

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-31004 Coverage requirements. (1) I own a business. Am I required to have workers' compensation insurance coverage for my employees? Nearly every employer doing business in the state of Washington is required to have workers' compensation insurance for ~~((their))~~ his/her employees. Washington law (RCW 51.12.020) does exempt certain types of employment from coverage. A copy of this law can be found in **Appendix A** of the workers' compensation manual. If you employ only individuals who are excluded from mandatory workers' compensation insurance coverage, you are not required to have workers' compensation insurance coverage.

(2) I hire contractors to perform work for me. Do I need to be concerned about premiums on their work? Yes. There are two ways you may be liable for premiums on the work they do.

First, they may be "workers" for whom you are required to report and pay premiums. The law defines worker to include both your employees and independent contractors you hire, when the essence of the contract is personal labor. See RCW 51.08.070, 51.08.180 and 51.08.195 for more guidance about when independent contractors will be considered workers.

Second, the Industrial Insurance Act imposes premium liability on anyone who contracts with another to have work performed. Even if the contractor you hire is not your worker (for example, if the contractor uses one or more workers on the job), you could be liable for their premiums if they fail to pay.

(3) Is there any way for me to protect myself from being held liable for premiums owed by construction contractors I hire? Yes, if you are a registered construction contractor or licensed electrical contractor, and you hire a registered construction contractor or a licensed electrical contractor to do construction work that requires licensing or registration, you can protect yourself from being found liable for the premiums on the work that contractor does for you if:

(a) They have a principal place of business eligible for IRS deduction;

(b) They keep books and records that reflect all items of income and all expenses of the business; and

(c) You have verified that they have an industrial insurance account in good standing, or are a self-insured employer approved by the department.

(4) What does "in good standing" mean? For someone's account to be in good standing, they must:

(a) Be registered with the department of labor and industries for industrial insurance coverage with the state fund;

(b) Have a certificate of coverage, also known as a liability certificate, that has not been revoked or canceled;

(c) Have submitted all reports and supplements required by the department within the past year; and

(d) Be current with all payments due to the state fund, or are current with an approved written payment agreement with the department regarding all unpaid amounts due the state fund.

(5) How do I know that someone's account is considered to be "in good standing"? You can find out whether someone's account is in good standing by visiting the department's website or calling your account manager. If the account is in good standing, we will give you a confirmation number you can keep as proof that you verified their status.

(6) I use the same subcontractors over and over. Do I have to verify that they have an industrial insurance account in good standing every time I use them? No. In RCW 51.12.070 protection for construction contractors only requires that you have confirmed a subcontractor's account within a year prior to letting a contract. When you check out your subcontractors on the department's website or by calling your account manager, a confirmation number will be provided as proof you checked them out. This confirmation number is valid for one year from the time it is issued.

If you are notified by the department of labor and industries that a subcontractor's account is no longer in good standing, you may be liable for their industrial insurance premiums from the date of notification forward.

(7) Can I, as a construction contractor, be held liable if I verify that the accounts of construction contractors I hire are in good standing, but they fail to confirm the accounts of the construction subcontractors they hire? No. If you make sure you and your construction subcontractors meet the requirements of RCW 51.12.070, you cannot be held liable if they fail to make sure their construction subcontractors meet the requirements.

AMENDATORY SECTION (Amending WSR 04-13-017, filed 6/4/04, effective 7/5/04)

WAC 296-17-31013 Building construction. (1) Does this same classification approach apply to building and construction contractors?

Yes, but it may not appear that way without further explanation. We classify contractors by phase and type of construction since it is common for each contract to vary in scope.

Example: A contractor who builds and remodels private residences may frame the structure and work on no other phases of the project. On another job the same contractor may do only the interior finish carpentry. On still another job the contractor may install a wood deck or build a garden arbor. Each of these carpentry activities is covered by a different classification code. To ensure that contractor businesses receive the same treatment as other businesses, we assign classifications according to the phases and types of construction they contract to perform. Since some contractors specialize in one area of construction, such as plumbing, roofing, insulation, or electrical services, this classification approach mirrors that of nonbuilding contractor businesses. The policy of assigning several basic classifications to contractors engaged in multiple phases of construction may seem to be in conflict with the classification approach used for nonbuilding contractor businesses, but we have simply used the **multiple business** classification approach.

