

FACT Sheet



MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY
CONSTRUCTION CODES AND LICENSING

Who may work as an independent contractor in the construction industry?

Exemption certificate

State law requires individuals working as independent contractors in the residential and commercial construction industry to obtain an Independent Contractor Exemption Certificate (ICEC) from the Department of Labor and Industry. For purposes of the state workers' compensation, unemployment insurance, wage and hour occupational safety and health laws and state and federal tax withholding, individuals doing residential and commercial construction work without an ICEC will be employees of the contractor for whom they are working.

These businesses are characterized as contracting, performing work and receiving compensation from another contractor. **The ICEC is only required for independent contractor sole proprietorships who subcontract.**

Businesses that are registered as another business entity with the Minnesota Secretary of State do not qualify for the ICEC. This includes corporations, LLCs and partnerships. Also, the ICEC does not apply to construction sales, many types of landscaping (see Minn. Statutes 181.723, sub. 2) construction design, manufacturing, cleanup, deliveries or maintenance.

To obtain an ICEC, individuals must complete and submit an application that establishes that they meet the conditions required to operate as an independent contractor. Applications are available at www.dli.mn.gov/ccld/icec.asp.

Certificate holders may work as either independent contractors or employees. Whether a certificate holder is working as an independent contractor or employee will depend on the conditions of the particular work relationship.

To operate as independent contractors, individuals must be able to meet the conditions set out in the law's nine-factor test. View the nine-factor test at www.dli.mn.gov/ccld/icec.asp.

Apply for a certificate

Applications for the ICEC are available on the DLI Web site at www.dli.mn.gov/ccld/icecapply.asp. The application and the renewal fee for the certificate is \$165. These fees are **nonrefundable**. Independent contractors are required to renew their exemption certificate every two years.

Contractor responsibility

Contractors will be obligated to verify that the workers with whom they enter into agreements as independent contractors have a current ICEC.

DLI maintains a list of certificate holders on its Web site, and certificates for those individuals are available to download and print. Contractors are required to maintain a copy of these certificates for five years.

Individuals and contractors who fail to comply with the law are subject to a penalty of up to \$5,000 for each violation and will be reported to workers' compensation, unemployment insurance and revenue regulation for further action.

**For more information about
the ICEC, visit
www.dli.mn.gov/ccld/icec.asp**

This fact sheet is a general outline, subject to statutory change. To read the text of the law, visit www.dli.mn.gov/ccld/icec.asp. Determination of independent contractor status for those doing commercial or residential building construction or improvements in the public or private sector is governed by Minnesota Statutes §181.723.

443 Lafayette Road N. • St. Paul, MN 55155 • E-mail: dli.ic@state.mn.us • Phone: (651) 284-5074 • TTY: (651) 297-4198

Contractor responsibility

Contractors are obligated to verify that the workers with whom they enter into business agreements as independent contractors (subcontractors) have a current ICEC. For purposes of the state's workers' compensation, unemployment insurance, wage and hour and occupational safety and health laws, workers without current exemption certificates will be employees of the contractors for whom they are working, unless another exemption applies to them.

DLJ maintains a list of certificate holders on its Web site. Once issued, the ICEC will be available at the license and certification lookup at www.dli.mn.gov/ccld/icec.asp. Contractors can access the site to verify a worker's status and will be required to maintain a copy of the certificates for five years.

Penalties

Individuals and contractors who fail to comply with the law are subject to investigation and a penalty of up to \$5,000 for each violation and will be reported to other state agencies for possible further action.

Contact information

For exemption certificate application materials, to verify an employee's status as an independent contractor, and view a list of frequently asked questions visit

www.dli.mn.gov/ccld/icec.asp

To contact DLI for more information about the exemption certificate:

- e-mail: dli.ic@state.mn.us
- phone: (651) 284-5074

Additional resources for independent contractors:

Minnesota Department of Labor and Industry
Workers' Compensation Division
Web site: www.dli.mn.gov/wc/indpcont.asp
Phone: 1-800-342-5354

Minnesota Department of Employment
and Economic Development
Unemployment Insurance Division
Web site:
www.uimn.org/tax/hdbook/ind_contractor.htm

Minnesota Department of Revenue; for details of
the 2-percent withholding requirement.
Web site: www.taxes.state.mn.us
Phone: (651) 282-9999

US Internal Revenue Service
Web site: www.irs.gov
Phone: 1-800-829-1040

This document can be provided in different
forms, such as large print, Braille or audio,
by calling (651) 284-5005 or (651) 297-4198/TTY.

This brochure is also available in the
following languages:

- Spanish (Español)
- Hmong (Hmoob)
- Russian (Russkiy yazyk)



Minnesota Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155
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INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE

Follow this guide to help
assess your eligibility for
the Independent Contractor
Exemption Certificate

A statewide requirement

State law requires individuals working as independent contractors in the residential and commercial construction industry to obtain an Independent Contractor Exemption Certificate (ICEC) from the Department of Labor and Industry. For purposes of state workers' compensation, unemployment insurance, wage and hour, occupational safety and health laws and state and federal tax withholding, individuals doing residential and commercial construction work without an ICEC will be employees of the contractor for whom they are working.

These businesses are characterized as contracting, performing work and receiving compensation from another contractor. **The ICEC is only required for independent contractor sole proprietorships who subcontract.**

Businesses that are registered as another business entity with the Minnesota Secretary of State do not qualify for the ICEC. This includes corporations, LLCs and partnerships. Also, the ICEC does not apply to construction sales, many types of landscaping (see Minn. Statutes 181.723, sub. 2) construction design, manufacturing, cleanup, deliveries or maintenance.

Apply for a certificate

Applications for the ICEC are available at www.dli.mn.gov/ccld/icec.asp. The application and renewal fee for the ICEC is \$165 every two years. **Application and renewal fees are nonrefundable.** Applications must be submitted by mail or hand-delivered and will be granted or denied within 30 days after they are received by DLI.

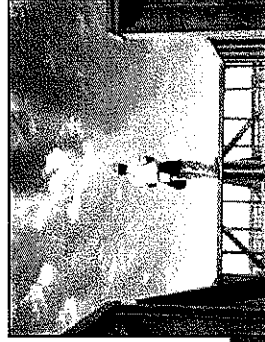
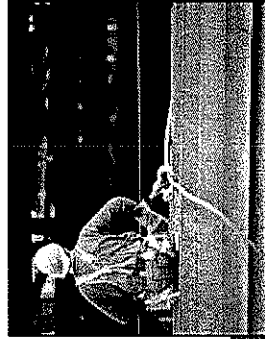
Nine-factor test: Are you an independent contractor?

To be an independent contractor, in addition to having an ICEC, an individual must meet the conditions set out in all of the following factors. The individual:

- maintains a separate business with the individual's own office, equipment, materials and other facilities;
- holds or has applied for a federal employer identification number or has filed business or self employment income tax returns with the federal Internal Revenue Service if the person has performed services in the previous year for which the individual is seeking the ICEC;
- operates under contracts to perform specific services for specific amounts of money and under which the individual controls the means of performing the services;
- incurs the main expenses related to the service the individual performs under contract;
- is responsible for the satisfactory completion of services that the individual contracts to perform and is liable for failure to complete the service;
- receives compensation for service performed under a contract on a commission or per-job or competitive bid basis and not on any other basis;
- may realize a profit or suffer a loss under contract to perform service;
- has continuing or recurring business liabilities or obligations; and
- the success or failure of the individual's business depends on the relationship of the business receipts to expenditures.

To determine eligibility for an ICEC, individuals will be required to submit as part of their application, information and documentation showing they meet the above nine factors.

The Independent Contractor Exemption Certificate application is available at www.dli.mn.gov/ccld/icec.asp



Legislation - ICEC

See Minnesota Independent Contractor Exemption Certificate Rules (PDF)

Statute:

181.723 INDEPENDENT CONTRACTORS.

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

(a) "Person" means any individual, limited liability corporation, 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.

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.** 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 (1) the individual holds a current independent contractor exemption certificate issued by the commissioner; and (2) the individual is performing services for the person under the independent contractor exemption certificate as provided in subdivision 6. The requirements in clauses (1) and (2) must be met in order to qualify as an independent contractor and not as an employee of the person for whom the individual is performing services in the course of the person's trade, business, profession, or occupation.

Subd. 5. **Application.** To obtain an independent contractor exemption certificate, the individual must submit, in the manner prescribed by the commissioner, a complete application and the certificate fee required under subdivision 14.

