

## Misclassification: Independent Contractor or Employee?

The Wrong Classification Costs  
Everyone!  
Iowa Workforce Development  
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## Disclaimer – Educational Presentation!

- This material is intended for general information purposes only.
- This is not intended, nor should it be construed or relied upon, as legal advice.
- Please consult your attorney for specific legal advice.

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## Three Guarantees:

- Questions that can't readily be answered.
- Answers you won't like.
- Lots of gray area...

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## What is Misclassification?

- Answer: Workers are treated like "independent contractors" when they are really "employees."
- Someone is issued a "1099" as an "independent contractor," when they are really an employee and should have a "W-2."
- Or, the worker does not even get a "1099," but is paid cash "under the table." (Underground economy)

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## Ramifications of Misclassification

### Hurts Law-Abiding Businesses:

- Sabotages fair, competitive workplace.
- Companies that unlawfully misclassify employees as independent contractors fail to account for normal payroll-related costs and expenses, underbidding law-abiding businesses who are required to pay these as part of overhead.

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## Ramifications of Misclassification

### Impact on Iowa's Workers:

- Misclassified workers are wrongfully deprived of protection of workers' compensation, unemployment benefits, minimum wage, overtime, family medical leave, discrimination protection, other important labor and employment laws.

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### Impact on Many Programs, Laws

- Unemployment – unemployment taxes, benefits (IWD – Unemployment Division).
- Revenue – payment of income taxes (Revenue and IRS).
- Workers' Compensation (IWD – Work Comp Division).
- Contractor Registration (IWD – Labor Division).
- Minimum Wage – (IWD – Labor Division).
- Overtime – (Federal DOL).
- Statutes have civil, potentially criminal penalties.

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### Governor's Task Force

- Workforce Development, Revenue, Economic Development studied the issue in 2008 as part of Governor's Task Force.
- Legislature appropriated funds for efforts to deal with misclassifications – funds went to IWD. Misclassification Unit began working in September 2009.
- You will see more education and enhanced enforcement efforts!

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### What have we been doing?

- In fiscal year July 1, 2009 – June 30, 2010, IWD Field Audit and Misclassification Unit staff found 200 employers who misclassified 1,667 workers.
- Total unreported wages for these workers - \$27,912,071.
- Total of unemployment taxes, penalty and interest due to IWD - \$1,405,800.

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### How did we find these employers?

- The Misclassification Unit received 780 tips, referrals and leads from a variety of sources.
- These sources include Field Auditor initiated leads, investigator initiated leads, emails, phone calls and faxes, walk-ins, and referrals from other IWD divisions.
- The Misclassification Unit investigators visited 163 work sites in 34 cities from October 2009 through June 2010.

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We continue to seek and find – in a wide variety of industries and work settings

- The Misclassification Unit has more than 350 active assignments
- New tips come in every day
- We take every tip and referral seriously
- We find misclassified workers in a variety of industries – some expected, many unexpected
- Large companies and small businesses are misclassifying workers

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### Collaboration with Iowa Workers Compensation Division

- Misclassification Unit refers employers to Workers Compensation Division to check compliance or non-compliance with those requirements.
- Workers Compensation Division refers employers to Misclassification Unit for investigation.
- Workers Compensation Division can make referrals to the AG or County Attorneys for criminal prosecutions.

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### Federal Action – IRS & DOL

- IRS announced enhanced education and enforcement efforts in this area.
- IRS and IWD working together to combat and eliminate misclassification of workers
- US DOL supports state misclassification efforts

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### How to Avoid Misclassification Problem?

- Get your ducks in a row.....



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### Independent Contractor or Employee?

- Employer may want worker to be independent contractor. Why?
- Worker may want to be independent contractor. Why?

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### Independent Contractor or Employee? What is the test?

- Common law test developed by court cases over time – common sense.
- See common law factors reflected in Iowa Administrative Code §871-23.19 (unemployment law context).
- Most important factor: Right to Direct and Control Manner and Means of Performance

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### More likely an “Employee”

- Is there an employer/employee relationship?
  - 1) Does the employer have the right to direct and control the performance of the work or service?
  - 2) Can the employer and worker part ways without penalty? (Fire or quit?)
  - 3) Does the employer furnish the tools, equipment and place of work?
  - 4) Is the worker paid fixed wages calculated on hourly or weekly basis?

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### More likely to be “Independent Contractor”

1. Worker is subject to direction and control of another merely as a result of the work, not as to the means and method for accomplishing the results;
2. Discharge or termination will constitute a breach of contract;
3. Work involves performance of specific job or piecework at a fixed price;
4. Proof of a distinct trade, occupation, business or professional service offered to the public who reap the benefit of that training or experience;
5. Proof that the worker has the right to employ assistants with the exclusive right to supervise their activity and completely delegate their work

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### KEY POINT!

- In unemployment cases, most important test for determining whether the worker is an employee or an independent contractor is whether the employing party has the right to **direct and control the manner and means** of performance.
- While each individual case must be considered on its merits, and a variety of factors are important, the **right to control the manner in which work is performed** is held to be "the single and universally applicable test" to determine employee from independent contractor.

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### What about INTENT of the parties?

- In unemployment context, intent may be a factor, but is definitely not dispositive of whether there is an employer/employee relationship or whether worker is an independent contractor. Regulation stating if there is employer/employee relationship, doesn't matter if there is a document that says to the contrary.
- In workers' compensation context, there are several cases holding that "intent" of the parties is conclusive in determining whether there is employer/employee relationship and worker is not an independent contractor.
- Status of "Intent" cases – Iowa Supreme Court held that "exclusive reliance" on intent "appears questionable in workers' compensation context, but is definitely misapplied in the unemployment benefits context."

