

IMPORTANT: PLEASE READ BEFORE COMPLETING APPLICATION

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. **The predetermination WILL NOT apply if you do not perform work consistent with the information provided in this application.**

Title 39-A M.R.S.A. §13-A establishes that: A person who performs services for remuneration is presumed to be an employee unless the employing unit proves that the person is free from the essential direction and control of the employing unit, both under the person's contract of service and in fact and the person meets specific criteria. In order for a person to be an independent contractor:

A. The following criteria must be met:

- (1) The person has the essential right to control the means and progress of the work except as to final results;
- (2) The person is customarily engaged in an independently established trade, occupation, profession or business;
- (3) The person has the opportunity for profit and loss as a result of the services being performed for the other individual or entity;
- (4) The person hires and pays the person's assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants' work; and
- (5) The person makes the person's services available to some client or customer community even if the person's right to do so is voluntarily not exercised or is temporarily restricted; and

B. At least 3 of the following criteria must be met:

- (1) The person has a substantive investment in the facilities, tools, instruments, materials and knowledge used by the person to complete the work;
- (2) The person is not required to work exclusively for the other individual or entity;
- (3) The person is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work;
- (4) The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work;
- (5) Payment to the person is based on factors directly related to the work performed and not solely on the amount of time expended by the person;
- (6) The work is outside the usual course of business for which the service is performed; or
- (7) The person has been determined to be an independent contractor by the federal Internal Revenue Service.

STATE OF MAINE
WORKERS' COMPENSATION BOARD
27 STATE HOUSE STATION
AUGUSTA, ME 04333-0027
Tel. 207-287-7071 / Fax 207-287-5413

APPLICATION FOR PREDETERMINATION OF INDEPENDENT CONTRACTOR STATUS
TO ESTABLISH A REBUTTABLE PRESUMPTION

NOTICE

- **The predetermination process is voluntary under the Maine Workers' Compensation Act. The Act DOES NOT require an individual to receive an approved predetermination before working as an independent contractor.**
- **If you file this application, it may be: Granted or denied (you will receive a letter to this effect); or, instead of denying it, the Board may return your application and request additional information.**
- By submitting this Application you are not relinquishing your rights to be covered under the Maine Workers' Compensation Act—if you are injured you may still file a claim with the Board.
- Approved predeterminations are “portable” (may be submitted to any employing unit) and are valid for one year from the date of approval.
- The predetermination is only valid with respect to an employing unit if you work consistent with the answers on this application
- A predetermination from the Board is not binding on the Department of Labor.
- **You must retain a copy of this application for your records. You may be required to produce this application along with the decision that you receive from the Board.**

Pursuant to 39-A M.R.S.A. § 105, _____ (Applicant Name (and d/b/a if you use one)) hereby requests a predetermination by the Maine Workers' Compensation Board that the Applicant is an independent contractor.

APPLICANT

Name: _____

Doing Business As (d/b/a) (if applicable): _____

Complete Mailing address: _____

STREET/P.O. BOX

APT. NO.

CITY

STATE

ZIP CODE

Telephone: _____

E-mail address: _____

Type of work you do: _____

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

SECTION I

THIS APPLICATION IS NOT COMPLETE UNLESS YOU ANSWER ALL OF THE QUESTIONS IN THIS SECTION AND PROVIDE ALL REQUIRED INFORMATION. INCOMPLETE APPLICATIONS WILL BE RETURNED.

(1) The person has the essential right to control the means and progress of the work except as to final results.

- (a) Do you have the right to decide how to perform your work? Yes No
- (b) Other than the completion date for the work, do you have the right to determine when you will perform your work? Yes No

(2) The person is customarily engaged in an independently established trade, occupation, profession or business.

(a) Please state your trade, occupation, profession or business.

(b) Please indicate how your business is organized:

- sole proprietor
- corporation
- limited liability company
- partnership
- professional corporation

(c) How long have you been considered independent in your trade, occupation, profession or business?

- (d) Have you worked for or searched for work from more than one source during the 12 months prior to the date of this application? Yes No
- (e) Did you file a corporate or partnership income tax return last year for the trade, occupation, profession or business listed in Question 2(a)? Yes No
- (f) Did you file Schedule C, Schedule E or Schedule F with your personal income tax return last year for the trade, occupation, profession or business listed in Question 2(a)? Yes No
- (g) Did you pay self-employment tax and file Schedule SE with the I.R.S. last year for the trade, occupation, profession or business listed in Question 2(a)? Yes No

(h) If you answered “No” to Questions 2 (e), (f) **and** (g), please explain:

(3) The person has the opportunity for profit and loss as a result of the services being performed for the other individual or entity.