(a) A complete application must include all of the following information:

(1) the individual's full name;

- (2) the individual's residence address and telephone number;
- (3) the individual's business name, address, and telephone number;
- (4) the services for which the individual is seeking an independent contractor exemption certificate;
- (5) the individual's Social Security number;
- (6) the individual's or the individual's business federal employer identification number, if a number has been issued to the individual or the individual's business;
- (7) any information or documentation that the commissioner requires by rule that will assist the department in determining whether to grant or deny the individual's application; and
- (8) the individual's sworn statement that the individual meets all of the following conditions:
 - (i) maintains a separate business with the individual's own office, equipment, materials, and other facilities;
 - (ii) holds or has applied for a federal employer identification number or has filed business or self-employment income tax returns with the federal Internal Revenue Service if the person has performed services in the previous year for which the individual is seeking the independent contractor exemption certificate;
 - (iii) operates under contracts to perform specific services for specific amounts of money and under which the individual controls the means of performing the services;
 - (iv) incurs the main expenses related to the service that the individual performs under contract;
 - (v) is responsible for the satisfactory completion of services that the individual contracts to perform and is liable for a failure to complete the service;
 - (vi) receives compensation for service performed under a contract on a commission or per-job or competitive bid basis and not on any other basis;
 - (vii) may realize a profit or suffer a loss under contracts to perform service;
 - (viii) has continuing or recurring business liabilities or obligations; and
 - (ix) the success or failure of the individual's business depends on the relationship of business receipts to expenditures.

(b) Individuals who are applying for or renewing a residential building contractor or residential remodeler license under sections 326.83 to 326.992 and any rules promulgated pursuant thereto may simultaneously apply for or renew an independent contractor exemption certificate. The commissioner shall create an application form that allows for the simultaneous application for both a residential building contractor or residential remodeler license and an independent contractor exemption certificate. If individuals simultaneously apply for or renew a residential building contractor or residential remodeler license and an independent contractor exemption certificate using the form created by the commissioner, individuals shall only be required to provide, in addition to the information required by section 326.89 and rules promulgated pursuant thereto, the sworn statement required by paragraph (a), clause (8), and any additional information required by this subdivision that is not also required by section 326.89 and any rules promulgated thereto. When individuals submit a simultaneous application on the form created by the commissioner for both a residential building contractor or residential remodeler license and an independent contractor exemption certificate, the application fee shall be \$150. An independent contractor exemption certificate that is in effect before March 1, 2009, shall remain in effect until March 1, 2011, unless revoked by the commissioner or canceled by the individual.

(c) Within 30 days of receiving a complete application and the certificate fee, the commissioner must either grant or deny the application. The commissioner may deny an application for an independent contractor exemption certificate if the individual has not submitted a complete application and certificate fee or if the individual does not meet all of the conditions for holding the independent contractor exemption certificate. The commissioner may revoke an independent contractor exemption certificate if the commissioner determines that

the individual no longer meets all of the conditions for holding the independent contractor exemption certificate, commits any of the actions set out in subdivision 7, or fails to cooperate with a department investigation into the continued validity of the individual's certificate. Once issued, an independent contractor exemption certificate remains in effect for two years unless:

(1) revoked by the commissioner; or
(2) canceled by the individual.

(d) If the department denies an individual's original or renewal application for an independent contractor exemption certificate or revokes an independent contractor exemption certificate, the commissioner shall issue to the individual an order denying or revoking the certificate. The commissioner may issue an administrative penalty order to an individual or person who commits any of the actions set out in subdivision 7.

(e) An individual or person to whom the commissioner issues an order under paragraph & (d) shall have 30 days after service of the order to request a hearing. The request for hearing must be in writing and must be served on or faxed to the commissioner at the address or facsimile number specified in the order by the 30th day after service of the order. If the individual does not request a hearing or if the individual's request for a hearing is not served on or faxed to the commissioner by the 30th day after service of the order, the order shall become a final order of the commissioner and will not be subject to review by any court or agency. The date on which a request for hearing is served by mail shall be the postmark date on the envelope in which the request for hearing is mailed. If the individual serves or faxes a timely request for hearing, the hearing shall be a contested case hearing and shall be held in accordance with chapter 14.

Subd. 6. Performing services under exemption certificate. An individual is performing services for a person under an independent contractor exemption certificate if:

(a) the individual is performing services listed on the individual's independent contractor exemption certificate; and

(b) at the time the individual is performing services listed on the individual's independent contractor exemption certificate, the individual meets all of the following conditions:

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

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

(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 suffers 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.

Subd. 7. Prohibited activities. (a) An individual shall not:

(1) perform work as an independent contractor who meets the qualifications under subdivision 6 without first obtaining from the department an independent contractor exemption certificate;

(2) perform work as an independent contractor when the department has denied or revoked the individual's independent contractor exemption certificate;

& (3) transfer to another individual or allow another individual to use the individual's independent contractor exemption certificate;

(4) alter or falsify an independent contractor exemption certificate; > (5) misrepresent the individual's status as an independent contractor; or

& (6) make a false material statement, representation, or certification; omit material information; or alter, conceal, or fail to file a document required by this section or any rule promulgated by the commissioner under rulemaking authority set out in this section.

(b) A person shall not: > (1) require an individual through coercion, misrepresentation, or fraudulent means to adopt independent contractor status;

(2) knowingly misrepresent that an individual who has not been issued an independent contractor exemption certificate or is not performing services for the person under an independent contractor exemption certificate is an independent contractor; or

& (3) make a false material statement, representation, or certification; omit material information; or alter, conceal, or fail to file a document required by this section or any rule promulgated by the commissioner under rulemaking authority set out in this section.

(c) A person for whom an individual is performing services must obtain a copy of the > individual's independent contractor exemption certificate before services may commence. A copy of the independent contractor exemption certificate must be retained for five years from the date

of receipt by the person for whom an individual is performing services.

Subd. 8. **Remedies.** An individual or person who violates any provision of subdivision 7 is subject to a penalty to be assessed by the department of up to \$5,000 for each violation. The department shall deposit penalties in the assigned risk safety account.

Subd. 9. **Commissioner's powers.** (a) In order to carry out the purposes of this section, the commissioner may:

(1) administer oaths and affirmations, certify official acts, interview, question, take oral or written statements, and take depositions;

(2) request, examine, take possession of, photograph, record, and copy any documents, equipment, or materials;

(3) at a time and place indicated by the commissioner, request persons to appear before the commissioner to give testimony and produce documents, equipment, or materials;

(4) issue subpoenas to compel persons to appear before the commissioner to give testimony and produce documents, equipment, or materials; and

(5) subject to paragraph (c), with or without notice, enter without delay upon any property, public or private, for the purpose of taking any action authorized under this subdivision or the applicable law, including obtaining information or conducting inspections or investigations.

(b) Persons requested by the commissioner to give testimony or produce documents, equipment, or materials shall respond within the time and in the manner specified by the commissioner. If no time to respond is specified in the request, then a response shall be submitted within 30 days of the commissioner's service of the request.

(c) Upon the refusal or anticipated refusal of a property owner, lessee, property owner's representative, or lessee's representative to permit the commissioner's entry onto property as provided in paragraph (a), the commissioner may apply for an administrative inspection order in the Ramsey County District Court or, at the commissioner's discretion, in the district court in the county in which the property is located. The commissioner may anticipate that a property owner or lessee will refuse entry if the property owner, lessee, property owner's representative, or lessee's

representative has refused to permit entry on a prior occasion or has informed the commissioner that entry will be refused. Upon showing of administrative probable cause by the

commissioner, the district court shall issue an administrative inspection order that compels the property owner or lessee to permit the commissioner to enter the property for the purposes specified in paragraph (a).

& (d) Upon the application of the commissioner, a district court shall treat the failure of any person to obey a subpoena lawfully issued by the commissioner under this subdivision as a contempt of court.

Subd. 10. **Notice requirements.** Unless otherwise specified, service of a document on a person under this section may be by mail, by personal service, or in accordance with any consent to service filed with the commissioner. Service by mail shall be accomplished in the manner provided in Minnesota Rules, part 1400.5550, subpart 2. Personal service shall be accomplished in the manner provided in Minnesota Rules, part 1400.5550, subpart 3.

Subd. 11. **Facsimile; timely service.** When this section permits a request for hearing to be served by facsimile on the commissioner, the facsimile shall not exceed 15 pages in length. The request shall be considered timely served if the facsimile is received by the commissioner, at the facsimile number identified by the commissioner in the order, no later than 4:30 p.m. central time on the last day permitted for faxing the request. Where the quality or authenticity of the faxed request is at issue, the commissioner may require the original request to be filed. Where the commissioner has not identified quality or authenticity of the faxed request as an issue and the

request has been faxed in accordance with this subdivision, the person faxing the request does not need to file the original request with the commissioner.

Subd. 12. **Time period computation.** In computing any period of time prescribed or allowed by this section, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or legal holiday.

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. **Fee.** The certificate fee for the original application and for the renewal of an independent contractor exemption certificate shall be \$150.

