Employers have certainly had a tough go of things over the past several years, weathering an economy full of challenges unseen in decades. As many of these employers have started to breathe a sigh of relief and emerged leaner and more in control, it appears that legislators across the country seeking tax revenue are hoping to find it in employers who take advantage of their workers.

The United States' Senate Committee on Health, Education, Labor and Pensions recently turned up the heat on employers who violate federal laws and, in particular, federal contractors. A report released from the Committee found that some of the nation's largest federal contractors are failing to pay their workers the wages earned or provide them safe and healthy working conditions. The Committee made numerous recommendations, including better reporting workplace safety violations, annual publication of contractors who violate federal labor law, reporting a contractor's failure in public databases for consideration in future awards, withholding awards to contractors who violate employee welfare and safety federal laws, and debarment consideration.

Accompanying the political efforts which increase minimum wages and impose other employment-related legislation are record numbers of wage and hour suits and a heightened crackdown on incorrect labeling of independent contractors. The current and proposed penalties are steep—back wages, liquidated damages, attorney's fees, costs, increased worker's compensation premiums, and tax penalties. Listed below are several of the more prevalent labor issues impacting employers in this new economy of employee scrutiny.

I. Wage and Hour Litigation

Continued On Page 12
Product Profile

Maryland Commercial
Used Furniture and Construction Services for Business

Cubicles/Workstations: Installation/Sales/Rentals

Desks/Chairs/Cabinets:
If we don’t have it... We’ll find it.

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Remove a wall here… Add a door there...

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Grace Fuqua 410-456-2929 grace@mdcommercial.com www.MDcommercial.com
Is Commissioning Dead Without LEED?

What Happened to Enhanced Commissioning?

It is safe to say that the three forces with the largest impact on the construction industry in the last decade are LEED, Commissioning and BIM. Some would argue that the tasks required for LEED Energy & Atmosphere (E&A) credits have been performed for years prior to the LEED wave of the late 2000s. “Energy Model” was the new term for Life Cycle Cost Analysis and “Commissioning” was the new term for start-up and punch out, etc. These may be just part of industry’s evolutionary process, however, LEED’s CxA requirements have truly revolutionized the Commissioning industry.

In the mid 2000s, not only did traditional MEP design firms evolve into commissioning players, but completely new corporations were formed to solely address the commissioning needs of clients seeking LEED certified buildings. Fundamental commissioning could be performed by all, however per LEED, Enhanced Commissioning (in buildings in excess of 50,000 SF) requires third party commissioning. Hence, the full service commissioning firm was born. The economy booming with new construction, the projects were plentiful and the firms were few. The supply and demand relationship dictated high CxA fees, many times rivaling the design fees. Commissioning services offered less liability and equivalent fees; everyone jumped on the band wagon.

It’s now 2014, the nation has been in a deep recession in excess of five years. Do you still see full service commissioning start-up firms? The fees have dropped partly as a result of many new entrants to the market. However, the 800 lb gorilla in the room (or absent from the room) is the original driver, LEED Certification. The large majority of LEED is highly geared toward new construction. Today, new construction is only a fraction of what it was five years ago, so it follows that the LEED impact on commissioning in private industry has greatly diminished. Just as LEED fed the movement, without LEED the commissioning demand is starving. Maybe not dead, but drastically different. Even if developers have a new building and go LEED, do you see them engaging “Enhanced Commissioning?” Fundamental commissioning is a prerequisite to all E&A credits, with many points pending in the balance, but enhanced commissioning only gets you one more point. It’s just not cost effective, a single point could be obtained much easier elsewhere.

Life Support: It should be noted that LEED remains a driver in the military, federal, state and local government arenas as new (funded) buildings are mandated to meet various green building standards. However, the federal and military require a “certified” commissioning authority to engage this segment of the industry. This CxA certification is a barrier to entry into the commissioning market, limiting the supply of CxA services. As a result, fees remain higher here than the private market.

Another trend by public entities is the “Commissioning Owner’s Representative.” This concept essentially privatizes the owner’s role, which oversees the third party commissioning authority.

Steve Trageser, PE, LEED AP, CPD, CxA Director of Construction & Senior Mechanical Engineer at Henry Adams Consulting Engineers. Steve Trageser leads HA’s efforts in the design-build, construction administration, and commissioning fields. In addition to being a registered PE, Steve is a Certified Plumbing Designer, LEED Accredited Professional, and Certified Commissioning Agent through the AABC Commissioning Group of ACG. Steve holds a BS degree in Mechanical Engineering from the University of Maryland and an MBA from Loyola University Maryland. He is an active member of Maryland Construction Network.

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Buyer Advantage, Seller Beware

Welcome to the challenges and advantages of the Internet Age where selling seems to be all about the lowest price. At the same time, the cost of selling - from advertising to marketing to acquiring prospective customers and working with them until a sale happens is enormous, and increasing. Consider the costs often squandered in the pursuit of unqualified prospects. In today’s information accessible era, the new paradigm is buyer advantage, seller beware. And, it’s critical that Senior Management and Owners ensure they’re maximizing their ROI on business development dollars and resources.

The results according to the latest studies indicate that 66% of the buying decision has been predetermined before buyers engage with the prospective sellers. Even worse, most sellers have not prepared adequately, if at all; for the sales call.

Given the competitive marketplace, and the fact they know more about you then you about them, you need to mitigate the challenges.

And, “Simple Preparation Gives You Game Control. “How many times have you heard the sports analogy of control the ball and you control the game. Well, is it any surprise the same holds true in the game of selling?

Let’s sum this up visually:

<table>
<thead>
<tr>
<th>Be Prepared and…</th>
<th>you’ll be in control of the situation by possessing important knowledge.</th>
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</thead>
<tbody>
<tr>
<td>Be in control of the situation and …</td>
<td>constantly direct that knowledge to reinforce to your prospect how much they trust your judgment, your knowledge, your honesty.</td>
</tr>
</tbody>
</table>

Want to be in control of each step, each sales interaction, each negotiation…so that you both win, continually reinforcing their trust in you and your process?

Here are some steps to follow:

Prepare your attitude: you must make time to fully develop your sales skills and business knowledge. It means accepting sales success is your responsibility and building a foundation on confidence.

We mean practicing for a better approach: it means learning to listen to your prospective customers more, and talking less, way less. You have two ears and one mouth. Use them in that ratio or higher.

We mean intentional preparation for every interaction: think about emails you’re sending, planning phone calls, having specific objectives in mind, being ready for contingencies in face-to-face meetings.

We mean knowing who you need to have those interactions with, by knowing everything you can that’s appropriate about your prospect.

We mean knowing what it takes to win the sale.

We mean knowing your resources (in football terms; who can run, who can catch, and the value of a good helmet!) and being ready to know how to use your resources to support you, or at least not weaken you, in the game.

We mean preparing to stand up to your competitors in
every possible and ethical way.

Preparation takes time and effort and I’m telling you that all your effort, work and commitment to preparation will pay off in spades. Even in a worst case scenario when you don’t win, great preparation will ensure you don’t pursue and invest time and resources in a NO WIN situation.

Jim Martin, is a sales consultant, motivator, coach, and author of “Ultimate Selling, The Art & Science of Sales Success” and “How to Prepare for a B2B Sales Call”. For more information, go to www.ultimatesellingsolutions.com. If you own an iPad, go to www.UltimateSellingSeries.com where you can connect to the iBookstore and download a multi-touch, interactive eBook titled: “How to Prepare for a B2B Sales Call”.