(a) Check each of the following expenses you paid in the last 12 months in order to perform your work:

- | | |
|--|---|
| <input type="checkbox"/> rent and utilities | <input type="checkbox"/> insurance |
| <input type="checkbox"/> tools and equipment | <input type="checkbox"/> postage and delivery |
| <input type="checkbox"/> training | <input type="checkbox"/> repairs and maintenance |
| <input type="checkbox"/> advertising | <input type="checkbox"/> supplies |
| <input type="checkbox"/> payments to business managers and agents | <input type="checkbox"/> travel |
| <input type="checkbox"/> wages or salaries of assistants | <input type="checkbox"/> leasing of equipment |
| <input type="checkbox"/> licensing/certification/professional dues | <input type="checkbox"/> depreciation |
| | <input type="checkbox"/> inventory/cost of goods sold |
| | <input type="checkbox"/> other |

(b) Do you ever provide the materials necessary to complete your work? Yes No

(c) Do you ever provide the tools and/or equipment necessary to complete your work? Yes No

(d) Can you make more money based on how you do your work? For example, if material costs are lower than expected, or the job does not take as long as expected. Yes No

(e) Can you lose money doing your work? For example, if material costs are higher than expected, the job takes longer than expected, or re-work must be done due to a mistake or flaw, etc. Yes No

(f) Are you responsible for completing the work you agree to do? Yes No

(g) If you fail to do quality work, do you have to redo the work or fix the mistake at no additional cost to the people or businesses who hired you? Yes No

(4) The person hires and pays the person's assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants' work.

- (a) Can you, if you want, use assistants and/or subcontractors to perform, or help perform, your work? Yes No

If "No" please explain:

- (b) Do you use assistants to perform your work? Yes No
(If "Yes," answer questions (c), (d) and (e). If "No," proceed to question (5).)

- (c) Are you responsible for paying your assistants? Yes No

- (d) Are you personally responsible for supervising the details of your assistants' work? Yes No

- (e) Do you provide Workers' Compensation coverage for any individuals who work with you? Yes No

(5) The person makes the person's services available to some client or customer community even if the person's right to do so is voluntarily not exercised or is temporarily restricted.

- (a) Do you advertise? Yes No

- (b) Do you have the right to work for more than one person or business at a time? Yes No

- (c) Other than the completion date for the work, do you determine what you work on, how you will perform the work and when you will work on it? Yes No

SECTION II

YOU MUST ANSWER ALL QUESTIONS IN THIS SECTION. SATISFACTORY ANSWERS TO AT LEAST THREE (3) QUESTIONS ARE REQUIRED TO QUALIFY. INCOMPLETE APPLICATIONS WILL BE RETURNED.

(6) The person has a substantive investment in the facilities, tools, instruments, materials and knowledge used by the person to complete the work.

- (a) Have you made a substantive investment in the facilities, tools, instruments, materials or knowledge you use to complete your work? Yes No
- (b) Do you provide the essential equipment or knowledge that is used to complete your work? Yes No
- (c) Are you required to lease essential equipment from the people or businesses who hired you? Yes No
- (d) If the answer to (6)(c) is “Yes,” are you paying fair market value for the equipment that you are leasing? Yes No

(7) The person is not required to work exclusively for the other individual or entity.

- (a) Are you required to work exclusively for one person or business? Yes No
- (b) Have you worked for more than one person or business during the past 12 months? Yes No
- (c) Do you have the right to refuse work offered by the people or businesses hiring you? Yes No

(8) The person is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work.

- (a) If you do not complete the work you agree to do in your contracts (verbal or written), are you potentially liable to pay the people for the damages they suffer as a result of this failure? Yes No
- (b) If you fail to do quality work, do you have to redo the work or fix the mistake at no additional cost to the people who hired you, or potentially pay them money damages so they can have the work redone or fixed? Yes No

(9) The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work.

- (a) Do you have agreements (verbal or written) with the people or businesses who hire you? Yes No

- (b) If the people or businesses that hire you cancel your contracts (verbal or written) before you have an opportunity to complete the work, are they potentially liable to pay you the money you would have received if you had completed the work? Yes No

(10) Payment to the person is based on factors directly related to the work performed and not solely on the amount of time expended by the person.

- (a) Are you paid by the hour for your work? Yes No
- (b) If paid by the hour, do you negotiate your rates? Yes No
- (c) Are your contracts (verbal or written) for specific work at a set price? Yes No
- (d) If the answers to 10 (a),(b) or (c) are "No," please explain.

(11) The work is outside the usual course of business for which the service is performed.

- (a) Is the work you do different than the work performed by the people or businesses that hire you? Yes No
- (b) Have you worked as an employee for any of the people or businesses for which you currently work? Yes No

If yes, please provide the most recent date of your employment: _____

(12) The person has been determined to be an independent contractor by the federal Internal Revenue Service.

The Internal Revenue Service allows businesses or workers to a request a determination as to whether or not a worker is an independent contractor. These determinations can be requested by filing Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding* with the I.R.S.

- (a) Have you filed Form SS-8 with the I.R.S.? Yes No
- (b) If you filed Form SS-8, have you received a determination? Yes No
- (c) If you received a determination, please check the appropriate box:
- Approved Denied Other

Please provide the date the I.R.S. issued its determination: _____.

APPLICANT

**THIS APPLICATION MUST BE SIGNED.
UNSIGNED APPLICATIONS WILL NOT BE PROCESSED.**

Read carefully and sign below:

I hereby certify the foregoing information is truthful and accurate. I understand if any information contained in this application is found to be intentionally misleading or fraudulent, the predetermination of independent contractor status shall be nullified and I may be subject to fines as described on page 1.

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

You must retain a copy of this application for your records. You may be required to produce this application along with the decision that you receive from the Board.

Date

Signature of Applicant