If we have assigned multiple classifications to your construction business you should take special care in maintaining the records required in the auditing and recordkeeping section of this manual. If we discover that you have failed to keep the required records we will assign all worker hours for which the records were not maintained to the highest rated classification applicable to the work that was performed.

(2) Who does this rule apply to?

If you are a building, construction or erection contractor and we have assigned one or more of the following classifications to your business, this rule applies to you: 0101, 0103, 0104, 0105, 0107, 0108, 0201, 0202, 0210, 0212, 0214, 0217, 0219, 0301, 0302, 0303, 0306, 0307, 0403, 0502, 0504, 0506, 0507, 0508, 0509, 0510, 0511, 0512, 0513, 0514, 0516, 0517, 0518, 0519, 0521, 0540, 0541, 0550, 0551, 0601,

0602, 0603, 0607, 0608, and 0701.

(3) Can I have a single classification assigned to my business to cover a specific construction project?

Yes, to simplify recordkeeping and reporting requirements we will assign a single classification to cover an entire project.

(4) How do I request the single classification for one of my construction projects?

You should send your request to the attention of your policy manager at the address below:

Department of Labor and Industries
P.O. Box 44144
Olympia, Washington 98504-4144

(5) If I have asked for a single classification on one of my construction projects, how do you determine which classification will apply?

You must supply us with a description of the project and a break down of the total number of hours of exposure by phase of construction that you are responsible for.

Example: *You notify us that your company will be responsible for all plumbing and iron erection work on a commercial building site. You have requested a single classification for this project. In your request you tell us that you estimate that it will take one thousand work hours to perform all the plumbing work and five hundred work hours to do the steel erection work.*

With this information we will estimate the premiums by classification.

Example: *We determine that the plumbing work is covered under classification 0306 and the steel erection work is covered under classification 0518. Assume that classification 0306 has an hourly premium rate of \$1.50 and classification 0518 has an hourly premium rate of \$2.55. We estimate the total premium on this job to be \$2,775 (1,000 hours x \$1.50 = \$1,500 + 500 hours x \$2.55 = \$1,275).*

Our next step in this process is to develop an average hourly rate for the project. We will use this information to select the single classification which will apply to this project.

Example: *We will take the estimated premium (\$2,775) and divide this number by the estimated hours (1,500) and arrive at an average hourly rate of \$1.85.*

To select the single classification that will apply to a construction project, we will compare the average hourly rate that we have computed to the rates of the classifications applicable to the project. We will select the classification whose hourly rate is the closest to the average hourly rate that we computed from the information you supplied us with.

Example: From the information you supplied, we have determined that the average hourly rate for this project is \$1.85. We also know that the rate for the plumbing classification (0306) is \$1.50 per hour and the rate for steel erection is \$2.55 per hour. We would assign classification 0306 as the single classification applicable to this project.

(6) How will I know what classification will apply to my construction project?

We will send you a written notice which will specify the basic classification and premium rate that will apply to this project.

(7) If I have asked for a single classification to cover one of my construction projects, am I required to use the single classification which you gave me?

No, but you should call your policy manager to verify what other classifications would apply to the project. The name and phone number of your policy manager can be found on your quarterly premium report or your annual rate notice. For your convenience you can call us at (360) 902-4817 and we will put you in contact with your assigned policy manager.

(8) I am a general construction or erection contractor, I subcontract all my work and have no employees of my own. Do I have to report to the department of labor and industries?

