

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) "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:

(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.

An individual who is not registered, if required by section 326B.701, is presumed to be an employee of a person for whom the individual performs services in the course of the person's trade, business, profession, or occupation. The person for whom the services were performed may rebut this presumption by showing that the unregistered individual met all nine factors in this paragraph at the time the services were performed.

(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 and payments are in the name of the business entity; and

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

If the business entity in which the individual has an ownership interest is not registered, if required by section 326B.701, the individual is presumed to be an employee of a person for whom the individual performs services and not an employee of the business entity in which the individual has an ownership interest. The person for whom the services were performed may rebut the presumption by showing that the business entity met the requirements of clauses (1) to (3) at the time the services were performed.

Subd. 4a. MS 2012 [Renumbered 326B.701, subd 2]

Subd. 5. MS 2012 [Renumbered 326B.701, subd 3]

Subd. 5a. MS 2012 [Renumbered 326B.701, subd 4]

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 [Repealed, 2012 c 295 art 2 s 13]

Subd. 7. **Prohibited activities related to independent contractor status.** (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.

Subd. 7a. MS 2012 [Renumbered 326B.701, subd 5]

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 [Repealed, 2012 c 295 art 2 s 13]

Subd. 8a. MS 2012 [Renumbered 326B.701, subd 6]

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 [Repealed, 2012 c 295 art 2 s 13]

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 [Repealed, 2012 c 295 art 2 s 13]

Subd. 10a. MS 2012 [Renumbered 326B.701, subd 7]

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 and review by commissioners of revenue and employment and economic development.** 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. MS 2012 [Renumbered 326B.701, subd 8]

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; 2014 c 305 s 13-17,31

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.