Subd. 15. **Notice to commissioner; review by commissioner of revenue.** When the commissioner has reason to believe that an individual who holds a certificate has failed to maintain all the conditions required by subdivision 6 or is not performing services for a person under the independent contractor exemption certificate, the commissioner must notify the commissioner of revenue and the commissioner of employment and economic development. & Upon receipt of notification from the commissioner that an individual who holds a certificate has failed to maintain all the conditions required by subdivision 6 or is not performing services for a person under the independent contractor exemption certificate, 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 for an independent contractor exemption certificate and any required documentation submitted to the commissioner are private data on individuals as defined in section 13.02. Data in exemption certificates issued by the commissioner are public data. Data that document a revocation or cancellation of an exemption certificate are public data. Upon request of the Department of Revenue or Department of Employment and Economic Development, the commissioner may release to the requesting department data classified as private 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.

History: *2007 c 135 art 3 s 15*

NOTE: This section, as added by Laws 2007, chapter 135, article 3, section 15, is effective July 1, 2008. Laws 2007, chapter 135, article 3, section 15, the effective date.

Minnesota Independent Contractor Exemption Certificate Rules

(Effective date anticipated to be September 2, 2008)

5202.0100 SCOPE.

Parts 5202.0100 to 5202.0160 implement Minnesota Statutes, section 181.723.

5202.0110 DEFINITIONS.

Subpart 1. Scope. The terms used in parts 5202.0100 to 5202.0160 have the meanings given them in this part.

Subp. 2. Applicant. "Applicant" means an individual who applies for an independent contractor certificate under parts 5202.0100 to 5202.0160, and Minnesota Statutes, section 181.723.

Subp. 3. Certificate holder. "Certificate holder" means an individual who has been issued a current independent contractor exemption certificate under Minnesota Statutes, section 181.723.

Subp. 4. Commissioner. "Commissioner" has the meaning given in Minnesota Statutes, section 181.723, subdivision 1.

Subp. 5. Department. "Department" has the meaning given in Minnesota Statutes, section 181.723, subdivision 1.

Subp. 6. Document or documents. "Document" or "documents" has the meaning given in Minnesota Statutes, section 181.723, subdivision 1.

Subp. 7. Exemption certificate. "Exemption certificate" means an independent contractor exemption certificate issued under Minnesota Statutes, section 181.723.

Subp. 8. Main expenses. "Main expenses" for purposes of Minnesota Statutes, section 181.723 means:

- (1) The expense of purchasing, renting and maintaining tools, equipment, facility or office space and vehicles used in providing the service;
- (2) Labor expenses related to the service;
- (3) Business expenses that are related to the service, such as advertising, insurance, taxes, licenses and permits; and

(4) The expense of materials used in providing the service, except for building construction or improvement materials that under a contract are provided by the building owner or another contractor.

Subp. 9. Individual. "Individual" has the meaning given in Minnesota Statutes, section 181.723, subdivision 1.

Subp. 9-10. Person. "Person" has the meaning given in Minnesota Statutes, section 181.723, subdivision 1.

Subp. 11. Sworn Statement. "Sworn Statement" means a statement that is signed and sworn to before a notarial officer under Minn. Stat. chapter 358.

5202.0120 WHO SHALL BE ISSUED AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE.

Subpart 1. Individuals. The department shall issue an exemption certificate only to an individual as described in Minnesota Statutes, section 181.723, subdivision 2. Domestic or foreign business corporations, public service corporations, development corporations, nonprofit corporations, cooperatives, cooperative associations, limited liability companies, limited partnerships, or partnerships created by statute are not individuals.

Subp. 2. Manufacture, supply, and sale of products, materials, or merchandise excluded. Individuals who manufacture, supply, or sell products, materials, or merchandise for the construction of public or private commercial or residential buildings, but do not install, connect, attach, or adjust for use the products, materials, or merchandise, are not performing public or private sector commercial or residential building construction or improvement services.

Subp. 3. Landscaping services. For purposes of Minnesota Statutes, section 181.723, subd. 2 (3), landscaping services means placing soil, sod and mulch; planting seeds, plants, shrubs, trees, and other vegetation; and installing erosion control measures, retaining walls, boundary walls, fences, brick and stone pavers, and aesthetic surface treatments.

5202.0130 APPLICATION; REQUIRED INFORMATION AND DOCUMENTATION; APPROVAL OR DENIAL.

Subpart 1. Complete application; submission of documents.

A. An application for an exemption certificate is complete upon the commissioner's receipt of all of the following:

- (1) a signed and dated application on a form approved by the commissioner;
- (2) the information and documentation required in subpart 2; and
- (3) the fee required by Minnesota Statutes, section 181.723, subdivision 14.

B. The applicant must submit complete and legible copies of the information and documentation required in subpart 2 and must retain the original information and documentation for at least two years after submitting the application. The commissioner may store by imaging or other electronic format any information and documentation submitted as part of the application if the image or electronic format produces an accurate and readable image. The commissioner must retain the copies of the submitted information and documentation until the information and documentation is stored by imaging or other electronic format. Thereafter, the commissioner may destroy the copies.

C. The commissioner may request the original of any information and documentation required in subpart 2 if the copies submitted under item B are not legible or complete, or as needed to verify the authenticity or accuracy of the information and documentation submitted. The applicant must submit the original information or documentation within five working days after receipt of the commissioner's request for the original. The commissioner must return the originals to the applicant within 30 days after the information or documentation is either copied or stored by imaging or other electronic format.

Subp. 2. Required information and documentation. All applicants for an exemption certificate must provide the information and documentation required in items A to N on a form and in the manner required by the commissioner.

A. The information in Minnesota Statutes, section 181.723, 4.1 subdivision 5, paragraph (a), clauses (1) to (6) and (8).

B. A designation of whether the applicant's business or residential address and business or residential telephone number will be used for purposes of contacting the applicant in connection with the application or exemption certificate and for personal service under Minnesota Statutes, section 181.723, subdivision 10.

C. The business name under which the applicant intends to operate as an independent contractor. If the business name is not the applicant's full legal name, the applicant must submit a

copy of the certificate of assumed name that has been filed with the secretary of state according to Minnesota Statutes, sections 333.001 to 333.065.

D. A copy of any audit, letter, report, order, decision, determination, certificate, opinion, or ruling issued by any state or federal court or agency, to the applicant or about which the applicant has knowledge, that is related to the status of the applicant or the applicant's business as an independent contractor, sole proprietor, employer or employee. The applicant must explain how the audit, letter, report, order, decision, determination, certification, opinion, or ruling supports one or more of the factors in Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), or why the applicant should be granted the exemption certificate despite the document's findings.

E. A copy of any credential held or training completed by the applicant that is related to, or required for, the performance of services for which the applicant is seeking an exemption certificate. Examples of these credentials include a business, professional, or personal license issued by a government entity; a certificate of completion of an apprenticeship or other training program; and a degree issued by an accredited educational institution. If the credential is a license issued by a Minnesota state agency, the applicant may provide the license number and type of license held instead of providing a copy of the license.

F. Information about whether the applicant employs individuals while acting as independent contractors under the exemption certificate. If the applicant employs individuals, the applicant must also submit documentation of the applicant's unemployment insurance tax account number under Minnesota Statutes, section 268.045, and workers' compensation coverage for the employees under Minnesota Statutes, chapter 176. If the applicant believes that unemployment or workers' compensation insurance is not required, the applicant must explain the legal basis for why unemployment or workers' compensation coverage is not required.

G. Information about whether, at any time during the two years before the date of the application, the applicant has been employed. If the applicant has been employed at any time during the two years before the date of the application, the applicant must explain why the employment does not preclude issuance of an exemption certificate.

H. All state and federal tax documents that are related to the services the applicant will provide as an independent contractor under the exemption certificate and that have been filed within the two years before the date of the application, including state and federal tax returns,

forms, schedules, and other attachments. If the applicant has not filed any tax returns, forms, schedules, or other attachments required by this item for one or both years, the applicant must explain why not. Examples of tax documents that must be submitted under this item, if they have been filed with the Internal Revenue Service, the Minnesota Department of Revenue, or a taxing agency in another jurisdiction, include returns, forms, schedules, and attachments documenting:

- (1) income earned and tax paid and owed, such as Internal Revenue Service tax returns on forms 1040 and 1040 SS, and Minnesota Department of Revenue tax returns on form M1;
- (2) itemized deductions, such as Internal Revenue Service Schedule A;
- (3) income, profit, or loss from a business, such as Internal Revenue Service Schedule C or C-EZ;
- (4) self-employment tax paid or owed, such as Internal Revenue Service Schedule SE;
- (5) federal unemployment tax paid or owed, such as Internal Revenue Service form 940;
- (6) withholdings from wages, such as Internal Revenue Service employer's annual or quarterly tax returns on forms 941 and 944 and the Minnesota Department of Revenue annual withholding return/reconciliation and information returns that show Minnesota withholding tax;
- (7) deduction schedules for depreciation and amortization, such as Internal Revenue Service form 4562;
- (8) the sale of business property, such as Internal Revenue Service form 4797;
- (9) reporting cash payments received in a trade or business, such as Internal Revenue Service form 8300;
- (10) expenses for business use of a home, such as Internal Revenue Service form 8829;
- (11) certificates of exemption of payment of sales tax, such as Minnesota Department of Revenue form ST3; and
- (12) wages or payments made by or received by the applicant as shown on Internal Revenue Service 1099, 1096, W-2, and W-3 forms. The applicant must describe the services performed by or for the applicant for each 1099 or W-2 form issued or received.

