

# Construction

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## On the Hook for the Builder's Defense?

If you are a subcontractor, it is likely you have signed a contract at some time in which you agreed to “indemnify and save the builder harmless” (or similar language to the same effect) against claims for damages emanating from your work. The contract probably also contained language by which you agreed to defend the builder from such claims. If the contract provides for defense of the builder, you will probably be on the hook for the builder's defense costs regardless of proof of your negligence.

It is important to note that the interpretation of contractual language may vary by

jurisdiction; however, subcontractors must be prepared. The good news is that most general liability insurance policies will

cover expenses you agree to in an “insured contract,” which a majority of subcontractor agreements are. Nonetheless, it is important to review all potential contractual obligations with your insurance coverage in mind so you don't find that you are not covered when a claim is filed.

Consult with our insurance specialists to

find policy options that can reduce your risk exposure for indemnity and defense costs. ■



## Best Practices Coalition for Underground Work

Contractors often find themselves digging, and that can pose a threat to underground pipes and cables, as well as to the foundational stability of nearby facilities, utilities and buildings. Improper underground work can cause enormously costly damages to the surrounding environment as well—an area that could be as small as a few square feet or as broad as a city street. Depending on the nature of the damage, cleanup could take weeks and cause job delays and massive expenses that, in some cases, are not covered by insurance.

To aid in damage prevention, experts representing several groups, including excavators, locators, public works, road

builders, and insurance companies, formed the Common Ground Alliance (CGA). The CGA's mission is to encourage best practices and protect underground facilities in North America from harm. The organization conducts research and provides information for its members as well as the general public on protection best practices.

The CGA offers a downloadable best-practices guide that is broken down into eight chapters, each focusing on a different specialty in underground work. It covers planning and design, location and marking, excavation, mapping, compliance and more. Get a copy or find more information at [www.commongroundalliance.com](http://www.commongroundalliance.com). ■

## Reduce Heavy Equipment Theft



**T**heft of heavy equipment continues to plague the construction industry. The National Equipment Register (NER) offers the following tips to combat this billion-dollar crime industry:

- Fence in all job sites and secure gates with locks and heavy chains.
- Install and frequently test lighting at the storage site to be sure it is sufficient to light both the job site and its surrounding areas/exterior grounds.
- Use mechanical means to secure heavy machinery. Examples include ignition and hydraulic bypasses, as well as drive-control and trailer-hitch locks.
- Store smaller equipment in lockable containers.
- Keep smaller or more valuable equipment between larger pieces of secured, idle equipment, thus making its removal more difficult.
- Invest in a GPS system for heavy equipment to aid in location if theft occurs.

It is also important to be sure all equipment is adequately insured in case it is stolen. Some of the measures suggested above as well as other loss-control measures may qualify you for premium discounts.

For more information on insuring heavy equipment, call our service team today. ■

## Audits Seek Misclassified Workers

Trouble is on the way for companies that misclassify workers as independent contractors rather than employees. According to the *Kiplinger Tax Letter*, the IRS is equipped with an “arsenal” of tools it will use to pinpoint audit leads.

Most states are now working with the IRS to share payroll tax examination data. This cooperation is expected to result in thousands of additional audit referrals. New document-matching programs will assist regulators in audits and lessen the chance of a no-change examination. For example, an electronic matching system will help the IRS spot businesses issuing 1099 forms with payments of \$25,000 or more to at least five work-

ers with no alternative source of income.

Employee reporting will also help the IRS. Form 8919 can be filed by taxpayers along with their tax returns to inform the IRS that they believe they have been misclassified by employers as contractors. The component of the tax code that permits filers of 8919 forms to avoid paying self-employment tax could encourage workers to make reports.

Misclassification can result in penalties and additional audit premium due on your workers compensation and general liability insurance. For more information on proper classification of your contractors and employees, visit [www.irs.gov](http://www.irs.gov). ■

## Drowsiness at Work: a Medical Condition

Obstructive sleep apnea (OSA) is a pervasive condition that causes chronic fatigue and leads to sleep-related auto and machinery accidents.

OSA is more prevalent than diabetes, and those who have it are 3.9 times as likely to suffer from congestive heart failure, are at a 40% increased risk of depression, and are more likely to develop other conditions related to the lack of quality sleep.

OSA is a highly treatable condition, and employers who assist their workers in dealing with it can help their firm as well as the employee. OSA sufferers miss almost three times as much work as others and are three to five times more likely to have an accident at work, at home or on the road. They also have a 20% lower productivity level than non-OSA workers, with problems attributed to continual drowsiness and progressive memory loss.

