

FASA's

THE CONTRACTOR'S




Compass

THE OFFICIAL EDUCATIONAL JOURNAL OF THE AMERICAN SUBCONTRACTORS ASSOCIATION


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 **SPECIAL:** Coronavirus Is Here: What Does That Mean for Your Project and Your Business?


by Brian Wood, Smith, Currie & Hancock, LLP


 **The Hidden Costs of Labor**
by Jim Welsh, Payroll4Construction.com

 **LEGALLY SPEAKING: Faulty Workmanship Coverage: An Evolving Oddity in Contractors Professional Liability Insurance**


Co-authored by: Jeff Slivka, President, Environmental and Construction Professional Practice; and Joe Reynolds, Assistant Vice President - Environmental and Construction Professional Practice, RT Specialty, LLC


 **Taxation in Construction: Contractors' Guide to Sales Taxes**
by Patrick Hogan, CEO, Handle

 **Turning the Corner on Auto Claims**
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 **Human Reclamation Through Bricklaying**
by George F. Will, Columnist

 **Paving the Way for More Women to Build Construction Careers**
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by Brittany Bainum, Founder, Tradeworthy Jobs

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Thinking About Taxes, Insurance, Employment

Special Analysis:
COVID-19 Construction Impact

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THE CONTRACTOR'S Compass

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EDITORIAL PURPOSE

The Contractor's Compass is the monthly educational journal of the Foundation of the American Subcontractors Association, Inc. (FASA) and part of FASA's Contractors' Knowledge Network. The journal is designed to equip construction subcontractors with the ideas, tools and tactics they need to thrive.

The views expressed by contributors to The Contractor's Compass do not necessarily represent the opinions of FASA or the American Subcontractors Association, Inc. (ASA).

MISSION

FASA was established in 1987 as a 501(c)(3) tax-exempt entity to support research, education and public awareness. Through its Contractors' Knowledge Network, FASA is committed to forging and exploring the critical issues shaping subcontractors and specialty trade contractors in the construction industry. FASA provides subcontractors and specialty trade contractors with the tools, techniques, practices, attitude and confidence they need to thrive and excel in the construction industry.

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Contributing authors are encouraged to submit a brief abstract of their article idea before providing a full-length feature article. Feature articles should be no longer than 1,500 words and comply with The Associated Press style guidelines. Article submissions become the property of ASA and FASA. The editor reserves the right to edit all accepted editorial submissions for length, style, clarity, spelling and punctuation. Send abstracts and submissions for The Contractor's Compass to communications@asa-hq.com.

ABOUT ASA

ASA is a nonprofit trade association of union and non-union subcontractors and suppliers. Through a nationwide network of local and state ASA associations, members receive information and education on relevant business issues and work together to protect their rights as an integral part of the construction team. For more information about becoming an ASA member, contact ASA at 1004 Duke St., Alexandria, VA 22314-3588, (703) 684-3450, membership@asa-hq.com, or visit the ASA Web site, www.asaonline.com.

LAYOUT

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PRESIDENT'S LETTER



Dear ASA Members,

First and foremost, I want all of our members to know that all of us at ASA National are praying for you during the current COVID-19 situation that has gripped our country. It is amazing to think that just a few short weeks ago we were all gathered together in Las Vegas, and now many of us are physically distancing and staying home. If your business has been affected, we are thinking about you. More importantly, if you or anyone in your family has had their health affected, please know that we are all praying for a speedy recovery. We as members of ASA are stronger when we stand together, and TOGETHER we will all get through this.

What a week we had in Las Vegas! I cannot begin to tell you how much I enjoyed meeting with all of you at our SUBExcel 2020 event, and am already looking forward to next year. If you did not join us this year for SUBExcel, I highly recommend that you plan to be there in 2021. Nowhere else will you have so many leaders in the subcontracting community in one place to learn, network, and thrive together.

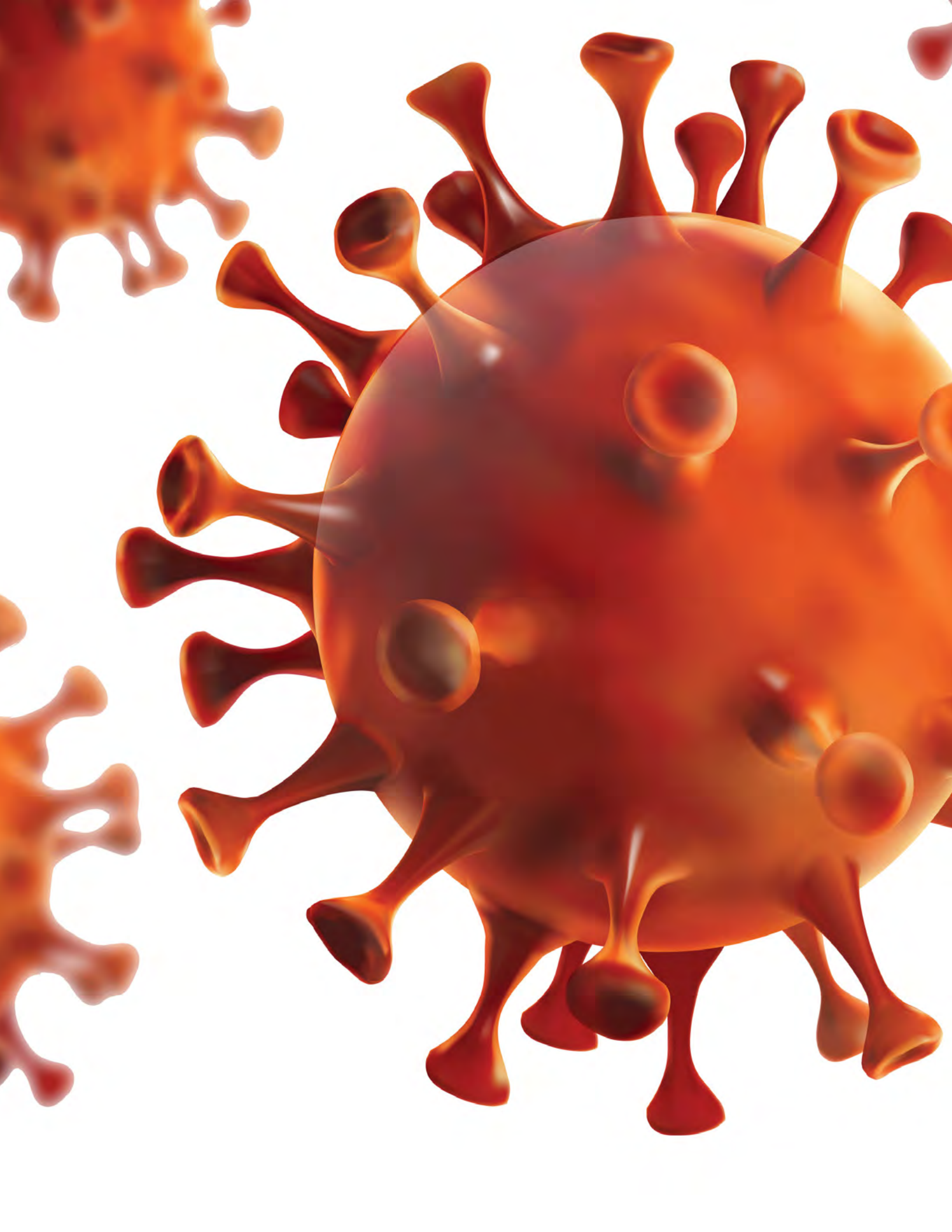
One of the highlights of SUBExcel was the high quality of the speakers throughout the event. Several members mentioned to me, including Rebecca Price of ASA Metro Washington, that they specifically enjoyed the two keynote presentations, Martha Ann Marley's "Economic Update" and Chris Singleton's "Overcoming the Unthinkable Adversity and Uniting our Cities". I fully agree that all of the speakers and presentations were absolutely stellar this year.