I. The applicant's Minnesota tax identification number or an explanation of why the applicant does not need one.

J. Copies of up to five executed contracts for services the applicant contracted to provide before the date of the application, if any, and template contracts that the applicant intends to use in contracting to provide services as an independent contractor under the exemption certificate. The template contracts must satisfy factors in Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), items (iii), (iv), (v), (vi) and (vii), for the services the applicant will provide as an independent contractor under the exemption certificate.

K. Applicants must submit the documentation described in subitems (1) and (2). In addition, applicants must submit the documentation described in at least five of subitems (3) through (13) related to the services the applicant will perform under the exemption certificate.

- (1) rental agreements or lease agreements, other than a post office box, for facility space used by the applicant in performing the services for which the applicant is seeking the exemption certificate. Instead of the rental or lease agreements, the applicant may provide the tax documentation described in item H, subitem 10;
- (2) documentation that establishes the applicant's ownership or control of equipment, tools, materials, or vehicles necessary for the applicant to perform the services for which the applicant is seeking the exemption certificate. Examples of such documentation include contracts, rental or lease agreements, deeds and receipts, or the tax documentation described in item H, subitems 2 or 7 showing such ownership or control;
- (3) if submitted by the applicant in response to item H, the state or federal tax documentation described in item H, subitems 1, 3, 4, 8, 9, and 11, and IRS 1099 forms issued to the applicant;
- (4) a commercial liability insurance policy or bond covering the applicant or the applicant's business, office equipment, and materials;
- (5) a workers' compensation policy covering the applicant;
- (6) business or building permits held or applied for;
- (7) bills or invoices from and payments made to vendors, suppliers, subcontractors, or other persons;
- (8) contracts with vendors, suppliers, subcontractors, or other persons;

- (9) bank statements and accounting statements showing receipts, expenditures, and profit or loss for the applicant's business;
- (10) trade or professional memberships or affiliations;
- (11) marketing or advertising materials;
- (12) documentation of payment to other independent contractors as shown on IRS forms 1099 and 1096; and
- (13) documentation of compliance with laws related to:
 - (a) workers' compensation or unemployment insurance as described in item F, and item H, subitem 5; and
 - (b) payment or withholding of wages as shown on IRS W-2 and W-3 forms or item H, subitem 6.

L. Authorization for or completion of forms authorizing the department to verify that the application and all information and documents submitted with the application are true and correct.

M. A color photocopy of a current photo identification document issued to the applicant by the United States or a state or territory of the United States, along with documentation required by any federal electronic verification program, such as the Systemic Alien Verification for entitlements Program adopted under United States Code, title 8, section 1642, that assists the department in verifying the applicant's authorization to work in the United States.

N. In addition to the sworn statement required by Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), a sworn statement that:

- (1) the application and all information and documents submitted with the application are true and correct;
- (2) the applicant is a United States citizen, or, if not a citizen, is authorized to work in the United States under federal immigration law; and
- (3) the applicant has complied with and will continue to comply with federal immigration law in hiring any employees.

Subp. 3. Approval or denial. Applications must be approved or denied according to items A and B, and Minnesota Statutes, section 181.723, subdivision 5, paragraph (c).

A. The commissioner must issue an exemption certificate if both subitems (1) and (2) are met:

(1) the application is complete according to subpart 1; and

(2) the commissioner determines that all of the information and documentation submitted establishes that the applicant meets or could meet the factors in Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), for the services for which the applicant has requested an exemption certificate.

B. The commissioner must deny an exemption certificate if:

(1) the application is not complete according to subpart 1; or

(2) the commissioner determines that all of the information and documentation submitted does not establish that the applicant meets or could meet the factors in Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), for the services for which the applicant has requested an exemption certificate.

5202.0140 APPLICATION FOR A CORRECTED, RENEWAL, OR AMENDED CERTIFICATE; TIME FRAMES FOR SUBMISSION OF INITIAL AND RENEWAL APPLICATIONS.

Subpart 1. Obligation to update identifying information. Within 15 days of the change, each certificate holder or applicant for an exemption certificate must notify the commissioner in writing of any change in the certificate holder's:

A. legal name;

B. business name;

C. business address;

D. business telephone number;

E. residential address;

F. residential telephone number; or

G. business organization.

Subp. 2. No additional fee or documentation. If the only change submitted under subpart 1 is to the certificate holder's business address, business telephone number, residential address, or residential telephone number, the commissioner must issue an updated exemption certificate within ten business days without requiring an additional fee or documentation.

Subp. 3. Legal name change. If the change is to the certificate holder's legal name or business name, the certificate holder must submit additional information and documentation if the commissioner determines it is needed to verify the change and to determine whether the name change affects the validity of the exemption certificate.

Subp. 4. Application to add new category of service. A certificate holder must submit a new complete application and fee according to part 5202.0130 to add a new category of service.

Subp. 5. Time frames for submission of initial and renewal applications. An initial application for an exemption certificate must not be submitted before September 2, 2008, or before the effective date of these rules, whichever is later. To renew an exemption certificate without a lapse in the certificate, the certificate holder must submit a new complete application and fee according to part 5202.0130 at least 30 days, but no more than 60 days, before the expiration date specified on the applicant's current certificate. An individual who does not file a complete application for renewal at least 30 days before the certificate's expiration date is uncertified as of 11:59:59 p.m. Central Time on the certificate's expiration date and remains uncertified unless and until a renewed certificate is issued by the department.

5202.0150 CONTENTS OF APPROVED CERTIFICATE; NOTICE OF CERTIFICATE; EFFECTIVE DATE.

Subpart 1. Content of certificate. If an application is approved, the department shall issue to the applicant an exemption certificate, which shall include at least the following information:

- A. the name of the independent contractor to whom the certificate was issued;
- B. the assumed name of the business if there is one;
- C. the address and telephone number provided in part 5202.0130, subpart 2, item B;
- D. the date the certificate was issued and the expiration date;
- E. the service or services that the independent contractor is permitted to perform under the certificate;
- F. the effect of the certificate under Minnesota Statutes, section 181.723, subdivisions 2 to 4; and
- G. how a person may contact the department with questions or to verify that a specific certificate remains current.

Subp. 2. Department list of certificate holders. The department shall maintain a list of current certificate holders on its official Web site. The Web site shall include the information in subpart 1 and, if applicable, whether the department has received a request to cancel an exemption certificate or has revoked an exemption certificate and the date the exemption certificate is canceled or revoked.

Subp. 3. Effective date. An exemption certificate issued before March 1, 2009, is effective on the date stated on the exemption certificate and shall remain in effect until March 1, 2011, unless revoked by the commissioner or canceled by the certificate holder. An exemption certificate issued on or after March 1, 2009, is effective on the date stated on the exemption certificate and remains in effect for two years unless revoked by the commissioner or canceled by the individual. A certificate holder must submit a new complete application and fee under part 5202.0130 in order to obtain a new exemption certificate if the previous exemption certificate has expired, been canceled by the certificate holder, or revoked by the commissioner.

Subp. 4. Verification of certificate and identity of certificate holder. The individual who holds an independent contractor exemption certificate must present current photo identification issued to the individual by the United States or a state or territory of the United States to any person for whom the certificate holder performs services under the exemption certificate. Before permitting the certificate holder to provide services as an independent contractor under a contract, the person for whom a certificate holder is performing services must:

A. obtain from the department and retain for five years a copy of the department's current exemption certificate for the certificate holder; and

B. review the photo identification presented by the certificate holder to verify the certificate holder's identity.

5202.0160 EXPIRATION, REVOCATION, OR CANCELLATION OF CERTIFICATE; NOTICE TO PUBLIC AND CONTRACTORS.

Subpart 1. Notice. When an exemption certificate expires, is canceled, or is revoked, the department shall indicate that certificate's status on the list of certificate holders on the department's official Web site. After a certificate has expired, is canceled, or is revoked, the department shall maintain the former certificate holder's information on its Web site for at least six months. After six months, the department may remove the expired, canceled, or revoked

certificate holder's information from its list of certificate holders. A former certificate holder shall not hold out as an independent contractor for the services listed on the expired, canceled, or revoked exemption certificate. An exemption certificate expires or is canceled or revoked as of 11:59:59 p.m. Central Time on the date of expiration, cancellation, or revocation.

Subp. 2. Cancellation. A certificate holder may request that an exemption certificate be canceled by filing a written request, in the form and manner prescribed by the commissioner. The written request must include the current name, address, and telephone number for each person for whom the certificate holder is performing services or intends to perform services under the exemption certificate before its cancellation. In addition, the cancellation request shall include a sworn statement that the certificate holder has provided written notification of the cancellation request to each person named. Within 21 days of receipt of the request, the department must serve on the certificate holder and each person the certificate holder has named in the cancellation request an order cancelling the exemption certificate. The effective date of cancellation is seven days after the order is served on the certificate holder and the persons named in the certificate holder's cancellation request.