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### Real Cases – Real Decisions



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### Construction Laborers



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### Case No. 1A Construction Laborers

- Unemployment case, *Louismet v. Bielema*, decided in 1990 by Iowa Court of Appeals.
- Workers/claimants filed for benefits after work ended at hotel they had been hired to renovate.
- Former employer claimed they were all independent contractors and did not pay UI taxes, did not withhold any money from their wages.
- Ultimate decision – workers, all 190 of them, were employees, not independent contractors.

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### Case No. 1A Construction Laborers

#### Employee Evidence

- Workers subject to direct and control of 2 supervisors
- Workers required to punch time clock, work specific hours
- Workers subject to termination
- Employer furnished place to work

#### Independent Contractor Evidence

- Employer relied on independent contractor agreements that employees signed
- Court found problems with evidence (agreements not signed until weeks, or months after employment started; employees requested to sign or risk losing their jobs)

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### Case No. 1B Construction Laborers



- Unemployment case, *Novel Homes v. Jordan & Jones*, decided in December 2008 by Administrative Law Judge
- Two construction workers filed for unemployment benefits, listed claimant home building company as an employer
- ALJ found workers were employees

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### Case No. 1B Construction Laborers

#### Employee Evidence

- Company admitted it retained right to control means by which workers performed their responsibilities (said it reviewed the workers' work product and if it was unsatisfactory, it was the company that was responsible for the correction); also said workers could be terminated at any time without penalty

#### Independent Contractor Evidence

- Company's primary argument: workers agreed to work as independent contractors- ALJ held "intent of parties" is only one factor to be considered
- Workers could come and go as they wanted (but 3 days no call/no show - fired)
- Workers free to hire assistants

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### Case No. 1B Construction Laborers

#### Employee Evidence

- Workers employed in a continuous manner, not a specific project
- Workers required to perform work personally
- Workers paid on an hourly basis, sometimes paid overtime
- Company controlled hours workers worked
- Any work done for others had to be done outside of work for company

#### Independent Contractor Evidence

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### Case 1B: Construction Laborers

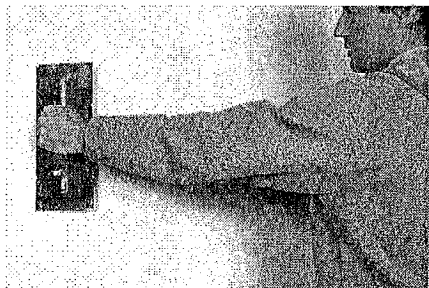
#### Employee Evidence

- Company provided tools (other than small hand tools)
- Company provided workers' comp coverage (worker also had his own)
- Company said worker's only risk of loss was for damage to workers' tools, equipment

#### Independent Contractor Evidence

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### Case No. 2 Drywall Installers



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### Case No. 2 Drywall Installers

- Unemployment case, *Franks v. Wickman Drywall*, decided in January 2009 by Administrative Law Judge
- Worker/claimant filed for unemployment benefits listing drywall company as his last employer
- IWD determined the drywall contractor had never paid in UI taxes
- Worker had been employed by drywall company from January - December 2007
- ALJ determined the worker was an employee

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### Case No. 2 Drywall Installers

#### Employee Evidence

- Worker said employer worked alongside him 95% of the time, would stop & correct him
- Worker said he was paid on hourly basis and employer told him what jobs to do
- Worker said he had right to do other jobs, but had to clear it with employer first
- Customers contracted with Drywall company and made payment to it

#### Independent Contractor Evidence

- Worker was not required to perform services personally, could have sent someone else (disputed)
- If worker was unavailable, another "subcontractor" could be called in
- Worker supplied own hand tools for job
- Earnings were reported on a 1099

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### Case No. 2 Drywall Installers

#### Employee Evidence

- Employer provided drywall, mud, fasteners for each job
- Worker bore no risk of financial loss
- Both employer and worker retained right to terminate relationship without penalty
- Worker was paid by the hour
- Employer's accountant said he was told by employer employee was independent contractor, but accounting tapes showed paid on hourly basis
- Employer could not provide contractor registration for worker

#### Independent Contractor Evidence

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### Case No. 3 Home Siding



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### Case No. 3 Home Siding

- Workers' compensation case, *Crane Siding and Roofing v. Meier*, decided by Court of Appeals in 1982
- Employer described itself as sole proprietor/general contractor who sold siding packages to homeowners and then subcontracted actual siding application to independent contractors
- Claimant worker was injured when he fell from scaffolding; owner of home had contracted with Employer to provide the siding, he then subcontracted with worker
- Injured worker sought workers' compensation benefits which employer denied, claiming worker was independent contractor
- Workers' Comp Commissioner found worker was an employee; district court reversed, saying worker was a "casual employee," and Court of Appeals reversed – ultimately finding worker was employee, not an independent contractor

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### Case No. 3 Home Siding

#### Employee Evidence

- Company owner did not contest he was an employer
- Employer had given instructions on work methods to be used
- "Subcontractor" claimant had a "more or less continuous relationship" with the employer
- Employer made arrangement for rental equipment used by workers
- Employer had indicated that "subcontractors" could not work for any other siding company
- Employer had "apparent authority to hire the claimant and that in claimant's mind, this defendant had the authority to fire him."