As we all look towards the excitement of Spring, I want to encourage you all to keep excelling each and every day. The American Subcontractors Association wouldn't exist without its members, and I am so grateful for all of you. Our future has never been brighter, and I can't wait to see what is just on the horizon.

Thank you for all you do,

Anthony Brooks

ASA President 2019-2020





FOCUS FEATURE

Coronavirus Is Here: What Does That Mean for Your Project and Your Business?

by Brian Moore, Smith, Currie & Hancock

The outbreak of COVID-19 ("coronavirus") has wreaked a considerable human toll of death, physical suffering, fear, and anxiety internationally. Much of the fear and anxiety results from a lack of information or a full understanding about the spread of the disease, protection against infection, and treatment. At Smith, Currie & Hancock, we urge our clients, friends, and colleagues to take seriously, but calmly and prudently, the threat of this disease to protect yourselves, your loved ones, and your businesses. The first step in that process is to inform yourselves with reliable information. Toward that end, we direct your attention to the Centers for Disease Control and Prevention's Coronavirus Disease 2019 website: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>

In addition to the human toll, coronavirus has caused substantial disruptions to economies worldwide. In that regard, the adage "a picture is worth a thousand words" is particularly foreboding. Satellite images taken by

the U.S. National Aeronautics and Space Administration (NASA) of China at the outset of the coronavirus outbreak and approximately a month later show a dramatic decline in air pollution, signifying and illustrating a sharp decline in industrial activity and transportation caused by the disease.

While the outbreak in the U.S. has not reached the magnitude seen in China (~81,000 cases) or Italy (~64,000 cases), the U.S. now has ~46,000 cases, and for the last month has felt the impacts of coronavirus on trade and resultant disruptions to supply chains, as many raw materials used in U.S. manufacturing and manufactured goods consumed in the U.S. originate from China and the other impacted countries. In the last two weeks, the U.S. has begun to suffer more direct impacts from coronavirus, as businesses and public entities across the U.S. have cancelled public and group gatherings of all types, and have announced and begun to implement flexible work arrangements

to allow more work¹ from home and restrictions on non-essential travel. As of 1/17, 48 states, plus the District of Columbia, have declared states of emergency. While the CDC, National Institute of Allergy and Infectious Diseases (NIAID), and other health agencies are unable to predict with precision the likely total number of people that will become infected in the U.S. (some researchers estimate upwards of 100 million will become infected), Anthony Fauci, Director of NIAID, testified to Congress on March 11, 2020 simply that "it's going to get worse."

The forecast and the continued economic disruption in the U.S. and its trading partners make it increasingly likely that coronavirus will cause appreciable impacts to construction material supply chains, labor availability, and construction projects in general. To prepare for and address this eventuality, owners, contractors, subcontractors, material suppliers, and other construction project participants should consider possible impacts to their labor forces, material availability and price escalation, and disruptions and delays to work. In order to mitigate these risks, project participants should be mindful of contractual and regulatory obligations, while vigilantly and proactively preserving and exercising their rights. Contracting parties should pay particular attention to regulations and provisions addressing (1) force majeure and other excusable delays; (2) material escalation; and (3) OSHA compliance and other employee health and safety concerns.

Force Majeure and Excusable Delays

Modern construction contracts commonly contain provisions addressing risks of delays resulting from "force majeure" (translated from French as



FIGURE 1: NASA SATELLITE IMAGES TAKEN IN JANUARY AND FEBRUARY 2020

¹ Wide-scale telecommuting presents increased cybersecurity concerns. Smith Currie intends to address these concerns in a separate publication.

"superior force") and other events and circumstances beyond the control of the parties to the contract. Examples of these clauses can be found in ConsensusDocs 200 Section 6.3 and Federal Acquisition Regulation Section 52.249-14. ConsensusDocs 200, Section 6.3 states in part:

DELAYS AND EXTENSIONS OF TIME.

(1) *If Constructor is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Constructor, Constructor shall be entitled to an equitable extension of the Contract Time. Examples of causes beyond the control of Constructor include, but are not limited to, the following: (a) acts or omissions of Owner, Design Professional, or Others; (b) changes in the Work or the sequencing of the Work ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under §11.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Constructor; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. Constructor shall submit any requests for equitable extensions of Contract Time in accordance with ARTICLE 8.*

(emphasis added)

Similarly, FAR 52.249-14 states in part: **EXCUSABLE DELAYS (APR 1984)**

(a) *Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the*

Contractor. Default includes failure to make progress in the work so as to endanger performance.