Subp. 3. Revocation notice. During an action to revoke an exemption certificate, the certificate holder must inform the commissioner of any person for whom the certificate holder is providing services or intends to provide services under the exemption certificate. The department must serve a final order revoking the certificate upon the certificate holder and any person identified by the certificate holder. The effective date of the revocation is seven days after the order is served on the certificate holder and the persons identified by the certificate holder.

**Minnesota Department of Labor and Industry
Code Enforcement and Licensing Division
443 Lafayette Road North
St. Paul, MN 55155**

Instructions for Completing an Independent Contractor Exemption Certificate Application

These are instructions for filling out the Application for an Independent Contractor Exemption Certificate under Minn. Stat. § 181.723 and Minn. Rules chapter 5202. Retain this instruction sheet for future reference. For further information you may consult the Department of Labor and Industry website at www.dli.mn.gov or call the Department at 651-284-5074 or toll-free at (800) 342-5354. TTD users may call the Department at (651) 297-4198.

Only individuals may apply for an Independent Contractor Exemption Certificate. Domestic or foreign business corporations, public service corporations, development corporations, nonprofit corporations, cooperatives, cooperative associations, limited liability companies, limited partnerships, or partnerships created by statute are not individuals and cannot be issued an Independent Contractor Exemption Certificate. Independent Contractor Exemption Certificates are only issued to individuals providing residential or commercial building construction or improvement services.¹ If you have questions about this you may call the Department at one of the numbers listed above.

Payment

See application for amount due. **Applications received without the appropriate fee cannot be processed.** The payment should be made by check, cashier's check or money order. Make the check out to: **Minnesota Department of Labor and Industry.**

Note: You will be able to apply for a combined application every other year as the independent contractor exemption certificate and the Residential Building Contractor and Remodeler License are valid for two year.

1. SSN, Date of Birth, and E-mail Address

Social security number (SSN): A valid SSN is required to complete the application.

Date of Birth: Please list your date of birth in the following format: month, day, year.

E-mail address: Providing an e-mail address is optional.

2. Federal Employer Identification Number (FEIN)

An FEIN can be obtained on the Internal Revenue Service (IRS) website at: <http://www.irs.gov/businesses/small> and consult the topic "Employer ID Numbers (EIN's)". Or you may call the Business & Specialty tax line at 800-829-4933.

¹ For example, individuals who manufacture, supply, or sell products, materials, or merchandise for the construction of public or private commercial or residential buildings, but do not install, connect, attach, or adjust for use the products, materials, or merchandise, are not performing public or private sector commercial or residential building construction or improvement services. Building construction or improvement services do not include the maintenance or removal of existing plants, shrubs, trees, and other vegetation. Other landscaping services are included only if they are provided as part of a contract for the building construction or improvement services. See, Minn. Rule 5202.0120 and Minn. Stat. § 181.723, subd. 2 (3).

3. Minnesota Tax Identification Number

To find out if you need a Minnesota tax identification number please see the following website: <http://www.taxes.state.mn.us/>. Click on the topic "Business Taxpayers," then click on "Register for a Minnesota tax ID on line," and then consult the topic "Do I need a Minnesota tax ID number." If you do not have employees you may not need a Minnesota tax identification number, but review the above website to be sure.

3a. Unemployment Insurance Tax Identification Number

Under Minnesota unemployment insurance law, every individual or organization that pays covered wages in Minnesota must register with the Minnesota Unemployment Insurance Program, in the Minnesota Department of Employment and Economic Development. If you do not have employees, you may not need an unemployment insurance tax identification number. To determine whether you need an unemployment insurance tax identification number, please see the following website: <http://www.uimn.org/> and consult the topic "New Employer Information."

4. Full Legal Name

Fill in your full legal name.

5. Home Phone Number

Include your home phone number. If you don't have a land line and do have a cell phone, provide your cell phone number.

6. Home Address

Include your residence mailing address. Post office box numbers will not be accepted.

7. Business or DBA Name

Fill in the business name under which you intend to operate as an independent contractor. If the business name is not your full legal name, you must submit a copy of the Certificate of Assumed Name that has been filed with the Secretary of State. Information about Certificates of Assumed Name can be found on the Minnesota Secretary of State's website at: <http://www.sos.state.mn.us/home/index.asp?page=180> or call that office at 651-296-2803 or 1-877-551-6767.

8. Business Phone

Provide your business phone number. If your business does not have a land line and does have a cell phone, provide that number. You may provide both a land line and a cell phone number.

9. Business Address

Provide your business address, not a post office box. If your business address is the same as your home address state "SAME AS HOME."

10. Preferred contact address and number

Check the box where you would prefer to have your mail and phone calls received if the Department needs to contact you.

11. Section A

Submit complete and legible copies of documents described in each of the five categories and check the boxes to confirm the documents are being submitted with the application. **Do not submit original documents because they may be destroyed after scanning.** Retain the original information and documentation for at least two years after submitting the application. If the copies submitted are not legible or complete, the Department may request the original of the information and documents submitted.

For purposes of box 4, a “template contract” is a form that contains blanks that are used to fill in the details of an agreement and for dated signatures of the parties to the contract. Once the details are filled in and it is signed and dated, it is a record of the agreement. A proper bid form could meet the requirements of a template contract. Any template contract used, including bid forms, must demonstrate that the independent contractor:

- operates under a contract to perform specific services for specific amounts of money and under which the individual controls the means of performing the services;
- incurs the main expenses² related to the service the individual performs under contract;
- is responsible for the satisfactory completion of services that the individual contracts to perform and is liable for a failure to complete the service;
- receives compensation for service performed under a contract on a commission or per job or competitive bid basis and not on any other basis; and
- may realize a profit or suffer a loss under contracts to perform the service.

For purposes of box 5, a copy of the Certificate of Compliance with Workers' Compensation Law form is included in the packet with these instructions.

Section B

Submit items from five of the eleven categories listed in this section and check the five boxes to confirm the documents are being submitted with the application. (Five documents from one category will not fulfill the requirements of this section.) The documents submitted must be related to the services you intend to provide as an independent contractor. Some of the documents submitted under this Section may be required under Section C, question 3.

For box 1, provide any of the state and federal tax documents listed on the application that are related to the services you will provide as an independent contractor and that have been filed within the two years before the date of the application.

To satisfy box 11, you must submit documentation of both (a) and (b).

² “Main expenses” are defined as:

- (1) The expense of purchasing, renting and maintaining tools, equipment, facility or office space and vehicles used in providing the service;
 - (2) Labor expenses related to the service;
 - (3) Business expenses that are related to the service, such as advertising, insurance, taxes, licenses and permits; and
 - (4) The expense of materials used in providing the service, except for building construction or improvement materials that under a contract are provided by the building owner or another contractor.
- Minn. Rules 5202.0100, subd. 8.

Section C

Question 1: Work as an employee

If you have worked as an employee in the past two years, explain why the employment does not prevent the issuance of an independent contractor exemption certificate. (For example, you may no longer be employed or you may have decided to start your own business outside of employment.)

Question 2: Other agency's determination of status:

Examples of agencies that issue determinations of independent contractor or employer status include: state workers' compensation departments; offices of administrative hearings; unemployment compensation departments, state tax agencies, and the Internal Revenue Service. If the agency concluded that you were not an independent contractor, explain why that ruling does not affect this application.

Question 3: State or federal income tax filing:

Please provide all tax documents filed in the last two years if not already provided under Item 11, Section B. (If you provided all state and/or federal tax documents described in this question in connection with Item 11, Section B, state that in the space provided.)

If you have not filed state and/or federal income tax documents for one or both of the past two years for services you intend to perform as an independent contractor, please explain why in the space provided.

Examples of tax documents that must be submitted under this question, if they have been filed with the Internal Revenue Service, the Minnesota Department of Revenue, or a taxing agency in another jurisdiction, include returns, forms, schedules, and attachments documenting:

- (1) income earned and tax paid and owed, such as Internal Revenue Service tax returns on forms 1040 and 1040 SS, and Minnesota Department of Revenue tax returns on form M1;
- (2) itemized deductions, such as Internal Revenue Service Schedule A;
- (3) income, profit, or loss from a business, such as Internal Revenue Service Schedule C or C-EZ;
- (4) self-employment tax paid or owed, such as Internal Revenue Service Schedule SE;
- (5) federal unemployment tax paid or owed, such as Internal Revenue Service form 940;
- (6) withholdings from wages, such as Internal Revenue Service employer's annual or quarterly tax returns on forms 941 and 944 and the Minnesota Department of Revenue annual withholding return/reconciliation and information returns that show Minnesota withholding tax;
- (7) deduction schedules for depreciation and amortization, such as Internal Revenue Service form 4562;
- (8) the sale of business property, such as Internal Revenue Service form 4797;
- (9) reporting cash payments received in a trade or business, such as Internal Revenue Service form 8300;
- (10) expenses for business use of a home, such as Internal Revenue Service form 8829;
- (11) certificates of exemption of payment of sales tax, such as Minnesota Department of Revenue form ST3; and
- (12) wages or payments made by or received by the applicant as shown on Internal Revenue Service 1099, 1096, W-2, and W-3 forms. The applicant must describe the services performed by or for the applicant for each 1099 or W-2 form issued or received.

