

## Employer Liability Insurance – Bona Fide or Labour Only?

Whilst it is difficult to provide an accurate definition (as the law does not provide one), it is important to try to correctly determine the status of sub-contractors to ensure that the correct insurance cover is in place. If a sub-contractor is a bona-fide subcontractor (BFSC) Employers' Liability Insurance is not required but if a Sub-contractor is a labour only subcontractor (LOSC) Employers Liability is required/

The following definitions and guide will aid the decision making process and help you advise your client.

### Labour Only Sub-contractors and the self employed

Labour only sub-contractors, self-employed people, people hired or borrowed by you or embedded in your business are considered employees if they are working for you and under your control.

### Other contractors who are not Employees i.e bona-fide sub-contractors – (BFSC)

If they are not working directly for you and not under your control and they have their own insurance cover.

### General guide

If the answer is 'YES' to all or most of the following questions, then the worker is probably a LOSC and would need to be covered for employers for Employers' Liability Insurance:

1. Are they paid by the hour, week, or month?
2. Can they receive overtime pay or bonus payment?
3. Do you only supply their own small hand tools?
4. Do they always have to do the work themselves?
5. Can the insured tell them at any time what to do, where to carry out the work or when and how to do it?
6. Can you work a set amount of hours?
7. Can the insured move them from task to task?
8. Does the insured complete the Risk Assessments?

If the answer is 'YES' to all or most of the following questions, then the worker is probably a BFSC and Employers' Liability Insurance for these sub-contractors is not required

1. Do they agree to do a job for a fixed price regardless of how long the job may take?
2. Do they have a contract of service as opposed to a contract of employment?
3. Within an overall deadline, are they able to decide what work to do, how and when to do the work and where to provide the services?
4. Do they regularly work for a number of different people other than our insured?
5. Do they have to correct unsatisfactory work in their own time and at their own expense?
6. Do they hold their own public liability insurance in their own name?
7. Do they pay the cost of all materials or supplies required for the work without being reimbursed? (Excluding minor items and consumables)
8. Can they hire someone to do the work or engage helpers at their own expense?
9. Do they risk their own money e.g if they bid for a job and the bid is too low they have to bear the additional cost themselves?
10. Do they provide or hire in the main items of equipment they need to do their job, not just the small tools that many employees provide for themselves?