#### Independent Contractor Evidence

- As a general rule, employer had subcontractors sign two forms, both prepared by employer. First form repudiated existence of any employer/employee relationship. Second form established terms and conditions of contractor/subcontractor relationship.
- Evidence that one worker at the job site had signed the form (alleged subcontractor), but the injured worker had not

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### Case No. 3A Home Siding

- Unemployment benefits case, *AAA Associates Home Improvement v. Doornenbal*, decided in September 2009 by an Administrative Law Judge
- Worker filed claim for unemployment benefits, which led to a missing wage investigation
- ALJ determined an employer/employee relationship existed
- IRS determined an employer/employee relationship through its own independent investigation

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### Case No. 3A Home Siding

#### Employee Evidence

- Continuous relationship from 2005-2007, working 35-40 hours per week for this company
- Company provided all materials and major equipment needed for this type of work
- Company maintained the right to direct work, but rarely exercised that right with skilled workers
- Advertising, customer contacts, contracts and payments through company, not workers
- Worker did not have expenses and had no investment in a siding business
- Workers dependent on company for expensive tools of this trade

#### Independent Contractor Evidence

- Employer argued that worker was experienced siding installer, did not need any training or supervision
- Workers provided own small hand tools
- Worker typically paid on a per square footage rate rather than hourly
- Worker could hire assistants for some work, such as site cleanup
- Worker could decline work, but did not do so for this 2 year period
- Written "employment application" completed one year after relationship began, which said "for sub-contractors only"

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### Case No. 4 Painters



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### Case No. 4 Painters

- Unemployment decision, *Quiles v. Platinum Plus Painting*, decided by Administrative Law Judge in June 2008
- Worker/claimant filed claim for unemployment benefits
- IWD contacted former employer after finding no record company had paid in UI taxes
- IWD conducted fact-finding
- Employer claimed that worker was a sub-contractor who had been issued 1099 and his subcontract was terminated because he missed work and work was of poor quality
- ALJ agreed with agency finding that worker/claimant was an employee, as were the 50 other painters who worked for them

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### Case No. 4 Painters

#### Employee Evidence

- Employer could not produce any evidence of "written agreement" with worker(s)
- Company accountant provided some "form contractor agreements," but they were old and of questionable validity
- Accountant admitted that company failed to have its painter workers sign contractor agreements, show proof of contractor registration, proof of business liability insurance

#### Independent Contractor Evidence

- Company claimed that workers bid the painting job and were paid when work was done at rate of \$1.10 per square foot, however, payment made weekly while work was in progress

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### Case No. 4 Painters

#### Employee Evidence

- Although company was registered as a contractor with Labor Division, no evidence of contractor registrations for the 50 some painters
- Although painters may work on 3 to 4 houses during the week, all jobs were bid by the company to the client
- No evidence the claimant or other painters had an independent painting business although some workers may have performed jobs for other companies

#### Independent Contractor Evidence

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### Case No. 4 Painters

#### Employee Evidence

- Company acknowledged one employee who was considered a project manager who supervised the job sites
- Company contracted with business firms like Hubbell Homes, Regency, to paint new residential construction
- All work at job sites was done under company name
- Company provided all the paint to the workers, although each worker used personal brushes to apply the paint

#### Independent Contractor Evidence

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## Case No. 5 Masonry



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## Case No. 5 Masonry

- Unemployment benefits case, *Connolly Bros. Masonry v. Dept. of Employment Services*, decided by Court of Appeals in 1993
- Workers worked for company that performed masonry work at construction sites
- Company had up to 15 workers at any one time
- Case began when a former worker filed for unemployment benefits
- IWD discovered company never paid in UI taxes
- Company argued workers were independent contractors
- ALJ found workers were employees, district court agreed and Court of Appeals affirmed

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## Case No. 5 Masonry

## Employee Evidence

- Company had right to control the performance of the workers (Court found the fact that company only hired experienced workers who did not need extensive supervision was not dispositive, holding that "the fact that an employer fails to exercise control does not mean that the right of control does not exist.")

## Independent Contractor Evidence

- Company asserted it exercised little control over the workers, that it only directed final result and employees chose means, method of doing job and picked when they worked

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## Case No. 5 Masonry

## Employee Evidence

- Company specified time workers were to appear for work and assigned each worker a job for the day
- Workers were paid on an hourly basis, not retained at a fixed price to do a specific job
- Workers used company's expensive tools, equipment
- Public only dealt with the company, not the workers, this shows workers not in business for themselves

## Independent Contractor Evidence

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## Case No. 6 Part-Time Roofers



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## Case No. 6 Part-Time Roofers

- Unemployment case, *Providence Roofing v Boer, et al*, decided in October 2009 by Administrative Law Judge
- Company randomly selected for UI tax audit
- IWD determined existence of employer/employee relationship with five workers considered "contract" labor
- Company treated these part-time workers differently than other workers, although all working together at same sites
- Company owner refused to provide workers' contact information to auditor, claiming to lack this information
- ALJ determined that these five workers were employees, not independent contractors

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### Case No. 6 Part-Time Roofers

#### Employee Evidence

- Hired for one or two days, mostly to help with extra work
- Under Iowa law, presumed to be employees unless business owner proves otherwise
- Other workers paid as employees, but these 5 workers treated differently because most of them worked only a day or two and made less than \$600
- One worker was paid more than \$600, but no 1099 was issued to him

#### Independent Contractor Evidence

- Paid as contract labor
- Provided own tools (not verified)
- Set own hours (not verified)
- Billed company for services (not verified)

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### Case No. 7 Grain Truck Driver



- Unemployment case, *Gaffney v. Dept. of Employment Services*, decided in 1995 by Iowa Supreme Court
- Considered landmark case for determining worker status as employee or independent contractor
- Worker was awarded unemployment benefits after determination he was employee, not independent contractor