No, since you do not have employees, you do not need to report to the department of labor and industries. You should be aware that the workers' compensation insurance laws of Washington include certain independent contractors as workers. If we determine that an independent contractor that you used qualifies as a covered worker, you will be responsible for the premium due for their work time. You can also be held responsible for premiums due to labor and industries if you subcontract with an unregistered contractor and they fail to pay premiums on behalf of their employees. It is in your best interest to make sure that your subcontractors are registered contractors (~~(by contacting us at 1-800-647-0982)~~) in good standing by confirming their status on the department's website or contacting your account manager.

(9) Am I required to keep any special records of subcontractors that I use?

Yes, you are required to keep certain information about the subcontractors that you use. The information required is:

-  Subcontractor's legal name;
-  Contractor registration number and expiration date;
-  UBI number (or labor and industries account ID number).

If you supply materials to a subcontractor, also keep a record of the:

-  Amount of material supplied;
-  Project name or location;

- ✎ Date material was supplied; and
- ✎ Completion date of contracted work.

Failure to maintain these records may result in the subcontractor being considered a covered worker for whom you must report hours.

(10) What classification should I use to report construction site cleanup by my employees? You should report the cleanup of construction debris in the same classification that applied to the work which generated the debris unless another classification treatment is provided for in other rules. For example, if you are a roofing contractor and you have an employee pick up roofing debris at the construction (project) site, you would report the employee involved in the site cleanup in the roofing classification (0507). If you are the general contractor at a construction site and have either classification 0510 "wood frame building construction" or classification 0518 "nonwood frame building construction" assigned to your business, you would report site cleanup in the classification applicable to the type of building you are constructing. For example, if you are a general contractor and you are engaged in building a single-family wood frame dwelling, you would report construction site cleanup by your employees in classification 0510 "wood frame building construction."

(11) I am a construction site clean-up contractor, my employees only pick up construction debris, we do no construction work, what classification do I report site cleanup in? If your employees are cleaning a construction site where a wood frame building was erected, you would report their work time in classification 0510 "wood frame building construction." If your employees are cleaning a construction site where a nonwood frame building was erected, you would report their work time in classification 0518 "nonwood frame building construction." If your employees are cleaning other nonbuilding construction sites, you would report their work time in the same classification that applied to the construction work that generated the nonbuilding construction debris. For example, if you are doing site cleanup for a concrete contractor that was involved in pouring and finishing sidewalks and driveways, you would report the work time of your employees involved in this construction site clean-up project in classification 0217 "concrete flatwork."

(12) What classification should I use to report the work time of my employees when they are involved in the set up of scaffolding, hoists, cranes, towers or elevators at a construction site? We use the same classification treatment for this type of work as we do with construction site cleanup. For example, if you are a roofing contractor and you have an employee set up scaffolding at the construction (project) site, you would report the employee involved in the set up of

scaffolding in the roofing classification (0507). If you are the general contractor at a construction site and have either classification 0510 "wood frame building construction" or classification 0518 "nonwood frame building construction" assigned to your business, you would report the set up of scaffolding at the construction in the classification applicable to the type of building you are constructing. For example, if you are a general contractor and you are engaged in building a single-family wood frame dwelling, you would report scaffolding set up by your employees in classification 0510 "wood frame building construction." Helicopter services that are engaged to assist in lifting beams, air conditioning units, statues and other objects onto buildings or structures are to be reported separately in classification 6803.

(13) Is preoccupancy cleanup of a building by my employees classified the same as debris cleanup at a construction site? Since your understanding of what preoccupancy clean-up work is may be different from ours, we need to share with you our understanding before we can answer this question. Our understanding in this area is that preoccupancy cleanup occurs after the building is finished. The clean-up work consists of washing paint and overspray from windows, vacuuming carpets, washing floors and fixtures, and dusting woodwork, doors and cabinets. If you have employees whose duties are limited to this type of cleaning, we will allow you to report their work time in classification 6602 "janitors."

