

# Hiring Independent Contractors

## You may be an Employer and not know it!

Presented By:

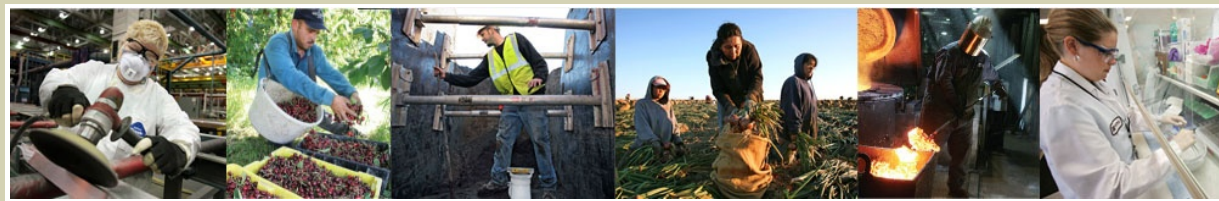
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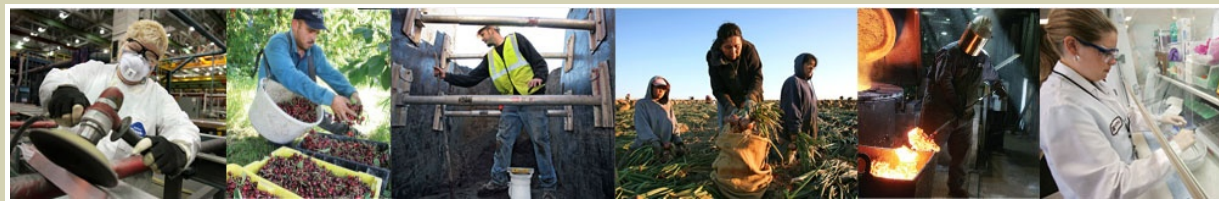


## Topic for Discussion:

### 1. Independent Contractors (IC's)

#### Includes:

- Comparison of employees and IC's
- Which IC's are covered by workers compensation
- General discussion of the rules
- Specific situations may not be answered
- Determinations are based on specific facts and circumstances



## Hiring Independent Contractors- You May be an Employer and not know it!

Ask yourself these three questions. They will help you understand your requirements.



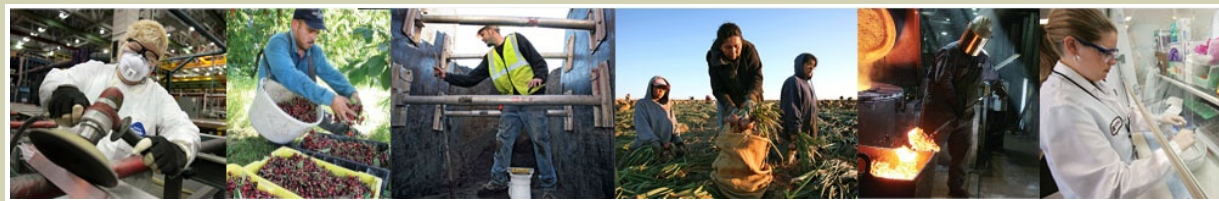
Do they bring more than their personal labor to the job?



Are they working without your supervision?



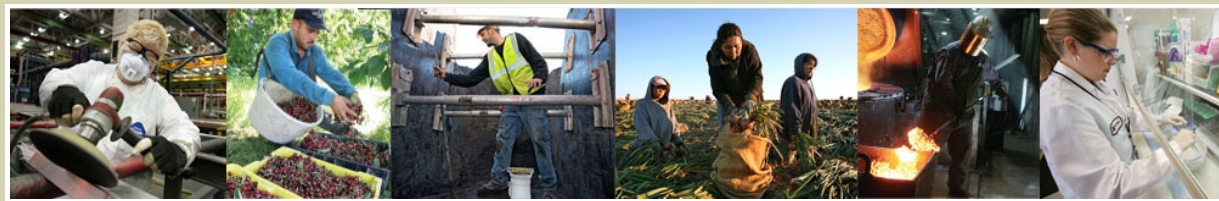
Do they have an established, independent business?



