

# SNOW START UP

ISSUE #5: FOCUS ON **SUBCONTRACTING**

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## ADDITION BY SUB-TRACTION

As you grow your snow business, supplementing your portfolio by working as a subcontractor for larger companies is common. At some point you may decide to grow by hiring subs instead of being one. Regardless of the path, it's important to follow insurance, legal and operations rules and best practices.

### HIRING SUBS

#### PROS

- Ability to take on additional business without assuming labor, equipment and overhead costs
- Access to larger or specialized equipment you don't have
- Expansion into new markets
- Do not have to provide insurance or pay taxes

#### CONS

- Possibility of federal and state tax and worker's compensation audits. (Learn more on page A2)
- Restrictions on training and oversight
- Quality may be subpar and open you to unhappy clients/damaged reputation
- Cannot manage or supervise the subcontractor's work
- Restrictions on right to fire

### WORKING AS A SUB

#### PROS

- No sales and marketing costs
- Add properties to close routing gaps
- Expand your book of business
- Build relationships with contractors who can share knowledge
- Keep your team working during the winter

#### CONS

- Less profit since the contractor is taking a cut
- Required to use the contractor's software/technologies for service documentation, billing, etc.
- Subject to slow payments from contractors
- Don't have complete control of the contract
- Responsibility for your own taxes (federal, state, Social Security, etc.)

## BEST PRACTICES FOR HIRING SUBS

The subcontractor(s) you hire are a direct reflection on your company. They're working on your behalf, but you'll be the one left holding the bag if they fail. Here are some tips for hiring subcontractors:

- 1** Set up a meeting at their facility to see their equipment and meet their team. Do they have the right equipment and the employee experience to manage the sites you award them?
- 2** Inquire about their workload. Do they realistically have the capacity to service your sites, too? Also ask if they are subcontracting for other companies that may further dilute their capacity.
- 3** Does the subcontractor have safety standards and protocols in place?
- 4** Make sure they have the right type and amount of insurance. (See Page A3)
- 5** Only award what the subcontractor can handle; and don't overwhelm them with a large portfolio. Start with a few sites and add more as you become comfortable with their capabilities.

# SUB OR EMPLOYEE? TESTS MAKE THE CALL

➔ There are three general tests that can be used to determine if you are following the guidelines for employee vs. subcontractor classification. It is vital that you follow the guidelines, or you could open yourself to significant penalties. Be prepared to “show your work” in the event of an audit because the government presumes that a worker is an employee unless proven otherwise.

## IRS: COMMON LAW (Right to Control)

The US Internal Revenue Service (IRS) classifies workers for federal employment tax purposes — income tax, FICA taxes for Social Security and Medicare, and federal unemployment taxes.

The IRS previously used a 20-factor Common Law Test to determine classification. They’ve streamlined the process, with those 20 factors falling into three general categories:

### BEHAVIORAL CONTROL



These facts show whether there is a right to direct or control how the worker does the work.

**Instructions:** A company can provide subcontractors detailed guidelines on how the level of service and scope of work should be achieved. It cannot, however, provide extensive instructions on how, when and where the work is to be done; what tools or equipment to use; who they can hire; or where to purchase supplies and services.

**Training:** The contracting company cannot train the subcontractors on procedures and methods, which indicates that the business wants the work done in a certain way. It can orient subcontractors on company policies, regulations and service expectations.

### FINANCIAL CONTROL



These facts show whether there is a right to direct or control the business part of the work.

**Significant investment:** If you have a significant financial investment in your work, you may be an independent contractor.

**Expenses:** If you are not reimbursed for some or all business expenses, you are likely an independent contractor.

**Opportunity for profit or loss:** If you can realize a profit or incur a loss, this suggests you are in business for yourself and may be an independent contractor.

### RELATIONSHIPS OF THE PARTIES



These facts illustrate how the business and workers perceive their relationship.

**Employee benefits:** If a company provides benefits such as insurance, pension or paid leave, that worker will be classified as an employee.

**Written contracts:** A written contract may show what the company and the subcontracting company intend. Download a subcontractor agreement template at [my.sima.org](http://my.sima.org).

Source: Internal Revenue Service Publication 1779

## ABC TEST

Each state uses its own method to evaluate worker status, the most prevalent of which is the ABC Test. In the snowplowing industry, the “B” prong is often the most difficult to prove:

A

**Absence of control.** The worker is free from the employer’s control or direction in performing the work.

B

**Business of the worker.** The worker performs tasks that are outside the usual course of the hiring entity’s business.

C

**Customarily engaged.** The worker is customarily engaged in an independent trade, profession, occupation or business of the same nature as the work performed by the hiring entity.

Some states use a modified ABC test, which disregards part B, so where the work takes place is no longer a consideration. This is beneficial for companies who work in multiple states.

Whichever test you choose to follow, make sure it meets the federal and state requirements for each state you do business in. If you aren’t sure, consult an attorney and/or accountant for guidance.

**DID YOU KNOW?** The Canada Revenue Agency establishes the rules for similar employee vs. subcontractor requirements. Learn more at [canada.ca/en/revenue-agency.html](http://canada.ca/en/revenue-agency.html)

# RISK MANAGEMENT BEST PRACTICES

If you contract with subcontractors, keep these best practices in mind:

**1** Do not allow subcontractors to perform services for you without executing a signed and written contract. The scope of the contract should, at minimum, specify what services are to be performed based on the contracted level of service. Getting in writing the contractual responsibility for site inspection and monitoring is crucial when confronted with litigation arising from a personal injury that occurred days after a snow event.

