Montana Department of LABOR & INDUSTRY

# Independent Contractor Exemption Certificate (ICEC) FAQ

1. **Who is required to obtain an independent contractor exemption certificate or self-elected workers' compensation insurance coverage?**

   A person who regularly and customarily performs services at a location other than the person's own fixed business location must obtain an independent contractor exemption certificate unless the person has self-elected workers' compensation insurance coverage.

   "Person" means:
   - a sole proprietor;
   - a working member of a partnership;
   - a working member of a limited liability partnership;
   - a working member of a member-managed limited liability company; or
   - a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in MCA 39-71-116(9).

2. **What is the purpose of an independent contractor exemption certificate?**

   It allows an independent contractor to waive all their rights and benefits that would otherwise be provided by a workers' compensation insurance policy. If an independent contractor were to suffer a work-related injury or occupational disease while performing the occupations specified on the certificate, they would not be eligible for workers' compensation benefits. The certificate concludes the person's status is conclusively presumed to be that of an independent contractor. Refer to MCA, 39-71-417(7).

3. **What is the purpose of self-elected workers' compensation insurance coverage?**

   Self-elected workers' compensation insurance coverage provides wage-loss and medical benefits to an independent contractor should a work-related injury or occupational disease occur.

4. **Can health insurance, commercial general liability insurance, or industrial accident insurance take the place of workers' compensation insurance coverage?**

   No. Montana law specifically requires Montana workers' compensation insurance coverage under MCA 39-71-401 and MCA 39-71-411.

   To verify if the contractor has self-elected workers' compensation insurance coverage, request proof of coverage from the contractor or call their workers' compensation insurance agency.

5. **What is the risk of hiring an independent contractor without an independent contractor exemption certificate or self-elected workers' compensation insurance coverage?**

It could result in the state treating the independent contractor as an employee of the hiring agent. This means the hiring agent may be responsible for claims related to work-related injuries or occupational diseases and incur penalties from the Uninsured Employers' Fund. Labor agreements and issuance of 1099s do not make a person an independent contractor.

6. **Are there penalties for making a person obtain an ICEC?**

Yes. Montana law prohibits employers from avoiding their responsibility to provide workers' compensation insurance coverage for employees. An employer may not require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status or exert control to a degree that destroys the independent contractor relationship. An employer who violates a provision of the law is subject to a fine to be assessed by the department of up to $5,000 for each violation. Refer to MCA 39-71-419(2).

7. **Are there penalties if an independent contractor does not comply with the workers' compensation laws?**

Yes. A person may not:

- perform work as an independent contractor without first obtaining an independent contractor exemption certificate or self-elected workers' compensation coverage, unless it is not required.
- perform work under a revoked or suspended certificate;
- transfer their certificate to another person; or
- misrepresent their status as an independent contractor.

A person who violates a provision of the law is subject to a fine to be assessed by the department of up to $5,000 for each violation. Refer to MCA 39-71-419(1).

8. **Should I register my business name with the Montana Secretary of State?**

Yes. All persons using a business name other than their personal name are required to register. You may contact the Secretary of State's office at (406) 444-3665 or visit their website. Please complete this step before submitting your completed independent contractor exemption certificate application.

9. **What do I need to do to hire employees?**

- Cover your employees under a Montana workers' compensation insurance policy.
- Check requirements with the Unemployment Insurance Division and the Department of Revenue.
- If you are a construction contractor, per MCA 37-45-102, apply for the construction contractor license. For additional information, refer to Construction Contractor License (CCL) - Frequently Asked Questions.

10. **Where do I purchase a Montana workers' compensation insurance policy?**

You may contact any workers' compensation insurer authorized to write Montana workers' compensation insurance policies; or contact Montana State Fund at (406) 495-5000 or 1-800-332-6102.

11. **As an independent contractor, can I hire other independent contractors?**

Yes. Ensure that anyone you contract with is also in compliance with the workers' compensation laws.

12. **What should I do if I need temporary help on a job?**

Contact a temporary employment agency in your area.