

Subcontractors

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Subcontractors

What are they?

They should be **independent** contractors you hire for a specific task

NOT

Contractors (people) you hire as extra help

Independent Contractor

Control over:

Outcome of contract

Not methods of achieving the outcome

Why are You Using Subcontractors?

- You do not do that type of work – ex. Low slope/steep slope
- Temporary increase in work, so need to add labor, but do not wish to hire additional employees
- Subcontractor has trained employees
- Keep payroll low for workers' compensation premium purposes
- Keep EMR low
- Control potential unemployment compensation costs
- Keep PPE costs down
- Limit liability?

Proposed Rule by DOL 2024

Economic Reality Test

Independent contractor (I/C) must:

- Have opportunity for profit or loss depending on his/her management skill
- Investment by I/C vs. principal
- Degree of permanence of working relationship
- Nature and degree of control
- Extent to which work performed by I/C is integral to business of principal (employer)
- Skill and initiative required

(On September 4, 2025, the DOL stated that it intends to rescind the 2024 rule)

How do You Handle Your Subcontractor?

- Only use subs for work you do not have skill sets to perform among your employees – not for unskilled labor
- Use multiple subs and switch out who you use on different projects
- Never direct subcontractor employees - always work with/through sub's onsite manager
- Do not place your sign on jobsite
- Try to avoid visits to jobsite by your employees
- Be sure sub's employees understand that they are working for sub, keep your name out of it.

Contract

- Be sure to establish that the contractor is an I/C
- Fixed-price contract
- State that your safety director may visit site to confer with sub's competent person and confirm safety
- Your safety director will only communicate with sub's owner and/or site competent person
- Note that failure of sub to comply with all OSHA standards may result in fines to you, which may be recovered by reducing what you owe the sub, or by other stipulated penalties (pass by legal counsel)

Contract (cont.)

- Be sure contract states that sub is solely responsible for payment of wages/salaries to his/her employees
- Be sure to state that sub is required to comply with all Federal and State laws and regulations including, but not limited to, any regarding safety compliance, environmental compliance, and compliance with all regulations regarding FLSA, immigration, child labor, EEOC, etc.

After All of This

If Subcontractor

- General liability
- Multi-employer work site

If Employee

- Workers' compensation liability
 - Increase EMR
 - Safety violation
- OSHA – As your employee (exposure to willful and/or repeat)

Subs hiring subs ?????

Less control for you

All points in preceding slide apply

Thank You

Questions?



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