

Legal Guides for Independent Contractors

by Ted Cushman

Two new handbooks by attorney Stephen Fishman, from the legal self-help publisher Nolo Press, explain the rules of independent contracting from both angles: *Wage Slave No More* is aimed at workers who want to become self-employed, while *Hiring Independent Contractors* helps employers stay legal in their dealings with self-employed contractors.

Independent contractor status has advantages, but simplicity isn't one of them. And whether you hire employees or subs, you have to deal with rules and a sea of paperwork.

In fact, it's this very complexity that makes these books worth reading. Fishman doesn't have all the answers to every question, but he does present the issues in organized form, and takes you most of the way to getting your arrangements straight.

From the general contractor's point of view, using contract workers has both risks and benefits, Fishman explains. The biggest advantage is the chance to avoid payroll expenses such as tax withholding, workers comp premiums, and unemployment insurance. In addition, you don't have to extend employee benefits to independent contractors, or provide them with tools or shop and office space. Beyond that, most contract workers lack certain employee rights under labor and antidiscrimination laws (including the right to minimum wage and overtime pay). And by hiring an independent contractor, you may avoid some liability for any

damages caused by the worker's actions.

But with the advantages come drawbacks. Independent contractors aren't covered by your comp insurance, but that means they can sue you for on-the-job injuries caused by your negligence — a potentially calamitous risk. And while independent contractors lack an employee's right to quit any time (they're responsible for completing con-

For this last reason, most of *Hiring Independent Contractors* deals in detail with the rules that govern worker classification. The latest IRS requirements alone get five chapters, including a chapter on "safe harbor" rules (see "Tax Talk," page 18), a chapter on the IRS test of worker status, and a chapter on IRS audits. And since satisfying the IRS isn't your only worry, Fishman includes

chapters on workers compensation rules and state payroll taxes (like the unemployment tax).

For the tradesperson starting a solo business, *Wage Slave No More* provides an essential introduction to the game. Key sections include a chapter on choosing the legal form of the business (sole proprietorship, partnership, or corporation), deducting expenses, and paying estimated taxes (a pitfall for novices).

A computer diskette comes with each book, loaded with sample contracts and other documents. Only a few of these relate directly to the construction industry, how-

ever, and for actual construction agreements you're probably wiser to consult your own attorney. Taken together, the two books sound a general theme that most building contractors probably already understand: When in doubt, consider workers as employees. When the chips are down with the IRS, safe is cheaper than sorry.



Wage Slave No More: The Independent Contractor's Legal Guide and Hiring Independent Contractors: The Employer's Legal Guide, by Stephen Fishman (Nolo Press, 1997; 800/728-3555; \$29.95 each).

contracts), they can also be harder to control — and harder to fire.

Worst of all, every state and federal agency that collects payroll assessments, would prefer to have your workers listed as employees. If authorities retroactively redefine your "subs" as employees, the backcharges and penalties can really hurt.

