

Owners: Head Off Potential Liability by *Insisting* on Safety

by STEVEN FELLMAN

WHENEVER A SERIOUS injury or death occurs on a jobsite, it's common for the injured party to retain legal counsel to maximize the amount they receive as a result of the accident. Although the law regarding personal injury claims varies from state to state, most construction worker employees are limited in the types of claims that they can file against their employer. Faced with these limitations, they will usually look to third parties as possible additional sources of damages—and the most obvious third party is the owner.

Although the owner may try to protect itself through insurance, contract indemnification clauses or other methods, there is no question that the best – and, ultimately, the cheapest – way to eliminate this potential liability is by establishing a comprehensive and proactive zero-injury safety program that includes not only the owner's employees but the employees of all contractors, subcontractors and vendors; in other words, anyone who enters the jobsite.

Responsible owners have full-time safety personnel on the jobsite every day during the course of a major construction project to make sure that unsafe conditions are eliminated. They will also require that all contractors and subcontractors adhere to an owner-approved safety program. Some owners even arrange to interview the contractor's safety managers to make sure that they have the proper training and experience.

However, regardless of how well the safety program is designed,

unless all the workers are trained to meet the safety standards and report unsafe conditions, the program will fail. Training and a culture of safety must be a requirement for construction workers as well as management.

Union contractors employ only those workers who have been thoroughly trained by their respective crafts as part of their journeyman programs. These programs emphasize safety and recognize the specific areas of exposure faced by the individual trades. Workers who have completed these demanding training regimens understand that safety is a prime concern for everyone involved. They aren't afraid to report unsafe conditions or practices because they know that their unions will protect them in the event that they stick up for their rights to have a safe job site.


The non-union construction worker, on the other hand, has no such guaranteed training. Further, the non-union worker must always be concerned about possibly losing their job if they report unsafe conditions. By contrast, visit the website of any of the major construction unions and you'll see firsthand how much emphasis is placed on safety and accountability.

At one time, it was common to hear people say that construction is a dangerous occupation and it is reasonable to expect injuries on the job site. That mindset is archaic, a relic of the past.

This past fall, I had the honor of attending the annual NMAPC Zero Injury Safety Awards Gala in Washington, D.C. Recognition was

given to a long list of contractors and union representatives who, in tripartite cooperation with their owner clients, worked millions of man hours with no recordable injuries. This proves beyond a doubt that when everyone works together to establish a culture of safety, they can accomplish what was previously thought to have been impossible. And, at the end of the day, owners don't have to face the added complications of a lawsuit filed by an injured worker.

Safety is of the utmost importance to everyone involved in the construction industry. The wife who watches her husband leave for work in the morning, the construction foreman, the contractor, the president and CEO—all of them want to make sure that he returns home safe at the end of the day.

Safety is needed not only for the protection of employees but also for the protection of employers. A safe job saves money, improves efficiency, improves productivity and reduces costs and eliminates potential liabilities for damages. Safety is a win-win proposition. 



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