



Montana Nonprofit Association

Montana's Independent Contract Law Plain Language and Q&A

Plain Language

With regard to Workers Compensation, there are four broad categories when discussing persons paid to do work:

1. Corporate officers & Managers of Manager Managed LLC,
2. Independent Contractors,
3. Main Street Employers, and
4. Employee.

1) Corporate officers & Manager of Manager Managed LLCs who are shareholders of more than 20% in a C-Corp or S Corp or own 20% of the Manager Managed LLC are not required to have an ICEC but are, nevertheless, exempt from Workers Compensation. Except Motor carriers as stated in 39-71-117

2) Independent Contractor

- a. pays own Workers Compensation and therefore not required to apply to Department of Labor and have up-to-date ICEC – Hiring agent does not have to pay Work-Comp
- b. applies to Department of Labor, receives ICEC and therefore is exempt from paying Work-Comp – Hiring agent does not have to pay Workers Compensation

3) A Main Street Employer is one who has no employees; has a fixed business location (like a shop or store); regularly and customarily does the majority of their work within their...

4) fixed business location; and occasionally works outside of their fixed business location and is exempt from the Workers Compensation act. This person may or may not be a sole proprietor.

5) Employee – is paid by employer, who withholds Workers Compensation (and other taxes) as required by law.

Q&As

Q. How is an Independent Contractor who has obtained an ICEC different from a Main Street Employer?

A. In the eyes of the Department of Labor and with regard to Workers Compensation, there is no difference. A main street employer is exempt from the work comp act because they don't regularly and customarily work outside of their fixed business location. Some Main Street Employers are Sole Proprietors; a Sole Proprietor that meets

the law (1) (a) (i) above is required to be covered by Workers Compensation or apply for the ICEC.

Q. Can a work relationship be reclassified from IC to Employee?

A. Yes. If the Hiring agent has compromised the working relationship and is treating the IC like an employee, the Department of Labor could review that relationship and suspend the ICEC for that hiring agent and only that hiring agent.

Q. How does the Department of Labor test a work relationship?

A. When a person is granted an ICEC by the Department of Labor, they are conclusively presumed to be an Independent Contractor. If the Department of Labor later does an investigation of the work relationship and determines there is too much control, or some other negating quality exists, the Department of Labor can suspend the ICEC for that hiring agent. From that point forward, that relationship will be classified as an employer/employee work relationship and the Employer is required to pay workers compensation and other taxes on the employee's wages.

An investigation from the Department can be initiated by complaint, audit, random worksite inspection or other reason acceptable by law.

Q. Can an Independent Contractor purchase Workers Compensation even though he or she is exempt?

A. Yes. Even though they are exempt, an IC can purchase Workers Compensation. No other insurance policy covers work related accidents as completely as a Workers Compensation policy.

Q. If a hiring agent hires an Independent Contractor who is paying their own WC, should the contract be explicit about who pays the taxes?

A. Yes. The contract should say that the Independent Contractor is responsible for his or her own taxes, including Workers Compensation. This implies all taxes are the responsibility of the IC.

Q. Should the hiring agent attach a copy of the IC's recent WC bill payment or affidavit that the IC will pay their own taxes to the contract?

A. Yes. It would be in the best interest of the hiring agent to verify that the IC is paying his or her own taxes, and to attach that verification to the contract if possible.

Q. Does a Sole Proprietor have to register with Secretary of State?

A. Maybe. If the sole proprietor uses their own personal name as their assumed business name (ABN), they do not have to register that name with the SOS. (i.e. John Jones). However, if the sole proprietor uses anything other than their own personal name or adds anything to their personal name (i.e., AAA construction, or John Jones Construction), then they must register.

Partnerships, Limited Liability Partnerships, also have to register with the SOS. Member managed LLCs, Manager Managed LLCs, and S – C Corporations, and Nonprofit Corporations must register and annually file a report with the Secretary of State.

Q. Does a Sole Proprietor have to pay Work Comp, etc?

A. It depends on the situation. A Sole Proprietor who works at a fixed business location, is free from outside direction, owns his or her own “tools of the trade”, and who works in a regularly recognized trade or occupation, would not have to pay WC because they are exempt by law. If a sole proprietor does NOT have a fixed business location, uses his/her own tools and equipment, and works in their own independently established trade, occupation, or business, they would be required to EITHER cover themselves under WC or apply for and receive an ICEC from the Dept of Labor and Industry. If a Sole Proprietor does not work in their own location, uses other’s tools, works under the direction of a supervisor (or board of directors), or is not working in a recognized trade or occupation they would be considered employees and their employer would have to pay WC and other taxes on earnings. **An employee cannot be required by an employer to pay their own WC benefits.**

Q. Can a Sole Proprietor be hired to do administrative services, and therefore be exempt from Work-Comp?

A. Depending on the situation, yes or no. If the Sole Proprietor works from his or her own business location using his or her own tools of the trade and is being treated like an IC, the answer would be yes.