Recognizing Revenue

Since 2008 businesses and business owners have lived through a recession, sequestration, the new health care bill and now a change in how businesses recognize revenue. Yes, I said the way virtually every industry, including construction, now recognizes revenue will change. Now that I have your attention you are probably asking why this is happening and when this will begin.

Well, the why is because the accounting standard Gods, FASB, believe businesses need a single, principle-based revenue standard. This new standard is aimed at improving accounting for contracts with customers. This improvement is believed to provide a better framework for addressing revenue issues, to increase the comparability across different industries, and require better disclosures. When will the new standards go into effect? The final standard is scheduled for release during the first quarter of 2014. It will be effective for public entities for annual periods ending after December 15, 2016 and for nonpublic entities for annual periods after December 15, 2017.

So the FASB has defined what they call a “core principle” in applying the new standard. The core principle is to “recognize revenue to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services”. In order to implement this “core principle”, and for companies to determine when to recognize revenue, a five step process is being introduced as guidance:

1. Identify the contract(s) with the customer.
   A contract is defined as an agreement between two or more parties that creates enforceable rights and obligations. Additional analysis is required when two or more contracts are entered into at or near the same time with the same customer or for any contract modification that may occur.

   Continued On Page 19
An Ounce Of Prevention Is Worth A Pound Of Cure

Construction is one of the largest industries which coincides directly with being one of the most dangerous of all industries. It is no surprise that there are more work-related illnesses and accidents in the construction industry than any other industry, both in the United States and world-wide.

According to the United States Department of Labor and OSHA, nearly 6.5 million people work at approximately 252,000 construction sites across the country on any given day. Potential hazards for workers in construction include: falls from heights, trench collapse, scaffold collapse, electric shock and arc flash, failure to use proper personal protective equipment and repetitive motion injuries. Those are the most serious.*

Safety and prevention are the number one priorities when it comes to the high risk involved in construction industry jobs. Putting in place safety preventative policies and procedures is vital to a successful outcome. Educating management staff and new hires as well as ongoing education for all employees will assist in reducing injuries and claims.

- All contractors should have an effective safety and health program
- All hazards should be corrected on a daily basis after daily audits are conducted
- Increase the level of training for supervisors and employees

A study by the Department of Occupational and Environmental Safety and Health at the University of Wisconsin-Whitewater, was conducted using the Experience Modification Rate (EMR) to help track a company’s safety record in correlation with the amount of money spent on safety. The survey showed that in recent years, companies that had safety measures in place and spent more money on safety, had a better EMR. Companies more experienced in the industry as well as the larger companies had the best safety records as nearly all of them had safety procedures in place.*

Interestingly, Construction Industry Institute (CII) research shows that most employers feel that they adequately educate employees about injuries, prevention and compensation; however, most employees surveyed do not understand. Owners place too much emphasis on the EMR measure of contractor safety performance as a sole indicator in the contractor selection process. OSHA incidence rates for companies that do not track safety results by project are twice the rate of companies that do i.e. What gets measured, gets improved.

Construction Industry Institute recommends the following in regards to Workers Compensation Management:

- Educate employees, employers and employee representatives about workers compensation and its impact on business
- Take an active role in interfacing with their insurance carrier and medical care providers for projects
- Maintain frequent contact with injured workers. Make sure their needs are being met and keep them abreast of jobsite activities
- Utilize modified work programs for injured employees (see below)
- Establish accountability for workers compensation costs with projects and supervisors

From a case management perspective, once you have a safety or risk management program in place and a work-related injury occurs, there are several
important steps you can take to insure a successful and expeditious return back to work for the injured employee/worker (IW):

- Any injury must be accurately identified and promptly reported. Immediate treatment with an appropriate provider is essential
- Placing an aggressive case manager, who is industry savvy on the case as soon as possible after the injury will maximize the overall outcome
  - American Airlines performed a pilot study in December of 2012, which proved that automatically assigning workers compensation case managers to all long time claims significantly reduced injured workers time away from the job. They have now assigned case managers to all of their workers comp claims
- Tracking and identifying common injuries and claims which can assist in providing information to decrease frequency and causation
- A modified or light duty return to work program has proven to reduce costs and limit the overall liability of a workers compensation claim
  - Benefits to Employer, Insured and Employee by:
    - Reducing malingering and fraudulent claims
    - Indemnity expenses in temporary total disability payments are reduced
    - Increases positive resolution of claims
    - Increased control, contact and communication
    - Modified duty restrictions as prescribed by the medical provider can be implemented to both Employer and Employee advantage, by allowing IW to progress his/her job related activities towards full duty

Continued On Page 19
Construction Risk Management In The Rollercoaster Recovery

The construction industry continues its slow and steady -- but inconsistent -- recovery from the lingering economic recession. Overall, the long-term forecast for the construction industry following the economic recovery is robust. In the meantime, the industry is experiencing recovery malaise. Week after week, reports of positive government news are offset by conflicting negative industry news reports only to be followed by yet another optimistic outlook. So goes the up and down rollercoaster recovery.

Strategic Risk Management

The continuing uncertainty of the economic recovery makes strategic risk management more important than ever for contractors. Insurance and risk management can be a source of competitive advantage or disadvantage for construction firms. Insurance and risk management are a major expense for contractors.

Insurance is an important product and its purchase should never be considered as a commodity. The value of having the right insurance coverage (by means of policy, endorsement or extension) and limits cannot be overstated. There are direct, indirect and opportunity costs all of which can impact your bottom-line. The intelligent buyer knows there is a difference between price and value.

Insurance is also an important service. The existing trends and emerging opportunities in the construction industry are driving specialized and customized insurance, surety and risk management solutions. The discipline of strategic risk management is one such development. It is recommended that your company partner with your insurance advisor to conduct a strategic risk analysis and to evaluate your company’s resilience and risk accountability culture.

It is important to embed a risk management mindset into strategic business planning processes. As a strategic discipline risk management serves several important purposes, including but not limited to decision making, risk and cost allocation, as well as business process improvement. To effectively incorporate risk management thinking into strategic business planning contractors need to be mindful of two important concurrent developments:

1. Pressures in the construction insurance market
2. Changing nature, scope and complexity of risk in the construction industry

Pressures in the Construction Insurance Market

The construction insurance market is experiencing pressure from various disruptive forces. Some of these developments occurred independent from the recession while others were made worse by the recession. Nevertheless, these trends and developments are continuing to be disruptive through the economic recovery, including:

- Growing severity of Workers Compensation losses
- Escalating alternatives to traditional insurance including captives, owner or contractor controlled insurance programs (OCIPs/CCIPs) and subcontractor default insurance
- Increasing number of owner insolvencies and subcontractor defaults
- Increasing challenges on Property and Builders Risk placements with coastal wind and other catastrophic loss exposures
- Rising threat of increasing General Liability premiums
- Growing pressure on professional liability due to increasing frequency and severity of large design related liability losses
- Increasing regulatory and administrative requirements for employee health benefits under the Affordable Care Act

Expanding Risks in the Construction Industry
To further complicate matters, the level of risk in the construction industry continues to expand. A number of industry developments and trends are continuing to change the risk profile at the individual company level and for the industry as a whole. The following representative eight industry trends illustrate the growing nature, scope and complexity of risk to be evaluated, understood and managed by contractors:

1. Expanding use of alternative construction delivery methods, including Design/Build and Integrated Project Delivery
2. Growing number of accelerated fast-track projects
3. Changing project finance methods, including Public Private Partnerships
4. Expanding number of joint ventures to meet project capitalization and surety obligations
5. Reemerging skilled workforce shortage
6. Growing reliance on technology and vulnerability to business systems and network disruptions
7. Expanding use of Building Information Modeling (BIM) and online collaboration on construction design
8. Continuing migration of construction defect claims and litigation from residential to commercial construction

A word of caution is in order: this list of risk trends and developments is not exhaustive. Other risk exposures and issues may be important for your company depending upon your scope of work, industry sector and/or geographic region.

