

Avoid Liability for Your Subcontractor's Unpaid Workers' Comp Premiums

Construction contractors: You could be liable. Find out how to protect yourself.



The Department of Labor & Industries (L&I) is responsible for making sure all workers receive the medical care they need if they are hurt on the job.

As a contractor, you know that you must pay workers' compensation premiums for all of your own employees. But what happens if your subcontractor fails to pay premiums for their employees? Under Washington law (RCW 51.12.070 and RCW 51.16.070), you — the general contractor — could be held responsible.

How do you protect yourself from liability for a subcontractor's unpaid premiums?

If you are in the construction trades, you cannot be held liable for a subcontractor's premiums if you can show that *all six* of the following statements are true:

1. **Both** you and your subcontractor are either:
 - Registered contractors under RCW 18.27, **OR**
 - Licensed in the electrical field under RCW 19.28

Note: Check by going to www.Lni.wa.gov/VerifyAContractor

2. The work you have subcontracted is the work of a contractor as described in RCW 18.27.010 (work that involves construction, repair, addition or removal, improvement, movement, wrecking or demolition of another's real property) or electrical work as described in RCW 19.28.

Note: Check the language of these RCWs by going to www.leg.wa.gov/LawsAndAgencyRules

3. Your subcontractor maintains a set of books and records that reflects all of the business's income and expenses. (You may ask to review them.)

4. Your subcontractor works out of either a storefront location or home office that is used regularly and exclusively for the business, including paperwork, and is eligible for an IRS business deduction. (You may visit their place of business to make sure.)
5. You are **not** supervising your subcontractor or their employees. This means you are hiring a truly independent contractor, which means you are **not**:
 - Telling them how to do the job
 - Assigning tasks
 - Training
 - Keeping time sheets
 - Paying a wage
 - Setting regular hours

Note: Read L&I's *A Guide to Hiring Independent Contractors in Washington State* by going to www.Lni.wa.gov/go/F101-063-000

6. Your subcontractor has an industrial insurance (workers' compensation) account in good standing with L&I or is a self-insured employer certified by L&I.

Note: Check by going to www.Lni.wa.gov/VerifyAContractor

To help protect yourself from liability, check your subcontractor's liability certificate (Certificate of Coverage) each year at this site, print a copy of it and keep it on file. Or, you may fill out a Tracking Request form (available at the above website) and we will notify you if your subcontractor falls behind on workers' compensation requirements. In either case, you must also be able to show that all six of these statements are true.

Warning signs that you might be liable for your subcontractor's premiums:

If the subcontractor:

- Does not bill in writing or send the general contractor an invoice for work completed.
- Pays workers and/or suppliers in cash and does not keep receipts.
- Prefers to be paid in cash and does not automatically give the general contractor a receipt.
- Does not keep records of the job they are doing for the general contractor.

Always:

- Keep *required* records of your subcontractor's legal name, contractor registration number and expiration date, UBI number or L&I account ID number. If you supply materials to a subcontractor, you also must keep records of the amount of material supplied, date supplied, the project name or locations, and the date the contracted work was completed.
 - *Recommended* records: Industrial Insurance, Employment Security and federal ID or account numbers.
- Use written contracts when hiring subcontractors. The contract should contain an explanation of how you have protected yourself from liability for any unpaid premiums.

Remember! When you hire a subcontractor, you are the one in control. You should examine a subcontractor's books, registration/license, records and place of business before you make the decision to hire — or continue employing — the subcontractor.

You also need to obtain and keep your subcontractor's UBI number. Find the number online at www.DOR.wa.gov.



For more information

Visit www.Lni.wa.gov

For more information on subcontractor liability:

Call 360-902-6868 or
email Determinations@Lni.wa.gov