(14) If I have an employee who does some construction work, construction site cleanup and preoccupancy cleanup, can I divide their work time between the janitor and a construction classification? No, we will not permit you to divide the work time of an employee between the janitor classification and a construction classification. If you have an employee who does preoccupancy clean-up work for you, and that employee also performs other nonpreoccupancy clean-up work for you such as construction work, shop work or construction site debris clean-up work, then you must report all of their work time in the applicable construction or nonshop classification.

NEW SECTION

WAC 296-17-31030 Successorship and other transfers of ownership. RCW 51.16.200 requires a taxpayer to make a return and pay the tax due to the department of labor and industries within ten days of quitting business, selling out, exchanging, or otherwise disposing of the employer's business or stock of goods. If this tax is not paid by the employer, any successor to the employer becomes liable for the full amount of the tax. RCW 51.08.177 defines the term "successor." Subsections (1) through (3) of this section provide an interpretation of successorship issues.

(1) **What does the term "a major part" mean as that term is used in RCW 51.08.177?** A major part refers to a significant or substantial portion of a business's property. Major does not mean more than half.

Example: A sand and gravel business owns several trucks and a gravel pit as its primary assets. Each may be considered "a major part" of the property of the taxpayer.

(2) **Can a taxpayer/employer have more than one successor?**
Yes.

Example: Using the sand and gravel business in the example above, if the gravel pit were to be sold to one business (A) and the fleet of trucks to another business (B), both A and B would be considered successors.

(3) **What is intangible property?** Intangible property is property that has no physical existence, but may have value.

Example: The most common example is "goodwill." Goodwill is the value of a trade or business based on expected continued customer patronage due to its name, reputation, or any other factor. Other examples of intangible property include literary rights, bank accounts, customer lists, and internet domain names.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-517 Classification 0502.

**0502-04 ((~~Rug, linoleum~~)) Carpet, vinyl, tile and other floor or
((~~drainboard~~)) counter top covering: Installation or removal**

Applies to contractors engaged in the installation or removal of floor or (~~drainboard~~) counter top coverings such as, but not limited to, (~~rugs,~~) wall to wall carpet, (~~linoleum,~~) vinyl, laminate, or tile(~~, parquet or astroturf~~) in residential or commercial settings. Work contemplated by this classification includes, but is not limited to, the installation and/or removal of foam or rubber padding, floor coverings such as rugs or carpet, tack strips, door strips, subflooring (particle board or plywood), linoleum, vinyl, base board or door strips, and hauling existing floor covering debris away. This classification also includes the installation of (~~counter tops and the installation of~~) clay or ceramic tiles on (~~drainboards~~) counter tops and backsplashes.

This classification excludes contractors engaged in the installation of counter tops as part of an interior finish carpentry or cabinetry contract which is to be reported separately in classification 0513; the installation of hardwood floors which is to be reported separately in classification 0513; the installation of decorative brick, slate, marble or granite which is to be reported separately in classification 0302; installation of roofing tiles which is to be reported separately in classification 0507; and floor covering stores which are to be reported separately in the applicable classification.

0502-99 Carpet, vinyl, tile and other floor or counter top covering: Installation or removal (only to be assigned by the floor covering specialist)

Applies to floor covering contractors who consider themselves to be independent contractors, have no employees, and have not elected owner coverage for themselves.

The purpose of assigning this classification is to allow the independent contractor the opportunity to be checked for "account in good standing" status for prime contractor liability.

Special note: Any contractor who hires employees or elects owner coverage is required to report in the applicable construction classification.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-52002 Classification 0507.

