

Hiring subcontractors

What you are required to do when you hire a subcontractor

Hiring an uninsured subcontractor poses a significant liability to your organization. This liability can affect your workers' compensation premium substantially. This notice explains what you must do—and have available to your SFM auditor—to avoid unexpected additions to your premium.

Minnesota law (Minn. Stat. §176.215) states: When a subcontractor fails to obtain workers' compensation coverage, the general contractor or any intermediate contractor is liable for payment of all workers' compensation benefits due an injured employee of the uninsured subcontractor, so long as the injury occurs on a job that is within the scope of the contract.

What this means to you:

When the subcontractor uses employees

If your subcontractor uses any employees on the job you have hired the sub to do, then the subcontractor is required by law to carry workers' compensation insurance. Before work begins, it is absolutely necessary for you to get a Certificate of Workers' Compensation Insurance from the subcontractor showing coverage in force at the time of the subcontracted work.

You will need to make this certificate available to your SFM auditor during your regular annual audit. If your auditor is not able to verify that the subcontractor had a workers' compensation policy in force, then the payroll of the subcontractor will be included in the payroll base for calculating your workers' compensation

premium. If you do not have the payroll information for the subcontracted work, in most circumstances, the subcontract price of the work performed during the policy period may be used as payroll (Minnesota Basic Workers Compensation Manual Rule 2.H.2). Including this may increase your premium substantially.

When the subcontractor works alone

If your subcontractor has no employees and therefore is doing the job by himself, then he may or may not be carrying workers' compensation insurance.

If he does have workers' compensation insurance: You need to get from him a certificate showing workers' compensation coverage in force at the time of the subcontracted work.

If he does not have workers' compensation insurance, then you need to have him do these four things:

1. Provide you with a valid copy of the Independent Contractor Registration issued to him by the Minnesota Department of Labor and Industry. If exempt from this Registration requirement, request a copy of the subcontractor's current license.
2. Fill out and return to you the attached "Determination of independent contractor status" form. This will enable SFM to determine whether the subcontractor meets the legal criteria for "independent contractor" for purposes of workers' compensation.

3. Ask whether the subcontractor is registered with the state as a business entity.

4. Provide you with a Certificate of Insurance for General Liability covering the dates the work was performed and with limits of at least \$300,000.

Always require your subcontractor to provide you with the necessary certificates.

When work is fundamental to your business

Be aware that, under Minnesota Rules, your contract with a subcontractor may be considered an employment contract if the subcontractor's work is fundamental to your business. Minnesota Administrative Rules 5224.0340 Subpart 9 states: The subcontractor may be considered an employee when "the services provided are necessary to the fundamental business purpose for which the organization exists." A subcontractor's status as your employee may increase your payroll base for purposes of calculating your workers' compensation premium.

Name of SFM policyholder _____

Policy No. _____

Instructions to SFM policyholder

When you need to use this form

You must always have your subcontractor furnish you with a certificate showing workers' compensation coverage in force at the time of the subcontracted job. This is essential when the subcontractor uses employees.

However, an individual doing the subcontracted job by himself may not need to carry workers' compensation. If your subcontractor is working by himself and does not provide you with a Certificate of Workers' Compensation Insurance because he claims to be an independent contractor, then you must have the subcontractor fill out the form on the other side.

- 1) Make photocopies of this form. Be sure to copy both sides.**
- 2) At the top of this page, fill in your company's name and policy number.**
- 3) Have the subcontractor complete the form on the other side and return it to you promptly.** Keep it with your records and make it available to your SFM auditor.

Your SFM auditor will want copies of (1) this completed form, (2) the subcontractor's Independent Contractor Registration, and (3) the subcontractor's Certificate of Insurance for General Liability covering the dates the work was performed. This will enable SFM to determine whether the subcontractor meets the legal criteria for "independent contractor" for purposes of calculating your workers' compensation premium.

**Determination of independent contractor status
for workers' compensation insurance coverage**

Note to subcontractor: Please complete this form and return it to the person or business for which you are performing the contracted work. Please also attach copies of your insurance certificate and/or your Independent Contractor Registration.

Subcontractor business name _____

Operates as: sole proprietor _____ partnership _____ corporation _____

Dates work is to be performed _____

Yes No

- Do you plan to use or hire employees, casual labor or subcontractors during the dates for which work will be done?
- Do you maintain a separate business with your own office, equipment and materials?
- Will you be working for specific amounts of money and controlling how the work is done?
- Do you have, or have you applied for, a Federal Employer Identification Number?
Enter your FEIN _____
- Will you incur the main expenses related to the work performed?
- Are you responsible for the satisfactory completion of the work you have contracted to perform and are you liable for failure to complete it?
- Will you receive compensation for work performed under the contract on a commission or per-job basis and not on any other basis?
- Will you realize a profit or loss under the contract?
- Do you have recurring business liabilities or obligations?
- Does the success of your business depend on business receipts being sufficient to cover expenses?
- Are you performing services that are fundamental to the business you are contracting with?

Signature _____ Date _____