



DANGER: CONSTRUCTION SITE

AVOIDING LIABILITY AND WORKERS' COMPENSATION EXPOSURE IN THE CONSTRUCTION INDUSTRY

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Construction sites are listed among the most dangerous places to work. With millions of accidents reported each year, injuries are often serious—and sometimes catastrophic. Such injuries often give rise to liability claims and workers' compensation claims. These claims can be challenging to defend, and tend to involve sophisticated issues with multiple parties and complex relationships. The avoidance of such claims requires proactive risk management strategies.

Danger: Construction Site

The Liability Perspective

Liability avoidance begins with safety. Safety should always be the first priority for owners, general contractors, and subcontractors on any construction site.

Safety policies and procedures for many medium and large construction projects are detailed, and well-established contractors are aware of the importance of following these safety plans. Depending on the size and scope of the project, contracts should contain comprehensive provisions covering site safety compliance with detailed indemnification provisions and additional insured obligations running in favor of the owner, construction manager, and general contractor. Many of the largest general contractors and construction managers work closely with insurance brokers, carriers, and risk managers to solidify subcontractor compliance with insurance obligations, safety, training, and policies covering risk management.

Subcontractor compliance with site safety guidelines is critical, and many cities have adopted laws governing such compliance across the country. For example, depending on the size and scope of the construction project, New York City requires site safety plans to help mitigate safety risks during construction. The city adopted local laws and regulations that require licensed site safety managers to oversee site safety plans for most large construction projects.

Before work begins on a project, owners, general contractors/construction managers, and risk managers should check certificates of insurance to make sure each contractor and subcontractor have the required coverage and that additional insureds are named on the certificates. It is critical to confer with brokers in checking the policies to confirm appropriate coverage. Detailed review of another party's full insurance policy may be necessary to determine whether additional insureds were accounted for via endorsement, alongside review of any problematic coverage exclusions.

Construction Site Injury Prevention

Because construction sites are inherently hazardous, injury prevention requires a proactive approach. For example, a construction site may require a sidewalk closure or construction barriers to be constructed around the entire site that can help prevent accidental entry by pedestrians or passersby. Likewise, overhead protection is often required on multi-story buildings, including the installation of sidewalk bridging and scaffolding. In New York, scaffolding is assembled pursuant to detailed plans that are submitted to the New York City Department of Buildings (DOB) for approval. Site protections like Masonite should be routinely inspected for defect to avoid protection-related injury. In addition to physical protection mechanisms, cautionary signage should be clearly posted in the presence of known hazards.

Post-Accident Investigation

Despite best efforts, accidents can and do happen. When an accident is reported and the potential of a liability claim arising exists, post-accident investigation is critical and necessary for formulating a defense. For example, obtaining witness statements as soon as possible after an accident is essential. Within a few hours of an accident, the site safety team must track down coworkers that may have been assigned in the area of the accident. For larger projects, multiple trades may have been assigned to the accident area. In this situation, coordination with the general contractor or project manager is key. Most general contractors and construction managers maintain detailed daily logs and related records of all trades working onsite. Daily logs typically contain the trade name, company contact information, and number of employees assigned to the project. Deliveries made, equipment used, and weather conditions may also be helpful documentation for a contractor that later finds itself in litigation.

Accident reports and witness statements are essential. Witness statements should be completed and signed by the

person making the statement. If needed, interpretation services should be made available for accuracy of each statement. Statements should also include complete contact information for each witness, including address and phone numbers.

Photographs should also be taken of the scene, including any equipment involved in the accident. If the equipment involves hand tools, ladders, and safety equipment, they should be taken out of service, labeled, and preserved and placed under a litigation hold. This is crucial as memories fade and witnesses can be difficult to track down. Preservation of CCTV footage is also paramount. Without proper preservation of evidence, and locking down witnesses and statements, a company may be subject to spoliation claims, and witnesses may be precluded from providing testimony during deposition or trial.