Question 4: Credentials/Training:

If a license is not required for the services you propose to provide, and you do not have any other credential or any formal training, you may describe other related training or experience in the space provided (but you are not required to do so.)

Question 5: Written contracts:

If you have performed services under a contract before the date of this application, submit up to five executed contracts. An executed contract is one that is dated and signed by all the parties. If you did not enter into any contracts before now, you still must submit the template contracts that you would use as described in Section A.

Question 6: Citizenship

If you are not a U.S. citizen, submit copies of documentation of authorization to work in the United States.

Nine-Factor Qualification and Sworn Statement

This must be signed and sworn to before a notarial officer. Typically this will be a notary public.

Exemption Certificate Services

Check the box next to each service that you intend to provide under the Independent Contractor Exemption Certificate. You may check more than one.

Submission of Application

Submit the payment and application to the Department in one of the following ways:

- Mail your check or money order, the completed application, and copies of all supporting documents to:
Minnesota Department of Labor and Industry
Financial Services/Independent Contractor
PO Box 64225
St. Paul, MN 55164-0225
- Hand deliver your check or money order, the application and the supporting documents to the Department of Labor and Industry at the address at the top of these instructions.

This material can be made available in different formats, such as large print, Braille, or on a tape. To make a request, call 1-800-342-5354 (DIAL-DLI); Voice or TTD (651) 297-4198

Independent Contractor Exemption Certificate Application



DO NOT USE THIS SPACE

COPY

E-mail: dli.ic@state.mn.us
 Website: www.dli.mn.gov/ic

PRINT IN BLUE OR BLACK INK or TYPE
 Unreadable or illegible applications may be denied.

APPLICATION FEES ARE NONREFUNDABLE

NOTE: Do not submit this application on behalf of an LLC, partnership or corporation.

THIS APPLICATION IS FOR: <input type="checkbox"/> Check here if you are only applying for an Independent Contractor Exemption Certificate for a fee of \$165. If you are applying for both an Independent Contractor Exemption Certificate and a Residential Building Contractor or Remodeler License, the combined fee with Recovery Fund Contribution is: <input type="checkbox"/> Less than \$1 million Total Fees is \$595 <input type="checkbox"/> \$1 million to \$5 million Total Fees is \$695 <input type="checkbox"/> More than \$5 million Total Fees is \$795 (you must complete both applications)	Make check or money order payable to: Minnesota Department of Labor and Industry CASH IS NOT ACCEPTED BY MAIL OR WALK-IN. DO NOT STAPLE CHECK TO APPLICATION OR PAPERWORK Write your check number Amount paid	For DLI Use Only Application Number Date RSRC 4150 – IC 4091 – RBC 4101 – Recovery Fund
License Fee Surcharge – The 2009 Minnesota Legislature assessed a \$5 or 10% surcharge, whichever is greater, on licenses to cover costs of building the Statewide Electronic Licensing System. The license fee includes this surcharge.		

1. SOCIAL SECURITY NUMBER	DATE OF BIRTH	E-MAIL ADDRESS
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2. FEDERAL EMPLOYER IDENTIFICATION NUMBER (FEIN)
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3. MN TAX IDENTIFICATION NUMBER <input type="checkbox"/> Not required, no employees	3a. UNEMPLOYMENT INSURANCE TAX ID NUMBER <input type="checkbox"/> Not required, no employees
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4. APPLICANT FULL LEGAL NAME (first, middle, last)	5. HOME PHONE NUMBER (include area code)
--	--

6. APPLICANT HOME ADDRESS	CITY	STATE	ZIP CODE
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NOTE: If your business or d/b/a name does not include your full legal first and last name you must attach a copy of a Certificate of Assumed Name date-stamped by the Minnesota Secretary of State. (651-296-2803, 1-877-551-6767, or www.sos.state.mn.us.)

7. BUSINESS OR DBA (doing business as) NAME	8. BUSINESS PHONE (include area code)
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9. APPLICANT BUSINESS ADDRESS	CITY	STATE	ZIP CODE
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10. For purposes of serving legal documents or if DLI has questions about this application use:
 my business address and phone number or my home address and phone number

11. Section A
 You must provide all supporting documentation described in Section A. Please check each box appropriately to help identify what documentation is included with your application.

- Documentation of ownership or control of facility space used in performing the services for which you are seeking the exemption certificate. Examples include rental or lease agreements (other than a post office box) or tax documents showing expenses for business use of home (such as IRS form 8829).
- Documentation of ownership or control of equipment, tools, materials, or vehicles necessary to perform the services for which you are seeking the exemption certificate. Examples include contracts, rental or lease agreements, deeds and receipts or tax documents showing such ownership or control such as Internal Revenue Service Schedule A or form 4562.
- A color photocopy of a current photo identification document issued to the applicant by the United States or a state or territory of the United States, such as a state-issued driver's license, state ID, or a U.S. passport.
- Template of the contracts you intend to use to provide the services as an independent contractor under an exemption certificate.
- Complete and sign the *Certificate of Compliance with Minnesota Workers' Compensation Law* form; available at www.dli.mn.gov/ccldforms.

11. Section B

You must submit documentation for five of the items listed below. Please check the five boxes that identify what documentation is attached.

- State or federal tax forms and schedules that show income earned and tax paid and owed. Submit IRS tax returns on forms 1040 or 1040 SS, Minnesota Department of Revenue tax returns on form MI **along with corresponding business- related schedules and forms**. Examples of business-related schedules and forms include: income profit or loss from a business (such as IRS Schedule C or C-EZ); self-employment tax paid or owed (such as IRS Schedule SE); the sale of business property (such as IRS form 4794); reporting cash payments received in a trade or business (such as IRS form 8300); certificate of exemption of payment of sales tax (such as Minnesota Department of Revenue form ST 3); and IRS 1099 forms.
Note: Question 11, section C box 3 below requires you to submit tax documents related to your business if you have filed any in the previous two years. Those submissions may also be used to satisfy this item.
- A commercial liability insurance policy or bond covering you or your business, office equipment and materials.
- A workers' compensation policy covering the applicant.
- Business or building permits held or applied for.
- Bills or invoices from and payments made to vendors, suppliers, subcontractors, or other persons.
- Contracts with vendors, suppliers, subcontractors, or other persons.
- Bank statements and accounting statements showing receipts, expenditures, and profit or loss for your business.
- Trade or professional memberships or affiliations.
- Marketing or advertising materials.
- Documentation that you paid other independent contractors as shown on IRS form 1099 and 1096.
- Documentation of:
 - (a) workers' compensation or unemployment insurance coverage for your employees; and
 - (b) payment or withholding of wages for your employees as shown on IRS W-3 forms, IRS forms 941 and 944 Minnesota Department of Revenue annual withholding/reconciliation and information returns

11. Section C

Please check the appropriate "Yes" or "No" response and complete the explanations if necessary. Attach additional sheets, if necessary.

- Yes No In the two years before the date of this application, have you received wages from an employer that were reported on a W2?
If your answer is "Yes," explain why your employment does not preclude the issuance of an Independent Contractor Exemption Certificate.

-
- Yes No Has a government agency or court issued an audit, letter, report, order, determination, certificate, opinion or ruling that is related to your status as an independent contractor, sole proprietor, employer or employee?
If your answer is "Yes," explain why (a) the audit, letter, report, order, determination, certificate, opinion or ruling by any state or federal court or agency supports one or more of the nine factors on page 4 of this application, or (b) why the application should be granted despite the document's findings.

Yes No In the two years before the date of this application, have you filed state and/or federal tax documents related to the business you intend to operate under this independent contractor exemption certificate?
If your answer is "Yes" submit copies of all business-related tax forms and schedules filed in the previous two years. (These documents may also be used to satisfy question 11, section B, box 1.)

If your answer is "No," explain why you have not filed business-related state and/or federal tax documents in the previous two years.

Yes No Do you hold a credential or have you completed training that is required to perform the services or is related to the performance of the services for which you are seeking an exemption certificate? Credentials may include: a business, professional or personal license issued by a government entity, a certificate of completion of an apprenticeship, trade school, or manufacturers training program, a degree issued by an accredited educational institution.

If the credential you hold is a license issued by the State of Minnesota, you do not need to provide a copy of the license. Instead, write the license number next to the appropriate license type on page 5 of this application. If the license type is not listed on page five, write the license type and number here:

License type: _____ License number: _____

Provide a copy of all other credentials or documentation of completed training.

