

# Do you know who's working on your job sites?

**M**ake sure you know who is working on your jobsites.

This sounds like a strange thing to tell a business owner, but in light of the current trends towards hiring itinerant “crews” or “sub-sub” contractors, the warning shouldn’t be taken lightly. It’s a practice that has been going on for years, but has started to gain momentum and popularity with drywall, framing, painting, and roofing subcontractors.

Typically the “crew” consists of 5-10 workers who are led by the “crew leader.” These groups move from jobsite to jobsite picking up work wherever it is available. The crew leader contacts the subcontractor to get the job. He then recruits his own workers, schedules them for when and where to work, and oversees their activity on the jobsite. But in this arrangement, the subcontractor puts the individual crew workers on his payroll and pays the taxes associated with employees.

### Subcontractor & Crew Leaders

Paying wages to these crews is a bit confusing because every subcontractor has a different way of paying, but it usually goes something like this: Typically the work done in the four industries is paid by piece rate. The subcontractor receives from the crew leader records showing each crew workers’ piece count for the pay period. The subcontractor writes the pay checks to the individual crew member “employees” and they in turn pay a pre-arranged percentage to the crew leader. That amount is handed back to the subcontractor who in turn writes a paycheck to the crew leader. The subcontractor pays the taxes, takes out payroll deductions, etc.

By keeping the crew “employees” on the subcontractor’s payroll, the crew leader is not liable for any costs or expenses of running the crew.

### If It Sounds Too Good...

This arrangement might sound good and may be totally legal, but there are potential drawbacks. One major problem BIAW claim staff has experienced is when crew workers decide to have a relative or friend tag-along for the day to help get the work completed faster. The crew worker usually pays the tag-along out of his own check—so you can imagine the complications that can arise.

First, the subcontractor has no idea who is working. The crew leader may not even know about the tag-along, and if he does he usually doesn’t report the tag-along to the subcontractor. This can create serious liability issues. And if a workers’ compensation claim is filed by a tag-along injured on the jobsite, the subcontractor pays the workers’ compensation costs for that injury.

### L&I Favors Injured Worker

Sometimes, if the subcontractor is very organized and has been very diligent, he can prove the tag-along was not on payroll and the Department of Labor & Industries (L&I) will reject the claim. But don’t count on it.

If L&I has rejected the claim, the injured tag-along will usually appeal to the Board of Industrial Insurance Appeals (BOIIA), which more often than not will find of the tag-along. If BOIIA doesn’t overturn the rejection, there is yet another level to which the tag-along can appeal—writing a Petition For Review.

The Petition is reviewed by a three member panel also referred to as the Board. One representative from labor, one from business, and one not associated with either side comprises the panel. Because of the legislative mandate that “L&I shall construe liberally in favor of the injured worker,” this Board will almost always rule

in favor of the tag-along. So after months, maybe years, of wrangling in the appeals system the tag-along will ultimately likely be awarded his or her claim—and the subcontractor picks up the tab.

One recent case involved a man who worked for a drywall company for a few months, and then was laid off. The drywall company didn’t hear from him again until months later, when they received a claim for benefits with a date of injury that fell weeks after the last day the man worked for the company. The company provided documentation showing the claimant had not been employed by on the date of injury, so L&I denied the claim.

The claimant appealed, and BOIIA affirmed the denial of the claim. The claimant then filed a Petition for Review and prevailed before the three member board because he demonstrated he had worked as a tag-along for a crew worker who was working for the drywall company on the date of injury.

So the drywall company got stuck paying the time loss benefits for a worker they never even knew was on the job.

### Background Checks and Paperwork a Must

Whenever approached by a “crew leader,” every subcontractor should follow the instructions suggested in numerous past *Claims Corner* articles—obtain job applications from every prospective employee, contact references and past employers, and use BIAW’s QuickCheck program to check the applicant’s criminal background. Avoid hiring itinerant “crews” unless the basic pre-employment checks outlined above have been completed for each crew worker. Otherwise, you may be setting yourself up for an ugly workers’ compensation claim. 

