

WHO IS AN INDEPENDENT CONTRACTOR & WHO IS NOT?

HOW DO I GET AN INDEPENDENT CONTRACTORS EXEMPTION CERTIFICATE? (ICEC)

- ★ Read the entire application and waiver.
- ★ Submit a completed department application form bearing the applicant's original notarized signature in which you declare under penalty of perjury that the statements contained on the form are true and accurate to the best of your ability.
- ★ Submit documentation confirming the applicant is engaged in an independently established business.
- ★ Submit a notarized waiver.
- ★ Pay a fee of \$125 (non-refundable).

MISUSING THE CERTIFICATE CAN BE COSTLY.

The Department will have the authority to investigate the working relationship between an independent contractor (IC) and his/her hiring agent. The Department may suspend or revoke an independent contractor exemption certificate.

When a certificate has been suspended or revoked, the IC and the hiring agent will be put on notice that the IC's status is no longer conclusively presumed. The hiring agent may then be responsible for workers' compensation coverage on that IC if the IC continues to work for him/her under a suspended or revoked independent contractor exemption certificate.

Fines of up to \$1000 per violation may be assessed against the hiring agent if:

- a) control is exerted to the extent it creates an employer/employee relationship, or

- b) the hiring agent requires an employee to adopt IC status to avoid their obligations to provide workers' compensation coverage.

The same fines may be assessed against an IC for:

- a) performing work as an IC without first obtaining a certificate,
- b) performing work as an IC when the Department has revoked or denied a certificate,
- c) transferring to another person or allowing another person to use a certificate that was not issued to that person, or
- d) misrepresenting the person's status as an IC.

WHO DECIDES?

Whether one is an independent contractor or an employee is a complex issue. The Independent Contractor Central Unit (ICCU) investigates working relationships and determines if the worker(s) are ICs or employees. Wage withholding, unemployment insurance, workers' compensation, human rights, and wage and hour issues are all decided using the same standards, and by one agency, the ICCU. Decisions made by ICCU are binding upon other agencies, so an employer will receive one decision from the state in a timely manner.

INDEPENDENT CONTRACTOR EXEMPTIONS.

Owners of a business that consider themselves independent contractors **MUST** have workers' compensation coverage on themselves or

obtain an Independent Contractor Exemption Certificate. When approved, this exempts an individual from workers' compensation and unemployment insurance. A sole proprietor, working member of a partnership, member-managed limited liability company or manager-managed limited liability company (construction industry) may apply for the exemption.

Corporate officers of corporations and managers of manager-managed limited liability companies (non-construction industry) may apply for the exemption certificate. Officers and managers would be exempt from workers' compensation but not from unemployment insurance. Please contact unemployment insurance at (406) 444-3834.

The exemption is valid for 2 years at a cost of \$125 (non-refundable). Any employees hired by the independent contractor must be covered by a workers' compensation policy.

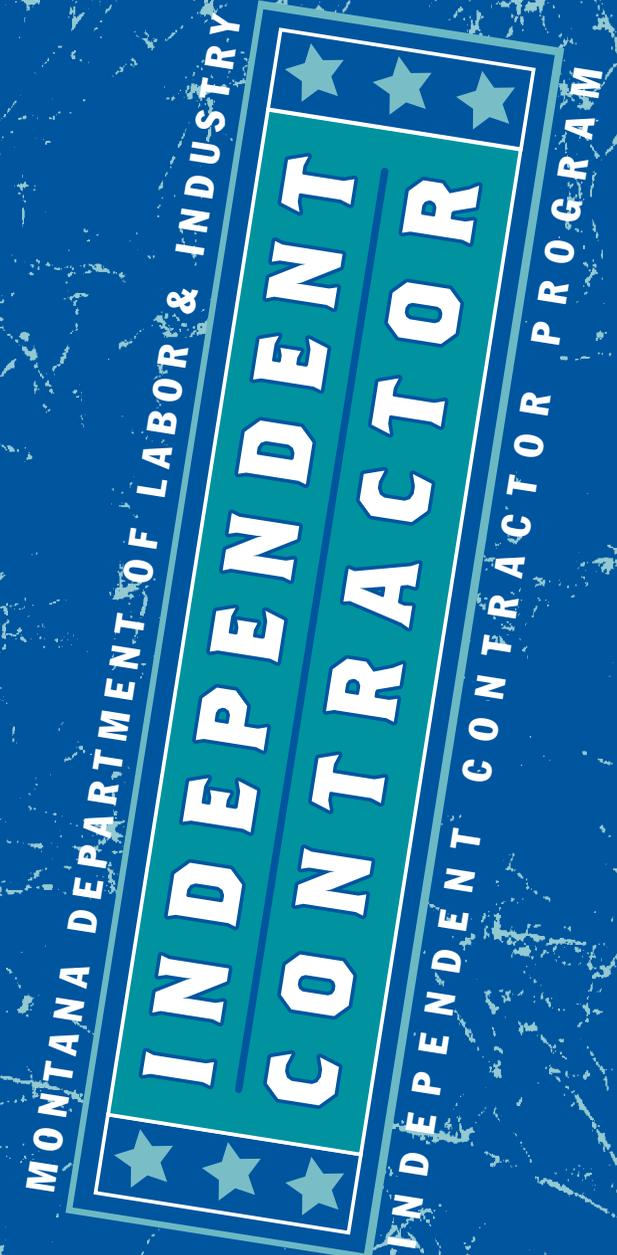
Exemption forms are available at local Job Service offices, and on the website below.