Studies show that 30%–50% of commercial drivers suffer from untreated sleep apnea and that 25% of drivers at



major trucking companies suffer from severe OSA. Drivers with severe OSA are three to seven times more likely to have an accident as those without it. Some 800,000 accidents a year are caused by drivers with sleep apnea at a cost of \$15.9 billion.

The good news is that sleep apnea can be easily diagnosed and that drivers treated for OSA show a 75% decrease in accidents. For more information on testing your drivers for this dangerous condition, visit [www.b-alert.com/ARES](http://www.b-alert.com/ARES). ■

# Ladder Safety Tips

According to the Occupational Safety and Health Administration (OSHA), falls from portable ladders (step, straight, combination and extension) are a leading cause of occupational fatalities and injuries. The U.S. Consumer Product Safety Commission reports that more than 180,000 people received medical attention in 2006 due to injury from ladder use, and 150 people were killed in ladder-related falls.

OSHA provides the following tips for preventing injury or death from improper ladder use:

- Read and follow all labels/markings on the ladder.
- Always inspect the ladder prior to using it. If the ladder is damaged, it must be removed from service and tagged until repaired or discarded.
- Use ladders and appropriate

accessories (ladder levelers, jacks or hooks) for their designed purposes only.

- Ladders must be free of any slippery material on the rungs, steps or feet.



- Do not use a self-supporting ladder (e.g., step ladder) as a single ladder or in a partially closed position.
- Do not use the top step/rung of a ladder as a step/rung unless it was

designed for that purpose.

- Use a ladder only on a stable and level surface, unless it has been secured (top or bottom) to prevent displacement.
- Do not place a ladder on boxes, barrels or other unstable bases to obtain additional height.
  - A ladder placed in any location where it can be displaced by other work activities must be secured to prevent displacement, or a barricade must be erected to keep traffic away from the ladder.
  - Be sure that all locks on an extension ladder are properly engaged.
- Do not exceed the maximum load rating of a ladder. Be aware of the ladder's load rating and of the weight it is supporting, including the weight of any tools or equipment. ■

## Construction Tops OSHA Violations' List

For the second consecutive year, two standards rank at the top of OSHA's citation and penalty categories, and both are in the construction industry.

### The top 10 most frequently cited standards (with OSHA regulation numbers):

1. Scaffolding, general requirements, construction (29 CFR 1926.451)
2. Fall protection, construction (29 CFR 1926.501)
3. Hazard communication standard, general industry (29 CFR 1910.1200)
4. Control of hazardous energy (lockout/tagout), general industry (29 CFR 1910.147)
5. Respiratory protection, general industry (29 CFR 1910.134)
6. Electrical, wiring methods,

components and equipment, general industry (29 CFR 1910.305)

7. Powered industrial trucks, general industry (29 CFR 1910.178)

8. Ladders, construction (29 CFR 1926.1053)

9. Machines, general requirements, general industry (29 CFR 1910.212)

10. Electrical systems design, general requirements, general industry (29 CFR 1910.303)

### The top 10 highest in penalty amounts (with OSHA regulation numbers):

1. Fall protection, construction (29 CFR 1926.501)

2. Scaffolding, general requirements, construction (29 CFR 1926.451)

3. Electrical, hazardous (classified) locations (29 CFR 1910.307)

4. Control of hazardous energy (lockout/tagout), general industry (29 CFR 1910.147)

5. Excavations, requirements for protective systems, construction (29 CFR 1926.652)

6. Machines, general requirements, general industry (29 CFR 1910.212)

7. General duty clause (Section 5(a)(1) of the OSH Act)

8. Powered industrial trucks, general industry (29 CFR 1910.178)

9. Walking-working surfaces, general requirements (29 CFR 1910.22)

10. Process safety management of highly hazardous chemicals (29 CFR 1910.119)

Be sure to brush up on OSHA standards and prevent costly violations at your firm. ■

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for your referrals.**

If you're pleased  
with us, spread the  
word! We'll be happy  
to give the same  
great service to all  
of your friends and  
business associates.

## **Insuring Increased Exposures for 'Green' Construction**

**M**ore contractors are striving to satisfy the Leadership in Energy and Environmental Design (LEED) rating standards, developed by the U.S. Green Building Council, on new construction and remodels of existing buildings.

To meet LEED standards, contractors might have to purchase materials that, if damaged, could be more expensive to replace than traditional building materials. For this reason, it is important to check if your firm's current limits are high enough to cover more expensive specialty items for environmentally friendly construction or repairs.

Several insurers now provide special coverage for just these risks, so contact us to discover your options. ■

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