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### Case No. 7 Grain Truck Driver

#### Employee Evidence

- Worker claimed he did not understand his status with the company
- Worked exclusively for company for 2 years; was paid 25 percent of gross revenue for each load;
- One company paid the other company for lease of the tractor

#### Independent Contractor Evidence

- Company claimed it only had "leased on" truck drivers. Worker signed two leases, one agreeing to lease a truck tractor from one of the companies and the other to lease the truck tractor he drove to the company that paid him, documents stated he was self-employed independent contractor and not employee

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### Case No. 7 Grain Truck Driver

#### Employee Evidence

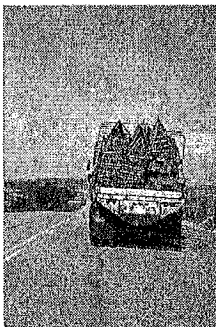
- After worker damaged truck, company got funding for new truck that could be leased out
- Iowa Supreme Court found that lower court erred in "exclusively relying" on the "independent contractor" agreements to find he was independent contractor, remanded the case

#### Independent Contractor Evidence

- Company never withheld taxes, insurance or benefits from his check

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### Case No. 8 Dump Truck Driver



- Unemployment case, *Barber v. Ozark Automotive*, decided by Administrative Law Judge in Jan. 2009
- Companion workers Compensation claim
- ALJ found dump truck driver was an employee, not an independent contractor
- ALJ said right of control trumped factor of intent

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### Case No. 8 Dump Truck Driver

#### Employee Evidence

- Company owned, maintained, fueled the truck and provided it to worker to use;
- Company contracted with customers to perform hauling services at set price (worker had no opportunity for profit or loss, customary in independent contractor setting)
- Driver seeking unemployment benefits worked on a regular basis and usually paid every Friday
- Company supervised driver as to point of pickup with delivery instructions provided by customer

#### Independent Contractor Evidence

- Company had driver sign form stating he was a subcontractor
- Worker could accept or reject work

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### Case No. 8 Dump Truck Driver

#### Employee Evidence

- Driver was not free to use Company's truck for independent jobs and was not allowed to hire other drivers to take his place
- Company told driver what to do when he experienced blow-out and then fired him
- Company's ownership of truck, with direction of where to perform job for company's customers constituted critical "right of control"

#### Independent Contractor Evidence

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### Case No. 9 Cleaning Co. Worker

- Unemployment case, *Titus v. Professional Janitorial Service*, decided by Administrative Law Judge in May 2008
- Janitorial worker was found to be employee, not independent contractor, but decision was limited to just that worker



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### No. 9 Cleaning Co. Worker

#### Employee Evidence

- Worker required to sign covenant not to compete that ALJ said "clearly established an employer/employee relationship"
- Worker did not have separate cleaning business, company acquired account where she worked
- Worker worked one weekly job, paid flat rate

#### Independent Contractor Evidence

- Worker was not supervised
- Worker paid by job, not by the hour
- No work comp coverage
- Worker signed an independent contractor agreement, given 1099

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### Case No. 9 Cleaning Co. Worker

#### Employee Evidence

- Worker worked schedule of 3 hours a day on Monday and Friday and 1 hour on Wednesday
- Company provided the vacuum (billed the client for it) and company required client to provide cleaning supplies and specific work directions
- Worker was "let go" because of unsatisfactory work

#### Independent Contractor Evidence

- She was the only worker asked to sign no compete agreement; no other workers asked to sign no compete agreements
- ALJ found company witnesses to be credible
- ALJ limited decision to just this worker

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### Case No. 10 Sales Person



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### Case No. 10 Sales Person

- Unemployment case, *Klein v. Medical Solutions Inc.*, decided in 2008 by Administrative Law Judge
- Worker/claimant sold orthopedic and rehab equipment, supplies and services
- Filed claim for unemployment benefits after she was fired for not meeting sales goals
- Discovered that company had not made UI tax payments, claimed she was independent contractor
- IWD found, ALJ affirmed, that she was employee, not independent contractor

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### Case No. 10 Sales Person

#### Employee Evidence

- Agreement between worker and the company required her to work for one year, would be scheduled to work 40 hours a week, paid a monthly commission and expenses
- Worker agreed to sign non-compete agreement that company required, stating she would not work for competitor for 2 years after she left, within the state of Iowa

#### Independent Contractor Evidence

- Written agreement between worker and company in which she was called "independent contractor"
- Company testified during hearing that the independent contractor agreement used was a "standard model" that had been obtained from a computer software program

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### Case No. 10 Sales Person

#### Employee Evidence

- Company required her to keep logs of her contacts and file weekly report
- Worker worked out of company's offices
- Company required her to meet minimum daily quota for sales calls
- Company provided her with list of prospective clients to call upon; others she identified

#### Independent Contractor Evidence

- Company testified it assumed it complied with contractor requirements because it used this "standard model," and that non-competition agreements were compatible with independent contractor status
- Company claimed logs, daily call-in requirements, weekly reports were "suggestions" and not requirements

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### Case No. 10 Sales Person

#### Employee Evidence

- Company provided worker with product inventory, equipment, tools, supplies
- Initially company provided her with car
- Since company paid her commissions for all sales and services, no risk of business loss (paid on draw)
- Worker performed a few tasks beyond sales that involved answering phones and DME set-up

#### Independent Contractor Evidence

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### Case No. 11 Occasional Horse Show Worker



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### Case No. 11 Horse Show Worker

- Workers compensation case, *Lopez v. MidStates Horse Shows*, decided by Iowa Court of Appeals in Oct. 2009
- Worker periodically provided services at horse shows, a week at a time, over a 2 year period
- Agency decided that worker was employee, entitled to workers compensation coverage for his serious injury, affirmed on appeal
- Independent IRS investigation determined employer-employee relationship.