(emphasis added)

While ConsensusDocs 200, Section 6.3 and FAR 52.249-14 address epidemics, actions the U.S. government and other public entities might take to combat such epidemics and other unavoidable circumstances, the remedies granted in these provisions are only excusable time extensions, not additional compensation for the impacts. ConsensusDocs 200, Section 6.3 excludes epidemics, adverse governmental actions, and unavoidable circumstances from the causes for which the contractor is entitled to an equitable adjustment:

(2) *In addition, if Constructor incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, Constructor shall be entitled to an equitable adjustment in the Contract Price subject to §6.6.*

Similarly, FAR 52.249-14 addresses only a time extension for such impacts:

(c) *Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.*

A court's or board of contract appeals' determination of whether delays caused by the spread of the coronavirus are excusable will depend on the specific facts and circumstances. A court may consider such factors as whether the length of the delay is reasonable; whether alternative pools of labor or sources of material could replace the pandemic-affected ones at a reasonable cost; whether the government shut down a project site or project management and for how long; and whether the government imposed an area-wide quarantine.

Even if a court or board finds that the delay was excusable, the language of the contract determines what, if any, remedies are available. If the contract has no force majeure clause, even a delay beyond the contractor's or supplier's control may not be excusable or compensable. The

court will have to determine whether the purpose of the contract is entirely frustrated by the outbreak of coronavirus, nullifying it. It must also determine whether the contract affords only a time extension or compensation for damages related to the delay as well as considering what mitigating actions a contractor or supplier took to defray the delay and expense of the event.

Common to all force majeure clauses is the requirement to give written notice of the causes of delay. Generally, these clauses require notice to be given immediately upon the occurrence of the event that could impact performance, irrespective of whether the impact is ultimately incurred. Project participants should be hyper-vigilant about potential disruptions to their work, even erring on the side of providing advance warnings and notices of possible disruptions. To be prudent, contractors, subcontractors, and material suppliers should immediately make inquiries as to the status of pending orders and ability of counter-parties to fulfill upcoming orders.

When giving notice, project participants should (1) explain how the coronavirus qualifies as a force majeure or other excusable event under the contract; (2) provide as much specificity as possible about impacts to performance; (3) include any additional contractually-required information to the extent it is known; and (4) provide updates as more information becomes available. For contracts still in negotiations, parties should consider including provisions specifically tailored to possible impacts from coronavirus, including suspension clauses that can be implemented on short notice and equitable adjustments to contract prices to account for disruptions and other impacts to performance.

Material Escalations

Dodge Data & Analytics estimates that building product imports from China account for nearly 30 percent of all U.S. building product imports, making China the largest supplier to the U.S. Accordingly, current and continued disruptions to supply chains portend an almost certain impact to prices of construction products and materials. While contractors in the U.S. have already incurred or been notified of delays to

construction materials, the U.S. has not felt the full cost impact of disruptions to the supply chain caused by coronavirus. To protect against or mitigate these impacts, project participants should be fully aware of contract provisions addressing price escalation.

To the extent that force majeure clauses do not provide financial relief for qualifying impacting events, contractors and subcontractors will need to look to escalation clauses in their existing contracts and/or consider including such provisions in future agreements for relief. Common escalation clauses specify the materials subject to escalation and define the events that trigger the clause. Often, the triggering event is a specified percentage increase in a standard price index. Other clauses call for making price adjustments at fixed intervals (quarterly, annually, etc.) or upon certain project milestones.

Given the uniqueness of coronavirus, project participants should consider escalation clauses tailored to the circumstances with provisions flexible enough to account for the fast-changing impacts associated with the spread of the disease. These clauses should establish standards for documenting and proving the cost increases, including the exhaustion of alternative sources of supply.

Labor Laws and OSHA Compliance

Employee health and safety is of paramount importance. Not only is this a moral imperative, it is enshrined into laws and regulations applicable to construction and expressly addressed in contract provisions. The Occupational Safety and Health Act ("OSHA Act") established the general duty for all employers to provide employees with a place of employment "free from recognized hazards that are causing or are likely to cause death or serious physical harm." (General Duty Clause, Section 5(a)(1)). Applying this general standard to construction, the American Institute of Architects' A201 General Conditions of the Contract for Construction specifies in part:

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and

shall provide reasonable protection to prevent damage, injury or loss to:

.1 employees on the Work and other persons who may be affected thereby;

Coronavirus presents unique challenges to fulfilling project participants' duties and obligations with respect to health and safety. To assist employers with those challenges, OSHA has provided guidance and general tips to help prevent exposures to, and/or infection with, coronavirus. This guidance on control and prevention can be found at <https://www.osha.gov/SLTC/covid-19/controlprevention.html>.

As the modes of transmission of coronavirus are not fully understood at this time, OSHA reminds employers of existing standards and regulations meant to protect workers against the transmission of infectious agents. These include:

- *Bloodborne Pathogens standard* (29 CFR 1910.1030);
- *Personal Protective Equipment standard* (29 CFR 1910.132);
- *Eye and Face Protection standard* (29 CFR 1910.133);
- *Respiratory Protection standard* (29 CFR 1910.134); and
- *Hand Protection standard* (29 CFR 1910.138).

OSHA further directs all employers to refer to the CDC's Interim Guidance for Business and Employers to Plan and Respond to Coronavirus Disease 2019, which can be found at <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html>.

While the CDC's interim guidance provides detailed steps for "businesses and employers to plan and respond" to the coronavirus, some high-level recommendations include:

- Actively encouraging sick employees to stay home;
- Separating sick employees;
- Emphasizing staying home when sick, respiratory etiquette and hand hygiene by all employees;
- Performing routine environmental cleaning; and

Advising employees before traveling to take certain steps, including checking CDC health notices, seeking healthcare

advice, and advising supervisors if employees become sick during travel.

The CDC's National Institute for Occupational Safety and Health (NIOSH) further addresses the possibility of transmission of infectious diseases via mucous membranes of the eye, whether directly (e.g., droplets generated through coughing) or from touching the eyes with contaminated fingers. NIOSH makes recommendations for eye protection to combat these mechanisms of transmission.

States and their subdivisions may also impose additional requirements. At present, 28 states have OSHA-approved occupational safety and health plans. To be approved, the plans must have standards and enforcement programs at least as effective as OSHA's, and are permitted to have different and/or more stringent requirements. Thus, we recommend that employers refer to both federal and state regulatory resources on health and safety.

