

**APPLICATION FOR PREDETERMINATION  
OF CONSTRUCTION SUBCONTRACTOR  
TO ESTABLISH A REBUTTABLE PRESUMPTION**

STATE OF MAINE  
WORKERS' COMPENSATION BOARD  
27 STATE HOUSE STATION  
AUGUSTA, ME 04333-0027  
TEL: (207) 287-7071 FAX: (207) 287-5413 TDD: (877) 832-5525

Pursuant to 39-A M.R.S.A. § 105-A, \_\_\_\_\_ (Hiring Agent) hereby requests a predetermination by the Maine Workers' Compensation Board that the Applicant is a construction subcontractor per 39-A M.R.S.A. § 105-A (1)(B).

HIRING AGENT	APPLICANT
Name:	Name:
D/B/A (if applicable):	D/B/A (if applicable):
SSN or FEIN:	SSN or FEIN:
Physical address:	Physical address:
Mailing address:	Mailing address:
NAICS* code (your 6 digit code):	NAICS* Code (your 6 digit code):
Telephone:                      E-mail address:	Telephone:                      E-mail address:

**\* TO LOOK UP A NAICS CODE FOLLOW THIS LINK:** <http://www.naics.com/search.htm>

The hiring agent and the worker will receive a written copy of the board's decision regarding this predetermination. A rebuttable predetermination is valid for one year from the date of approval or for the length of the contract, whichever is shorter.

**Please note: Information provided on this form, not otherwise confidential, may be shared with other state and federal agencies.**

The State of Maine does not discriminate on the basis of disability in admission to, access to, or operation of its programs or activities. This material can be made available in alternate formats by contacting the Workers' Compensation Board ADA Coordinator.

## **IMPORTANT: PLEASE READ BEFORE COMPLETING APPLICATION**

**Notice to hiring agent:** Predetermination of independent contractor status is based upon the information provided in this application. Participation in the submission of a fraudulent or intentionally misleading form which leads to an employer's failure to secure the payment of required compensation is 1) a crime punishable by up to one year imprisonment, 2) may carry additional civil fines of up to \$10,000 or more, and 3) can lead to the suspension or revocation of State-issued licenses, certification or registration.

**Notice to applicant:** Predetermination of independent contractor status is based upon the information provided in this application. Participation in the submission of a fraudulent or intentionally misleading form can result in fines of up to \$1,000 for an individual and up to \$10,000 for a corporation, partnership or other legal entity.

A "hiring agent" is defined as a person that hires or contracts with a person to perform construction work, but excludes an owner or occupant of real property who hires a person or persons to perform construction work on that real property.

A "construction subcontractor" is defined as a person who performs construction work on a construction site for a hiring agent if the person satisfies all of the following criteria:

1. Possess or has applied for a federal employer identification number or SSN or agreed in writing to carry out the responsibilities imposed on employers under this chapter;
2. Has control and discretion over the means and manner of performance of the construction work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the hiring agent;
3. Has control over the time when the work is performed and the time of performance is not dictated by the hiring agent. This allows agreements as to completion schedules, range of work hours and maximum work hours the applicant is to provide;
4. Hires and pays the person's assistants, and if employees, supervise the details of their work;
5. Be in business for him/herself;
6. Has continuing or recurring construction business liabilities or obligations;
7. Success or failure of the person's business depends on the relationship of business receipts to expenditures;
8. Receives compensation for construction work or services performed, and remuneration is not determined unilaterally by the hiring agent;
9. Is responsible in the first instance for the main expenses related to the service or construction work performed (a hiring agent may provide supplies or materials necessary to the work);
10. Is responsible for satisfactory completion of the work and may be contractually responsible for failure to complete the work;
11. Supplies the principal tools and instruments used in the work (hiring agents may supply tools or instruments unique to their special requirements or which are located on their premises); and
12. Is not required to work exclusively for the hiring agent.

**YOUR APPLICATION WILL NOT BE CONSIDERED COMPLETE UNLESS YOU HAVE ANSWERED THE QUESTIONS COMPLETELY AND PROVIDED ALL REQUIRED INFORMATION AND SIGNATURES. FAILURE TO FILE A COMPLETE APPLICATION WILL RESULT IN THE APPLICATION BEING DENIED.**

- (1) Has the applicant been hired to operate equipment owned by the applicant that weighs more than 7,000 pounds and that will be operated by the applicant on the construction site or used by the applicant to transport materials to or from the construction site?

If **YES**:

- (a) Answer (b) and (c), and *skip* questions (2) through (18);

**PLEASE NOTE: If granted pursuant to this question, the presumption only applies to the applicant's operation of the equipment that is the subject of the agreement between the parties.**

- (b) The applicant must attach proof that the applicant owns the equipment and that the equipment meets the weight requirement; and
- (c) A signed copy of the written contract must be attached to this application or, if this is a verbal agreement, the following questions must be answered:
- (i) Please identify the location or locations where the work will be performed.
- (ii) How long the contract will be in effect?
- (iii) How will the applicant be paid (in other words, by the hour, by the job, etc.)?
- (iv) Briefly describe the scope of the work that will be performed by the applicant.
- (2) Did the applicant provide a Social Security Number or Federal Employer Identification Number?