If you do not hold a license or other credential, or if you have not completed formal training related to the service for which you are seeking an exemption certificate, you may describe any other related training or experience here:

Yes No Have you entered into written contracts to provide services as an independent contractor before the date of this application?
If "Yes," submit copies of up to five of the executed contracts.

Yes No Are you a U.S. citizen?
If your answer is "No," provide verification of authorization to work in the United States.

Nine-Factor Qualification and Sworn Statement

I, _____, being first duly sworn, state all of the following:

1. I meet all of the following conditions:
 - (i) maintains a separate business with the individual's own office, equipment, materials, and other facilities;
 - (ii) holds or has applied for a federal employer identification number or has filed business or self-employment income tax returns with the Federal Internal Revenue Service if the person has performed services in the previous year for which the individual is seeking the independent contractor exemption certificate;
 - (iii) operates under contracts to perform specific services for specific amounts of money and under which the individual controls the means of performing the services;
 - (iv) incurs the main expenses related to the service that the individual performs under contract;
 - (v) is responsible for the satisfactory completion of services that the individual contracts to perform and is liable for a failure to complete the service;
 - (vi) receives compensation for services performed under a contract on a commission or per-job or compensation bid basis and not on any other basis;
 - (vii) may realize a profit or suffer a loss under contracts to perform services;
 - (viii) has continuing or recurring business liabilities or obligations; and
 - (ix) the success or failure of the individual's business depends on the relationship of business receipt to expenditures.
2. I am a United States citizen or am authorized to work in the United States under federal immigration law;
3. I have complied with and will continue to comply with federal immigration law in hiring any employees.
4. The information provided in this application and all information and documents submitted in support of this application, at any time, are true and correct at the time submitted.
5. I authorize the Department of Labor and Industry (DLI) to verify with third parties that the information and documentation I am submitting with this application is accurate and complete. Further, I authorize those third parties to release information about me that they may have to DLI to the extent necessary for DLI to verify this application. Further, I authorize the Minnesota Department of Revenue to release tax information about me that it may have to DLI to the extent necessary for DLI to verify the tax information I will submit with this application.

Signature of Applicant (must be signed before a Notary Officer)

Date Signed

Subscribed and sworn to before me

this _____ day of _____

Notary Public _____

My Commission expires _____

Notary Stamp

Exemption Certificate Services

You **MUST** indicate any and all services you will provide under the Independent Contractor Exemption Certificate. Include the license number where applicable.

<input type="checkbox"/> 23834 ACOUSTIC CEILING TILE <input type="checkbox"/> 23813 CARPENTRY (framing, windows and doors) <input type="checkbox"/> 23831 DRYWALL AND INSULATION <input type="checkbox"/> 23821 ELECTRICAL WIRING Include license # _____ <input type="checkbox"/> 23891 EXCAVATION AND SITE PREPARATION <input type="checkbox"/> 23817 EXTERIOR FINISHING <input type="checkbox"/> 23835 FINISH AND INTERIOR CARPENTRY <input type="checkbox"/> 23829 FIRE SPRINKLER INSTALLATION Include license # _____ <input type="checkbox"/> 23833 FLOOR COVERING AND TILE <input type="checkbox"/> 237110 GEOTHERMAL INSTALLATION SYSTEMS Include license # _____ <input type="checkbox"/> 23815 GLASS AND GLAZING <input type="checkbox"/> 23712 HIGH PRESSURE PIPING Include license # _____	<input type="checkbox"/> 333414 HVAC <input type="checkbox"/> 561730 LANDSCAPING SERVICES <input type="checkbox"/> 23814 MASONRY AND CONCRETE <input type="checkbox"/> 23713 POWER AND COMMUNICATION-RELATED STRUCTURES Include license # _____ <input type="checkbox"/> 23832 PAINTING AND WALL COVERING AND WINDOW TREATMENT INSTALLATION <input type="checkbox"/> 23822 PLUMBING Include license # _____ <input type="checkbox"/> 562910 REMEDIATION SERVICES (including lead and asbestos abatement) Include license # _____ <input type="checkbox"/> 23816 ROOFING <input type="checkbox"/> 238910 SEPTIC SYSTEM INSTALLATION Include license # _____ <input type="checkbox"/> 23812 STRUCTURAL STEEL (including welding) <input type="checkbox"/> 213111 WELL DRILLING
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NOTICE: Private or confidential data you provide on this application form, and that you may provide in response to written or verbal communications from the Department of Labor and Industry (department) because you file this form, will be used by the department to determine whether to grant or deny your application for an independent contractor exemption certificate. The data you provide may also be used by the department to enforce other laws under the department's jurisdiction, including construction code and licensing laws, workers' compensation laws, labor standards laws, and occupational safety and health laws. In addition the data may be provided to: the federal government as part of the Systemic Alien Verification for Entitlements Program or the E-verify program; the office of administrative hearings or a court; the department of revenue and the department of employment and economic development; other government entities authorized by law to receive the data; and anyone authorized to receive the data by your authorization or by court order. You may decline to supply the data requested, but if you refuse your application may be delayed or denied.

Minnesota Department of Labor and Industry
Construction Codes and Licensing Division
Licensing and Certification Services
443 Lafayette Road North
St. Paul, MN 55155
Phone: (651) 284-5034
Fax: (651) 284-5743
www.dli.mn.gov
dli.license@state.mn.us

Certificate of Compliance Minnesota Workers' Compensation Law

**THIS FORM MUST BE COMPLETED AND SIGNED BY ALL
BUSINESS TYPES**

COPY

PRINT IN INK or TYPE.

Minnesota Statutes, Section 176.182 requires every state and local licensing agency to withhold the issuance or renewal of a license or permit to operate a business or engage in any activity in Minnesota until the applicant presents acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Minnesota Statutes, Chapter 176. If the required information is not provided or is falsely stated, it shall result in a \$2,000 penalty assessed against the applicant by the commissioner of the Department of Labor and Industry.

A valid workers' compensation policy must be kept in effect at all times by employers as required by law.

CONTRACTOR'S LICENSE or CERTIFICATE NO (if applicable)	BUSINESS TELEPHONE NO.	FAX TELEPHONE NO.
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BUSINESS NAME (Use the person(s) name if business structure is sole proprietor or partnership (i.e., John Doe, or John Doe and Jane Doe), otherwise it is the legal name of the business entity.)

DBA ("doing business as" or also known as an assumed name) (if applicable)

BUSINESS ADDRESS (must be physical street address, no PO boxes)	CITY	STATE	ZIP CODE
COUNTY	E-MAIL ADDRESS		

**YOUR LICENSE OR CERTIFICATE WILL NOT BE ISSUED WITHOUT THE
FOLLOWING INFORMATION. You must complete number 1 or 2 below.**

NUMBER 1 – Workers' compensation insurance policy information

INSURANCE COMPANY NAME (not the insurance agent)

POLICY NO.	EFFECTIVE DATE	EXPIRATION DATE
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NUMBER 2 – Reason for exemption from workers' compensation insurance

If you have questions regarding the need to obtain workers' compensation coverage, including exemptions, contact 651.284.5032.

- I have no employees. (See Minn. Stat. § 176.011, subd. 9 for the definition of an employee.)
- I am self-insured for workers' compensation (include a copy of authorization to self-insure from the Minnesota Department of Commerce).
- I have employees but they are not covered by the workers' compensation law. (See Minn. Stat. § 176.041 for a list of excluded employees.) Explain why your employees are not covered:

Other: _____

I certify that the information provided on this form is accurate and complete.

APPLICANT SIGNATURE (mandatory)	TITLE	DATE
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NOTE: You must notify us if there is any change to your Workers' Compensation Insurance Information or Employee Status Change by resubmitting this form.

This material can be made available in different forms, such as large print, Braille or on a tape. To request, call 1-800-342-5354 (DIAL-DLI) Voice or TDD (651) 297-4198.

LIC 04 (12/09)

Template Contract Checklist for Independent Contractor Exemption Certificate Application Information Checklist

The template contract submitted with your application must be consistent with contract requirements set out in the nine-factor test in Minn. Stat. § 181.723 and Minn. Rules, chapter 5202. The Department of Labor and Industry will review your template contract according to this checklist, but only for whether it could meet the contract requirements in the nine-factor test if the contract is properly completed and executed. This checklist is not legal advice. You should consider consulting an attorney for legal advice on how to properly draft, complete or execute a contract.

___ The template contract must be between you and another contractor (for instance, the contract must not be with a homeowner).

___ The name in the template contract must be your legal name (or d/b/a name) as shown in your application.

___ The business address in the template contract must be the business address shown in your application.

___ The template contract must provide for a description of the specific services you will perform.

___ The specific services described in the template contract must be listed on page 5 of your application.

___ The template contract must permit compensation to be based on a per-job or competitive bid basis; it must not provide for payment on an hourly basis or other basis.

