

\$afety \$aves

By Jason Todhunter

I have been in the wood products industry since the early nineties and without a doubt this is the most positive time I can remember for our industry. I think there are a lot of reasons; for one we have a president and administration that for a change is putting American workers and companies first. This and the increase in our economy has produced a positive attitude and caused businesses to start up and current business to grow in almost all industries. We just finished up our first aid and fire training and we have added fifty new members to the MLA recently. All this is great news and hopefully a sign of even more positive times ahead.

With this growth of businesses in our industry it is a good time to review the importance of following the rules when working with an independent contractor (sometimes called sub-contractors or IC). First, what is the definition of an independent contractor?

An independent contractor in Montana is a person who renders service in the course of an occupation and:

- (a) has been and will continue to be free from control or direction over the performance of the services, both under a contract and in fact; and
- (b) is engaged in an independently established trade, occupation, profession or business.

Additionally, an independent contractor must obtain either an independent contractor exemption certificate or self-elected coverage under a Montana workers' compensation insurance policy. [Refer to MCA, 39-71-417.](#)

A very important thing to note is that if things are not in place correctly an independent contractor could be deemed an employee. If that happened you would have to pay workers comp on what you paid that person, plus some pretty hefty fines as well.

The first thing you want to have in place is a written contract. This is one thing that has to be implemented when working with a sub-contractor. Courts have reflected that having a contract is one of the main differences between an employee and a contractor. This contract needs to be a binding document that describes the business relationship, pay schedule, and liabilities.

Second and probably the most important; make sure that the sub-contractor has either a worker's comp policy (the safest) or a **current** Independent

Contractors exemption from the Montana Dept of Labor and Industry. You should get a work comp certificate from a sub-contractor or a copy of their current Independent Contractors Exemption Certificate. Having a contractor with worker's comp is the safest way because when an accident happens that person will be taken care of. If you accept an Independent Contractors exemption you should always go online to www.mtcontractor.com, and click on the ICEC search on the right side of the screen to assure the IC is current and is applicable to the work they are contracting with you to perform. If an IC is revoked before their renewal they will still have documents stating they have the exemption; however, the website is always current.

Another thing that an IC will need to have is a Business Liability insurance policy or with the Logger's Broad form endorsement, if logging. This is another one of the tests that the Department of Labor and Industry looks at when determining whether or not a person is an IC or an employee. Make sure you have a copy of their policy in hand and your insurance may require that you or the landowner be listed as additional insureds on their policy. These first three things need to be in place before any work is performed.

Last but not least is equipment. A true IC has to own their own equipment. This is a not grey area in the determination of employee or IC. IF the IC is operating the primary contractor's equipment they are an employee. If an accident happens in this scenario whomever owns the equipment is going to be the one who is liable; be very aware of this and protect yourself. ICs are a very important part of our industry; whether its an owner operator log hauler or an operator that owns a clipper or de-limber; a good family wage can be earned this way. That being said we all need to make sure that we have the proper documents and practices in place to protect the IC, the primary contractor and the landowner. Safety \$aves