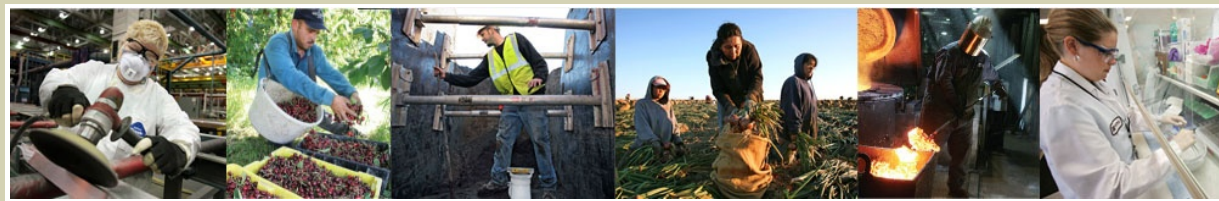
## Are you an employer?

- **An employer is someone who contracts with one or more workers, the essence of that contract being personal labor (includes independent contractors that do not qualify as exempt under RCW 51.08.180 or RCW 51.08.195)**
  
- As an employer in most cases you must:
  - Pay workers' compensation
  - Comply with wage and hour requirements
  - Pay unemployment tax
  - Maintain a safe work place



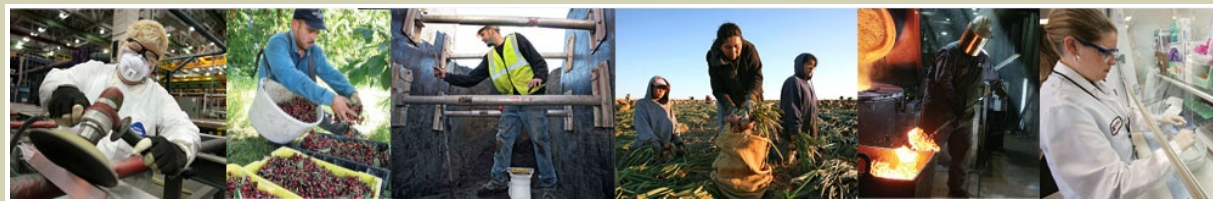


- **It can be difficult for employers to determine if an independent contractor (IC) is reportable to LNI**
- **To determine whether an IC is covered requires an objective application of the law**
- **The term “worker” is used interchangeably to refer to either an employee or IC**
  - **Employees: Regular, on-going, on payroll, benefits, hourly, W-2**
  - **IC’s: Not in payroll system, no benefits, bids the work, 1099**



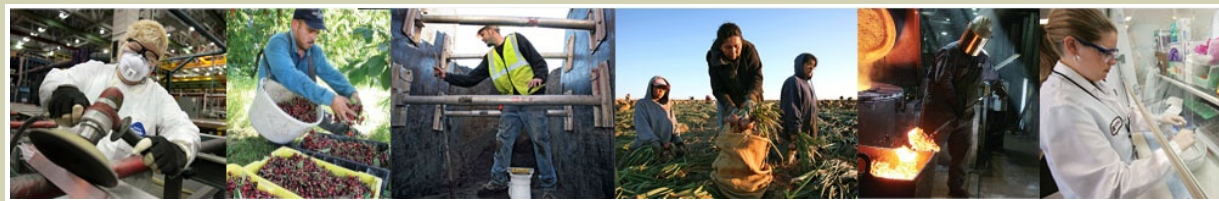
- **Workers' compensation covers both regular employees and independent contractors who *provide essentially personal labor***
  
- **Some exclusions. Examples include:**
  - **Sole proprietors, partners, corporate officers, LLC member/managers**
  - **Maritime employment, Native American tribal employment**
  
- **Some independent contractors excluded:**
  - **Those who provide more than their personal labor**

**The definition of an independent contractor used by Labor & Industries is different than the definition used by IRS**



## Qualifying as an Exempt Independent Contractor (IC)

- **RCW 51.08.180 mandates coverage for both traditional employees and independent contractors who only provide personal labor**
  
- **What is more than personal labor?**
  - To qualify under RCW 51.08.180 as an exempt independent contractor, the individual must provide more than personal labor. More than personal labor includes:
    - **Bringing employees to perform the work**
  