The Department of Labor's Wage and Hour Division recently provided some additional information about the obligations that the Fair Labor Standards Act (FLSA) and Family and Medical Leave Act (FMLA) may impose on employers responding to the coronavirus. You can review that information at the following link: <https://www.dol.gov/agencies/whd/pandemic>

STAY TUNED: Smith Currie will continue to monitor developments with coronavirus and will provide additional guidance on the issues caused by the disease.

Brian S. Wood is a Partner in the Washington, D.C. office of Smith Currie. Brian is highly experienced in matters involving both public (federal, state, and municipal) and private construction representing owners (public and private), contractors, design-builders, subcontractors, engineers, and sureties. Brian holds a degree in civil engineering and has worked as an engineer, construction manager, estimator, inspector, and scheduling and claims consultant on transportation, flood control, environmental restoration, and vertical construction projects.



CONTRACTOR COMMUNITY

ASA Coronavirus Resource Guide

ASA has also put together the ASA Coronavirus Employer Guide. To access this MEMBERS ONLY document, please visit the Resources section of the InfoHub and choose "Member Benefits/ASA Advantage" from the drop-down menu at the top of the Resources page.

The ASA Recognizes our 2019 Award Winners!

ASA was pleased to recognize the following individuals and chapters for achieving outstanding results on behalf of our association and the construction industry during our annual Awards Banquet at this year's SUBExcel in Las Vegas, Nevada. On behalf of all our members, congratulations are well deserved for the following:

Brian Carroll, Sanderford & Carroll, PC—ASA President's Award and Attorneys Council Award: ASA President Anthony Brooks proudly presented the ASA Presidents Award to Brian Carroll for his outstanding service to our association and industry. Brian is always eager to take up the charge on behalf of construction subcontractors whether it be updating Attorneys Council documents, providing much needed insight on pending federal legislation, or offering invaluable expertise in the legal needs of the construction industry. It would also come as no surprise to our members that Brian was also recognized by the Attorneys Council for his outstanding work in 2019!

Chip Mabus, F.L. Crane—Outstanding Service Award and Federal Advocate Award: The ASA honored our friend and colleague, Chip Mabus, for his dedication to the ASA. Chip served on ASA's National Board and was a 21-year employee of F.L. Crane. We lost Chip last November but his deep commitment to our association and industry will never be forgotten. The ASA presented Chip's children, Sam, Madeline, and Mallory with the Outstanding Service Award and the Federal Advocate Award to properly show our appreciation for his efforts on our behalf.

Tami Hasselwander, Executive Director of ASA of Oklahoma—Subcontractor State Advocate Award: The ASA recognizes Tami for being a leading

voice for subcontracting issues at the state level. Under Tami's leadership, her chapter successfully passed two pieces of legislation last year on retainage and allowing Oklahoma based contractors to match out of state bids on government projects.

Paul Brennan, NAPCO Precast, LLC—Subcontractor State Advocate Award: Paul Brennan of our ASA of San Antonio Chapter was recognized as a Subcontractor State Advocate for his relentless leadership in pushing our legislative agenda in Texas through the Voter Voice program. Paul was in constant contact with ASA National to request Voter Voice advocacy campaigns be launched and encouraged all Texas-based ASA members to participate.

ASA of Michigan and ASA of Western Pennsylvania—Chapter of the Year (between 50-100 members): ASA of Michigan and ASA of Western Pennsylvania were both so deserving of this award that we couldn't help but recognize both! ASA of Western PA not only grew their membership during 2019, they celebrated 50 years of providing excellence to the Subcontracting industry during 2019. While managing a fabulous celebration to commemorate the 50th anniversary, they were also profitable from the events for 2019. ASA of Michigan achieved profitable growth through 2018 - 2019 thanks to the dedication of its volunteer members. While most Chapters rely heavily on their Executive Directors to carry out daily notices, budgets, event planning, marketing, and overall administrative management of their Chapter, Michigan did all that and so much more through the hard work of their volunteer members.

ASA of Oklahoma—Chapter of the Year (over 100) members: ASA of Oklahoma (ASA-OK) has a thriving Chapter dedicated to growth, not only in their membership numbers, but also in the Construction Community. ASA-OK consistently strives to advance their leadership and name in the industry through a variety of programs. They passed two bills in the 2018-2019 sessions, HB 1114 reducing retainage on public construction if the project is subject to a bond and 50% complete AND HB 1885 requires Government projects to allow Oklahoma based contractors to match out of state low bids if those Oklahoma bids are within 5% of the lowest.

Dan Albrecht, Chapter President of ASA of New Mexico—Chapter President of the Year: Dan took on this role seriously and carried out each duty with professionalism and enthusiasm. During his Presidency, the chapter had a goal of expanding to additional parts of New Mexico. With Dan's help and leadership, this became a reality for ASA of New Mexico. In the Spring of 2019, ASA of New Mexico founded the Las Cruces branch, thus widening the reach ASA has to Southern parts of New Mexico and into Texas. Dan has been involved with ASA of New Mexico for over 9 years and as the current Past President, he remains heavily active in their BPI, Legislative committee, Nominating committee, and membership recruitment growth across the state.

Gia Espinoza, Executive Director of ASA of New Mexico—Executive Director of the Year: It was a great year for ASA of New Mexico and Executive Director Gia Espinoza is a major reason why! Day in and day out Gia helps guide and lead the ASA of New Mexico Chapter, and has been doing so for the past 8 years. Having previously worked in the subcontracting world, she knows the importance and value our association brings to its members. Gia truly knows how to run a tight ship, keep on budget, create successful events and training, keep her Board and Committees focused and engaged, help promote & market the Construction Industry, and most of all, keep her Chapter the place the New Mexico Subcontractors want to be.

Warren Quinn, Executive Director of ASA of Baltimore—New Executive Director of the Year: Warren Quinn keeps the trains running on time and has brought new energy to the ASA of Baltimore. When Warren joined ASA of Baltimore in September of 2018, the Board knew he came with skills and a background in association management needed for their chapter. What they didn't realize was how his exemplary leadership, professionalism, creativity, and experience would be exactly what they needed (and hoped for) in the Baltimore Chapter. Warren met and exceeded all the goals laid before him for the 2018-2019 year, and he continues to strive for further excellence in growing their chapter. ASA of Baltimore considers

themselves lucky to have Warren on their team.