___ The template contract must not indicate that the hiring contractor controls the means of performing the services. For example, the following provisions indicate that the hiring contractor, rather than the independent contractor, controls the means of performing the services:

- Set hours of work;
- The use of specific tools or equipment;
- That the independent contractor must perform the services personally, or that any assistants or other workers must be approved or provided by the hiring contractor;
- That the independent contractor must perform the services in a specific order or sequence, or must follow other detailed instructions on how to perform the services;
- Training by the hiring contractor;
- That regular oral or written reports related to the method of performing the services must be provided (as opposed to reports relating the accomplishment of a specific job or part of a job for partial payment);
- That the independent contractor can't enter into contracts with other contractors or persons.

On the other hand, a provision that the independent contractor must complete the described services, on or before a specified date, in a workmanship like manner, and in compliance with all building codes, regulatory and licensing agencies and other applicable laws does not indicate control by the hiring contractor.

_____ The template contract must not indicate that the hiring contractor will incur the main expenses related to the services that you will perform under the contract. The rules define, "main expenses" as:

- (1) The expense of purchasing, renting and maintaining tools, equipment, facility or office space and vehicles used in providing the service;
- (2) Labor expenses related to the service;
- (3) Business expenses that are related to the service, such as advertising, insurance, taxes, licenses and permits; and
- (4) The expense of materials used in providing the service, except for building construction or improvement materials that under a contract are provided by the building owner or another contractor.

In other words, under item 4, a contract may provide for the hiring contractor to provide major construction materials. However, if the hiring contractor agrees to pay for other materials or any of the expenses listed in items 1, 2 or 3, the hiring contractor, rather than the independent contractor, incurs the main expenses under the contract.

_____ The template contract must provide that you are responsible for the satisfactory completion of services that you contract to perform.

_____ The template contract must provide that you are liable to the hiring contractor for failure to complete the services agreed to in the contract.

_____ You must be able to realize a profit or suffer a loss under contracts to perform services. The following provisions in a contract indicate there is not an opportunity for the independent contractor to realize a profit or suffer a loss:

- The hiring contractor will reimburse all expenses;
- A guaranteed sum certain will be paid to the independent contractor (i.e. an hourly rate, a minimum payment regardless of satisfactory completion);
- The hiring contractor will provide all tools, materials, equipment;
- The hiring contractor will provide and pay assistants;
- The hiring contractor will provide an office;
- The independent contractor has an unlimited amount of time to complete the project;
- The hiring contractor, not the independent contractor, will be responsible for failure to complete the services or failure to complete the services in a workmanship like manner.

- Forms
 - License look-up
 - Plan review
 - Education services
 - Local government services
 - Contact us
-

Frequently Asked Questions - ICEC

Common questions and answers about the Independent Contractor Exemption Certificate

- Why is this certification required?
 - Who is covered by this law?
 - So if I form a corporation or LLC, this doesn't apply to me?
- If I already have my residential building contractor license, do I need an ICEC?
 - What should I include in my template contract?
 - When was the law effective?
- I've heard about a new 2-percent income tax withholding requirement for construction contractors. Can you tell me more about it?
- What if someone doesn't obtain a certificate, or a person hires someone without a certificate?
- If an individual has an exemption certificate, is he or she always considered an independent contractor?
 - What are the nine statutory conditions to be an independent contractor?
 - How do I apply for the exemption certificate?
 - How do I find out if someone is properly certified?
 - Questions?

Why is this certification required?

According to the Office of the Legislative Auditor, a conservative estimate shows 14 percent of Minnesota employers (subject to employment insurance tax) misclassified at least one worker as an independent contractor in 2005. Workers misclassified as independent contractors do not receive the benefits and protections which should be available to them. To address misclassification of workers, in 2007 the legislature enacted Minnesota Statutes, section 181.723 which requires that certain individuals who wish to work as independent contractors in the construction industry must apply for and be granted independent contractor exemption certificates.



Who is covered by this law?

This law applies to individuals performing public or private sector commercial or residential building construction or improvement services. It does not apply to, and DLI cannot issue exemption certificates to business that are registered as another business entity with the Minnesota Secretary of State, including: corporations, LLCs and partnerships. Also, the ICEC

does not apply to construction sales, many types of landscaping (see subd. 2 of Minnesota Statutes, section 181.723) construction design, manufacturing, cleanup, deliveries or maintenance.

These businesses are characterized as contracting, performing work and receiving compensation from another contractor. **The ICEC is only required for independent contractor sole proprietorships who subcontract.**

The law applies only if the individual is performing services in the course of the hiring person's trade, business, profession, or occupation. For example, the law would apply if the individual is roofing a house under a contract with a licensed residential remodeling company, but it would not apply if the individual is roofing a house under a contract directly with the homeowner.



So if I form a corporation or LLC, this doesn't apply to me?

While it is true that the ICEC requirements do not apply to business entities such as corporations or LLCs, forming a business entity does not exempt you from the current requirements regarding the nine-factor test that needs to be met for you to be treated as an independent contractor as opposed to an employee. In other words, there will be penalties for you and your employer if you are treated as an independent contractor but are actually an employee based on the nature of your relationship with your employer, even if you are operating under a business entity.

There are also legal, tax, and accounting ramifications involved in creating a business entity. You should consult an attorney or financial professional before making a decision regarding the business form under which you intend to operate.



If I already have my residential building contractor license, do I need an ICEC?

Yes. A residential building contractor license represents the contractor has passed the tests to prove their skill and ability. The ICEC represents the status of the independent contractor as a business entity as opposed to the status of being an employee. It is not a license but a certificate certifying that the person meets all the qualifications of an independent contractor instead of being required to be considered an employee by the contractor.



What should I include in my template contract?

View the Template Contract Checklist.



When was the law effective?

The law became effective for services performed on or after Jan. 1, 2009. Independent Contractor Exemption Certificates issued before March 1, 2009 are effective until March 1, 2011. Certificates issued after then are effective for two years. After the expiration, a new application fee of \$165 must be submitted every two years. **Fees are nonrefundable.**



I've heard about a new 2-percent income tax withholding requirement for construction contractors. Can you tell me more about it?

That is a new initiative from the Minnesota Department of Revenue. Visit its Web site for more details.



What if an individual does not obtain an exemption certificate, or a person hires someone without one to perform building construction or improvement services?

An individual covered by the law who does not have an ICEC is an employee of the hiring person, and not an independent contractor. The hiring person will be considered the employer of the individual, and as such, must comply with all the obligations of an employer for the purposes of workers' compensation, unemployment compensation, OSHA, labor standards and child labor laws. There are penalties for failure to comply with an employer's obligations under these laws, such as failure to obtain workers' compensation insurance, pay unemployment insurance tax or comply with the employment laws. In addition, penalties of up to \$5,000 may be assessed for each violation of Minn. Stat. Â§ 181.723, subd. 7



If an individual has an ICEC, does that mean he or she is considered an independent contractor for everything they do?

No. In order to be considered an independent contractor, the individual must have a current ICEC and, when performing services listed on the exemption certificate, must also be operating as an independent contractor according to the nine conditions set forth in the statute.



What are the nine statutory conditions to be an independent contractor?

An individual, who holds an ICEC, is an independent contractor if he or she:

1. maintains a separate business with the individual's own office, equipment, materials, and other facilities;
2. holds or has applied for a federal employer identification number or has filed business or self employment income tax returns with the federal Internal Revenue Service if the person has performed services in the previous year for which the individual is seeking the independent contractor exemption certificate;
3. operates under contracts to perform specific services for specific amounts of money and under which the individual controls the means of performing the services;
4. incurs the main expenses related to the service that the individual performs under contract;
5. is responsible for the satisfactory completion of services that the individual contracts to perform and is liable for a failure to complete the service;
6. receives compensation for service performed under a 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 contracts to perform service;
8. has continuing or recurring business liabilities or obligations;
9. the success or failure of the individual's business depends on the relationship of business receipts to expenditures.



How do I apply for the exemption certificate?

Individuals who work in construction and wish to obtain independent contractor status for 2009 must submit an application to DLI for review. The application form and a list of required documents individuals must provide to show they have the factors (above) in place that would allow them to function as an independent contractor. Visit the apply page for details and to download an application.

Applications will be processed within 30 days. Applications may be hand delivered or mailed.

The Department of Labor and Industry has published rules that set forth information and documentation that is proposed to be required as part of the application for an independent contractor exemption certificate.



How do I find out if someone is properly certified?

Visit the Contractor License/Certificate Lookup Web page. The hiring person will need to verify the individual's identity and confirm that the individual has an exemption certificate for the services they are offering to provide as an independent contractor.



Questions?

For more information about the Independent Contractor Exemption Certificate, contact the ICEC section at the Department of Labor and Industry by:

Phone: (651) 284-5074

E-mail: dli.ic@state.mn.us

Submit all written correspondence to:

Department of Labor and Industry
Independent Contractor Exemption Certificate
P.O. Box 64225
St. Paul, MN 55164-0225

