



CONTRACTOR OR EMPLOYEE

UNDERSTANDING THE DIFFERENCE

PRESUMPTION OF EMPLOYMENT

- Each person who performs services for another for remuneration is presumed to be an employee of the person for whom the services are performed unless it is proven that person is an independent contractor.
- An employer who asserts an individual is an independent contractor, rather than an employee, has the burden of proving the fact.

GENERAL CONTRACTOR LIABILITY

- As a general contractor you bear the legal responsibility to ensure independent contractors and subcontractors are adequately insured.
- A general contractor may be liable for unpaid premium and penalties for uninsured contractors.
- General contractor liability applies to the building construction trades.
- WSI may request a list of subcontractors/independent contractors at any time to review for compliance.

Documentation for General Contractors to Review

Due to the potential consequences of working with an uninsured contractor, it is best business practice to request the following documentation from every independent contractor/subcontractor:

1. Certificate of Liability Insurance
2. WSI's Certificate of Payment or Verification of Nonemployment
3. Business Registration with the Secretary of State
4. Contractor's License



EMPLOYER SEARCH TOOL

Determine if an employer, contractor, or subcontractor has WSI coverage. To access the Employer Search, visit: workforcesafety.com >> **Employers**

CONTRACTOR OR EMPLOYEE

CONTINUED

WSI has a formal independent contractor review process to evaluate the working relationship between the contractor and the employer. The process determines if the contractor is classified as an employee or independent contractor for the purposes of workers' compensation coverage in North Dakota.

20 FACTOR COMMON LAW



WSI uses the 20 factor "common law" test to determine whether a worker is a contractor or employee, with emphasis placed on these factors:

- Integration
- Working for More than One Firm at a Time
- Continuing Relationship
- Service Available to the Public
- Significant Investment
- Right to Dismiss or Terminate Services
- Realization of Profit/Loss

For a complete listing and explanation of these factors, see North Dakota Administrative Code [§ 92-01-02-49](#).

TRUCKING INDUSTRY



Trucking Industry – unique factors WSI considers when reviewing a driver as an employee or independent contractor:

- Who owns the truck?
- Who pays for maintenance and repairs?
- Who bears the burden of operating expenses, fuel, insurance, etc?
- Who supplies the personnel to operate the truck?

INDEPENDENT CONTRACTOR MYTHS

- 1. MYTH:** Out-of-state exemptions are valid in North Dakota.
TRUTH: North Dakota has a presumption of employment. An exemption certificate issued in another state does not transfer into North Dakota.
- 2. MYTH:** Reporting income on a 1099 makes the worker an independent contractor.
TRUTH: How a worker is paid is not one of the 20 factors of the common law test used in determining employee or independent contractor status.
- 3. MYTH:** Work performed by the contractor offsite means the employer does not have control.
TRUTH: Where the employer performs services is not solely indicative of control. Other factors include whether the services provided are integral to the employer's operations and whether the worker is required to comply with instruction and direction over the work performed.
- 4. MYTH:** Registering a business with the Secretary of State makes the worker an independent contractor.
TRUTH: Registering with the Secretary of State authenticates the business. WSI reviews the working relationship between the worker and the employer to determine employee or independent contractor status.
- 5. MYTH:** Contract or agreement states the worker is considered an independent contractor.
TRUTH: If a worker is determined to be an employee for the purposes of WSI, the worker cannot sign an agreement to waive their rights under Title 65.