    - **Bringing major/heavy equipment to the job (Not ordinary hand tools)**
      - **Examples: Gutter machine, backhoe, large metal lathe**
  
    - **Cannot supervise the IC, their employees, or the use of the equipment**



## **Providing employees -**

**An IC with employees must pay workers compensation premiums**

**Potential for prime contractor liability if IC fails to pay the premiums**

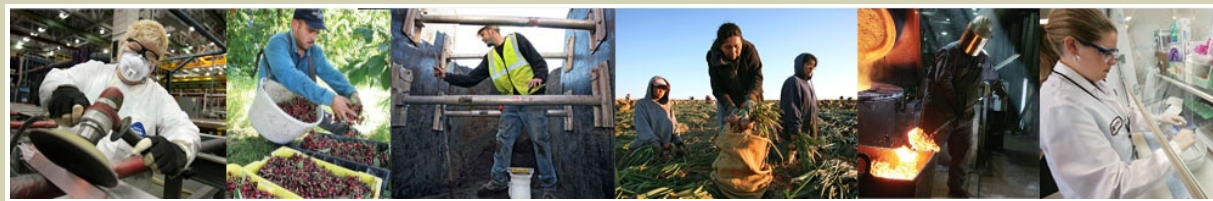
## **Providing equipment –**

**No clear definition of machinery or equipment**

**Equipment must be important to the contract – must play a central role in performing the work**

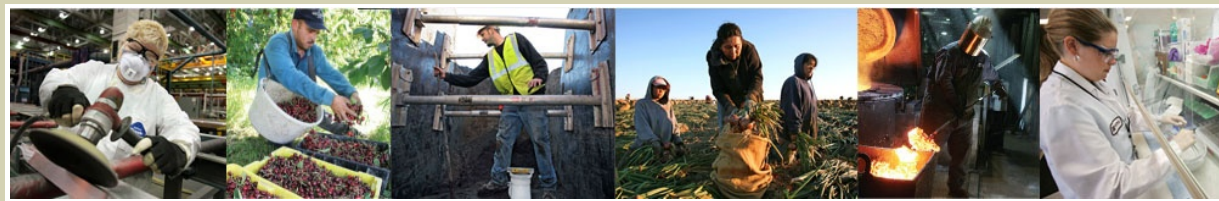
## **Providing the services of a business – testing for a business**





## Definition of an Independent Contractor

- RCW 51.08.195 - The six-part test is a guide to see that the business in question is established and independent. All six tests **must** be met to qualify as an exempt independent contractor:
  1. **Does the individual perform the work free of your direction and control? Both in contract and in Fact (You cannot supervise the means by which the result is accomplished.)**  
**Yes or No?**
    - **Although all tests must be passed, control is the most difficult element to consider – the test is for the *right* to control**
      - Training
      - IC uses employer’s tools or equipment
      - Reporting
      - Integration of work, with employer or other workers



2. **(kind of work): “The service is either outside the usual course of business for which the service is performed.” RCW 51.08.195 sub 2 part 1 means:**

**The work of one entity is unlike all of the work of the other entity.**

**Yes or No**

**Or,**

**(Work Location / Where Work is Performed): “The service is performed outside all of the places of business of the enterprise for which the service is performed.” RCW 51.08.195 sub 2 part 2**

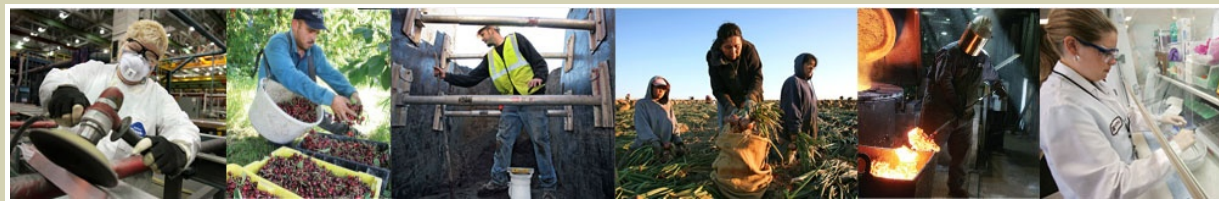
**means: The work locations are different. Yes or No**