Conclusion

Risk is inherent to the construction industry. Risk management is the bedrock of the construction industry. There is opportunity in risk. Strategic risk management is not about saying no to opportunity. Rather, strategic risk management is focused on protecting your business from being blindsided by hidden risks and cascading costs.

Strategic risk management will help you remain calm and composed during the rollercoaster economic recovery. More importantly, strategic risk management helps contractors identify factors and make decisions that impact their competiveness, growth, profitability and reputation.

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Q - Can a joint venture be certified as a disadvantaged business enterprise (DBE) in the State of Maryland?

A - No. A joint venture is an association of a DBE firm and one or more firms to carry out a single, for-profit business enterprise for which the parties combine their property, capital, skills and knowledge. Because a joint venture consists of businesses brought together temporarily, the joint venture itself cannot be certified.

However, with that said, a joint venture can receive DBE credit for a specific contract if the DBE partner of the joint venture meets the standards for an eligible DBE, and the DBE is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks and profits of the joint venture. With that said, the joint venture cannot serve as an instrument to meet contract goals in instances where the DBE is not given the opportunity to exercise independent judgments.

Certification of a business can be a viable tool for developing and maintaining business relationships. Businesses seeking certification as a DBE in Maryland may want to consider obtaining legal advice concerning eligibility requirements for certification prior to applying for certification.

James R Benjamin, Jr., is an attorney with Pessin Katz Law, PA. This information is provided for general information only. None of the information provided herein should be construed as providing legal advice or a separate attorney client relationship. Applicability of the legal principles discussed may differ substantially in individual situations. You should not act upon the information presented herein without consulting an attorney of your choice about your particular situation. While PK Law has taken reasonable efforts to insure the accuracy of this material, the accuracy cannot be guaranteed and PK Law makes no warranties or representations as to its accuracy.
What Are Some Change Order Best Practices For Contractors?

Boost Profitability with a Disciplined Approach to Change Orders

Implementing a disciplined and effective change order process can help construction contractors improve profitability and safeguard their reputations. But first, it’s essential that you understand and apply certain pricing principles.

Successful businesses are not necessarily those with the most creative and visionary ideas. They are companies that have cultures that encourage and reward people who are disciplined in thought and action. Construction contractors are no different.

How Do You Use Change Orders?

The profitability of a construction business is directly linked to the discipline of its people, including top management and on-site project managers. How a contractor uses change orders directly impacts his or her profitability.

Changes, particularly those initiated by the customer, are something every contractor has to deal with. Although simple in concept, change orders, when handled ineffectively, can result in lost profitability and ill will toward the contractor.

Contractors are like everyone else in that they want to do a good job and please their customers. Stopping to get written approval for every change during the construction process is sometimes seen by the contractor as potentially detrimental to his or her relationship with the customer. Often, the contractor’s mentality is to “Just get the work done and we will negotiate the price and terms in good faith later,” or “We just don’t have the time to do it now.”

The “Do It Later” Approach Doesn’t Work

This “do it later” approach often leads to a huge amount of time (i.e., lost profitability) spent on the back end of a job trying to resolve disputes (i.e., potential damage to the contractor’s reputation) that could have been avoided if changes were dealt with in writing before the work was done to ensure that the contractor and customer agreed on and understood the scope of work and price for the proposed change. Many disputes between contractors and their customers arise simply because they honestly had different perceptions of the requested changes.

Pricing Psychology Comes Into Play

Understanding the emotions of pricing psychology can help to implement an effective change order process, boost a contractor’s profitability, and enhance the business’s reputation in the eyes of its customers.

Two aspects of pricing psychology every contractor should take into account when putting change order procedures in place are price leverage and payment resistance. Price leverage is not so much an advantage held by one party over the other as it is a question of who has the most – or least – price sensitivity at a given time. Prior to any work being done the contractor typically has the leverage because the customer either needs or wants the requested change. This is the time when the contractor has the best opportunity to receive the maximum amount for the requested change and improve the profitability of his or her company. After the work is done the price leverage then shifts to the customer and the contractor can be left scrambling to recover whatever the customer is willing to pay.

Unwillingness to pay, or payment resistance, is often the direct result of the customer not feeling empowered in the change order process and being caught off guard. If he/she does not receive the change order within an appropriate time period, the customer is not given the opportunity to approve the terms of the change order or perhaps modify them if they are not what they expected. This sense of control is extremely important to the customer and when not granted, can leave the customer feeling disrespected. Furthermore, some

Continued On Page 32
Continuing to lead workplace litigation are actions against employers for not paying their employees properly. The GAO recently found that “substantial increases occurred over the last decade in the number of civil lawsuits filed in federal district court alleging violations of the Fair Labor Standards Act.” The Labor Departments for both state and federal governments are aggressively pursuing enforcement in this area. These actions have resulted in hefty expenses to employers and yielded big rewards to attorneys who recover their fees, penalties and unpaid wages from guilty employers. Contributing to these large awards is the fact that when employers misclassify one employee, they generally do the same with other employees with similar responsibilities. For federal contractors, the penalties are even greater and include possible debarment for violation of wage requirements.

The two most frequently filed types of actions brought on behalf of employees in this area focus on mischaracterization of the employee as exempt from overtime and misclassification of the employee as an independent contractor.

A. Misclassification as Exempt (Salaried)

This litigation has hit employers across all industries and all sizes. The Federal Fair Labor Standards Act (FLSA) ensures that employees are being paid a minimum wage and that they are paid overtime when applicable. Many states have companion statutes ensuring minimum wages are paid to employees who may not be covered by the federal act. The FLSA basically requires that employees be paid no less than the federal minimum wage for all hours worked and that all hours worked in excess of 40 hours per week are compensated at one and one-half times their normal hourly rate.

The most common problem is employers mistakenly believing that simply telling an employee they are being paid a salary or having an agreement with the employee to accept salaried payments is sufficient to confer exempt status. Regrettably, it is not so simple. To escape liability for minimum wage requirements and overtime, the employee must make a guaranteed amount of at least $455 per week and their position must require certain duties. The employee’s specific, actual and predominant job duties must meet certain FLSA requirements. In general, these are limited to employees who perform work involving a good deal of judgment and independent discretion. Job titles with fancy names do not determine exempt status; effective and actual job descriptions do.

B. Miscalculation of Hours

The other common mistake keeping the DOL busy is employers who do not pay for all hours worked. Hourly employees must be paid for all hours worked and it is incumbent on the employer to ensure that it is accurately tracking those hours, managing situations when an employee may work in excess of 40 hours, and ensuring that time records accurately reflect work performed for the employer. The general rule is that whether authorized or not, on-site or off, if the employee has performed work at the employer’s request or benefit, the employee must be paid. This includes paying employee for “on call” time, for work performed to fix work done incorrectly, and work done at home by the employee.

II. Independent Contractor Scrutiny

Federal and State labor departments have been cracking down for some time on employees wrongfully characterized as independent contractors. State governments have also jumped on this bandwagon and have focused their initial attacks on construction, landscaping and related trades. Renewed interest in this area has also been fueled by the requirements of the Affordable Care Act (ACA). As if the risk of misclassification under the FLSA was not already significant enough, under the ACA, penalties will be assessed against employers who seek to escape its reach by misclassifying employees as independent contractors.

Misclassification can lead to penalties of as much as $2,000 per worker if those workers obtain insurance through the state or federal insurance exchanges.