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### Case No. 11 Horse Show Worker

#### Employee evidence

- Worker paid daily rate for each horse show worked
- Worker considered himself an employee
- Worked for another horse show company during this time, issued W-2 by that company, not industry standard

#### Independent Contractor evidence

- Issued 1099s
- Business owner considered workers independent contractor
- Business owner argued industry standard is independent contractors

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## Case No. 11 Horse Show Worker

### Employee evidence

- Worker performed variety of duties and tasks as directed by business owner
- No written contract
- Worker did not have his own independent business

### Independent Contractor evidence

- Worker supplied his own personal tools to perform security work, set up and tear down tasks for the horse shows

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## What happens if you get the classification wrong?

- Various statutes – unemployment, income tax, workers' compensation, contractor registration, wage – have penalty provisions.
- That is, you could pay unemployment insurance taxes due and owing for the past five years, along with penalty & interest...
- For example, a business that misclassifies workers could pay penalties and interest for failure to withhold taxes or provide workers compensation coverage.

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## Need help?

- Don't know how to classify worker, check out misclassification web site at: <http://www.iowaworkforce.org/misclassification/>
- Contact:  
IWD Misclassification Unit  
Iowa Workforce Development  
1000 E. Grand Avenue  
Des Moines, IA 50319-0209  
T: 515-281-3191  
T: 800-JOB-IOWA  
F: 515-281-6457  
E-Mail: [Misclassification@iwd.iowa.gov](mailto:Misclassification@iwd.iowa.gov)

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[www.iowaworkforce.org/misclassification/](http://www.iowaworkforce.org/misclassification/)

• **THANK YOU!!!!!!**

• **ANY QUESTIONS?**

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## Iowa Workforce Development (IWD) Misclassification Report Form

If you think you or someone else is treated as an independent contractor instead of an employee, you can report this to IWD's Misclassification Unit.

Do you perform services for this company? ☐ Yes ☐ No

Individual/Company: \_\_\_\_\_ Doing Business As: \_\_\_\_\_

Day Phone # \_\_\_\_\_

Owner: \_\_\_\_\_

Cell Phone # \_\_\_\_\_

Address: \_\_\_\_\_

Fax # \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Email Address \_\_\_\_\_

Location of Work Site(s): ☐ Same as Above

Address: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Date Problem Occurred: \_\_\_\_\_ Is the worksite active now? ☐ Yes ☐ No How many workers at this site? \_\_\_\_\_

**Type of Work/Services Performed:** Be clear about the type of work or services performed, such as carpentry, construction, food service, delivery, trucking, etc.

**Statement of Facts of Alleged Violations:** Describe what is going on at this workplace. Tell us the facts.

Are workers classified as independent contractors? ☐ Yes ☐ No ☐ Unknown

How are workers paid? Check one or more.

☐ Cash

☐ Personal Check

☐ Payroll Check

☐ Combination

☐ Other \_\_\_\_\_

Do workers receive a pay stub? ☐ Yes ☐ No ☐ Unknown

Are workers paid all wages owed? ☐ Yes ☐ No ☐ Unknown

Are you aware of others we should contact? ☐ Yes ☐ No ☐ Unknown If yes, complete contact information below.

Please enter name(s) and contact information

Do you want this information to be kept confidential? ☐ Yes ☐ No ☐ Unknown

How may we contact you if we have questions?

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Email \_\_\_\_\_

Phone \_\_\_\_\_ Cell Phone \_\_\_\_\_

Print Form

## Misclassification of Iowa Workers

Misclassification of workers as "independent contractors" rather than "employees" is a growing problem in Iowa and across the nation. The Federal Government Accountability Office reports that the underpayment of Social Security taxes, unemployment and income taxes in 2006, due to worker misclassification, totaled an estimated \$2.72 billion nationally.

### Penalties

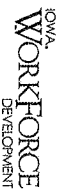
Intentional misclassification of workers is illegal. This practice constitutes tax and insurance evasion. Employers could pay significant penalties and face criminal charges. Penalties are determined on the facts of each individual case.

## Reporting Misclassification

If you believe that you, or someone you know, are intentionally

misclassified to avoid tax payments, workers' compensation coverage, and other legal obligations, reporting the concerns to Iowa Workforce Development is easy. You may:

- Fax or mail a completed reporting form found on the Web site, or
- Contact the Misclassification Unit by phone or e-mail to report your concerns.



1000 East Grand Avenue  
Des Moines, IA 50319

T: 515-281-3191

T: 800-IOWA

F: 515-281-6457

[misclassification@iwd.iowa.gov](mailto:misclassification@iwd.iowa.gov)

