

In the News

New Minnesota Law Targets Subcontractor Misclassification

In Minnesota, as in most states, it's common for general contractors to "1099" their workers — to misclassify them, in other words, as independent contractors. How common? A 2007 investigation by the state's Office of the Legislative Auditor estimated that 1 in 7 employers engaged in this practice; in the construction industry, the ratio was closer to 1 in 3. Now, however, that ratio is bound to change, thanks to a new state law that requires contractors to treat all individuals and sole proprietors as employees unless they've received an exemption from the state.

Tough requirements. Under the new law — Statute 181.723, which took effect January 1 — anyone who wants to work as an independent contractor in Minnesota's residential or commercial construction industry must first obtain an Independent Contractor Exemption Certificate (ICEC) from the state's Department of Labor and Industry. In addition to paying a \$150 fee, applicants must provide documentation proving that they do the following: file appropriate tax; perform specific services; incur expenses; assume liability; stay off the contractor's payroll; assume the risk of realizing a loss; have liabilities; and track revenue and expenses.

Sole proprietorships only. The law does not apply to individuals in construction sales, landscaping, or construction cleanup, or to business entities like LLCs, C or S corporations, or partnerships. It applies only to the large percentage of remodelers and builders who are sole proprietorships and one-man shops.

Both the worker or sub being hired and the contractor doing the hiring are responsible for compliance. Contractors must verify the status of their subs before jobs begin, update their records periodically to ensure that subs haven't let their exempt status lapse, and maintain ICEC records for five years after the initial hiring date. Failure to comply can result in fines of up to \$5,000 for the sub *and* the hiring contractor, as well as liability for all withholding and payroll taxes (including penalties and interest) if the sub is later reclassified as an employee.

Sea change. The rule represents a fairly dramatic change in how state governments are approaching this issue. Until recently it's been customary not only in Minnesota but throughout much of the country for contractors to rely on the IRS's longstanding 20-factor "right-to-control test" for determining independent contractor vs. employee status. That some subjectivity would be applied to the interpretation of those rules was a given. The incentive for a contractor to take advantage of any wiggle room, of course, is considerable: Any accountant will tell you that hiring an employee costs 25 percent to 30 percent more

■ LG Electronics has agreed to remove several of its refrigerators from the Energy Star program after October's *Consumer Reports* revealed that the manufacturer turned off icemakers during testing. LG will offer free in-home energy-efficiency modifications for already-purchased refrigerators and compensate consumers for the difference in cost between the actual energy usage of the appliance (over its useful lifetime) and the amount indicated on the original Energy Guide label. Models covered include LG's French Door-style units with through-the-door ice and water dispensers, and similar Kenmore-brand Trio models made by LG.

■ Electronic tracking devices have been used for years to locate stolen vehicles; now some builders are using them to find stolen appliances. In Lake Elsinore, Calif., a stove stolen from a new development was found after a hidden GPS device led police to a home where the stove and \$15,000 worth of other appliances were stashed. Police say that GPS tracking devices are increasingly being used in new and foreclosed vacant homes, at bank-owned properties, and on construction sites. Gilbert Waltz, president of Tracking the World, a GPS company used by KB Home, says it costs about \$500 to equip an appliance with a tracking system.

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than hiring a subcontractor to do the same work, once all of the employee's costs are factored in (Social Security, workers' comp, liability insurance, benefits).

No more wiggle room. But now federal and state officials everywhere — Minnesota is by no means unique — are cracking down on independent-contractor misclassifications. Increased revenue in the form of additional taxes, fees, and fines no doubt accounts for some of the heightened interest, but the crackdowns are also receiving solid support from workers' rights groups and

unions, says the National Employment Law Project (nelp.org), a private research and advocacy organization. Bills addressing independent-contractor misclassification have passed in New Jersey, Illinois, Washington, and Colorado — and several other states are working on similar measures.

At the federal level, notes NELP co-director Catherine Ruckelshaus, both the House and the Senate have introduced bills that address the issue. Meanwhile, the IRS, the Department of Labor, and representatives of more than 30 states have developed the Questionable Employment Tax Practices Initiative to combat various other schemes for avoiding federal and state employment taxes. — *Andrew Wormer*

Airtight Stucco Home Survives Destructive Blaze

It started out as a simple bonfire at the Teahouse, a popular hangout for Montecito, Calif., teenagers. But then Santa Ana winds — gusting to 70 mph — fanned embers from the not-quite-extinguished fire into flames that found ready fuel in the area's dry brush and oil-rich eucalyptus trees. By the time last November's California Tea Fire was finally contained, it had burned through almost 2,000 acres and destroyed 230 houses in Santa Barbara County.

One residence the fire didn't destroy was a house built in 2006 by Santa Barbara contractor Dennis Allen, a long-time proponent of sustainable design. Built in a

wildland-urban interface fire area, the house has numerous fire-resistant features required by local code and the California Building Code, such as a Class A roof — in this case a combination of standing-seam metal and standard BUR roofing — and ignition-resistant eaves and wall cladding.

But Allen also attributes the home's survival to its many green features. Its super insulation — R-40 cellulose in the 12-inch-thick walls and R-60 in its ceilings — helped it withstand outside temperatures estimated to have exceeded 1,000°F. Programmable thermostats inside the house measured a maximum indoor temperature of only 84°F during the fire; a sprinkler system would have activated if interior temperatures had reached 140°F.

In addition, the home is heated with a simple radiant slab and has no crawlspace vents to introduce burning embers into the structure and no hvac ductwork to spread them around. Nor does it have an air conditioner (or the accompanying ductwork); in this region, high insulation levels make such equipment unnecessary. And even though permitting the unvented roof was "a pain" at the time (the IRC now has "hot" roof details), Allen notes that roof and soffit vents are a common point of entry for burning embers.

Allen points out that small details — such as a smooth-trowel stucco finish that allowed the wall to shed burning embers easily — played a role in the home's survival as well. So did a bit of luck. "All of the doors except for one

leading to the garage had metal thresholds," he says. "That wooden threshold had marks from burning embers that landed on it. If it had ignited, the house could have ended up like all of the others."

— *Andrew Wormer*



Super-insulated walls and ceilings and unvented metal-wrapped eaves (shown in the "before" photo above) helped keep this home from igniting during California's Tea Fire, which left the surrounding landscape scorched (right).

