



### **Workplace Fraud Act Checklist (for GC's and subcontractors):**

*ABC has developed the following checklist for contractors (generals and subcontractors) who subcontract out work to ensure they are in compliance with Maryland's Workplace Fraud Act (that passed in 2009).*

The **Maryland Workplace Fraud Act** requires that employers in the construction and landscaping industries give an individual -- *classified as an independent contractor or an exempt person with whom they contract* -- notice of their classification and an explanation of what that classification means. (*An exempt person is an individual who operates their own business and does not have any employees other than their family members.*)

**A copy of the notice, in English and Spanish is available on the DLLR website.**

*The following is a checklist that you can use in evaluating each of your subcontractor relationships to ensure that you do not run afoul of Maryland's Workplace Fraud Act.*

I. For each of your projects (publically or privately funded) do you have a written contract for all of the subcontracted work on your project? Yes \_\_\_\_ No \_\_\_\_

**A. Do you have subcontract with an INDIVIDUAL(S) for this project? Yes \_\_\_\_ No \_\_\_\_ [NAME: \_\_\_\_\_]**

I. If yes, does the individual work for any other Company or persons, or does he only perform work for you? Yes \_\_\_\_ No \_\_\_\_

a. Does the Individual employ anyone other than family members? Yes \_\_\_\_ No \_\_\_\_ If yes, they may not be exempt individuals, but still **MAY BE** legitimate Independent Subcontractors.

2. Has the Individual provided you with proof of insurance and Workers Compensation Insurance? Yes \_\_\_\_ No \_\_\_\_

3. Has the individual provided copies of any license or registrations required for their work? Yes \_\_\_\_ No \_\_\_\_

4. Have you provided the individual with the *Notice to Independent Contractors and Exempt Persons*? Yes \_\_\_\_ No \_\_\_\_

- a. If Yes, did you have them sign an acknowledgement that they received the Notice? Yes \_\_\_\_ No \_\_\_\_

5. Can the individual pass the ABC Test?

- a. Will the Individual be able to work free of **DIRECT** supervision in order to achieve the end product desired? Yes \_\_\_\_ No \_\_\_\_

- b. Is the Individual customarily engaged in an independent business of the same nature as the work that is being performed by them on this project? Yes \_\_\_\_ No \_\_\_\_

- c. Is the work outside of your usual course of business or performed outside of any of your regular places of business? Yes \_\_\_\_ No \_\_\_\_

i. Work is "outside the usual course of business" if the individual:

1. Performs the work off of your premises (i.e. not at your home office);
2. Performs work that is not integrated into your operation; or
3. Performs work unrelated to your business.

6. Do you have copies of your Subcontract at the work site? Yes \_\_\_\_ No \_\_\_\_

**B. Do you have subcontract for work on your project with a COMPANY? Yes \_\_\_\_ No \_\_\_\_**

1. If yes, does the Company work for any other Company or persons? Yes \_\_\_\_ No \_\_\_\_

2. Has the Company provided you with proof of insurance and Workers Compensation Insurance? Yes \_\_\_\_ No \_\_\_\_

3. Is the Company Registered with SDAT as a viable entity? Yes \_\_\_\_ No \_\_\_\_  
[Perform Search](#)

4. Has Company provided you with proof of withholding payroll taxes, Workers Compensation and Unemployment Insurance for all of their employees? Yes \_\_\_\_ No \_\_\_\_

- a. If not, is reason because all of their workers are independent contractors?  
Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, DLLR may determine that your subcontractor has misclassified its employees, and at the time you execute Subcontract, you should procure copies of the Notice To Independent Contractors and Exempt Persons acknowledged by each individual identified by a subcontractor as an independent contractor working on your project site.
5. Has Company provided you with a determination from the IRS that any individuals are, in fact Independent Contractors? Yes \_\_\_\_\_ No \_\_\_\_\_

\*\*\*NOTE\*\*\* the IRS and the State of Maryland do not agree about the standard to determine if a person is an actual Independent Contractor. As such, an IRS determination will not necessarily protect you or your Subcontractor.

6. Has the Company provided copies of any license or registrations required for their work? Yes \_\_\_\_\_ No \_\_\_\_\_
7. Can the Company pass the ABC Test?
- a. Will the company and their employees be able to work free of direct supervision in order to achieve the end product desired? Yes \_\_\_\_\_ No \_\_\_\_\_
- b. Is the company customarily engaged in an independent business of the same nature as the work that is being performed by them on this project? Yes \_\_\_\_\_ No \_\_\_\_\_
- c. Is the work outside of your usual course of business or performed outside of any of your regular places of business? Yes \_\_\_\_\_ No \_\_\_\_\_

a. Work is "outside the usual course of business" if the individual:

1. Performs the work off of your premises (i.e. not at your home office);
2. Performs work that is not integrated into your operation; or
3. Performs work unrelated to your business.

Do you have copies of your Subcontract at the work site? Yes \_\_\_\_\_ No \_\_\_\_\_

**In addition to the additional steps that must be taken to ensure that individuals are properly classified, employers in the landscaping and construction industries must also keep, for at least three years, records containing the following information:**

1. The name, address, occupation, and classification of each employee or independent contractor;

2. The rate of pay for each employee or method of payment for each independent contractor;
3. The amount paid each pay period to each employee or independent contractor;
4. Records of the hours worked by each employee or independent contractor;
5. For each independent contractor or exempt person hired, the regulations further require that the employer keep **at the work site or place of business**:
  - a. A description of the employer's business or a contract between the employer and the independent contractor or exempt person;
  - b. Forms signed by the independent contractor or exempt person acknowledging that they received notice of their classification; and
  - c. Copies of any licenses or registrations provided by an individual classified as an independent contractor or exempt person.

**The preceding checklist is intended for informational purposes only and does not constitute legal advice or guarantees of any kind. This checklist is intended to provide guidance and reminders regarding the information necessary to prove that individuals are properly classified when subcontracting for projects. Completing this checklist will not guarantee that DLLR will not investigate the classification of Individuals on your projects.**

**You are advised to contact legal counsel immediately upon the event of any investigation or contact from DLLR regarding the classification of individuals on your projects.**