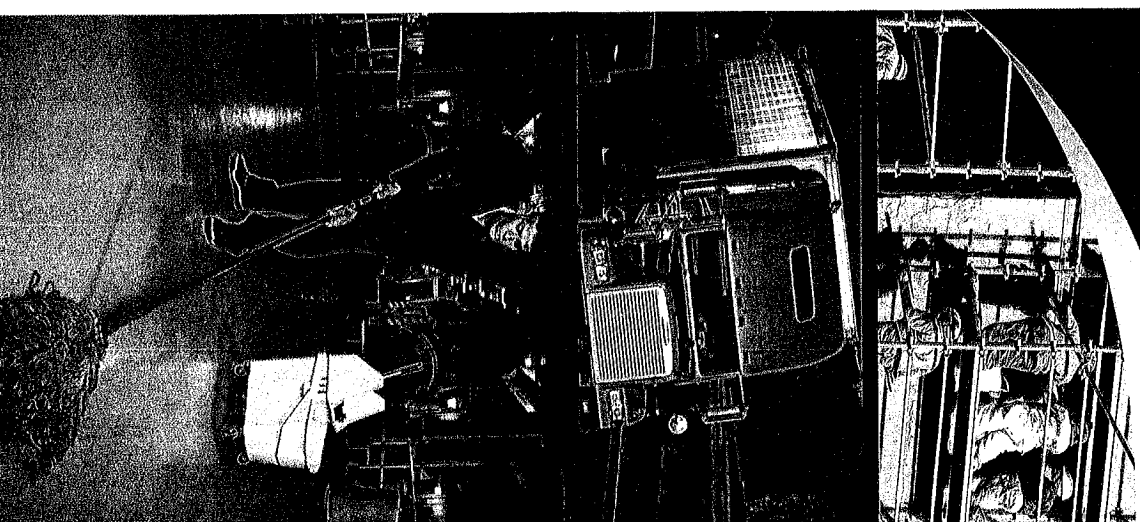
[www.iowaworkforce.org/misclassification](http://www.iowaworkforce.org/misclassification)

For deaf or hard of hearing, use Relay 711

70-0017 (02/10)

Equal Opportunity Employer/Program  
Auxiliary aids and services available upon request for  
individuals with disabilities.

→ Employee or  
Independent Contractor  
Misclassification —  
What is it?



## Iowa Requirements

Iowa employers must generally withhold state and federal income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to employees. A business does not generally need to withhold or pay any taxes on payments to independent contractors. When employers misclassify workers:

- They avoid paying these taxes.
- They might avoid workers' compensation coverage.
- They might fail to follow wage, contractor registration, or other employment and labor laws.
- They underbid honest, law-abiding businesses that pay all taxes owed.

Misclassification of workers threatens Iowa's economy, its businesses and its most important resource – its workers. The Iowa Legislature provided special funding for extra help to protect workers, law-abiding businesses, and taxpayers.

## Frequently Asked Questions

Why is it important to correctly classify workers?

An employer has different legal, tax and financial obligations depending on how a worker is classified.

Who is an "employee" under Iowa law?

An employee is anyone performing services for an employer. The employer controls the work to be done and how it will be done.

Who is an "independent contractor"?

"Independent contractors" are in business for themselves. They are not employees. They have an independent trade, business or profession they offer to the public. They are generally hired to accomplish a task(s) determined by the employer. Independent contractors retain the right to control how they will do the work.

What if I have a contract that says I am an independent contractor?

A written contract that creates an independent contract relationship is worthless if the employer retains the right to control what will be done and how it will be done.

[www.iowaworkforce.org/](http://www.iowaworkforce.org/)

What does it mean to get a 1099 form at the end of the year?

A 1099 form reports an independent contractor's income. This usually means that the employer did not withhold federal or state income taxes, or FICA (Social Security) or Medicare taxes from the worker's pay during the year.

The 1099 form is the right form to use if the worker really is an independent contractor. It is the wrong form to use if the worker really is an employee.

Employees should get a W-2 form at the end of the year. The W-2 form includes total wages and the amount of federal and state income taxes withheld. If you get a 1099 when you should have a W-2, you might owe federal and/or state taxes.

Who determines if a worker is an employee or an independent contractor?

Iowa Workforce Development and the Iowa Department of Revenue have investigators and auditors who determine worker classification by employers. If you have questions, you may contact the IWD Misclassification Unit at (515) 281-3191. You also may contact the Department of Revenue's Taxpayer Services at (515) 281-3114.



## IRS TAX PUBLICATIONS

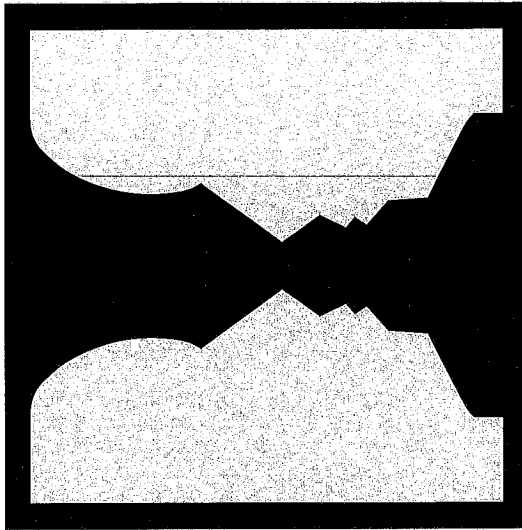
If you are not sure whether you are an employee or an independent contractor, get Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. Publication 15-A, *Employer's Supplemental Tax Guide*, provides additional information on independent contractor status.

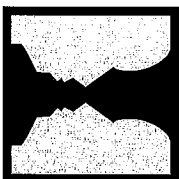
## IRS ELECTRONIC SERVICES

You can download and print IRS publications, forms, and other tax information materials on the Internet at [www.irs.gov](http://www.irs.gov). You can also call the IRS at 1-800-829-3676 (1-800-TAX-FORM) to order free tax publications and forms.

Publication 1796, *2007 IRS Tax Products CD (Final Release)*, containing current and prior year tax publications and forms, can be purchased from the National Technical Information Service (NTIS). You can order Publication 1796 toll-free by calling 1-877-233-6767 or via the Internet at [www.irs.gov/cdorders](http://www.irs.gov/cdorders).