Who is an independent contractor generally depends on who is claiming misclassification. Different tests exist across state lines and various enforcement agencies apply different criteria. Generally, the Courts and agencies look to see if the worker is truly independent and free of control of the employer. Courts and agencies examine the conditions under which the work is being done, as for example the ability to hire and fire, who
owns the tools of the worker, who controls the work and method of performance of the work, whether the employer is a separately established business, has licenses and insurance and most importantly – whether there is a contract in place between the employer and the contractor.

Pending federal and state legislation also seek to increase penalties, require mandatory notices provided at the beginning of the working relationship, and create presumptions that a worker is an employee placing the burden on the employer to demonstrate independent contractor status regardless of the worker’s insistence. An incomplete or flawed analysis is simply becoming too risky for employers.

III. Hiring Requirements/Wage increases

In addition to the above referenced pitfalls, federal and state legislation across the country seek minimum wage increases. Federal contractors are already required to pay a higher minimum wage and to ensure hiring practices seeking to employ veterans and disabled individuals. These changes include requesting applicants and employees to voluntarily self-identify whether they are veterans or individuals with disabilities. Job placements need to be made with state workforce agencies with a noted priority referral for protected individuals. Reasonable accommodations must continue to be made to such individuals so they can meet the general requirements of the position.

IV. Failure to Accommodate Disabled Workers

In addition to the focus required of federal contractor hiring practices to now include disabled individuals, a recent decision from the U.S. Court of Appeals for the Fourth Circuit held that “a sufficiently severe temporary impairment may constitute a disability” under the expanded definition of disability contained in the Americans with Disabilities Act Amendments Act of 2008. In other words, the disability does not have to be permanent. The Court ruled that if a temporary disability is severe enough, the employee does met the definition of “disabled,” under the ADA amendments. After the employer deemed the severe disability temporary and refused to accommodate the employee’s desire for modified working conditions, the employee sued. The appellate court agreed that temporary and severe injuries met the definition of “disability” under the amended Act and reinforced that the determination of whether an applicant or employee is disabled requires an individualized assessment. Once that disability has been identified, the employer must engage in an iterative process with the worker to determine if reasonable accommodations can be made. The permanent nature of the disabling condition is no longer a requirement.

Conclusion

Although the economy is starting to shape up, the burdens on employers are mounting. Before you find the DOL or a disgruntled employee’s counsel knocking at your door, (and there are many of these knocking, given the lucrative nature of class action Wage & Hour suits and the lack of risk for the plaintiff in filing a suit), it is prudent to spend the time and effort now to evaluate your hiring practices and labor force and make sure you are in compliance with all applicable state and federal rules, including the FLSA, ACA and ADA. Even with conscientious and thorough due diligence, there are no guarantees that you will not be sued, but with proper review of your policies and conscientious due diligence, you can create some great defenses should that unfortunate eventuality occur.

Donald Walsh is a principal in the law firm of Offit Kurman where he heads the government contract group. He is well-versed in government contracts and procurement and has worked closely with clients for over 20 years on contractual and administrative issues arising from doing business with federal, state, and local governments. He may be contacted at dwalsh@offitkurman.com or 443-738-1583.
Preparing For An Audit While You “Think Taxes”

Come springtime, many people start to “think taxes.” While doing so, contractors might also want to think about how to best position their construction business to minimize the chances of a time- and resources-consuming IRS audit.

Accounting method disputes

Many contractors prefer cash accounting to accrual accounting, which can be more complex and sometimes require you to pay taxes on income you haven’t yet received. The IRS, on the other hand, isn’t a big fan of cash accounting because it can delay tax payments.

Generally, the IRS allows contractors with less than $10 million in annual sales to use the cash method. But the accrual method is required for C corporations (and partnerships involving a C corporation) with more than $5 million in annual sales. Pass-through entities, such as S corporations and limited liability companies (LLCs), can typically use the cash method unless they have a long-term contract, in which case they need to use the percentage-of-completion method.

For contractors who spend generally 10% to 15% of their gross income on substantial purchases of materials, such as inventory, the accrual method is also required — even if annual sales are less than the otherwise applicable $5 million or $10 million threshold. Inventory items need to be monitored and capitalized unless paid for and consumed immediately.

If you’re audited and you’ve been using the cash method when you should have been using the accrual method, you may be forced to postpone deductions and pay penalties. Even if you aren't required to use the accrual method, be aware that using the cash method may invite IRS scrutiny.

Employee misclassification

Independent contractors are a big part of the construction industry. But if your business uses them, proceed with caution. The IRS has long believed that a significant percentage of employers misclassify employees as independent contractors, potentially costing the federal government millions of dollars in, among other things, payroll and income taxes.

Although the IRS does now offer the Voluntary Classification Settlement Program (VCSP) to help resolve disputes in this area, it’s shown no signs of letting up on investigating employers for misclassification. To avoid becoming a target, make sure your workers meet the criteria for independent contractors and that you issue 1099 forms to them.

Long-term contracts

As you may know, contracts that span over two calendar years are considered long-term. What you may not know is that the IRS watches these carefully to make sure contractors pay their taxes on the monies involved in a timely manner.

Many long-term contracts are subject to the percentage-of-completion method, which requires contractors to pay taxes each year on the portion of the contracts that were finished in that year. Some smaller contractors are allowed to use the completed-contract method, though, which lets them put off paying taxes until projects are done.

If you’re using the completed-contract method, keep in mind that the IRS may look into such contracts to make sure you’re not unnecessarily dragging out the terms. A couple of potential audit triggers: 1) a delay in completion of a contract that’s almost done to the next tax year, and 2) a contract that contains separate projects that could be treated as separate contracts, such as identical apartment units.

Business structure

In the past, structuring a construction company as an S corporation was generally believed to be a more effective audit shield than operating as a sole proprietorship or C corporation.
Contact us today to see how we can work together to help your business gain the advantages necessary to prosper and grow in this competitive industry.

We can help your company reach its maximum profit potential by providing the expert guidance, support and resources many contractors lack within their own organizations. Services we provide to construction industry firms include: Accounting and Auditing, Tax Planning and Preparation, Business Advisory Services, Surety and Bonding Assistance and Cost Segregation Services.

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Saw Horses Are So Easy

On one of my many trips to visit my daughter at college, I came across the following article in the Perspective Section of The Roanoke Star-Sentinel. As I read it, I laughed and then remembered times of home projects and laughed even harder. It’s always good to laugh, but even better when you can read a story and see yourself in it. Please notice no one was injured during this project!!!

My friend Broaddus had built a workshop out of a shed and I was helping him finish it out. There were shelves and a workbench to build, lighting to install, and tools to organize. A fun kind of a project for sure, even if it’s not my shop.

The main objective for the afternoon was to build a substantial workbench, and maybe get a good start on some shelves too, but we decided that first we’d whip out a pair of saw horses. We figured that we’d need some, not just for the making of shelves and the workbench for the shop, but also for future projects.

Saw horses, as you probably know, are simple affairs; usually quickly made from surplus 2×4’s. Typically made in pairs, they are used to support lumber or works-in-progress for cutting, trimming, and sanding. The height is such that the work is situated ergonomically, although saw horses are far too plain and simple to be comfortably associated with such a fancy word.

While Broaddus located the circular saw in the pile of tools, I searched the scrap wood pile, which was pretty much everywhere, for some suitable pieces of lumber from which to assemble the horses. We cleared the debris out of an area of the floor we deemed large enough to work. “Man, it’s going to be good to get this place organized,” I thought as I started in earnest. I had gathered suitable wood, and besides the saw, Broaddus had collected other odds and ends such as a tape measure, square, pencil, screws, and nails.