The Workers' Comp Perspective

Effective workers' compensation risk management in the construction industry begins with a deep understanding of the workforce and a comprehensive evaluation of existing safety protocols. A successful injury prevention program is not merely a checklist of safety rules; it should be an integral part of the company's culture. This cultural integration requires a top-down commitment to safety, where leadership sets clear expectations and leads by example.

Written safety policies should clearly articulate the organization's safety objectives, define employee responsibilities, and establish accountability at every level. These policies must be well-communicated and consistently reinforced through day-to-day operations and managerial oversight. When safety becomes ingrained in a company's values, it naturally influences behavior and promotes a proactive approach to risk.

Training and Communication

Education and training are critical to embedding safety into workplace culture. Supervisors, managers, and frontline

SUBCONTRACTOR COMPLIANCE WITH SITE SAFETY GUIDELINES IS CRITICAL, AND MANY CITIES HAVE ADOPTED LAWS GOVERNING SUCH COMPLIANCE ACROSS THE COUNTRY.

employees must receive ongoing training on safe work practices, hazard recognition, and emergency response procedures. Routine safety meetings, toolbox talks, and performance evaluations should include discussions on safety performance and areas for continuous improvement.

Equally important is employee involvement in safety planning. Encouraging staff to participate in hazard identification, safety committees, and job hazard analyses fosters a sense of ownership and accountability. When employees are engaged and informed, they are more likely to adhere to protocols and identify potential risks before an incident occurs.

Early Hazard Detection and Incident Investigation

One of the most effective methods of injury prevention is the early identification of workplace hazards. Employers must implement systems that allow for real-time reporting and correction of unsafe conditions. When incidents do occur, prompt and thorough investigations are critical.

Incident investigations should be conducted within 24 hours whenever possible and should focus on root cause analysis rather than assigning blame. Reports should outline corrective actions, identify contributing factors, and suggest changes to training, procedures, or equipment to prevent recurrence. Documentation should include photos or videos of the scene, witness statements, a review of the injured employee's training history, and an evaluation of whether third-party liability exists for subrogation purposes.

Contractors should be encouraged to host job site-wide safety stand downs in the wake of an incident to communicate

root cause and reiterate injury prevention techniques. Consideration may also be given for stand downs surrounding work holidays to refocus the workforce after time away.

Workforce Health and Wellness Programs

According to the Centers for Disease Control and Prevention (CDC), workplace health programs promote and protect employee health by combining policies with benefits and environmental support structures. These programs can reduce absenteeism, improve morale, boost productivity, and lower health care and workers' compensation costs.

In the construction industry, where physical demands and occupational stress are often heightened, health and wellness initiatives play a vital role in both injury prevention and recovery. Access to wellness programs, physical therapy, and mental health services helps employees build resilience and maintain their well-being, which in turn supports a safer and more engaged workforce.

Recruiting and Retaining the Right Talent

Hiring the right employees is another essential risk management strategy, particularly in the physically demanding construction industry. The hiring process should include behavioral interview techniques that assess a candidate's comfort and experience with safety protocols. Interviewers should ask targeted questions about previous safety training, responses to high-risk situations, and contributions to job site safety culture.

A well-written job description is equally important. Clearly defined roles and responsibilities set appropriate expectations

and help prevent misunderstandings that can lead to injury or dissatisfaction. Moreover, job descriptions serve as valuable documentation in the event of a dispute or litigation, and can support claims management by defining the physical and mental requirements of a role.

Some employers may enforce a pre-employment, or return-to-work physical exam to ensure an individual is adequately conditioned to return to the physical and mental demands of their work. Risk managers and human resources should discuss any labor union and/or jurisdictional nuance that would prevent such an exam from taking place.

Injury Management and Return-to-Work Strategies

An effective injury management plan is essential for controlling claim costs and supporting injured construction workers through recovery. High-performing organizations implement structured return-to-work (RTW) programs that provide modified duty options and ensure clear communication between the employer, medical providers, and claims professionals.

Managing liability and workers' compensation exposure in the construction industry demands a comprehensive, proactive approach. By prioritizing job site safety, strengthening subcontractor oversight, preserving evidence, and supporting injured workers, construction companies can not only avoid or reduce claims, but also improve overall project performance. ■

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