Call 1-800-829-4933, the Business and Speciality Tax Line, if you have questions related to employment tax issues.





# INDEPENDENT CONTRACTOR OR EMPLOYEE

## Which are you?

*For federal tax purposes, this is an important distinction. Worker classification affects how you pay your federal income tax, social security and Medicare taxes, and how you file your tax return. Classification affects your eligibility for employer and social security and Medicare benefits and your tax responsibilities. If you aren't sure of your work status, you should find out now. This brochure can help you.*

The courts have considered many facts in deciding whether a worker is an **independent contractor** or an **employee**. These relevant facts fall into three main categories: *behavioral control*; *financial control*; and *relationship of the parties*. In each case, it is very important to consider all the facts — no single fact provides the answer. Carefully review the following definitions.

## BEHAVIORAL CONTROL

These facts show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done — as long as the employer has the right to direct and control the work. For example:

- **Instructions** — if you receive extensive instructions on how work is to be done, this suggests that you are an employee. Instructions can cover a wide range of topics, for example:
  - how, when, or where to do the work
  - what tools or equipment to use

- what assistants to hire to help with the work
- where to purchase supplies and services

If you receive less extensive instructions about what should be done, but not how it should be done, you may be an **independent contractor**. For instance, instructions about time and place may be less important than directions on how the work is performed.

- **Training** — if the business provides you with training about required procedures and methods, this indicates that the business wants the work done in a certain way, and this suggests that you may be an **employee**.

## FINANCIAL CONTROL

These facts show whether there is a right to direct or control the business part of the work. For example:

- **Significant Investment** — if you have a significant investment in your work, you may be an **independent contractor**. While there is no precise dollar test, the investment must have substance. However, a significant investment is not necessary to be an **independent contractor**.
- **Expenses** — if you are not reimbursed for some or all business expenses, then you may be an **independent contractor**, especially if your unreimbursed business expenses are high.
- **Opportunity for Profit or Loss** — if you can realize a profit or incur a loss, this suggests that you are in business for yourself and that you may be an **independent contractor**.

## RELATIONSHIP OF THE PARTIES

These are facts that illustrate how the business and the worker perceive their relationship. For example:

- **Employee Benefits** — if you receive benefits, such as insurance, pension, or paid

leave, this is an indication that you may be an **employee**. If you do not receive benefits, however, you could be either an **employee** or an **independent contractor**.

- **Written Contracts** — a written contract may show what both you and the business intend. This may be very significant if it is difficult, if not impossible, to determine status based on other facts.



## When You Are an Employee

- Your employer must withhold income tax and your portion of social security and Medicare taxes. Also, your employer is responsible for paying social security, Medicare, and unemployment (FUTA) taxes on your wages. Your employer must give you a Form W-2, *Wage and Tax Statement*, showing the amount of taxes withheld from your pay.

- You may deduct unreimbursed employee business expenses on Schedule A of your income tax return, but only if you itemize deductions and they total more than two percent of your adjusted gross income.



## When You Are an Independent Contractor

- The business may be required to give you Form 1099-MISC, *Miscellaneous Income*, to report what it has paid to you.
- You are responsible for paying your own income tax and self-employment tax (Self-Employment Contributions Act — SECA). The business does not withhold taxes from your pay. You may need to make estimated tax payments during the year to cover your tax liabilities.
- You may deduct business expenses on Schedule C of your income tax return.

## Additional Resources

### Information on Additional Business Requirements

You may contact Iowa Workforce Development for general assistance on workforce issues at [www.iowaworkforce.org](http://www.iowaworkforce.org) or (800) 562-4692.

Business development information is available from the Iowa Department of Economic Development at [www.iowalifechanging.com](http://www.iowalifechanging.com) or (800) 532-1216.

Business license information is available at <https://blic.iowa.gov/default.aspx>.

Tax information is available from the Iowa Department of Revenue at [www.iowa.gov/tax/index.html](http://www.iowa.gov/tax/index.html) or (866) 503-3453.

Business structure and organization information, such as how to form a corporation, partnership or sole proprietorship, is available at [www.sos.state.ia.us/business/index.html](http://www.sos.state.ia.us/business/index.html) or at the Secretary of State's office.

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### Iowa Workforce Development Division of Labor

1000 E. Grand Ave.

Des Moines, IA 50319-0209

Phone: (515) 242-5871

Fax: (515) 242-5076

Toll free: (800) 562-4692 ext. 25871

E-mail: [contractor.registration@iwd.iowa.gov](mailto:contractor.registration@iwd.iowa.gov)

70-8026 (07/10)

## Iowa Contractor Registration



[www.iowaworkforce.org/labor/contractor.htm](http://www.iowaworkforce.org/labor/contractor.htm)

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DEVELOPMENT

# Contractor Registration

## Frequently Asked Questions

### Does the State of Iowa require a Contractor Registration?

Yes, Iowa Code Chapter 91C requires most construction contractors to register. You are not to perform contractor work in Iowa without first being assigned a registration number.

### What contractors must register with the State?

All individual contractors and businesses performing "construction" work within Iowa must be registered if they earn more than \$2,000 a year. Individuals or businesses making less than \$2,000 a year in "construction" work, or who work only on their own real estate or property, are not required to register. Individual employees of eligible contractors are not required to register. A registration should be filed even if "construction" work is only incidental to your business (such as employee leasing agencies).

### How do I find out if a contractor is registered?

Visit [www.iowaworkforce.org/labor/contractor.htm](http://www.iowaworkforce.org/labor/contractor.htm) or call (515) 242-5871.