0507-05 Roofwork construction and repair

Applies to contractors engaged in the installation or

repair of roofing material on all types of new or existing buildings or structures. Roofing materials include, but are not limited to, felt roofing paper, rolled composition, wood, fiberglass or composition shingles or shakes, aluminum or sheet metal, masonry or ceramic tile, tar, and polyurethane foam. Installation of roofing materials varies with the product. Wood, fiberglass and composition shingles are nailed; masonry, slate or ceramic tiles require drilling, nailing or cementing; polyurethane foam is applied by spray then coated with a protective layer of paint-like material; hot tar requires melting in tanks, usually at ground level, then it is pumped or raised by bucket to the roof top and applied by spray or mop; cold apply uses an adhesive to bond roofing membranes to form a roofing system; cold tar is applied by brush, spray or mop; single ply involves large sheets of roofing material which are unrolled on the roof with edges overlapping and seamed; and metal roofing is seam welded or nailed. For purposes of this classification the term "roofwork" includes repairs to the subroof such as the replacement of trusses, rafters, supports, and sheathing, but excludes the placement of trusses, rafters, supports or sheathing on new building construction. Essentially, when removing the existing roof material from an existing building or structure it is not uncommon to find dry rot or deterioration to parts of the subroof. The repair of the subroof is part of the roof repair or replacement project and is included in this classification. By contrast, when a subroof is constructed on new buildings or structures, this activity is to be reported separately in the classification applicable to the work being performed such as 0510 for wood frame construction or 0518 for nonwood frame construction.

This classification excludes roof cleaning, moss or snow removal on single story buildings not incidental to, or part of, a roofing contract which is to be reported separately in classification 6602; roof cleaning or moss removal of multiple story buildings not incidental to, or part of, a roofing contract which is to be reported separately in classification 0504; the installation of gutters and downspouts which is to be reported separately in classification 0519; waterproofing parts of buildings other than roofs which is to be reported separately in classification 0504 and/or 0101; placing roof trusses, rafters, supports and sheathing on new wood frame buildings which is to be reported separately in classification 0510; the application of polystyrene strips used as insulation on mobile homes which is to be reported separately in classification 0512; and placing roof trusses, rafters, supports and sheathing on new buildings, N.O.C. which is to be reported separately in classification 0518.

0507-99 Roofwork construction and repair (only to be assigned by

the roofing specialist)

Applies to roofing contractors who consider themselves to be independent contractors, have no employees, and have not elected owner coverage for themselves.

The purpose of assigning this classification is to allow the independent contractor the opportunity to be checked for "account in good standing" for prime contractor liability.

Special note: Any contractor who hires employees or elects owner coverage is required to report in the applicable construction classification.

AMENDATORY SECTION (Amending WSR 00-14-052, filed 7/1/00, effective 7/1/00)

WAC 296-17-52102 Classification 0510.

0510-00 Wood frame building: Construction or alterations, N.O.C.

Applies to contractors engaged in wood frame building construction or alterations not covered by another classification (N.O.C.). For the purposes of this classification, wood frame building construction means buildings erected exclusively of wood or wood products. This classification includes all building framing activities done in connection with wood frame building construction including the placement of roof trusses, sheathing roofs, installation of exterior building siding, and the installation of exterior doors and door frames. This classification also includes the installation of windows, window frames, and skylights when performed by framing workers as part of the framing contract on a wood frame building.

This classification excludes all other phases of wood frame building construction not listed as part of the framing activities above such as, but not limited to, site preparation and excavation (0101); overhead or underground utilities, asphalt work, or concrete work which is to be reported separately in the applicable classification; new landscape work (0301); brick work (0302); stucco work (0303); plumbing work (0306); HVAC work (0307); carpet and tile work (0502); exterior painting (0504); roof work (0507); insulation work (0512); interior finish carpentry - interior doors, cabinets, fixtures or molding (0513); installation of garage doors (0514); installation of sheet metal siding, gutters, and nonstructural sheet metal patio covers/carports (0519); interior painting (0521); electrical work (0601) or wallboard installation, taping or texturing which are to be reported separately in the

applicable classifications. For a more thorough description of the activities included and excluded from wood frame building construction, review the Construction Industry Guide.