\_\_\_\_ Yes    \_\_\_\_ No

If *NO*, the applicant must:

Provide evidence that the applicant has applied for a Social Security Number or Federal Employer Identification Number;

**OR**

Sign the following statement:

I have read and agree to carry out all of the responsibilities imposed on employers by the Workers' Compensation Act, Title 39-A M.R.S. § 101, et seq.

Dated at \_\_\_\_\_, Maine this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(City/Town) (Month)

\_\_\_\_\_  
(Signature of applicant)

(3) Please indicate the type of agreement that exists between the hiring agent and the applicant.

Written contract \_\_\_\_\_ (A copy of the signed contract must be submitted with the application.)

Verbal agreement \_\_\_\_\_

(4) Please identify the location or locations where the work will be performed.

(5) How long the contract will be in effect?

(6) How will the applicant be paid (in other words, by the hour, by the job, etc.)?

(7) Briefly describe the scope of the work that will be performed by the applicant.

- (8) Does the applicant have control and discretion over how the construction work is performed (in other words, is the result of the work, rather than the means or manner by which the work is performed, the primary element bargained for by the hiring agent)?
  
- (9) Does the applicant decide when the work will be performed (in other words, when to arrive at work and when to leave work)? (Note: The hiring agent is not prohibited from reaching an agreement with the applicant as to a completion schedule, range of work hours and maximum number of work hours to be provided by the applicant.)
  
- (10) Will the applicant use assistants to complete the contract?

If yes, to the extent such assistants are employees, will the applicant hire and pay these assistants, and supervise the details of the assistants' work?

- (11) Is the applicant in business for that person's self?
  
- (12) Is the applicant's pay determined unilaterally by the hiring agent?
  
- (13) Is the applicant responsible in the first instance for the main expenses related to the service or construction work performed? (Note: Nothing in this paragraph prohibits the hiring agent from providing the supplies or materials necessary to perform the work.)
  
- (14) Is the applicant responsible for satisfactory completion of the work and may the applicant be held responsible for failure to complete the work?
  
- (15) Does the applicant supply the principal tools and instruments used in the work? (Note: The hiring agent may furnish tools or instruments that are unique to the hiring agent's special requirements or are located on the hiring agent's premises.)

**PLEASE NOTE: Questions # 16, 17 & 18 require information that must be submitted by the Applicant.**

- (16) Has the applicant performed construction work during the 12 months prior to the date this application is signed?

If yes, please list 5-10 examples and include who the construction work was performed for and how long the contract lasted.

- (17) Is the success or failure of the applicant's construction business dependent on the relationship of the applicant's business receipts to expenditures?

If yes, the applicant must attach copies of business tax forms for the last three (3) tax years. "Business tax forms" means one or more of the following:

- **For Sole Proprietors:** Signed copy(ies) of the applicant's Federal Form 1040 along with the corresponding Schedule C (Form 1040) Profit Or Loss From Business.
- **For Corporations:** Signed copy(ies) of the applicant's Form 1120ME Maine Corporate Income Tax (pages 1 and 2 only).
- **For Partnerships, S-Corporations, LLCs:** Signed copy(ies) of the applicant's Form 1065ME/1120S-ME Maine Information Return Partnerships/LLCS/S Corporations along with the corresponding Schedule PSI.
- **For Composite Filers:** Signed copy(ies) of the applicant's Form 1040ME along with the corresponding Schedule NRC and Schedule 1040C-ME.

- (18) Is the applicant required to work exclusively for the hiring agent?

If no, the applicant must list the other jobs s/he is performing:

## HIRING AGENT

**Read carefully and sign below:**

I hereby certify that the foregoing information is truthful and accurate. I understand that should any information contained in this application be found to be intentionally misleading or fraudulent, the predetermination of independent contractor status shall be nullified and I may be subject to fines and/or criminal imprisonment as described above.

I further understand that this predetermination of independent contractor status is based upon the circumstances described in this application. I understand that changes in these circumstances may nullify the predetermination of independent contractor status. I agree to notify the Workers' Compensation Board of any subsequent changes to the information in this application or the circumstances described herein.

Dated at \_\_\_\_\_, Maine this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(City/Town) (Month)

\_\_\_\_\_  
(Signature of Hiring Agent)

## APPLICANT

**Read carefully and sign below:**

I hereby certify that the foregoing information is truthful and accurate. I understand that should any information contained in this application be found to be intentionally misleading or fraudulent, the predetermination of independent contractor status shall be nullified and I may be subject to fines and/or criminal imprisonment as described above.

I further understand that this predetermination of independent contractor status is based upon the circumstances described in this application. I understand that changes in these circumstances may nullify the predetermination of independent contractor status. I agree to notify the Workers' Compensation Board of any subsequent changes to the information in this application or the circumstances described herein.

Dated at \_\_\_\_\_, Maine this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(City/Town) (Month)

\_\_\_\_\_  
(Signature of Applicant)