Now I had used saw horses extensively in earlier projects, notably a farmhouse redo in 1987, but I had never built a pair; never really appreciated them for the elegant utilitarian structures that they are.

Clipping right along, in no time we had the first saw horse built, or so we thought. Setting it up on the plywood floor, we quickly noted that it didn’t sit evenly on its four legs. Maybe if we kind of pushed it down a little. “Oh, it will be fine once a little weight is applied to it,” I offered as I gently rocked the sawhorse back and forth with my index finger. Broaddus nodded hopefully. Hmmmm. But no, it’s back to the drawing board. Not even we could tolerate such a rocking horse.

The next hour or two was spent in hilarious frustration as our efforts to construct a proper pair of saw horses continued. Lots of cursing; excuse me – discussion, and many more tools were employed in the effort. The result of the original attempt was partially dismantled and evaluated. Different angles were introduced to the positioning of the legs, and screws were placed in different ways and in different sequences. A warped leg was shaved here and there where it rested on the floor and, this produced an undesirable effect upon the other legs. Each change introduced into the configuration of the horse created a new source of unevenness, a different character of the rocking, the elimination of which remained elusive; we were outsmarted at every step.

The comedy of our efforts was not lost on Broaddus and me. Between us there were quite a few years of formal education; and I’m talking about even beyond the fourth grade, and we actually have a fair bit of experience at basic carpentry, the previously mentioned farmhouse reconstruction, for instance.

Yeah right, I hear you say. Anyway, we well knew that both of our dads would be shaking their heads and roaring with laughter if they could have seen us there. After all, they represent a legacy of creative genius, and here we were bumbling hilariously along in our elementary carpentry shenanigans.

We finally got an acceptable design; through several incarnations, and the construction details figured out. The second saw horse progressed fairly smoothly, a few minor issues notwithstanding. Such was the day’s progress: two passable saw horses. But more than that: a renewed appreciation for the simple and for that which is taken for granted. And gosh, whenever I see those

Continued On Page 32
The Magic Of Investing

“There are things to be known and there are things unknown, and in between are the doors”.

– This is a quote by a well-known musician.

Ever did we imagine the story that has unfolded over the last 30 years. Most of us have lived thru some really incredible changes in our lives. Along with those changes come new challenges. Back in the late 90’s, Sir John Templeton, the renowned investment guru emphasized the changing lifestyles directly affected by the velocity of technology. A view in the rearview mirror is a king’s fortune by investing at opportune times. Today we’re talking fracking, 3-D Printing, Smartphones, the Cloud, apps, and the list goes on and on. Imagine 3D printing technologies may be used in hospitals to create hearts, hips, joints and other body parts as needed for surgery. GE will bring 3D into manufacturing plants for the parts they need. So goes the future way we will live, eat, and function to keep on track with life. Consider that these technologies add a new perspective to our investing world.

How do we prepare for these unknowns from our ever-changing supersonic world?

This answer is the same as it would have been back in the 50’s. Plan!

The magic of the 50’s is still here. That magic is compound interest and time. “Compound interest is the eighth wonder of the world. He who understands it, earns it … he who doesn’t… pays it.” Albert Einstein was heard to say that compound interest was the most powerful force in the universe. It is so powerful that there have been times in history where governments declared it illegal (thru the Middle Ages and Roman Empire).

What is compound interest? It’s interest earning interest. Remember the commercial of a guy who visits a friend with 2 pet rabbits. He looks down and then looks up and there’s 4 rabbits. Every time he looks up and down, the rabbits double. Within minutes all you see is rabbits. Wouldn’t it be nice to see that happen to your invested dollars?

The question is, what is the best way to put compound interest to work? Decisions of which dollars go to a taxable account vs. tax-deferred account. Suppose you are a wise investor and put $20,000 away per year for 10 years at 8%. In a taxable account, your annual contributions with taxes paid to the Governor and the Federal Government, accrues to approximately $287,500 vs. the same dollars to a tax-deferred (or tax advantaged) grow to approximately $313,000. Big difference. That’s a nice down payment on a retirement home in the tropics. We can view this as a gift from the government. The government rarely gives out gifts to business people, so use it. Whenever you look at investment returns, ask yourself, is this the real return? When we look at our company plan, do you know what the real costs are?

It is wise for companies to periodically review their company retirement plans. In the past few years, there have been numerous lawsuits by employees against their administrations. Many have been won by the employees. The issue has been lack of fiduciary responsibility and exorbitant fees. It is wise for companies to annually review their plan to confirm all info is up-to-date and fiduciary responsibility adhered to.

Knowing the right questions to ask can lead to success of implementing the right plans that are specific to the investor. Once your plan is in place, then the ideas to fuel your growing dollars and put the compounding effect in action.

One of those knowns and unknowns should be working with a seasoned investment advisor whose goal should be to steer you in the right direction. There also needs to be continual monitoring of investments and necessary recommendations made when appropriate.

There are lots of doors presented for consideration. The goal is always to create a comfortable, happy quality of life.

And oh, BTW, the quote is by Jim Morrison.

For a questionnaire to determine where you are on the road to financial security contact Carol Ashmen, RIA with Atlantic Financial Services, Inc. at cashmen@comcast.net or call her at 410-296-0470.
2. Identify the separate performance obligations in the contract.
Performance obligations would be identified at contract inception and determined based on contractual terms and customary business practices. A contract can be written with multiple performance obligations that are distinct and should be accounted for separately, which the FASB has established a two-step process to determine.

3. Determine the transaction price.
The transaction price would be the amount of consideration that an entity expects to be entitled to in exchange for transferring goods or services. The transaction price would reflect the effects of multiple financial considerations.

4. Allocate the transaction price to the separate performance obligations.
The transaction price of a contract with one or more separate performance obligations shall be allocated in “an amount that depicts the amount of consideration to which the entity expects to be entitled in exchange for satisfying each separate performance obligation”. The allocation of this price is generally based on relative standalone selling prices, however there are two potential exceptions relating to contingent consideration and discounts if specified criteria are met.

5. Recognize revenue when each performance obligation is satisfied.
The last step to this process is to recognize revenue when a performance obligation has been satisfied by transferring the good or service to a customer. The FASB indicates that the performance obligations can be satisfied over time or at a point in time.

The above information is just a summary of the five step process that could have a substantial impact on your business. Additional changes to highlight are new disclosure requirements that have been attached to the standard, contract terms and business practices that may need to be updated, and these new standards could affect your financial ratios and performance statistics.

It is important that you seek advice from your accounting professional as to how these new standards will impact your specific business.

Wayne Baldwin, CPA, is a principal in the auditing and accounting department of MKS&H. In addition to extensive compliance expertise, Wayne utilizes over 25 years of experience to consult with clients regarding business improvement, business plan preparation and various other corporate matters. Visit www.mksh.com or contact Wayne at 410-296-6200.

Continued From Page 5

Sometimes, no matter what safety steps you take or preventative measures you do, someone gets injured. Work-related injuries are sometimes unpreventable. But if you take the right safety and preventative measures, you can greatly minimize the occurrence, lessen the liability and reduce the overall costs for everyone involved.

Jen Nussbaum is with Proactive Medical Consultants

*https://www.osha.gov/Publications/OSHA3252/3252.html
*www.constructioninstitute.org/scriptcontent/more/rr45_11_more.cfm?CFID=15854864&CFTOKEN=60161176

Continued From Page 7
Get Chosen For The Right Project

How do you get chosen as the awarded contractor for the right project for your company? Do you ever wonder what separates the contractors who are chosen to work on that perfect project from the contractors that aren’t?