Special note: Classification 0510 also includes wood frame building alterations or remodel work when the activity involves building new additions. The term "new additions" is defined as adding on to an existing wood frame building (upwards or outwards) in which the use of structural supports and main bearing beams is required. This is distinguishable from classification 0516 - building repair or carpentry work that typically does not require the placement of structural supports or main bearing beams. The purpose of classification 0516 is to build or rebuild with nonstructural or bearing beams, or to replace an existing portion (including existing structural and bearing beams) of a wood frame building for appearances or as a result of deterioration to make it appear new again. Care should be exercised as the terminology to build, rebuild, remodel, construct or reconstruct is irrelevant to assignment of classification which should recognize what the project actually involves.

Guidelines:

Constructing a new wood frame building that never existed - 0510

Altering all or part of an existing wood frame building by adding on new additions - 0510

Remodeling all or part of an existing wood frame building without adding on new additions - 0516

Installation of wood or vinyl siding on a new or existing wood frame building - 0510

Constructing a new wood garage that never existed - 0510

Altering all or part of an existing wood garage by adding on new additions - 0510

Remodeling all or part of an existing wood garage without adding on new additions - 0516

Constructing a new wood carport or wood shed that never existed - 0510

Rebuilding an existing wood carport or wood shed (all or part) with or without new additions - 0516

Construction of a new wood deck by the framing contractor when a new wood house is being built - 0510

Constructing or replacing a wood deck on an existing wood house - 0516

Constructing or replacing a wood deck for any type of nonwood building - 0516

Altering the existing interior of a wood frame building by adding exterior additions - 0510

Remodeling the existing interior of a wood frame building

without adding exterior additions - 0516

Constructing, altering, or remodeling the interiors of nonwood frame buildings - 0516

Installation of windows, window frames, and skylights when performed by framing workers as part of the framing contract of a wood frame building - 0510.

0510-99 Wood frame building: Construction or alteration, N.O.C. (only to be assigned by the wood framing specialist)

Applies to framing contractors, who consider themselves to be independent contractors, have no employees, and have not elected owner coverage for themselves.

The purpose of assigning this classification is to allow the independent contractor the opportunity to be checked for "account in good standing" status for prime contractor liability.

Special note: Any contractor who hires employees or elects owner coverage is required to report in the applicable construction classification.

AMENDATORY SECTION (Amending WSR 02-09-093, filed 4/17/02, effective 7/1/02)

WAC 296-17-52150 Classification 0550.

0550-00 Wallboard installation, including scrapping - nondiscounted rate (to be assigned only by the drywall underwriter)

Applies to contractors engaged in the installation or repair of wallboard. This classification includes the installation of wallboard, drywall, or sheetrock in all types of residential or commercial buildings or structures. The process consists of cutting wallboard with a utility knife, hacksaw, or power saw to the desired size and then butting material into place and nailing or screw fastening to wood or metal wall studs. Electrical box, window, or door openings are cut out where needed. Installation may require the use of scaffolding, ladders, specialty lifts, or stilts when working at heights, including the use of T holders or hydraulic lifts to hold material being installed on ceilings. This classification also includes wallboard scrapping (picking up and discarding unused portions of wallboard remnants or scraps) at the construction site when performed by employees of the wallboard contractor.

This classification excludes delivery of materials to the construction site by material dealer employees which is to be reported separately in the applicable delivery classification;

delivery and stocking of materials to the construction site when performed by employees of the wallboard contractor which is to be reported separately in classification 1101; wallboard taping (including priming and texturing when performed by employees of the wallboard contractor) which is to be reported separately in classification 0541 or 0551; wallboard scrapping by nonwallboard contractor employees which is to be reported separately in the applicable construction debris cleanup classification; plastering, stuccoing or lathing work which is to be reported separately in classification 0303; and the framing of nonbearing walls when performed by the drywall contractor which is to be reported separately in classification 0516.

0550-99 Wallboard installation (only to be assigned by the drywall specialist)

Applies to drywall contractors who consider themselves to be independent contractors, have no employees, and have not elected owner coverage for themselves.

The purpose of assigning this classification is to allow the independent contractor the opportunity to be checked for account in good standing for prime contractor liability.

Special note: Any contractor who hires employees or elects owner coverage is required to report in the applicable construction classification.