**Or,**

**(Costs of Principal Place of Business): “The individual is responsible both under the contract and in fact, for the costs of the principal place of business from which the service is performed.”**

**RCW 51.08.195 sub 2 part 3 means: The IC is contractually obligated to pay all its costs and is paying all of its costs for its own headquarters, which is where the work is controlled. Yes or No**

Only one of these tests must be met to satisfy #2



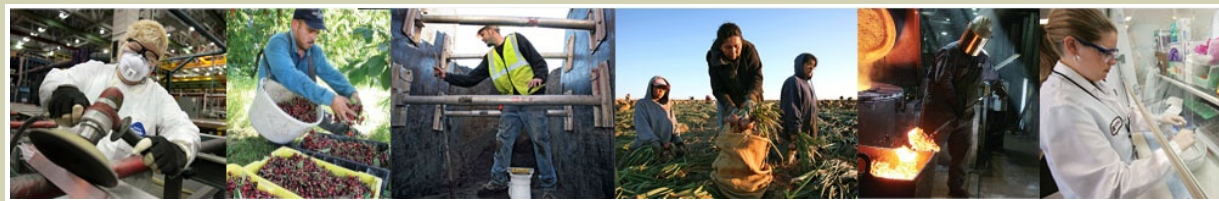
## Subsection 2 part A

**(kind of work): “The service is either outside the usual course of business for which the service is performed.”**

### **Yes or No**

#### **Example:**

1. A general contractor whose primary business is to build new construction hires:
  - a). A licensed architect to design the homes;
  - b). An electrician to install all the electrical work (because the general does not have licensed electrical contractors on staff);
  - c). A plumber to install the plumbing because the general is not a licensed plumber.
2. A restaurant contracts with a janitorial company who sends a crew to clean the restaurant after hours.
3. An auto body shop sends a vehicle to an auto mechanic for engine repairs

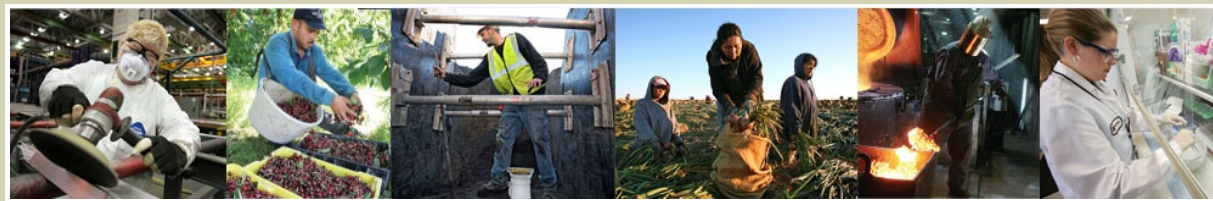


## Subsection 2 part B

**(Work Location / Where Work is Performed):** “The service is performed outside all of the places of business of the enterprise for which the service is performed.” RCW 51.08.195 sub 2 part 2 means: The work locations are different. Yes or No

### Example:

1. An antique furniture boutique sends a piece of furniture out to be refinished to a furniture refinisher at their shop/business location.
2. An auto repair company sends the transmission to a transmission shop.
3. A siding contractor has a contract with a general that’s building homes in three different subdivisions. The siding contractor subcontracts with another siding contractor to side the homes in one of the subdivisions. [Note: If the two siding contractors are siding a single home or sharing labor and/or equipment, the assumption is the contracting firm wouldn’t pass this part of the test.]