General Contractors, Property Managers, Facility Managers, and Owners all have specific qualifications they are looking for when choosing a contractor which include; scope of services, geographic areas serviced, certifications, experience, past projects completed, current projects, awards and recognition, bonding and financial ability, references and testimonials, and photos of past work. How do you currently get all your qualifications in front of the right people when they are making that important hiring decision?

There are over 3,600 searches per day done in just the Mid-Atlantic Region for commercial construction contractors. These 30,000 plus construction buyers, estimators, and project managers are charged with the task of searching through thousands of contractors to find the ones on their lists with the right qualifications to do the job correctly and most cost efficiently. You want to make sure your credentials are all included and up-to-date!

How can you make your company stand out in the industry and get connected with the companies you want to work with? The Proview on-line profile is a way to share all your qualifications, when buyers in the commercial construction industry are looking for it; 24 hours a day, 7 days a week, on the largest and most active commercial construction network on-line nationally!

You can showcase your competitive differentiators, your credentials and certifications, photos of your past projects, share the scope of work you preform from schools to manufacturing plants, to churches, to design build all across the nation. This is also your own unique webpage with multiple facets to use on your marketing and emails.

Get Found… Get Qualified… and Get Connected with the Right People, the Right Projects at the Right Time.
Hot Off The Wire

Under Construction Manager Lewis Contractors of Owings Mills, Maryland, GML, LLC dba J.D. Belfield Enterprises of Jessup, Maryland, a member in good standing of the Maryland Construction Network, is the “prime” scaffolding Subcontractor of record installing the vertical access required for interior and exterior repairs to the Mt. Vernon Place Washington Monument in Baltimore. The 178 foot tall structure will celebrate its 200th year in July of 2015.

The scaffolding and personnel hoist for access to all levels, from grade to the top of George Washington’s head, will be completely erected by April 1, 2014. It is a total turnkey operation performed by Belfield Enterprises to include stamped drawing designs, installation of scaffold work deck levels, temporary stairs & a personnel hoist, training of proper usage, maintenance inspections, and final dismantle upon completion. The full project duration for exterior completion and full dismantle is anticipated to be by Thanksgiving 2014.

The Mount Vernon Place Conservancy and its Executive Director, Lance Humphries, are leading the $5 million renovation project and has contracted Tom McCracken and McCracken Consulting, LLC to represent the Owners - which includes the City of Baltimore.

Other trades involved in this restoration of the oldest monument dedicated to our first president include: Scaffold Resource, Worcester-Eisenbrandt, James Posey Associates, Caplan Glass, Mahogany Construction, Reliance Fireproofing; Excell Concrete, Hayles and Howe, EMJAY Engineering & Construction.

Continued From Page 14

But times have changed. In November 2013, the head of the IRS Small Business/Self-Employed Division issued a statement declaring the agency’s intention to make auditing pass-through entities a top priority in 2014 and beyond.

Because of the administrative and legal complexities involved, you probably shouldn’t change your business structure just to minimize IRS scrutiny. But it’s a factor worth considering.

Specific concerns

This article isn’t an exhaustive list of every situation or dispute that could trigger an IRS audit. Work with your tax advisor to address concerns specific to your construction company.

Rivka Bier, CPA, MST is a manager at Hertzbach & Company, P.A. in Owings Mills, Maryland, Rockville, Maryland and Arlington, Virginia. She can be reached at (410) 363-3200 or by emailing rbier@hertzbach.com.
Embrace Conflict And Resolve It

Don’t Ignore It And Hope It Goes Away.

If you ever have a chance to hear a talk by Rod Hairston, Chaplain for the Baltimore Ravens, attend it. He has tremendous insights into people and how to see that they rise to their potential on a sports team, on any team. I had the privilege of hearing his presentation on dealing with conflict in organizations and I am passing along to you some of the wisdom he gave to the 207 CEOs and business owners who attended a workshop at PSA Financial in Hunt Valley, MD on July 31, 2012. The advice that Rod gave that day can be useful to all organizations. Conflict can arise in any situation where more than one person is involved in anything.

1. Resolving conflict in a healthy way makes everyone better. Do not hide from conflict and hope it will go away. It probably will get worse. The secret is to drill down into it and find the root cause.

2. Every organization needs a conflict resolution policy and strategy. Get help formulating these things and teach everyone about them.

3. Leaders do not have to be involved in every conflict. Fight upward delegation. Insist that the people in conflict define the real issue between them in detail and come to you only if that becomes unresolvable. The greater the detail of the definition, the greater the chance it can be resolved before it gets to you.

4. Be sure it is really a conflict. Personalities are different and that diversity is an asset. Not everyone has good vibes with each other. Help everyone learn each of their different styles and how they complement each other and also how they have a tendency to conflict with one another.

5. Conflict arises under these circumstances:
   - Personal attacks: Don't tolerate them
   - Deception and lying: A red flag about integrity
   - Jealousy and envy when acted out: Not restricted to teenagers
   - Insubordination and circumvention: Another red flag
   - Failure to keep commitments: And another red flag.

6. Be discreet about the matter. This does not mean being silent or hiding it.

7. Confront things not people.

8. Be ready for rejection as you work through the conflict. Sometimes people may have to admit they were wrong to be in conflict or they just did not understand the “other side.”

9. Be receptive for truth and the facts. Sometimes they may not be things you want to hear, but need to hear.

10. According to Road Hairston, there are three types of people in every organization:
    - Wise: Teachable. They realize they have things to learn.
    - Foolish: Not responsible for their actions-its’ never their fault. They need boundaries.
    - Evil: Want to bring somebody down-boot them.

11. Be clear about the offense. Keep asking, “What do you really mean by that?” until you get a firm definition of the real problem. Again, get to the greatest level of detail you can.

12. Ask three questions to help define the problem:
    - What was the situation?
    - What was your behavior?
    - What was the impact of that behavior?

13. Be prepared to go public. Don't let the conflict lie below the surface.

14. Don't move people if they are toxic, let them go. If they are teachable, help them learn.

15. Be forgiving. People do mess up and make mistakes. Also, they may have health issues or other personal problems. People have to learn that it is Ok to make mistakes. This creates an environment where people try harder to do their best.

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Developer’s Den

Commercial Real Estate 101 -
A Few Basics You Need To Know

As a business owner, your occupancy costs are a substantial percentage of your expenses, yet many owners don’t utilize an expert for assistance. Like your trusted attorney and tax advisor, all business owners should have an experienced real estate broker/advisor with which they can develop an ongoing professional relationship that is not “transaction driven” but rather “service oriented”.

Why use a commercial real estate expert?

Costs Savings: By utilizing a broker that is an expert in the subject market and asset class, their knowledge will include what market rents are, as well as what landlord concessions may be available (such as “free rent”). More property choices are available as typically there are opportunities that are “off market” that your expert will know about, due to the (change contacts to relationships) they have. Also, understanding the operating expenses and not just the “base rent” are important. Some landlord’s will use this as a “profit center” by adding unnecessary expenses to tenants. Operating Costs typically include real estate taxes, insurance, parking lot and roof maintenance (not replacement), snow removal, landscaping, common utilities, management fees and related expenses.

Remember also that commissions are almost always paid by the landlord so this critical service is of no additional cost.

Loyalty: Your broker will understand your needs and look to develop a long term relationship. As most leases are 3-5 years, you’ll need assistance on more than one occasion. Most owners will spend very little time researching the current market and renew their lease without much thought. Think of your advisor as your own real estate department.

Negotiating Skills: By having a broker as your advocate, they will negotiate with landlords or sellers on your behalf. Specialization, along with market knowledge, is critical in order to get the best terms possible. Your expert will also understand leases and contracts so they can work with your attorney to complete the transaction successfully.