For more information, contact the Independent Contractor Central Unit at (406) 444-9029.

Montana Department of Labor & Industry
Employment Relations Division
1805 Prospect Avenue
PO Box 8011
Helena MT 59604
www.mtcontractor.com

The Montana Department of Labor & Industry has compiled this pamphlet as a guide only. This pamphlet does not cover all situations, and does not replace or supersede any law, administrative rule or regulation. For more detailed information regarding independent contractor laws, contact the Montana Department of Labor & Industry Independent Contractor Central Unit

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INDEPENDENT CONTRACTORS

A MISUSED CATEGORY.

Individuals who sign independent contractor agreements or who hold exemptions may not be ICs in fact. The issuance of 1099s and lack of withholding taxes does not make an individual an independent contractor.

Contract labor agreements do not establish contractor status. By law, a worker cannot sign away their rights to workers' compensation or unemployment insurance coverage. The worker must meet the independent contractor criteria.

Workers hired on a temporary or part-time basis are considered employees unless they meet the independent contractor guidelines.

Persons who hold exemption certificates are presumed to be an independent contractor, but an IC status can be destroyed by control.

The Montana Supreme Court has stated the following four factors are indicators of control in a working relationship.

1. Evidence of control including the right to control.
2. The furnishing of equipment.
3. The method of payment.
4. The right to fire without liability.

The consideration given to each of these factors is not a balancing process. A worker may be an employee simply by the strength of one of the four factors, while all need to be met to be an independent contractor.

TO BE AN INDEPENDENT CONTRACTOR (IC) IN MONTANA, A WORKER MUST BE:

- ✓ Free from control or direction.
- ✓ Engaged in their own independently established business, occupation, trade or profession.
- ✓ Hold an Independent Contractor Exemption Certificate (ICEC).

HERE ARE SOME COMMON THINGS TO THINK ABOUT WHEN DETERMINING CONTROL:

- ★ Payment is on a time basis rather than on a bid or project completion basis.
- ★ The pay is determined by the hiring agent, as opposed to the worker submitting a bid establishing the cost for the project.
- ★ The hiring agent provides substantial tools and equipment necessary to perform the job functions as opposed to the worker providing their own tools and equipment. The hiring agent instructs what tools to use and how to use them.
- ★ The hiring agent oversees how the work is performed as opposed to the worker completing the project in the manner and means they see appropriate.

- ★ The hiring agent explains, shows, and/or trains the worker how to perform the work. If you receive extensive instructions as how work is to be done, this suggests an employee relationship.
- ★ The hiring agent can release the worker from the job without notice or the opportunity to fix the problem. When the working relationship can be terminated without liability, the hiring agent has the control.
- ★ When there is no opportunity for profit or loss for the worker, they do not have control.
- ★ The hiring agent requires the worker to log the time worked on the job is an indication they have control.

THE DEPARTMENT RECOMMENDS THE FOLLOWING WHEN HIRING AN IC:

- ★ Have a written contract containing who, what, when, where and how.
- ★ Hire for a defined project with a beginning and ending date.
- ★ Hire those who are experts at their work.
- ★ Do not train or provide essential equipment or materials for the project.
- ★ Do not pay on a time basis; for example by the hour.
- ★ Ask for proof of General Liability Insurance.
- ★ Ask for proof of ICEC and verify it is in good standing by looking on the web at www.mtcontractor.com or calling (406) 444-9029.
- ★ Obtain references and follow them up.
- ★ Choose to hire only those who carry workers' compensation insurance on themselves.

THE EMPLOYER'S RESPONSIBILITY.

Employers are obligated to ensure the workers they hire as ICs truly are ICs. Obtain proof of their insurances. They must make sure their relationship with the IC is to achieve an end result as opposed to directing and controlling the way the work is done. A way to destroy a good hiring agent/IC relationship and turn it into an employer/employee relationship is for the hiring agent to exert or have the right to exert control over the worker.