

181.723 CONSTRUCTION CONTRACTORS.

Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section.

(a) "Person" means any individual, limited liability company, limited liability partnership, corporation, partnership, incorporated or unincorporated association, sole proprietorship, joint stock company, or any other legal or commercial entity.

(b) "Department" means the Department of Labor and Industry.

(c) "Commissioner" means the commissioner of labor and industry or a duly designated representative of the commissioner who is either an employee of the Department of Labor and Industry or person working under contract with the Department of Labor and Industry.

(d) "Individual" means a human being.

(e) "Day" means calendar day unless otherwise provided.

(f) "Knowingly" means knew or could have known with the exercise of reasonable diligence.

(g) "Document" or "documents" includes papers; books; records; memoranda; data; contracts; drawings; graphs; charts; photographs; digital, video, and audio recordings; records; accounts; files; statements; letters; e-mails; invoices; bills; notes; and calendars maintained in any form or manner.

(h) "Business entity" means a person other than an individual or a sole proprietor.

Subd. 2. **Limited application.** This section only applies to individuals performing public or private sector commercial or residential building construction or improvement services. Building construction and improvement services do not include (1) the manufacture, supply, or sale of products, materials, or merchandise; (2) landscaping services for the maintenance or removal of existing plants, shrubs, trees, and other vegetation, whether or not the services are provided as part of a contract for the building construction or improvement services; and (3) all other landscaping services, unless the other landscaping services are provided as part of a contract for the building construction or improvement services.

Subd. 3. **Employee-employer relationship.** Except as provided in subdivision 4, for purposes of chapters 176, 177, 181A, 182, and 268, as of January 1, 2009, an individual who performs services for a person that are in the course of the person's trade, business, profession, or occupation is an employee of that person and that person is an employer of the individual.

Subd. 4. **Independent contractor.** (a) An individual is an independent contractor and not an employee of the person for whom the individual is performing services in the course of the person's trade, business, profession, or occupation only if the individual is registered with the Department of Labor and Industry, if required under subdivision 4a, and the individual:

(1) maintains a separate business with the individual's own office, equipment, materials, and other facilities;

(2)(i) holds or has applied for a federal employer identification number or (ii) has filed business or self-employment income tax returns with the federal Internal Revenue Service if the individual has performed services in the previous year;

(3) is operating under contract to perform the specific services for the person for specific amounts of money and under which the individual controls the means of performing the services;

(4) is incurring the main expenses related to the services that the individual is performing for the person under the contract;

(5) is responsible for the satisfactory completion of the services that the individual has contracted to perform for the person and is liable for a failure to complete the services;

(6) receives compensation from the person for the services performed under the contract on a commission or per-job or competitive bid basis and not on any other basis;

(7) may realize a profit or suffer a loss under the contract to perform services for the person;

(8) has continuing or recurring business liabilities or obligations; and

(9) the success or failure of the individual's business depends on the relationship of business receipts to expenditures.

(b) If an individual is an owner or partial owner of a business entity, the individual is an employee of the person for whom the individual is performing services in the course of the person's trade, business, profession, or occupation, and is not an employee of the business entity in which the individual has an ownership interest, unless:

(1) the business entity meets the nine factors in paragraph (a);

(2) invoices are submitted in the name of the business entity;

(3) the business entity is registered with the secretary of state, if required; and

(4) the business entity is registered with the Department of Labor and Industry, if required under subdivision 4a.

Subd. 4a. Registration pilot project. (a) The commissioner shall implement a pilot project, effective July 1, 2012, for the registration of persons who perform public or private sector commercial or residential building construction or improvement services as described in subdivision 2. The purpose of the pilot project is to evaluate whether the information obtained through registration assists the Department of Labor and Industry, the Department of Employment and Economic Development, and the Department of Revenue to enforce laws related to misclassification of employees. The commissioner shall issue a report to the legislature no later than January 1, 2014, on recommendations for amendments to the registration program, including reasonable registration fees to be used to aid in enforcing misclassification laws. The commissioner must not charge a fee for registration under the pilot project, but may take the enforcement action specified in subdivision 8a. The pilot project shall expire on June 30, 2014, unless extended by the legislature.

