

# Understanding Your Liability When Using Subcontractors for Construction Projects



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If your construction business is so successful that you need outside help, congratulations. But hiring a subcontractor for a construction project comes with considerations related to taxes, insurance and risk of legal trouble. Knowing your rights and a few subcontractor laws can help you avoid expensive problems down the road.



**What Is a Subcontractor?**

A subcontractor is a contractor who works for another contractor, rather than directly for the client. Subcontractors are generally people with specialized skills. Construction software company [eSUB](#) explains some of the distinctions on its website. The main contractor on a project is often a general contractor or a builder that manages the entire project and handles interactions with the client.

Subcontractors, by contrast, work on just their part of the project, which could be anything in construction that requires expertise: electrical work, tile, drywall, concrete, plumbing and more. They interact with the builder rather than the client, and they work for the builder on a contract basis, just like the builder works for the client on a contract basis.

It's important to understand that [a subcontractor is not an employee](#) of the contractor, legally speaking. They may work together closely and the contractor may give the subcontractor directions, but the subcontractor is an independent business that gets paid and taxed just like the contractor, rather than a salaried employee. Their business relationship is not defined by employment laws. Rather, they will [create a contract](#) that defines what work will be done and for how much money.

### **What Should I Know Before Using a Subcontractor?**

Subcontractors are a vital part of the construction industry, which is why builders and general contractors use them routinely. But before hiring one, you must understand the laws on issues like taxation and insurance.

#### **Subcontractor Taxes**

For income-tax purposes, a subcontractor is an independent contractor just like the contractor, with all the same tax forms. However, the Internal Revenue Service or a state regulator could consider the subcontractor your employee. If they do, [you might owe](#) overtime, benefits, back taxes and more. This is not common, but it can be pricey, so you may want to [talk to an attorney](#) or accountant if you have concerns.

#### **Subcontractor Insurance and Licensing Requirements**

Another consideration is whether the subcontractor has its own general liability insurance, workers compensation insurance and subcontractor license. A contractor who hires an uninsured or unlicensed subcontractor

may be liable for any injuries or lawsuits stemming from the subcontractor's actions. That can get very expensive very quickly, which is why many contractors won't work with unlicensed or uninsured subcontractors.

### **Writing Airtight Subcontractor Agreements**

You have many opportunities to protect yourself when writing the general contractor-subcontractor agreement the contract that spells out the obligations between you and the subcontractor. Make this as specific as you can, with details about the work the subcontractor will do, when they should deliver it, and when and how they will be paid. If there's a dispute later, having it all in writing helps both parties.

Construction attorney Alex Barthet of [The Barthet Firm](#) in Miami says you should include a detailed schedule in your contract.

"And not just when it should be completed, but ... as the project gets bigger, it's not just 'I need it done by this date,' it's 'Here are all the milestones that you have to hit,'" says Barthet, whose firm focuses heavily on construction disputes.

It's common for subcontractor agreements to also include a warranty (guarantee) that the subcontractor is licensed and insured, although Barthet recommends checking the subcontractor's paperwork against state databases. Contracts also typically contain indemnity clauses that require the subcontractor to assume full legal responsibility for any problems that arise from its own actions. If a lawsuit arises later, this could protect you from being held responsible for the subcontractor's mistakes.

Another important part of the typical contractor-subcontractor agreement concerns mechanic's liens. According to [the California Contractors State License Board](#), a mechanic's lien is a "hold" against private property to secure a debt—sort of the legal equivalent of a heavy weight on your ankle. Contractors can file a lien against a property if the client doesn't pay, and the subcontractor has the same right if the contractor refuses to pay the subcontractor.

If that happens, the client is likely to be unhappy, since a lien makes it difficult to sell the property. But attorney [Mark Mueller](#) of [Driggers, Schultz & Herbst](#) in Troy, Michigan, says your contract can help you avoid that situation by having the subcontractor waive its lien rights. That's a common feature of [general contractor agreements](#).

He also suggests specifying that the subcontractor will be paid when you're paid by the client, so that expectations are managed.

"In Michigan, you have a right to lien property for 90 days after furnishing goods or services, so it's important that the contractor get a waiver of that right to lien," he says. "They don't want to be faced with an owner who's facing a lien."

However, Barthet adds that it's not legal in every state to ask subcontractors to waive their future lien rights. Instead, he suggests agreements in which subcontractors, upon payment for completed work, waive their rights to any sort of payment action related to that work.

Working with subcontractors is an industry standard for a reason: You get skills you don't have and subcontractors get jobs without dealing directly with clients. With a little knowledge, you can make sure the experience is a smooth and profitable one for all parties.

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