



## Construction Fair Play Act/Commercial Goods Transportation Industry Fair Play Act - FAQs

### 1. In some cases, why does NYSIF include charges for construction subcontractors who are claimed as independent contractors?

With the passage of the **NY Construction Fair Play Act** in 2010, there is a presumption of employment for an individual who performs services for a hiring contractor unless the individual meets ALL of the criteria in the tables below to establish that the individual is an independent contractor or works for a separate business entity. On audit, the auditor will require proof to verify that the individual meets the criteria and forward to our Underwriting Department for a final determination. If an individual fails to meet the criteria, or acceptable proof is not provided, a charge for the individual will be included in the charges on the policy of the hiring contractor. It should be noted that an entity can be a separate business and be subject to the NY Construction Fair Play Act regarding its own employees. If the hired entity does have its own employees, a premium charge for those employees must be applied to the hiring entity's policy unless it can be shown that those employees are covered under the hired entity's own policy.

### 2. In some cases, why does NYSIF include charges for commercial goods transportation industry subcontractors who are claimed as independent contractors?

The **NY Commercial Goods Transportation Industry Fair Play Act** passed in 2014, provides that an individual who transports goods in the state of New York while operating a commercial motor vehicle for a commercial goods transportation contractor shall be classified as an employee of that contractor unless payment for such services is reported on a Federal Income Tax form 1099, if required by law. In addition, the individual must meet ALL of the criteria in the tables below to establish that the individual is an independent contractor or works for a separate business entity.

### 3. In some cases, why does NYSIF include charges for subcontractors when a certificate of insurance is provided for the subcontractor?

Per the NY Compensation Insurance Rating Board:

"Any executive officer, sole proprietor, partner or member of an LLC, etc., who has been excluded from coverage under their own company policy, via an exclusion endorsement, shall be included on the policy of the hiring company when they perform duties that pertain to the operations of the hiring company."

To apply the **Construction Fair Play Act** properly, we must also consider if the entity through which the executive officer, sole proprietor, partner or member of an LLC, etc., performing duties that pertain to the operation of the hiring entity meets the criteria set forth in the tables below.

**Table 1: Criteria set up in each Act to determine if an *individual* is an independent contractor.**

NY Construction Fair Play Act	NY Commercial Goods Transportation Industry Fair Play Act
Applies to an individual who performs services for a construction contractor.	Applies to any person performing commercial goods transportation services for a commercial goods transportation contractor. Payments for services are reported on a Federal Income Tax form 1099, if required by law.
The individual is free from direction and control in performing the job, <b>AND</b>	Same
The individual performs works that is not part of the	Same

usual work done by the business that hired the individual, **AND**

The individual has an independently established business.

Same

**Table 2: Criteria set up in each Act to determine if the *business entity through which the individual performs the services, whether a sole proprietor, partnership, corporation or other entity*, can be considered a separate business entity from the hiring contractor.**

NY Construction Fair Play Act	NY Commercial Goods Transportation Industry Fair Play Act
Applies to an individual who performs services for a construction contractor.	Applies to any person performing commercial goods transportation services for a commercial goods transportation contractor. Payments for services are reported on a Federal Income Tax form 1099, if required by law.
The hired entity is performing the service free from the direction or control over the means and manner of providing the service, subject only to the right of the contractor, for whom the service is being provided, to specify the desired results.	The hired entity is performing the service free from the direction or control over the means and manner of providing the service, subject only to the right of the contractor, for whom the service is being provided, to specify the desired results.
The hired entity is not subject to cancellation or destruction upon severance of the relationship with the contractor. (The alleged independent business is not dissolved merely because the contract with the hiring contractor has ended.)	The hired entity is not subject to cancellation or destruction upon severance of the relationship with the contractor. (The alleged independent business is not dissolved merely because the contract with the hiring contractor has ended.)
The hired entity has a substantial investment of capital in the business entity beyond ordinary tools and equipment and a personal vehicle.	The hired entity has a substantial investment of capital in the business entity beyond ordinary tools and equipment.
The hired entity owns the capital goods and gains the profits and bears the losses of the business entity.	The hired entity owns or leases the capital goods and gains the profits and bears the losses of the business entity.
The hired entity makes its services available to the general public or the business community on a continuing basis.	The hired entity may make its services available to the general public or the business community (including entities that are not subject to any written contract with the hiring entity) on a continuing basis.
The hired entity includes services rendered on a federal income tax schedule as an independent business or profession.	The hired entity provides services reported on a federal income tax form 1099, if required by law.
The hired entity performs services for the contractor under the business entity's name.	The hired entity performs services for the commercial goods transportation contractor pursuant to a written contract, under the business entity's name, specifying their relationship to be as an independent contractor or separate business entity.
When the services being provided require a license or permit, the hired entity obtains and pays for the license or permit in the business entity's name.	When the services being provided require a license or permit, the hired entity obtains and pays for the license or permit in the business entity's name or where permitted pays for reasonable use of the commercial goods transportation contractor's license or permit.
The hired entity furnishes the tools and equipment necessary to provide the service.	If necessary, the hired entity hires its own employees without contractor approval, pays the employees without reimbursement from the contractor and reports the employees' income to the Internal Revenue Service.
If necessary, the hired entity hires its own employees without contractor approval, pays the employees without reimbursement from the contractor and reports the employees' income to the Internal Revenue Service.	The commercial goods transportation contractor does not represent the hired entity as an employee to its customers.
The contractor does not represent the hired entity as an employee to its customers. <b>AND</b>	The hired entity has the right to perform similar services for others on whatever basis and whenever it chooses. <b>AND</b>

The hired entity has the right to perform similar services for others on whatever basis and whenever it chooses.

N/A