



I'M HERE TO SAVE YOUR COMPANY MONEY

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Not too often do you hear an attorney say those words. Well, that is just what I intend to do through this article.

Making safety a primary concern on your jobsite will save your construction company money. The Occupational Safety and Health Administration (OSHA) has reported that one out of ten construction site workers are injured every year. There are approximately 150,000 construction site accident injuries each year according to the Bureau of Labor Statistics. Workers between the age of 25 and 34 are the most likely to be injured in a construction site accident. The National Institute of Occupational Safety and Health (NIOSH) reported that the construction industry is the most dangerous industry in the country.

Construction jobsite accidents are more expensive than you think. First there are the direct costs such as workers' compensation claims which cover medical costs and lost wage payments for the ill or injured worker. Recent studies have pegged this figure as high as \$12.7 billion dollars a year in the United States. The direct costs pale in comparison to the indirect costs.

What are these indirect costs? Well, first you are going to have to train and compensate a replacement worker. Using temporary labor or re-assigning employees until the injured employee returns will definitely cut into your production. Management time will also be cut into. You will be dealing with claim adjusters, medical providers, the injured employee, or his/her attorney, and then your attorney. Production suffers.

There is also the cost of damaged property. I know what you're thinking, "That's why I have insurance." Contractors often turn to their commercial general liability policy (CGL) to pay the costs of repair or replacement for construction accidents their employees are involved in. However, CGL policies will not cover all situations. Before a CGL policy will provide coverage, three things must be true. First, the contractor must be "legally obligated" to pay damages. The contractor has to be negligent. Second, the damage must arise out of an "occurrence" which is defined in the policy. Finally, the accident must result in property damage. Loss to a third party's building or equipment is property damage; loss of a party's computer data is not. Also CGL policies will not cover accidents that are a result of faulty workmanship. Insurance companies will search for an exclusion and deny the claim if they can make a creative argument to do so.

Even if you have insurance covering the workers' compensation and the property damage done, you will face the indirect cost of a rise in your insurance premiums or termination of coverage. Insurance companies are sophisticated gamblers. How much can they charge per month to keep your business and protect the insurance company from paying out more than they bring in? Since they will now begin paying out on a claim, they will attempt to get it back through increased premiums.

Another indirect cost of a construction jobsite accident is the costs that result from an OSHA investigation. An employer has eight (8) hours to report the death of an employee from a work related incident or the inpatient hospitalization of three or more employees. 29 U.S.C. §1904, 39(a). Those are just the employer's reporting requirements. OSHA can investigate any accident they become aware of whether it is a report from one of your employees, a report from another employer's employee on the jobsite or a newspaper report. OSHA citations can be very costly to a company.

Another indirect cost is the effect an accident may have on your other employees. Employees will experience job dissatisfaction if they feel unsafe at work. Unhappy employees are also more likely to call OSHA and report any problems they see at work. If an employee somehow perceives that the company doesn't care about his safety, they will look for ways to "stick it to" the company or just look for ways out.

The final indirect cost is legal costs. "Now wait a minute Brent, I have workers' compensation insurance, the CGL policy, and I have avoided an OSHA investigation, so

what other legal costs are out there when a construction jobsite accident takes place?” Attorneys are creative. There are two other types of litigation you can find yourself involved in as a result of a construction jobsite accident.

The first is a gross negligence claim by the injured employee against his fellow co-workers and your supervisors. Despite collecting from workers’ compensation, an injured employee can sue his co-workers and collect if gross negligence is found. For gross negligence to be found, the co-workers or supervisor had to know of the peril, know that the injury was probable, and consciously fail to avoid the peril.

Is the company on the line for this? No. However, if your top supervisor or other stellar employee is sued, in many situations the company will voluntarily step up and pay for defense costs and even any liability found.

The second type of litigation occurs on multi-employer worksites where a construction accident takes place and another companies’ worker is injured. Someone else’s problem, right? Not always. Sometimes the injured employee or even the other contractor will bring an action against your company for anything your company or your employees did to contribute to the accident.

So I have spelled out the doom and gloom of what the direct costs and the even larger indirect costs are as a result of a construction jobsite accident. I told you earlier that I was going to help your company save money. Here goes . . . All of those direct costs and indirect costs can be avoided if you do these 7 things:

1. **Make safety on the jobsite your top priority.** Emphasis it to your supervisors. Become known to your employees as a safety freak. Hold surprise safety inspections on your jobsites to see how you do. Ask Master Builders to come out and look over your jobsite to see if they can find any safety issues. You can even ask Iowa OSHA Consultation to come out and inspect your jobsite. When you ask them to do this, they will not assess citations, but they will require you fix all problems that they point out.
2. **Hold weekly safety training sessions or toolbox talks.** Figure out what are the biggest safety issues your employees deal with and then hold

weekly hour-long training sessions addressing those issues. Have an outline of what each talk will cover and have each employee sign off as having participated on that date. This will prove to OSHA that you did train employees and which of them got the training. Make it fun if you can. Have each employee put on a training session with a prize given to the best session. There are ways to make these sessions fun; you just have to be creative.

3. **Make sure you provide all the necessary personal protective equipment (PPE) needed.** This will include, but not limited to, hardhats, earplugs, goggles, and steel toe shoes. If you aren't going to provide it, make it clear to all who apply for work with your company that they will need to have certain pieces of PPE. Make it clear where and when the PPE must be worn. If the supervisor sees that an employee is not wearing the necessary PPE, they need to discipline the employee.
4. **Have the necessary safety equipment available on the jobsite.** What I am talking about here are items above and beyond the PPE. These are things like debris netting, guardrails, rebar caps, proper lighting, safety signs, safety cones, and first aid kits. There are additional safety items I haven't listed I am sure. Analyze the jobsite and ask yourself: What can I do to make this job safe?
5. **Employee compliance and discipline.** Make sure your employees know the safety rules for your company and that you have the rules to protect them. Also make sure your employees know that if you find the rules are being violated, you will be forced to discipline the employee. Inform the employees so they know what discipline will be taken for violations. A progressive system in which each violation leads to a harsher penalty is recommended. Handing out discipline is not fun. However, your safety program is worthless if there is no teeth to it. Document all violations of your program and the discipline administered. You can also have an awards program to honor those employees who follow your safety program best.

6. **Verify the skills and qualifications of your employees.** Make sure your employees can safely do the work they will be performing. If you see deficiencies, get that employee additional training or reassign them to work they can safely do. Don't let your employees learn on the job without appropriate safety equipment and supervision.
7. **Perform a job safety analysis before having employees begin working.** Involve your employees. They will know what hazards are present on a job better than anyone else. They will also "buy in" to any solutions that are arrived at. Review your accident history including any near misses. This will show you that what you are currently doing may not be adequate. Conduct a preliminary review of the work. List and rank potential problems. Outline the steps that need to be taken to eliminate the hazard.

There you go. Seven easy steps that will save your company money. I enjoy working with any contractor who faces the direct and indirect results of a construction accident. Funny thing is they never seem to enjoy it as much as I do.

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