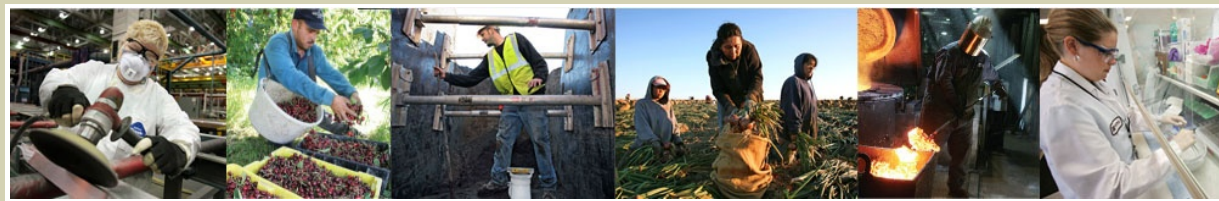
## Subsection 2 part C

**(Costs of Principal Place of Business):** “The individual is responsible both under the contract and in fact, for the costs of the principal place of business from which the service is performed.” RCW 51.08.195 sub 2 part 3 means: The IC is contractually obligated to pay all its costs and is paying all of its costs for its own headquarters, which is where the work is controlled. Yes or No

### Example:

1. A painting contractor has a mobile headquarters in its van with client records, computer, printer, equipment, tools and inventory with records proving it is paying all costs for the van.
2. A lawn care service regularly performs administrative, marketing and sales work from its home office, and has records proving it is paying all costs for the home office.
3. A roofing contractor has a separate business office location from the general contractor and is responsible for paying mortgage or rent, electricity, phone, internet, etc for the separate business office location.





**3. Does the individual have an established independent business that existed before you hired them?  
Yes or No**

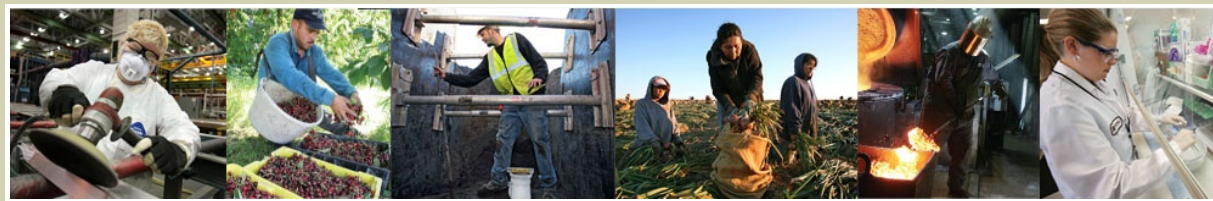
Evidence may include other customers or advertising, could their business suffer a loss under this contract? When the contract is complete, would this individual still be able to remain in business?

Or,

**Does the independent contractor have a principal place of business that qualifies for an IRS business deduction? Yes or No**

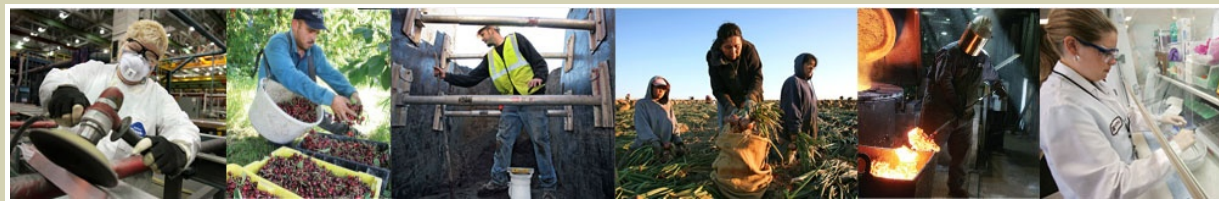
If the principal place of business is the individuals home, is it used regularly and exclusively for the business?

Only one of these tests must be met to satisfy #3



## Alternate Definition (Continued)

4. **Under IRS rules, is the individual required to file a tax return with the IRS for their business? Yes or No**
  
5. **Has the individual established all the required registrations and accounts for their business? Yes or No**
  - a. At a minimum, the individual must have a UBI number and an active DOR tax account
  - b. Other accounts and registrations needed include contractor registration, workers' compensation, and unemployment accounts
  
6. **Does the individual maintain their own set of books and records that reflect all of their income and expenses of the business? Yes or No**

