

# Using Independent Contractors Can Be Risky Business

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The October 5, 2010 hailstorm in Maricopa County brought roofing opportunities for roofers who had the ability handle an onslaught of work. Many roofing companies hired workers as independent contractors to assist with the temporary surge in need. Until now, the Registrar has not weighed in on whether this practice could cause a contractor to be disciplined. The Registrar's silence has empowered many roofers to hire independent contractors to perform roofing work.

In response to inquiries after the 2010 hailstorm, in a Substantive Policy Statement issued May 17, 2013, the Registrar has attempted to clarify its position regarding independent contractors. Unfortunately, the policy is unclear and contradictory. However, it appears that the Registrar is saying that contractors may hire independent contractors, and utilize temporary employment agencies, to perform job duties that do not include acts related to a contracting trade. So, contractors are free to utilize clerical workers, accountants, office managers, or other workers for duties that do not include the act of contracting. On the other hand, if a contractor needs an extra worker to perform the skilled labor in which the contractor is licensed, the contractor needs to utilize an independent contractor who is licensed in the trade he is to perform or hire that worker as an employee.

The Policy Statement points out that there is a gray area between a worker who is truly an independent contractor and one who is an employee but being called an independent contractor. In general, the more control the employer has over the worker's job duties, and how the worker performs his/her job, the more likely that worker will be deemed an independent contractor by a court or the IRS.


In the event a court or governmental agency determines

that a contractor violated laws or regulations, the Registrar can discipline the contractor. The Policy Statement provides examples of such laws and regulations, including

- Failure to comply with social security statutes and rules
- Failure to provide worker's compensation coverage or to comply with unemployment benefits coverage
- Failure to pay income, withholding, or any other required tax
- Aiding and abetting an unlicensed contractor, or entering into a contract with an unlicensed contractor to perform work for which a license is required.

The most likely violation that may get the attention of the Registrar would be the aiding and abetting allegation, or entering into a contract with an unlicensed contractor.

To date, the Registrar has not actively begun to enforce the thrust of the Policy Statement. It took two and one half years after the hailstorm of 2010 for the Registrar to issue its Policy Statement. However, contractors should be cognizant of the Policy Statement and abide by it now and, particularly, when the next hail storm hits.

*Timothy D. Ducar is an attorney practicing general litigation matters, including business, construction, employment, ADOSH and worker's compensation issues. He practices in Arizona, California, Nevada and Utah. He will provide you written materials that discuss increasing collections at no cost. If he cannot assist you with your particular legal matter, he will refer you to a competent attorney. He can be reached at (480) 502-2119. *

## 2014 Workers Comp Rate

NCCI has released the 2014 Roofer Workers Comp Rate effective 1/1/14

Expiring 2013- 21.64

Estimated 2014- 21.54