Saving Time and Reducing Stress: By having an expert to manage the transaction from beginning to end, you are able to focus your time on running your business.

Now that you understand why you should have an expert, how do you choose one?

First and foremost, the person who you decide to use must:

- Be a respected expert in commercial real estate and the type of property needed. Being a residential agent, who occasionally does a commercial deal, does not fall in this category. By having attained a SIOR (Society of Office and Industrial Realtors) or CCIM (Certified Commercial Investment Member) designation, this also insures you are dealing with a knowledgeable and experienced professional.
- Have ample experience in the subject market you are interested in. It is of no service to you as a client for someone who concentrates in Towson try to help you in Bethesda.

Also be careful of “dual agency”; a salesperson who is trying to locate you into a property that he or his firm may list is not serving your best interests.

You can also ask others in your industry; your tax advisor or attorney, for a referral. Social media with complete resumes such as LinkedIn can be used as well for selecting candidates. But when doing so, take the time to make certain they possess the requirements and skills outlined above so your goals and objectives are met. Stay away from inexperienced agents who want to generate a quick fee and move on.

Another popular topic today is to own versus lease. For the last three years, it has been my recommendation to buy if the capital is available. But the company size
needs to be somewhat steady and expects to be so over the next 5 plus years.

If a company needs to expand or contract within a few years of owning and needs to sell, they’re at the “mercy of the market” at that time. One way to insure against this is to purchase a facility slightly larger than what may be needed and lease the balance. Most lenders will allow this provided the owner occupy the majority of the property. However, if you choose this route, you will become the landlord but can always hire a management company to take care of the property.

There are several advantages to owning, notably the tax benefits which your accountant can discuss in greater detail. Banks today aggressively are seeking “owner occupant” loans, especially when combined with a SBA (Small Business Administration) Program. Interest rates continue to be very attractive, and owning can sometimes be less expensive than leasing. Other advantages include income, appreciation, and control. Risks are involved; most notably market fluctuations when it’s time to sell. However, real estate has been a relatively safe long term investment. An experienced real estate advisor can provide a sale versus lease analysis in order to show the financial comparisons.

There are pitfalls that your real estate advisor can help you avoid. These include future functional obsolescence and substantial deferred maintenance of properties. I am a big fan of looking at the “exit” of the property and not selling anything to a client that I would not want to own myself. Never buy someone else’s “problem” at any price.

Leasing has its advantages and three of the most important are mobility, flexibility, and focus. Lease terms are typically 3-5 years terms which allow for fluctuations in size or relocation if needed. By leasing, you can focus on your business and not the issues that arise with ownership.

In closing, these are a few tips that will hopefully save you time and money. If you have any other questions, please don’t hesitate to contact me.

The author of this article, J. Allan Riorda, SIOR, is a Principal with Lee & Associates based in Columbia, Maryland. Allan’s area of expertise is industrial properties and tenant representation. He has 26 years’ experience and has successfully negotiated over 800 leasing and sales transactions for clients in Maryland. Allan can be reached at 443.741.4040 or arioroa@lee-associates.com.

The Numbers Don’t Lie

Demand for Bachelor Degree Construction Graduates Exists

In the last edition of ‘Networked & Connected,’ the Maryland Center for Construction Education and Innovation, (MCCEI) discussed Maryland’s production shortage of construction-related bachelor degree graduates. Although the state is fortunate to have a few institutions with undergraduate Construction Management and Engineering programs, MCCEI suspected the combined output of graduates was not enough to meet the annual hiring demands of Maryland business. With the data from The Critical Path report supporting our hunch, we rolled up our sleeves and dug a little deeper.

MCCEI asked a small group of industry partners, general contractors ranging in size and annual revenue, for hiring data over the last three years. The data we received included: number of new hires and positions, type of degree, degree granting institution and employment experience at the time of hire.

Here are a few highlights from the preliminary data:

Top degrees hired in companies over the last three years

- Construction Management
- Civil/Mechanical Engineering
- Business Administration & Finance

Continued On Page 28
More and more we are bombarded with the phrase “Green”, and more and more it seems to mean less and less. As manufacturers add more buzzwords and phrases to their products, it is important to understand the ultimate goal of this current trend – reducing environmental impact.

The EPA defines green building as “the practice of creating structures and using processes that are environmentally responsible and resource-efficient throughout a building’s life-cycle from siting to design, construction, operation, maintenance, renovation and deconstruction.” Although it is tempting to only reach for the low-hanging fruit of bamboo floors, low VOC paints, and bicycle racks, it is far more beneficial to the occupants of a building and the world as a whole to take a broader view and utilize some current “best practices” for sustainable construction. Energy Efficiency, including passive heating and cooling, water and resource conservation, and reuse of existing construction and/or constructing for durability and strength should be our main focus.

To reduce the energy usage and associated resource depletion, buildings should be designed with proper insulation values and efficient HVAC systems, and should utilize passive strategies like ventilation, daylighting, and solar heat gain where appropriate. As with many of the latest products developed for resource efficiency, low-flow plumbing fixtures have become the norm in construction, and depending on budget and local ordinances there are alternative options like grey-water recycling and composting. Reusing existing infrastructure, or re-developing urban cores reduces the need for new raw materials and helps to enhance our existing neighborhoods while maintaining their original feel. Construction of buildings, whether they be homes or commercial office space, should allow for durability and also flexibility to ensure that these structures will stand the test of time and provide adequate layout and function for any number of occupants.

These aren’t new concepts, and before the term was invented they were not considered “Green”. Many of these ideas were just standard practice. Sustainable construction is a great concept, but it is easy to get bogged down in the claims and ads of new products and strategies. Let’s focus on the big picture and work toward an industry of efficiency and durability.

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Continued From Page 26

- Architecture

Top Degree Granting Universities/Institutions

- Pennsylvania State University
- University of Maryland, College Park
- Virginia Polytechnic Institute and State University
- University of Florida
- Drexel University
- Purdue University
- Michigan State University

Trends Identified by Preliminary Data

- Maryland businesses hire college degree professionals from out of state schools 2:1
- Larger companies, more than $200 million in annual revenue, tend to hire more entry level employees and nurture them along through the internal ranks
- Smaller companies tend to hire experienced professionals from the larger companies to mitigate the need to retrain and provide a more immediate plug and play
- The University of Maryland, College Park dominates the other Maryland University System schools as a hiring source, most notably for the undergraduate Civil Engineering program with an emphasis is project management and the undergraduate Architecture program. Maryland’s community colleges that offer Construction Management degrees are a viable resource for companies looking to hire field supervisors and superintendents

These preliminary findings only scratch the surface. The MCCEI Board of Directors have formed a taskforce committee to drive MCCEI’s efforts to address the four-year university graduate pipeline deficit in Maryland. Over the next few months MCCEI will analyze more in-depth hiring data from the industry, while continuing to quantify the annual demand for construction-related degrees. A full report will be released in late 2014.

MCCEI will continue to work with Maryland's institutions and our industry partners to develop plans and craft solutions to fill the workforce pipeline with talent educated in Maryland, for Maryland.

As an industry-led organization, MCCEI welcomes anyone with an interest in the bachelor degree production shortage to get involved by attending taskforce committee meetings. For more information about the committee schedule, please contact Lauren Mari at Lmari@mccei.org.

MCCEI could not accomplish the mission of creating a world-class education system for Maryland without the tremendous support received from both our industry and education partners. Please visit our website for more information about our mission and to get involved with our other initiatives, www.mccei.org.