### How do you define "construction"?

The definition of "construction" is very broad. Carpenters, electricians, plumbers, roofers, painters and many others are involved in construction. You may view a list of the types of work that are included under the definition of "construction" on the contractor registration web page.

### Do sub-contractors have to be registered? Yes.

### What if I operate under more than one business?

You must register every contractor business that has a separate federal identification number.

### What if I incorporate my business?

If you first applied as a sole proprietor or partnership and then incorporate your business, you must re-apply as a new business and be issued a new contractor registration number.

### What are the purposes of contractor registration?

The purposes of contractor registrations are to ensure:

- compliance with unemployment insurance laws
- compliance with workers' compensation laws
- contractor biographical information is available to the general public.

### How do I get a registration application?

1. Download a copy of the registration application at [www.iowaworkforce.org/labor/contractor.htm](http://www.iowaworkforce.org/labor/contractor.htm).
2. Visit 1000 E. Grand Ave. in Des Moines, IA, located across the street from the State Capitol.
3. Call (515) 242-5871 to request an application, or
4. Request an application via e-mail: [contractor.registration@iwd.iowa.gov](mailto:contractor.registration@iwd.iowa.gov).

### What do I do with the completed registration form?

Submit your complete registration form to the Division of Labor along with the \$50 registration fee (check or money order) and a Certificate of Workers' Compensation Insurance (if you have employees). A contractor with a home office outside of Iowa must also file a bond. Processing applications could take up to 30 days. You are not registered until a contractor registration number is issued.

### Are there exemptions from the \$50 annual fee?

A self-employed contractor may be exempt if they do not pay more than \$2,000 annually in wages to others working with them, and they do not work with or for other contractors in the same phase of construction. If this applies to you, complete the Fee Exemption Form, have it notarized and return it with your registration application form.

# Registration Asked Questions

*Frequently -*

## **Do I have to renew my registration number?**

Yes, registrations must be renewed annually. Renewal applications are the same as registration applications. A new Fee Exemption Form must be completed every year.

## **What if the information on my registration changes?**

It is your responsibility to notify the Division of Labor in writing if you have any changes after you submit your application. Changes could include name of your business, your name, business address, telephone number or e-mail address. Failure to report changes may subject you to citations and penalties.

## **Can I keep my same registration number?**

So long as you renew your registration on time, you may keep the same registration number unless your Federal ID number changes.

## **Is a bond needed to perform construction work in Iowa?**

Out-of-state contractors are required to file a bond. Having a branch office in Iowa does not make you an in-state contractor if your principal place of business is based outside of Iowa.

## **What kind of bond must I have?**

Bonds must be executed by a surety company licensed to do business in Iowa and issued on an official Division of Labor bond form. You may download the bond form from the web page or contact the Division of Labor and a form will be sent to you. The bond amount is \$25,000.

## **What is the purpose of the bond?**

The bond guarantees that taxes, penalties and other payments due to the State of Iowa as a result of your job are paid. Only the State and its agencies can collect under the bond for nonpayment.

## **What happens to the bond after I quit working?**

After you have completed your work in Iowa, your bonding company must send a written request to the Division of Labor asking that your bond be released back to you.

## **What are the penalties if I don't get registered, don't renew my registration every year or don't get the required bond?**

Violators may receive a \$500 citation. A citation up to \$5,000 may be imposed for a repeat violation.

## **If I am issued a citation, can I appeal?**

From the day you received the citation, you have 15 days to file an appeal. If you do not file within the 15 days, then you do not have any right to appeal. If you promptly correct the violation, you may be eligible for a penalty reduction.

## **Are there any other requirements for contractors working in Iowa?**

Contact the county or city office where you plan to work. Additional information pertaining to specific trade licenses may be obtained from the IDED website at <https://blc.iowa.gov/default.aspx>

## **How do I contact the Contractor Registration Program?**

Iowa Division of Labor, Contractor Registration  
1000 E. Grand Ave., Des Moines, IA 50319-0209  
Phone: (515) 242-5871; Fax: (515) 242-5076  
E-mail: [contractor.registration@iwd.iowa.gov](mailto:contractor.registration@iwd.iowa.gov)  
Website:  
[www.iowaworkforce.org/labor/contractor.htm](http://www.iowaworkforce.org/labor/contractor.htm)



# Contractor Registration Checklist

**You must have the following in order to meet the requirements of Iowa's contractor registration law:**

1. A corporation must have a federal identification number. An individual owner must have a social security number. A partnership may use the social security numbers of the partners if the business has applied for a federal identification number.



2. Current Iowa Unemployment Tax Account Number, if you have unemployment tax obligations and a number has been assigned to you. If not, all new contractor registration

applications will be presented to the Unemployment Tax Division to either be assigned a number or to check the validity of the previous owner's number.

3. Proof of workers' compensation insurance if you have employees. The proper proof is a certificate of workers' compensation insurance listing the Iowa Division of Labor as the certificate holder.

4. \$50 either in check form or money order, to pay the annual registration fee. Some individuals in the construction business are required to register, but are exempt from the \$50 registration fee. If you are self-employed, do not pay more than \$2,000 annually to employ others in the business, and do not work with or for other contractors in the same phases of construction you are fee exempt. You will need to file a fee exemption form.

5. If you purchased an Iowa contracting business, information about the acquired business will be needed.

6. A bond if the individual or company is an out-of-state contractor.



**For applications, bond and fee exemption forms or instructions, visit [www.iowaworkforce.org/labor/contractor.htm](http://www.iowaworkforce.org/labor/contractor.htm).**