(b) Except as provided in paragraph (c), any person who performs construction services in the state on or after September 15, 2012, must register with the commissioner as provided in subdivision 5 before performing construction services for another person. The requirements for registration under this subdivision are not a substitute for, and do not relieve a person from complying with, any other law requiring that the person be licensed, registered, or certified.

(c) The registration requirements in this subdivision do not apply to:

(1) a person who, at the time the person is performing the construction services, holds a current license, certificate, or registration under chapter 299M or 326B;

(2) a person who holds a current independent contractor exemption certificate issued under this section that is in effect on September 15, 2012, except that the person must register under this section no later than the date the exemption certificate expires, is revoked, or is canceled;

(3) a person who has given a bond to the state under section 326B.197 or 326B.46;

(4) an employee of the person performing the construction services, if the person was in compliance with laws related to employment of the individual at the time the construction services were performed;

(5) an architect or professional engineer engaging in professional practice as defined in section 326.02, subdivisions 2 and 3;

(6) a school district or technical college governed under chapter 136F;

(7) a person providing construction services on a volunteer basis, including but not limited to Habitat for Humanity and Builders Outreach Foundation, and their individual volunteers when engaged in activities on their behalf; or

(8) a person exempt from licensing under section 326B.805, subdivision 6, clause (5).

Subd. 5. **Registration application.** (a) Persons required to register under subdivision 4a must submit electronically, in the manner prescribed by the commissioner, a complete application according to paragraphs (b) to (d).

(b) A complete application must include all of the following information about any individual who is registering as an individual or a sole proprietor, or who owns 25 percent or more of a business entity being registered:

(1) the individual's full legal name and title at the applicant's business;

(2) the individual's business address and telephone number;

(3) the percentage of the applicant's business owned by the individual; and

(4) the individual's Social Security number.

(c) A complete application must also include the following information:

(1) the applicant's legal name; assumed name filed with the secretary of state, if any; designated business address; physical address; telephone number; and e-mail address;

(2) the applicant's Minnesota tax identification number, if one is required or has been issued;

(3) the applicant's federal employer identification number, if one is required or has been issued;

(4) evidence of the active status of the applicant's business filings with the secretary of state, if one is required or has been issued;

(5) whether the applicant has any employees at the time the application is filed;

(6) the names of all other persons with an ownership interest in the business entity who are not identified in paragraph (b), and the percentage of the interest owned by each person, except that the names of shareholders with less than ten percent ownership in a publicly traded corporation need not be provided;

(7) information documenting compliance with workers' compensation and unemployment insurance laws;

(8) a certification that the person signing the application has: reviewed it; determined that the information provided is true and accurate; and determined that the person signing is authorized to sign and file the application as an agent of the applicant. The name of the person signing, entered on an electronic application, shall constitute a valid signature of the agent on behalf of the applicant; and

(9) a signed authorization for the Department of Labor and Industry to verify the information provided on or with the application.

(d) A registered person must notify the commissioner within 15 days after there is a change in any of the information on the application as approved. This notification must be provided electronically in the manner prescribed by the commissioner. However, if the business entity structure, legal form of the business entity, or business ownership has changed, the person must submit a new registration application and registration fee, if any, for the new business entity.

(e) The registered person must remain registered while providing construction services for another person. The provisions of sections 326B.091 and 326B.094 to 326B.097 apply to this section.

Subd. 5a. **Web site.** (a) The commissioner shall develop and maintain a Web site on which applicants for registration can submit a registration application. The Web site shall be designed to receive and process registration applications and promptly issue registration certificates electronically to successful applicants.

(b) The commissioner shall maintain the certificates of registration on the department's official public Web site, which shall include the following information:

(1) the registered person's legal business name, including any assumed name, as filed with the secretary of state;

(2) the person's business address designated on the application; and

(3) the effective date of the registration and the expiration date.

Subd. 6. [Repealed, 2012 c 295 art 2 s 13]

Subd. 7. **Prohibited activities.** (a) The prohibited activities in this subdivision are in addition to those prohibited in sections 326B.081 to 326B.085.