ASA Houston Chapter—Innovation Award: The ASA is pleased to award ASA Houston Chapter with the Innovation Award for two tremendous initiatives. ASA Houston was determined to try something new to spur member excitement to raise funds for their Government Advocacy PAC. The “No Pants Party” idea was an out of the box, state of the art program that allowed members to donate from home. Through sponsorships and social media marketing, ASA Houston raised over \$40,000 for their PAC! The chapter also started the first women’s peer group for Houston area construction associations entitled “She Builds It,” where women from the industry come together to ask questions, get real answers, network comfortably, and form stronger relationships.

Industry-Recognized Apprenticeship Program (IRAP) Final Rule

On March 10, 2020, the Department of Labor issued their final rule on Industry-Recognized Apprenticeship Program effective on May 11th. The rule permanently excludes the construction industry from the IRAP. Below is the rule’s press release:

March 10, 2020

U.S. Department of Labor Issues
Industry-Recognized Apprenticeship
Program Final Rule

WASHINGTON, DC –The U.S. Department of Labor today published a final rule that will help expand apprenticeships in the United States by establishing a system for advancing the development of high-quality, Industry-Recognized Apprenticeship Programs (IRAPs).

IRAPs are high-quality apprenticeship programs, recognized as such by a third-party entity under standards established by the department in the new rule. Through these programs, individuals will be able to obtain workplace-relevant training and progressively advancing skills that result in an industry-recognized credential, all while getting paid for their work. An IRAP is developed or operated by entities such

as trade and industry groups, corporations, non-profit organizations, educational institutions, unions, and joint labor-management organizations.

“Apprenticeships are widely recognized to be a highly effective job-training approach for American workers and for employers seeking the skilled workforce needed in today’s changing workplace,” Secretary of Labor Eugene Scalia said. “This new rule offers employers, community colleges, and others a flexible, innovative way to quickly expand apprenticeship in telecommunications, health care, cybersecurity, and other sectors where apprenticeships currently are not widely available.”

Third-party entities interested in evaluating and recognizing high-quality IRAPs consistent with the department’s standards should follow the process outlined in the final rule to become Standards Recognition Entities (SREs).

As described in the final rule, many different types of entities may become recognized SREs, including trade groups, companies, educational institutions, state and local governments, non-profits, unions, joint labor-management organizations, and certification and accreditation bodies for a profession or industry. The rule also outlines the responsibilities and requirements for SREs, as well as the department’s standards that programs must meet to obtain and maintain IRAP status and sets forth how the administrator will oversee SREs.

Once recognized by the department, SREs will work with employers and other entities to establish, recognize, and monitor high-quality IRAPs that provide apprentices with industry-recognized credentials.

IRAPs will serve as a complement to the successful registered apprenticeship program that has been in place for over 80 years. The industry-led, market-driven SRE approach outlined in the final rule will give employers and other stakeholders additional flexibility necessary to expand the apprenticeship model into new industries and to address the diverse workforce needs of different industries and occupations. The rule prohibits SREs from recognizing IRAPs in the construction sector, which has the greatest existing utilization of registered apprenticeship programs.

Student Apprenticeship Act

On February 25, 2020, Reps. Fitzpatrick (R-PA) and Khanna (D-CA) introduced the bipartisan Student Apprenticeship Act, a bill that would close the gap between higher education and labor by modernizing workforce training and catalyzing the growth of registered apprenticeships nationwide. This bill is a companion to Sen. Bennet’s (D-CO) Student Apprenticeship Act.

Specifically, the Student Apprenticeship Act would promote collaboration across the board between higher education institutions, employers and labor by creating a grant program that aligns institutions of higher education, employers, and workforce intermediaries to create apprenticeship opportunities for students. As a student and an apprentice, participants would work to earn college credit and an industry credential while their employers pay them. Meanwhile, employers would pay at least 25 percent of the student’s college tuition and fees, and student-apprentices would earn credits for their work that count towards their degree and their industry credential.

The bill would also create competitive grants to drive apprenticeships through supporting the expansion of registered apprenticeships by providing institutions of higher education, employers, and workforce intermediaries with funds to offset the costs associated with developing and implementing student-apprenticeships. This would include developing curricula and standards, supporting on-the-job learning, mentoring, and additional supervision; purchasing updated equipment; and supporting services such as tutoring, transportation, child care, and housing subsidies.

Finally, the bill would update the federal work-study program to allow apprenticeship programs to qualify as work-study programs, so eligible students who demonstrate financial need earn additional funds to pay their tuition through work that aligns with their coursework and their intended career path.



The Hidden Costs of Labor

by Jim Welsh, Payroll4Construction.com

Breaking down labor costs on a job can not only be challenging but also misleading to say the least. For example, let's say I have a job that I figure is going to take 100,000 labor hours to complete. I prepare an estimate for how much that labor's going to cost, but I only calculate my labor rate with an average of what I guess my employees' direct wages are, which I figure is around \$50 per hour. By my estimate, my total labor cost is going to be around \$5,000,000. I add a 50% markup — or \$2,500,000 — to it, bringing my full labor estimate is \$7,500,000.

Right now, I'm pretty happy. I figure I'll be making a decent profit just off of my labor. But as the job progresses, I notice my labor is costing me a lot more than I initially thought. The good news is I'm on schedule, but I'm already starting to have to dip into my would-be profits to make sure my employees are paid. At the end of the job, I realize I didn't make nearly as much as I thought I would.

This scenario is a little extreme, but it highlights the larger problem at hand. We all know employees cost more than just their wages, and it's likely you already account for this when submitting an estimate, but exactly how much does that labor cost? Sure, wages make up the bulk of an employee's cost, and we probably have a good, rounded guess of how much payroll taxes are within our home states, but there are still a number of other indirect costs employers pay for their employees that add up to a significant amount. Too often, these end up getting missed when

determining the labor costs for a job — and when they're not accounted for, it's the profits that suffer.

An easy way to narrow this gap is for subcontractors to become familiar with — and keep accurate tabs on — their labor burden rate. By knowing this figure, they can not only make more accurate projections on expected profits from a job but also know whether they're charging the right rates for their employees' labor.