**2** Legally you may be held liable for your subcontractors' deficiencies; practically your customer will hold you at fault. Provide a written document outlining the specific job requirements for all locations the subcontractor is servicing. An unhappy customer could result in the loss of a contract.

**3** Your agreement should reflect whether the subcontractor you hire can further subcontract the work. If you allow this, you should require the sub to also defend and indemnify your company from all claims and litigation arising out of their subcontractor's performance or failure to perform required services. Some clients will not allow this practice, so you should also confirm this in the contract.

**4** Have your insurance provider and attorney review your subcontractor contracts to ensure you're protected.

**ADDITIONAL RESOURCE:** SIMA members can access subcontractor-specific contract clauses in the "Advanced Contract Clauses" document at [my.sima.org](http://my.sima.org).

## MAKE SURE YOU'RE COVERED

Whether you're hiring subs or working as a sub, make sure your I's are dotted and your T's are crossed when it comes to insurance coverage and documentation.

### Certificate of insurance (COI)

A COI is a summary of coverage issued by the subcontractor's insurance company. It is recommended that companies only hire subcontractors that can produce a COI. Here are some COI best practices:

- ✓ Do not accept a COI directly from the subcontractor. It must come from the insurance company.
- ✓ Review all COIs for fraud. Examples may include missing contact information, poor quality/photocopies, inconsistent fonts, or information appears to have been whited out.
- ✓ Make sure the COI is current and includes the policy expiration date. It is only valid from the date it was issued.
- ✓ Confirm your subs do not have exclusions on their policies (e.g., snow clearing services are not covered) and that the liability limits match yours. Some policies will not provide coverage if your sub's limits are less than yours.
- ✓ At minimum, subcontractors should have liability and workers' compensation coverage.
- ✓ Keep COIs organized and on file past the statutes of limitations for filing claims. These will be needed in the event of an insurance claim or audit.

### Contract provisions

When executing a contract with any subcontractors you plan to hire, follow these minimum insurance guidelines:

- ✓ Require the subcontractor to defend and indemnify your company from all claims and litigation arising out of the subcontractor's performance or failure to perform required services.
- ✓ The agreement should expressly require the subcontractor to repair any damage caused by its employees.
- ✓ Require all subcontractors to identify your company as an additional insured.

**ADDITIONAL RESOURCES:** Learn more about these contract terms and conditions at [sima.org/insurance](http://sima.org/insurance). SIMA members can also download contract templates and advanced contract clauses at [my.sima.org](http://my.sima.org).

*Disclaimer: Work with your insurance agent to determine proper coverage, limits and endorsements for your business. Canadian readers should contact an agent to determine requirements in their province.*

# COMMUNICATE THE PLAN

➔ You have your subcontractor contracts signed and your certificates of insurance in hand. Just as important in the subcontracting process is quality control. If you are the hiring contractor, you ultimately answer to the client, so it's imperative that your subs deliver on the promises that have been made. If you are a sub ready to take on work, you need to understand what you'll be asked to do before committing to the work. Check out some best practices to ensure the subcontractor relationship is successful:

## PRESEASON

1 Clearly set expectations for the season, including reliability; work quality; equipment, labor and materials commitments; safety requirements; service verification and documentation requirements; invoicing processes; and communication plans between your company, the subcontractor and the client.

2 While legal classifications prohibit you from telling a subcontractor how to perform the work, you should schedule a preseason meeting to review site maps and contract specifications and to document any pre-existing site damage. You don't want to be sued because a subcontractor did not properly perform services because you failed to convey site-specific information or conduct a site visit to ensure everyone understood the site's characteristics and potential hazards.

3 Make sure your contract outlines responsibilities and liability in the event of damage caused by the subcontractor, including responsibility for the costs of repair. Require your subs to report damage immediately using a detailed incident report.

## IN-SEASON

4 Check in with subcontractors after the first and all major subsequent events to make sure standards are being met; share updates from the customer regarding service; and hear from the subcontractor about any challenges or concerns they may have about their sites.

## POSTSEASON

5 When the season ends, meet to recap the season and provide feedback. Now is the time to look ahead and confirm they're on board for next season and if there is an opportunity to add sites if they performed well.

### TIP: PAY YOUR SUBS IN A TIMELY MANNER.

Outline the process that must be met for them to be paid (e.g., documentation, timely invoicing, etc.). Never leave them hanging. It erodes trust, making them less likely to go the extra mile, which could result in less than stellar performance.

## READY TO HIRE?

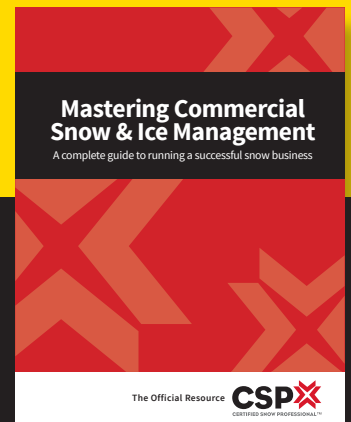
Where should you look for quality subcontractors?

- Referrals from your existing subcontractors.
- Seasonal businesses like roofing, paving, construction that have the equipment and employees but typically don't work winters.

## ADDITIONAL RESOURCES:

- Expanding Capacity Through Subcontracting
- Legal Hiring for the Snow Industry
- What You Need to Know about Snow Insurance

SIMA members can access these courses for free at [train.sima.org](http://train.sima.org).



*Mastering Commercial Snow & Ice Management* has in-depth information on subcontractor management. Purchase it at [sima.org/getcsp](http://sima.org/getcsp).



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