(b) An individual shall not hold himself or herself out as an independent contractor unless the individual meets the requirements of subdivision 4.

(c) A person who provides construction services in the course of the person's trade, business, occupation, or profession shall not:

(1) require an individual through coercion, misrepresentation, or fraudulent means to adopt independent contractor status or form a business entity;

(2) knowingly misrepresent or misclassify an individual as an independent contractor;

(3) contract with or perform construction services for another person without first being registered if required by subdivision 4a;

(4) contract with or pay another person to perform construction services if the other person is not registered if required by subdivision 4a. All payments to an unregistered person for construction services on a single project site shall be considered a single violation. It is not a violation of this clause:

(i) for a person to contract with or pay an unregistered person if the unregistered person was registered at the time the contract for construction services was entered into; or

(ii) for a homeowner or business to contract with or pay an unregistered person if the homeowner or business is not in the trade, business, profession, or occupation of performing building construction or improvement services; or

(5) be penalized for violations of this subdivision that are committed by another person. This clause applies only to violations of this paragraph.

Subd. 8. [Repealed, 2012 c 295 art 2 s 13]

Subd. 8a. **Enforcement; remedies; and penalties.** Notwithstanding the maximum penalty amount in section 326B.082, subdivisions 7 and 12, the maximum penalty for failure to register is \$2,000, but the commissioner shall forgive the penalty if the person registers within 30 days of the date of the penalty order.

Subd. 9. [Repealed, 2012 c 295 art 2 s 13]

Subd. 10. [Repealed, 2012 c 295 art 2 s 13]

Subd. 10a. **Notice requirement.** Notice of a penalty order for failure to register must include a statement that the penalty shall be forgiven if the person registers within 30 days of the date of the penalty order.

Subd. 11. [Repealed, 2012 c 295 art 2 s 13]

Subd. 12. [Repealed, 2012 c 295 art 2 s 13]

Subd. 13. **Rulemaking.** The commissioner may, in consultation with the commissioner of revenue and the commissioner of employment and economic development, adopt, amend, suspend, and repeal rules under the rulemaking provisions of chapter 14 that relate to the commissioner's responsibilities under this section. This subdivision is effective May 26, 2007.

Subd. 14. [Repealed, 2012 c 295 art 2 s 13]

Subd. 15. **Notice to commissioner; review by commissioner of revenue.** When the commissioner has reason to believe that a person has violated subdivision 7, paragraph (b); or (c), clause (1) or (2), the commissioner must notify the commissioner of revenue and the commissioner of employment and economic development. Upon receipt of notification from the commissioner, the commissioner of revenue must review the information returns required under section 6041A of the Internal Revenue Code. The commissioner of revenue shall also review the submitted certification that is applicable to returns audited or investigated under section 289A.35.

Subd. 16. **Data classified.** Data in applications and any required documentation submitted to the commissioner under this section are private data on individuals or nonpublic data as defined in section 13.02. Data in registration certificates issued by the commissioner are public data; except that registration information published on the department's Web site may be accessed for registration verification purposes only. Data that document a revocation or cancellation of a certificate are public data. Upon request of the Department of Revenue or the Department of Employment and Economic Development, the commissioner may release to the requesting

department data classified as private or nonpublic under this subdivision or investigative data that are not public under section 13.39 that relate to the issuance or denial of applications or revocations of certificates.

Subd. 17. [Repealed, 2012 c 295 art 2 s 13]

History: *2007 c 135 art 3 s 15; 2007 c 140 art 8 s 30; art 13 s 4; 2008 c 337 s 2; 2009 c 78 art 6 s 17; 2010 c 347 art 3 s 1; 1Sp2011 c 4 art 3 s 1; 2012 c 295 art 2 s 1-10*

NOTE: Subdivisions 6, 8, 9, 10, 11, 12, and 14 are repealed by Laws 2012, chapter 295, article 2, section 13, effective July 1, 2012, except they shall remain in effect for the regulation of an individual holding an independent contractor exemption certificate issued before July 1, 2012, under Minnesota Statutes 2010, section 181.723, subdivision 5, until the exemption certificate expires, is revoked, or is canceled.