Direct Payroll Costs

To calculate an accurate labor burden rate, it's necessary to first separate the direct payroll costs from labor burden costs for your employees.

Direct payroll costs are simply the wages that you pay your field employees. If an employee makes \$40 per hour and works 40 hours on a job in a week, the direct payroll cost is \$1,600. By totaling this number for each employee, you'll get a full picture of direct payroll costs and what you're paying in wages for your employees.

If that were the end of it, payroll costs would be fairly simple to track, but employees cost more than just their base wage rate or salary. And aside from underestimating the amount of hours it'll take to complete a job, these additional costs are also one of the most frequent causes of inaccurate estimates for labor cost.

Labor Burden Costs

An inescapable part of paying employees is also paying for the costs that exist outside of their wages. These indirect costs, also known as labor burden costs, are what get left behind

most often when estimating the total cost for employees' work.

cost prior to the markup, I can come closer to turning a profit on my labor. Of course, other aspects can still eat into these profits, like not having an accurate measure of my overhead or underestimating the amount of hours it'll take to finish a job, so it's still important to keep these additional costs and estimates in mind.

It's important to note that the labor burden rate isn't a static figure. Benefits and taxes change; employees get raises — all of these result in changes to rate. While there's no definite time that's best to recheck your labor burden rate, it can be beneficial to recalculate this figure at least quarterly or after any raises. Of course, if you have access to accounting software or payroll reports, this rate can be tracked easily and checked with far more frequency. By keeping up with their labor burden rate and its impact on their labor costs, subcontractors can get a more precise read on what they should charge for their labor.

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Faulty Workmanship Coverage: An Evolving Oddity in Contractors Professional Liability Insurance

Co-authored by:

Jeff Slivka, President, Environmental and Construction Professional Practice RT Specialty, LLC and

Joe Reynolds, Assistant Vice President - Environmental and Construction Professional Practice RT Specialty, LLC

A new insurance coverage is emerging in the Contractors Professional Liability realm – and it's not related to professional services. While offered by one pioneering carrier for over five years, over the past 18 months a handful of carriers have joined to create a viable market for "faulty work coverage" where it previously did not exist. Faulty work coverage or faulty workmanship liability coverage is being offered more and more to plug the gap that many specialty trade contractors live with in their commercial general liability (CGL) policy.

Currently under the CGL, while coverage exists for resulting liability of work performed by subcontractors of the insured, no such coverage exists for the replacement of the defective work installed by the insured, loss of use or recall of their defective products or impaired property. This faulty work coverage will do just that – pay for damages (i.e. the cost to replace or repair) resulting from an actual or alleged act, error or omission in the workmanship or the use of defective materials or products in the named insured's work. Currently offered to smaller specialty trades and some general contractors for the work they self-perform, appetites are still being honed to ensure carriers are protecting the profitability of their current book of Contractors Professional Liability coverage.

Before we go any further, it's important to briefly discuss how the current CPrL policy addresses faulty work. Generally speaking and simply put, the cost to "repair or replace" faulty work of the insured is excluded from a typical CPrL policy. The operative phrase is "the cost to repair or replace". Nearly every faulty work exclusion in a CPrL policy applies the exclusion only to the "repair

or replacement" of the faulty work or materials. This may sound very basic but it's important to point out that the resulting liability or damage caused by the faulty work itself would typically be covered provided all other terms and conditions of the policy are met. So, resulting damages are typically covered.

Second, many, if not all CPrL carriers, offer an option or exception to the typical faulty work exclusion. It's an exception to the exclusion that reads something like, "this exclusion does not apply to negligent acts, errors or omissions in the performance of covered professional services". While it would appear to fill the gap created by the exclusion for the cost to repair or replace the faulty work or materials, be skeptical of those carriers that believe they are covering the cost to repair or replace faulty work of their insured with this exception. Many carriers have explained this incorrectly and just because they make an exception to their faulty work exclusion for acts, errors and omissions arising out of covered professional services doesn't mean they provide the insured with "faulty work coverage". That is simply not accurate. This exception is only intended to allow coverage for damages resulting from negligence in the performance of professional services, not faulty work performed on the part of the insured.

For example, the CPrL policy has an exception to the faulty work exclusion for professional services as stated earlier. There are allegations against the insured that include "mismanagement of subcontractors" or "failure to properly inspect or direct the subcontractors" that resulted in damages to a third party. In the event the insured is found to be negligent for damages associated with the subcontractors faulty work by not

performing these services properly and responsible to pay damages, including the cost to repair or replace the faulty work coverage would be provided. However, it would only cover the cost to repair or replace the faulty work of subcontractors if awarded or included in the total damages incurred by a third party. The insured still does not have coverage for faulty work for self-performed work. The intent is to cover the damages associated with the insured's negligent act, error or omission in professional services and not the faulty work of the insured. It is important to note that most times, not always, those above referenced allegations, "failure to inspect or identify faulty work" or "mismanagement of subs" are picked up through the definition of professional services but only if the definition includes construction management, project management or some broader term or description of services. It's important to know such errors are not automatically covered without the inclusion of the above wording.

There are a couple of carriers that offer their CPrL program without a faulty work exclusion. There is no exclusion whatsoever addressing or excluding faulty work. On the surface this seems like a homerun and it may get closer to picking up the damages associated with the cost to replace or repair a subcontractors work, however, without allegations of negligence made against the insured resulting from performance of professional services, we're afraid coverage is limited at best since the insuring agreement clearly states – The carrier will pay for damages and claim expense arising out of an actual or alleged negligent act, error or omission in the rendering of or failure to render professional services by you or on your behalf.

True Faulty Work Coverage Terms & Conditions

True Faulty Workmanship coverage forms commonly serve as a separate insuring agreement, which can be offered in carrier-specific CPrL policies. In such agreements, the insuring document provides coverage for the claims arising out of the workmanship of "your work" or in the use of defective materials or products used in "your work." Specifically designed to cover self-performed work and not the work of 3rd party subcontractors, the Faulty Work coverage is then triggered when a third-party claim is brought against the contractor by an owner or other 3rd party. Commonly dovetailing with the exclusion for self-performed work found in most commercial general liability policies, the coverage when fully applied and specified also includes the materials, parts and equipment that are used to perform "your work" such as steel beams, epoxy activators, anchor bolts, etc. as well as the warranties or representations made in respect to "your work."