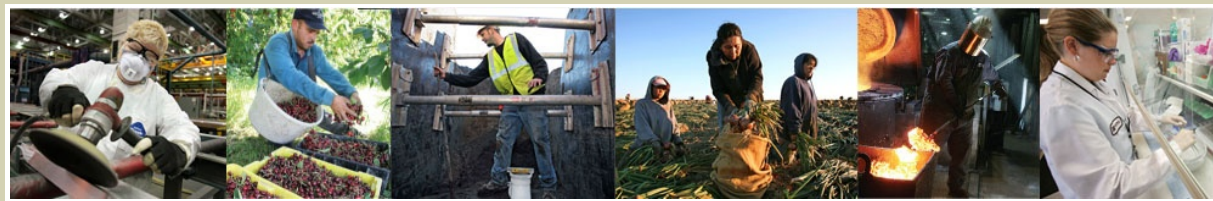


## **Two tests for independent contractors:**

The previous six part test is for independent contractors who provide services in non-construction industries.

**RCW 51.08.181. For independent contractors who provide services in the construction industry, add test #7:**

**7. Does the independent contractor have a valid contractor registration or electrical contractor license? Yes or No**



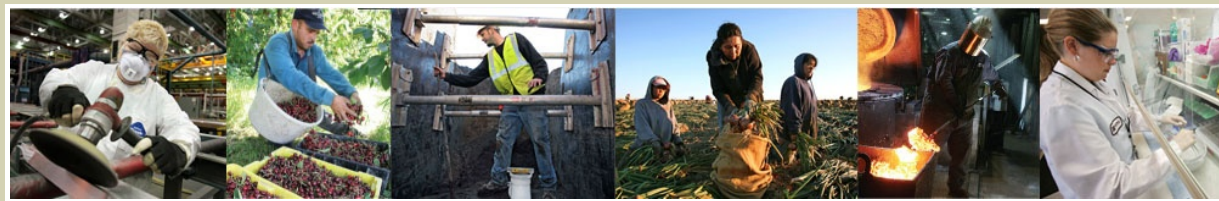
# Independent Contractors and Liability for their Unpaid Premiums

## The Workers' Compensation laws:

- RCW 51.04.060 No evasion of benefits or burdens
- RCW 51.08.180 Definition of a worker
- RCW 51.08.181 "Worker" - Registered contractor and electrician exclusions
- RCW 51.08.195 Alternate definition of a worker (6 part test)
- RCW 51.08.070 Definition of an employer
- RCW 51.12.070 Prime contractor liability
- RCW 51.16.070 Keep record of subs UBI

## Other resources:

- **A guide to hiring INDEPENDENT CONTRACTORS IN Washington State**  
<http://www.lni.wa.gov/IPUB/101-063-000.pdf>
- Publication F101-063-000
- **Liability for your Subcontractor's Unpaid Workers' Comp Premiums**
- <http://www.lni.wa.gov/IPUB/262-262-000.pdf>
- Publication F262-262-000



## Still have questions?

- ❑ Check out our web sites:

L&I home page: [www.LNI.wa.gov](http://www.LNI.wa.gov)

Report fraud: [www.Fraud.LNI.wa.gov](http://www.Fraud.LNI.wa.gov) (or call 1-888-811-5974)

Register or renew registration/license online: [www.Licensing.LNI.wa.gov](http://www.Licensing.LNI.wa.gov)

Look up a contractor: [www.Contractors.LNI.wa.gov](http://www.Contractors.LNI.wa.gov)

Pay quarterly premiums online: [www.QuarterlyReports.LNI.wa.gov](http://www.QuarterlyReports.LNI.wa.gov)

Check status of a Workers' Compensation account for a business:  
[www.PremiumStatus.LNI.wa.gov](http://www.PremiumStatus.LNI.wa.gov)

Check WISHA safety rules and issues: [www.SafetyRules.LNI.wa.gov](http://www.SafetyRules.LNI.wa.gov)

For unemployment tax questions, visit:

Employment Security Department: [fortress.wa.gov/esd/portal](http://fortress.wa.gov/esd/portal)  
or call **360-902-9360**.

To check the status of a Washington business license (UBI), visit:

Department of Revenue: [www.DOR.wa.gov/content/home](http://www.DOR.wa.gov/content/home)

- ❑ Visit your local L&I office. For maps and directions visit: [www.Offices.LNI.wa.gov](http://www.Offices.LNI.wa.gov)