

# A Loophole for Delaware General Contractors Blindsided by New Workers' Comp. Requirement

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**Warning:** *If you have subcontractors that use DBAs, you will be liable for their workers' compensation insurance premiums, costing you thousands of dollars. This article will show you a loophole to avoid this problem. (Note: This law only applies to contractors conducting business in the state of Delaware).*

## Highlights

- On July 17, 2007, a new Delaware law went into effect that requires general contractors in the construction industry to pay workers' compensation insurance for their subcontractors unless the subcontractors have either:
  1. Their own workers' (workmen's) compensation insurance,
  - or--
  2. A Corporation or LLC through which the subcontractors run their business.
- In light of this new law and loophole, many general contractors in the construction industry are requiring their subcontractors to form Corporations and LLCs, with LLCs being the most suitable choice.

## Details

According to a new Delaware law, made effective July 17, 2007, all unincorporated Delaware subcontractors in the construction industry are now required to purchase workers' compensation insurance (unless they are exempt, as explained below).

The new bill, Senate Substitute 1 for Senate Bill Number 68, was signed by Governor Minner on May 23, 2007. The bill amended Section 2311 of title 19, declaring that partners and sole proprietors in the construction industry must obtain workers' compensation insurance.

It is not just subcontractors that should pay attention to this new workers' compensation requirement, but general contractors as well. According to the new law, any general contractor that uses an uninsured subcontractor will face significant charges by their workers' compensation carrier, as if the subcontractor were one of the general contractor's own employees. (These charges could potentially increase the general contractor's workers' compensation premiums by thousands of dollars!)

There is a "loophole" to this new law, however, as subcontractors who own either an LLC or Corporation have the ability to make an election to be exempt from the workers' compensation requirement (this exemption covers up to four owners/members and must be in writing to be effective).

Therefore, a subcontractor essentially has two options:

1. Purchase workers' compensation insurance (often for a few thousand dollars), or
2. Incorporate a Corporation or LLC through which to run the subcontracting business (for under \$300).

## What Now?

Many general contractors in the construction industry, facing the possibility of being charged for uninsured subcontractors, are requiring their subcontractors to form an LLC or Corporation.

*What does IncNow recommend?* For construction subcontractors unsure of which structure to choose (LLC vs. Corporation), IncNow.com usually recommends the LLC. An attractive choice for almost any industry, the LLC offers many benefits, including:

**Simplicity:** Unlike a c-corporation or s-corporation, an LLC does not require any annual meetings, elections, or minutes.

**Flexibility:** In an LLC, owners can decide whether to waive certain fiduciary duties. The Delaware LLC Act provides for freedom-of-contract, allowing members to agree on anything. This is not possible in c-corporations, s-corporations, or even partnerships.

With these advantages of LLC ownership, coupled with the low cost and ease of formation (\$298 for a complete LLC package), it is no surprise that LLCs have been gaining in popularity with construction subcontractors in Delaware.

To get started with the Corporation/LLC formation process, visit [www.IncNow.com](http://www.IncNow.com) or call 800-759-2248 to speak with an incorporation specialist.