Bob Aydukovic, CRE is president of The Maryland Center for Construction Education & Innovation, (MCCEI) and has over 20 years of experience working in Maryland’s construction, real estate and economic development sectors.
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For more information on this effective and efficient member benefit, contact MCN’s Verna Regel at 443-982-7329 or at verna@endconstructionnet.net.
Bring in Spring with USGBC Maryland Green

When you think of the U.S. Green Building Council, LEED (Leadership in Energy & Environmental Design) is probably the first thing that comes to mind. However, if you have any interest in green building and sustainability, you should engage with the U.S. Green Building Council Maryland Chapter (USGBC Maryland or The Chapter), which has a local focus on green building issues that are priorities for Maryland.

In 2014, The Chapter celebrates its 10th anniversary as a leader in providing education and resources for green building, and creating a network of practitioners and champions who strive to make healthy and high performance buildings the standard across the state. USGBC Maryland is a 501(c) 3 non-profit, charitable organization, with a mission to use education, advocacy and community outreach to support the development of sustainable buildings and communities. The Chapter is the premier forum and network for a diverse constituency of builders and environmentalists, corporations, nonprofit organizations, elected officials, concerned citizens, teachers, students and more.

This past February, USGBC Maryland presented 14 awards as part of its 9th Annual Wintergreen Awards for Excellence in Green Building. Wintergreen celebrates, promotes and recognizes excellence in high performance, healthy design and building; environmental stewardship and community impact; and serves to highlight the green building initiatives and achievements of the USGBC Maryland region projects, businesses, and other vested individuals.

The awards ceremony, held at The Center for the Built Environment and Infrastructure Studies at Morgan State University (a 2012 Wintergreen Award winner), also served as the official launch for USGBC Maryland’s 10 BIG IDEAS campaign (www.usgbcmd.org/10BIGIDEAS), the keystone of The Chapter’s anniversary celebration. There will be a series of educational programs focused on each of the 10 BIG IDEAS: Energy, Green Economy, Integrated Design, Integrated Landscapes, Living Cities, Material Science, Regenerative Design, Resiliency, Technology and Water. The next program will be held on May 13, Next Generation Building Technologies: A BIG IDEA Program on Material Science, featuring Anna Dyson, Director for the Center for Architecture Science and Ecology (CASE) at Rensselaer Polytechnic Institute.

USGBC Maryland is also partnering with the National Capital Region Chapter again to host the 2nd annual DC NoVA MD Green Schools Summit, to be held at Cardozo Senior High School in Washington DC on April 26. The theme for this year is The Intersection of STEM and Sustainability. This unique event will once again bring together building professionals and K-12 school personnel to share best practices related to sustainable schools (www.usgbcncr.org/event/gss/).

There are a lot of innovative programs and events planned for the Chapter this year, looking back over the past 10 years and planning for what lies ahead. What BIG IDEAS do you think will transform the future of Maryland’s built environment? Join the conversation and network of individuals working together to shape the way a sustainable built environment can enhance the quality of life in Maryland.

Guests are always welcome to attend networking events, a fun and informal way to mingle with USGBC Maryland members, Directors and staff. Most educational programs and events are also open to the public. For more information about upcoming programs and events, please visit www.usgbcmd.org/calendar.

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The use of independent contractors/1099 labor has been a common practice in the construction industry for many years. In 2009 the Maryland Workplace Fraud Act was passed that provided the rules as to when someone is an independent contractor versus an employee. Subsequently, there was legislation further amending this law.

For contractors the use of independent contractors creates a number of potential liabilities. Proper documentation and record keeping, when the law is properly followed, provide protection against a variety of exposures.

There are several areas of liability that need to be addressed:

The Maryland Department of Labor definition of an employee versus an independent contract will determine your liability to payroll taxes and unemployment insurance. You have risk to unpaid taxes and unemployment insurance as well as potentially a failure to provide employee benefits. You also have a risk of an unemployment claim being filed.

Your general liability and workers’ compensation carriers charge based on direct labor payroll and subcontracted costs. Direct labor is much more expensive since the rates are based on the sub contractors having adequate insurance. Insurance carriers typically follow the same guidelines but may have specific documentation required to prove the independent contract is a true sub and not an employee. You have a risk of an insurance auditor charging additional premiums for undocumented sub contractors. There is also a risk of paying claims that you did not anticipate being responsible for.

Without proper documentation you can be forced to pay the appropriate taxes, fees, and premiums. In additional, civil penalties can also be applied.

What Do You Need?

An independent contractor should have their own business license, general liability insurance, and a signed Sole Proprietor's Status form. You should have a subcontract in place for all work they perform.

If the independent is doing work that is normally crew activity for your company, additional questions will arise to determine if that person is an employee or an independent contractor. If you pay them hourly, they only work for your firm, they do the same work as your employees, and you provide tools and/or materials then they will most likely be considered employees.

Why Is This Important?

The State of Maryland wants to collect the appropriate taxes, fees, and unemployment insurance premiums from every employer.

Insurance carriers are being much more aggressive in auditing their clients and this is resulting in many contractors incurring unbudgeted additional premiums for independent contractors that are not property documented.

Your experience modification factor could be compromised because of a claim from and improperly documented contractors. As well, other claims could be paid out that affect your insurance costs adversely.

Richard Shaw is a Vice President with CBIZ Insurance Services, Inc. and has over 25 experience working with clients to help them manage their risk. For more information about these plans and any other insurance needs, you may contact Richard at rshaw@cbiz.com.

If opportunity doesn’t knock, build a door.

Milton Berle
Continued From Page 11

customers whose contractors do not put change orders and accompanying price add-ons into writing might assume that requested changes, especially small ones, are included in the overall contract. Such customers are often caught off guard when a bill arrives very late – and larger than they expected – after the work is completed. This is where a contractor's reputation and customer relationships can really be damaged. No one likes to be surprised, especially when it comes to money.

Executing change orders prior to work commencing is the most effective way to maximize profitability, overcome payment resistance and build good customer relationships.

Contributed by Steve Ball, CPA, CVA, CCIFP, director of Gross Mendelsohn's Construction & Real Estate Group. Contact Steve at 410.685.5512 or sball@gma-cpa.com. You may want to check out one of our pricing tools, a burdened hourly rate calculator. Download it here.

Meet Steve Ball on May 8th when he presents:
Key Characteristics of Profitable Construction Companies!
Learn more about the program by clicking this link!

Continued From Page 17

crazy saw horses, I will certainly have to laugh.

Next time we’ll build that workbench.

Stay Safe,

Terry L. Foy
President
Foy Safety Consulting, Inc.

Article submitted by Terry Foy, Foy Safety Consulting. As noted, this article was originally published in the Perspective Section of The Roanoke Star-Sentinel. The article author: John Robinson.

Upcoming MCN Events

April 10th - Learn To Know / Learn To Grow
Breakfast Seminar: The ABCs of Joint Venturing & Partnering

April 16th - Project Tour & Networking: Gilbane – Morgan State University Business Management Complex

May 8th - Learn To Know / Learn To Grow
Breakfast Seminar: Key Characteristics of Profitable Construction Companies

May 13th – Direct Connect Networking: Sunset Cove

June 5th - Multi-Association Project Tour & Networking: AIA, MCN & USGBC – UB Law School

June 10th - Learn To Know / Learn To Grow
Breakfast Seminar: OSHA Nuts & Bolts

July 24th – Direct Connect Networking: Location: TBD

July 29th - Learn To Know / Learn To Grow
Breakfast Seminar: Featuring Howard Co. Executive, Ken Ulman & Offit Kurman Law

Please visit MCN's Online Events Calendar for the latest information on MCN events as well as those of our Association partners!

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