

Your duty in labour-only contracts — Records of Work

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This is the second article in a two-part series highlighting common misunderstandings about the responsibilities of an LBP under a labour-only contract.



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Article is relevant to LBP licence classes: All

The first part discussed the difference between liability and accountability and how this applies to building consents. This issue will look at an LBP's responsibility to provide accurate Records of Work (ROW) and produce quality work.

Records of Work

A ROW must be provided by each LBP completing restricted building work (RBW) on a project, as required by the Building Act 2004. The ROW must be supplied to the homeowner and the Territorial Authority.

A common complaint received by the Building Practitioners Board (the Board) is that an LBP didn't provide a ROW for a range of reasons, including:

- misunderstanding that providing a ROW will generate additional liability for the work
- being complacent or forgetful about completing paperwork
- withholding the ROW due to a dispute regarding payment or quality of work.

None of these, however, are valid reasons not to provide a ROW. As an LBP you have an obligation to provide the ROW, regardless of if there are contractual or payment disputes. You do not need to wait for the entire project to be complete to issue your ROW, just for your part of the work to be finished. In a situation where the contract has broken down, and you are unlikely to do any more work, you can still provide a ROW for the work you've already done.

The completed ROWs must also be accurate. An employer may find it easier to get one LBP to provide a ROW for all restricted building work completed within their class of licence, where in fact more than one LBP has carried out the work. Each LBP who has undertaken restricted building work must complete a ROW, or they will be in breach of their legal obligations. In other cases, an employer may be understaffed and request an LBP to provide a ROW stating that they supervised work done by unsupervised, unlicensed workers. An LBP should resist doing this, as they may be held accountable for the work done.

When you complete a ROW, ensure that the details are correct, as it creates an accurate record of who did what restricted building work. If there is an issue with the work completed and you were the LBP who did the ROW, it will be harder to prove that someone else is responsible for the work and you will expose yourself to the risk of disciplinary action.

Quality work

Aside from the right to carry out RBW, a building practitioner's licence shows the public and potential clients that you meet a minimum standard of competency. This provides confidence in your knowledge and skill, and raises you above an unlicensed building practitioner. Regardless of if

you are directly hired by the homeowner or subcontracted, you must complete work to a professional standard and only do work you are competent to do. If you are learning a new technique within your licence class, ensure you get advice and support so you know you are doing it correctly. You will still need to complete a ROW, as you are the one doing the work.

It can be difficult to say no when an employer asks you to do work outside your competence or substandard work. There may be financial or time constraints putting pressure on the project. Your responsibility, however, is to only carry out building work that you can do competently and to a reasonable standard. To protect yourself you could say no when an employer asks you to compromise your professional integrity to meet their targets. While you may not have to answer to the homeowner directly, you can still be held accountable by the Board for any negligent or incompetent work you do.

Disciplinary action

Working under a labour-only contract may reduce your liability in court, but it does not reduce your accountability as a LBP in front of the Board. If you fail to meet your obligations as an LBP, regardless of what your employer has instructed you to do, you may face disciplinary action. This could include fines and losing your licence for a period of time.

Quiz

1. When should you provide a ROW to the homeowner and Territorial Authority?
 - a. Once you have finished working on your section of the RBW.
 - b. Once the entire building project is complete.
 - c. Once the client has paid for the work completed.
2. Your employer asks you to complete all the ROWs on a site, including for RBW completed by other LBPs and/or unlicensed builders you did not personally supervise. Why should you say no?
 - a. If there is a problem with the RBW, it will be harder to prove you are not responsible for it.
 - b. You are undermining the LBP scheme by enabling unlicensed and unsupervised builders to do RBW illegally.
 - c. You could be disciplined by the Board for not complying with your obligations.
 - d. All of the above.
3. You are completing RBW within your licence class, but you are using a material or technique you are unfamiliar with, so you get another LBP with more experience to give you some tips and guidance. Who should complete the ROW?
 - a. The other LBP providing guidance on the work, as they are the expert.
 - b. You, as you are doing the work.
 - c. Both you and the expert LBP.
4. A project is running behind schedule. To try and catch up, your employer asks you to do extra work on a job which is outside your area of competence. What should you do?
 - a. Agree, they are in a tight spot and being a team player will help to complete the project and make the client happy.
 - b. Say no, because you might end up doing a poor job and the Board could penalise you personally for doing incompetent work.
 - c. Agree, but only if someone who is competent assists or supports you so you can be assured you are doing it correctly.
 - d. B & C are acceptable.

Check answers (<https://www.building.govt.nz/about-building-performance/news-and-updates/codewords/codewords-issue-90/your-duty-in-labour-only-contracts-records-of-work/quiz-answers-your-duty-in-labour-only-contracts-records-of-work/>)