However, exclusions do apply. For instance, Faulty Workmanship policies normally do not offer coverage for resulting bodily injury and property damage, which is typically provided under the insured's general liability policy. It also does not protect against the business risks arising from the decisions of unhappy customers. If the contractor follows the specs as agreed by the owner and installs such products properly, it is the owner who is at risk for the finished product.

While professional services are also excluded under the Faulty Workmanship policy, they are often addressed through the insured's professional liability insuring agreement. Exclusions for project delays also often apply. Although it's important to fully understand the policy since "givebacks" do exist for project delays and the resulting consequential damages arising from the professional services such as project management, design and construction management. In addition, here are some examples of where Faulty Workmanship terms and conditions would benefit the insured:

- As a subcontractor laid the concrete for a big box store in the Northeast U.S., workers applied a "shake-on" curing compound (aka accelerator) onto the floor, which started to delaminate two to three months later. A review found that the accelerator was improperly applied. The permanent fix involved the placement of a vinyl flooring on top of the concrete at a cost of approximately \$400,000
- A contractor was hired by a municipality to rehabilitate 13 manhole covers in a residential neighborhood. When complete, the new manholes sat two inches above street grade causing numerous complaints. The cost to remove and reinstall the covers was \$125,000. The initial job cost was \$150,000.
- Drywall was installed throughout the new wing of a hospital. Unfortunately, the contractor's purchasing team accidentally ordered several truckloads of three-eighths-inch drywall, rather than half inch drywall which was specified. The contractor proceeded to install the incorrect drywall, and the error was eventually discovered, necessitating the drywall's removal and reinstallation.

The Emerging Faulty Workmanship Marketplace

The marketplace for true faulty workmanship coverage has grown from one carrier in 2014 to approximately six or seven today. Typically offered as part of a blended contractor's errors & omissions product or a totally separate insuring agreement via endorsement to a CPrL policy, faulty workmanship configurations designed to cover faulty workmanship and the defective products used in the course of "your work" are available in capacities ranging from \$250,000 to \$5,000,000. With premiums starting as low as \$2,500-3,500, carriers are often selective when it comes to residential exposures and project type. While those markets offering both CGL and faulty work coverage on a contractors E&O form do so by mandating both be purchased by the same market, some others offer the faulty work coverage independent of writing the CGL.

It should be noted that special attention should be given to truly understanding what coverage is being offered under the title of "faulty work" as some markets are merely providing coverage for products manufactured or fabricated by the insured but coverage doesn't extend to work performed or installed by the insured.

Who's the Best Fit for Faulty Workmanship Coverage?

The beneficiaries of today's faulty workmanship coverage forms are artisans as well as general and trade contractors who are self-performing work. This includes electricians, plumbers, HVAC and mechanical contractors, interior finishers, masons, utility contractors and flooring contractors. Conversely, exterior insulation and finish systems (EIFS) roofing, structural and environmental contractors are often excluded. The other caveat is that the moment these contractors sub out their work, perform construction management or delegate design, the risk management or coverage automatically shifts toward professional liability exposures rather than Faulty Workmanship.

The benefit for most contractors, however, surrounds the ability to fill the policy gap for "your work" faulty workmanship claims triggered by third-parties against the insured – a true advantage for any construction professional who could neither afford or withstand the risks that accompany costly and timely claims.

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FEATURE

Taxation in Construction: Contractors' Guide to Sales Taxes

by Patrick Hogan, CEO, Handle

The construction industry is currently experiencing a boom. Thanks to strong economic conditions, multiple job opportunities, and investment from the government, the industry is projected to reach \$1.8 trillion by 2023.

But in this world, nothing can be said to be certain except death and taxes. As your construction business experiences a boost in revenue, it is important to stay on top of your tax obligations or risk the scrutiny of your state's tax authorities.

In general, when a buyer purchases something from a seller, the buyer needs to pay the sales tax, while the seller collects the tax and sends it to the relevant tax authorities. In the construction industry, however, dealing with taxes is easier said than done. For something that has a huge impact on the bottom line, rules and regulations about construction sales taxes are rarely straightforward and often confusing.

So before you get hit with an audit and incur the wrath of your state's tax authorities, here are some general guidelines on how to deal with construction taxes. Note that the following is not intended as a legal ruling but rather a general guide to sales taxes in the construction industry. Consult your state's revenue services department for specific information.

In general, construction services are not taxed

Most states do not require construction companies to charge a sales tax on services rendered. However, there are some states that require contractors to charge a sales tax on certain types of projects. With the rise of service-based companies, many states are considering the changes in the current business landscape and are beginning to collect taxes on some services.

The states of Alaska, Delaware, Montana, New Hampshire, and Oregon do not impose a statewide sales tax on services. Meanwhile, the states of Hawaii, New Mexico, South Dakota, and West Virginia tax services by default except for services that are specified in their state laws. The remaining 41 states along with the District of Columbia also do not tax services by default, but there are services specified by state laws that are taxed. Because each one of these states taxes different types of services, construction businesses need to review which aspects of their services are taxable and which are not.

In general, taxability of material purchases depends on the contract

In most states, contractors need to pay a sales tax upon the purchase of materials to be used in a construction project. However, this can get a little tricky. There are a few states that treat contractors as resellers who purchase materials to transform and sell to a buyer depending on the form of contract that they use.

In general, there are two types of contracts in construction:

- Lump-sum contract—With this contract, labor, materials, supplies, overhead, and profit are all "lumped" together in one item amount.
- Time and materials contract—With this, the stated contract amount is based on separate and itemized charges for supplies and materials and the rate of workers for their services.

Currently, Colorado, Washington, D.C., Indiana, Nebraska, and **Texas require contractors** to charge sales taxes on the materials section of a time and materials contract. Contractors in these places must also pay a sales tax on the purchase of materials used in lump-sum

contracts. Meanwhile, the states of Arizona, Hawaii, Mississippi, and New Mexico require contractors to charge a sales tax for both lump-sum contracts and time and materials contracts.

