

Your duty in labour-only contracts

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We discuss liability as opposed to accountability when it comes to labour-only contracts.



Article is relevant to LBP licence classes: All

In the first of a two-part series highlighting common misunderstandings about the responsibilities of a Licensed Building Practitioner (LBP) under a labour-only contract, we discuss liability as opposed to accountability and building consents.

There has been an increase in complaints made to the Building Practitioners Board about licensed building practitioners (LBPs) not fulfilling their obligations under labour-only contracts.

LBPs have responsibilities and obligations

There is a myth that LBP's responsibilities are lessened in labour-only contracts. This is not true. You cannot contract out of your responsibilities and obligations as an LBP – they are set regardless of the type of contract you are working under.

The Board has also noted that a power imbalance may exist between an employer and employee, however, as an LBP, you are still responsible for your own conduct.

This means that, even if your employer has instructed you to do something, you are personally accountable to the Board for your actions as an LBP. Your licence could be put at risk if you act dishonestly to benefit your employer.

Liability vs accountability

When a homeowner signs a contract with a contractor, there will be a contractual liability between the two parties. This means the contractor must provide the goods and services as agreed, and the client must pay for them. Failure by either party could lead to court action where the party in breach may be found liable for their role in the contract.

You might not have a contractual arrangement with the client but rather with another contractor while under a labour-only contract. In this situation, you are probably only liable to the contractor who engaged you for the work you do for them.

However, as an LBP, you are always accountable to the Board for your conduct. If you fail to maintain standards, the homeowner can lay a complaint to the Board.

The Board can then discipline you regardless of who you are contracted to. This is because the Board does not deal with payment or contractual disputes and instead determines whether the LBP has met their obligations specified in the Act.

Comply with building consents

In many cases, as an LBP on a labour-only contract, you will not be directly responsible for managing the building consent application. All LBPs, however, have a responsibility to ensure that a building consent is obtained (if one is required) before commencing work and to build to the

agreed consent. The Board expects LBPs to understand the building consent process and to hold themselves to a high standard throughout the compliance process.

Complaints show main problems

The Board's Annual Report 2018 noted numerous complaints relating to LBPs not complying with the consenting processes. The complaints highlighted the following failures:

- Carrying out building work without first checking that a building consent has been issued.
- Deviating from the building consent.
- Failing to obtain confirmation for a minor variation or amendment before continuing work.

If something isn't right with the building consent, alert the homeowner and refrain from starting or continuing work until the issue is resolved. While it may not be your responsibility to obtain the building consent, you will be responsible if you do any building work that does not comply with a building consent, if one is required.

You are the expert so use your judgement

Homeowners are not experts in the building process and may sometimes fail to fully understand their obligations regarding building consents. LBPs are the building and construction experts and are in a better position to identify a lack of adherence to the consenting process.

It is important that you use your own judgement rather than trusting that the homeowner has it right or that you won't be held accountable for any non-compliant work.

In the next issue, part two will look at your responsibility to produce quality work and an accurate record of work (ROW).

Quiz

1. There is a dispute between the client and your main contractor over the quality of the build. You were working under a labour-only contract. Which of the following is true?

- a. You are liable, no matter what.
- b. You will be liable but only if you completed a ROW for the work.
- c. You are accountable to the Building Practitioners Board for your work.

2. There is no building consent for a piece of work you are about to undertake, and the work is not exempt under Schedule 1 of the Building Act 2004. What should you do?

- a. Start work, as the main contractor assures you the consent is on its way.
- b. Don't worry about it – it is the responsibility of the homeowner.
- c. Refuse to start work until you have seen the consent.

3. True or false – homeowners should have all the required knowledge for a build, so you can just follow orders.

- a. True, nothing to worry about as they'll face the consequences.
- b. False, you are the expert and need to make sure you meet your responsibilities.

Check answers (<https://www.building.govt.nz/about-building-performance/news-and-updates/codewords/codewords-issue-89/your-duty-in-labour-only-contracts/quiz-answers-learning-opportunities-and-tools-for-lbps/>)