Consult a tax professional before making a bid

Sales taxes have a huge impact on your bottom line. Depending on the type of contract you use for a project, an incorrect estimate of the sales tax may lead to a bad construction deal. So before you bid on any job, it is always a good practice to consult a tax professional to help you determine crucial information that will aid you in your decision.

It doesn't hurt to ask questions about the taxability of some of the aspects of your business. For instance, you need to ask whether you will be treated as a reseller on a specific project and therefore need to up your bid to account for sales taxes or not. State laws may also provide exemptions as well as project-specific rules which you need to know reasonably well before making a bid.

Believe me when I say that learning about the numerous taxation rules and regulations is incredibly frustrating, especially for people who are not fluent in legalese. But at the end of the day, your due diligence can help you make better business decisions.



Patrick Hogan is the CEO of **Handle.com**, where they build software that helps contractors, subcontractors, and material suppliers

with late payments. Handle.com also provides funding for construction businesses in the form of invoice factoring, material supply trade credit, and mechanics lien purchasing.



FEATURE

Turning the Corner on Auto Claims

by: Jim Berriatua, Vice-President, Gallagher Global Construction Services



John was driving a company vehicle to a work site when he got a phone call. He glanced over at the screen to see who it was, just as Shawn was scurrying across the street, earbuds in, listening to the latest Grisham novel, trying to beat the solid red hand. Bad timing, distractions...we know what happens next. And it could happen to anyone.

Distracted driving happens, and it is now the # 1 cause of car accidents in the U.S. Speeding is # 2. As a business owner, with vehicles on the road, how do you combat this growing trend?

So what's your #1 Fleet Safety goal for 2020?

- Protect Employees?
- Protect the Company?
- Reduce Your Costs?

How about all three?
Collision-avoidance technology combined with text-deterrent technology and Motor Vehicle Record (MVR) 24/7 notices (for suspended licenses) have been shown

to dramatically reduce accidents, thereby reducing your company losses and insurance costs.

The Main Culprit

Cell phones are a ubiquitous part of our lives. Despite laws and fines for hand-held cell phone use in many states, the increase in distracted driving shows that these measures are not enough. Yes, there are more than enough other distractions too numerous to mention, but the drastic increase in accidents over the past few years is due to increased cell phone use. A **recent report** predicted that 6,590 pedestrians were killed on U.S. roads in

2019 – the highest number in more than 30 years!

The U.S. has the **most dangerous roads in the industrialized world**, with a vehicle fatality rate 40% higher than Canada and Australia. In 1993 the maximum speed limit in the U.S. was 65 mph. Today, **41 states have speed limits above 70 mph, with some states at 80 or 85 mph limits.**

Many companies have initiated driver training, dash cams, and telematics (documentation of driving habits) to help bring down their company accident rate. But while these systems may help, they're not very effective in bringing down their accident rate. But...there are systems which do.

MOST EFFECTIVE PROTECTION		
Audio Alerts (CAS)	Disable Texting	24/7 Suspended License Alerts
<ul style="list-style-type: none">• Following too closely• Pedestrians/cyclists• Turns w/o signaling• Lane creeping	<ul style="list-style-type: none">• Only when driving• Allows telephone calls (if needed)• Allows navigation and 911• Stops when vehicle stops	<ul style="list-style-type: none">• Email or text alert• All states• Immediate notification• Shows reason for suspension

Protect Employees

What if your car alerted you when you got too close to a vehicle - or a pedestrian or cyclist? Or when you strayed over the lane divider without signaling? Collision Avoidance Systems (CAS) have been shown to reduce or eliminate employee and pedestrian injuries, preventing major financial losses and increases in insurance.

To ensure that your employees are not texting and driving, new technology is now available that blocks incoming and outgoing texts, but only when your employee is the driver and only when the vehicle is moving. Hands free phone calls can be blocked or allowed. 911 calls and navigation apps are always left open.

Protect the Company

In addition, driver behavior has to change. But how? Like Pavlov's dogs being conditioned to salivate when a bell rings (knowing that a meal is on the way), can humans become better drivers if a bell rings to warn them they're not driving safely? Wouldn't it be nice to be alerted when you're too close to another vehicle/pedestrian/cyclist? Or when you've unintentionally started to drive across the lane? Would you like to know at any time, 24/7, if one of your employees has their license suspended? This technology is now available and covers drivers in every state.

After the Insurance Institute for Highway Safety installed CAS in their 22 vehicles,

a poll was conducted from the drivers. Their responses were overwhelmingly positive, declaring the CAS "helpful", "an eye-opener", "safer", "improved my driving." Poor driving behavior CAN be changed.

20 automakers (99 percent of U.S. light vehicle sales) have indicated that some form of CAS will be standard in their vehicles by 2022. Telematics PLUS Collision Avoidance Systems (CAS) actually CHANGES driver behavior.

Reduce Your Costs

With an installed cost of \$700-\$900 per vehicle - or about \$140-\$180/year over five years, it's a small price to pay for eyes and a brain that are ALWAYS focused on their surroundings and don't get distracted.



Real-world benefits of crash avoidance technologies

HLDI and IIHS study the effects of crash avoidance features by comparing rates of police-reported crashes and insurance claims for vehicles with and without the technologies. (June 2019)



Forward collision warning

- ↓ 27% Front-to-rear crashes
- ↓ 20% Front-to-rear crashes with injuries
- ↓ 9% Claim rates for damage to other vehicles
- ↓ 16% Claim rates for injuries to people in other vehicles

Forward collision warning plus autobrake

- ↓ 50% Front-to-rear crashes
- ↓ 56% Front-to-rear crashes with injuries
- ↓ 13% Claim rates for damage to other vehicles
- ↓ 23% Claim rates for injuries to people in other vehicles

iihs.org

© 2019, Insurance Institute for Highway Safety, Highway Loss Data Institute, 501(c)(3) organizations



"Being a transport company that travels into some of the heaviest traffic areas in the Northeastern United States, CAS has helped us to reduce incidents on the road and maintain a high safety rating with our insurance.."

-Jimmy Pardo Vice-President & Founder, [P&B Transport](#)



Ambu-Trans, a private ambulance service company in New York typically had 35-50 crashes a year, with about \$1 million in losses. After installing a Collision Avoidance System (CAS) in their fleet, the results were dramatic. They had 5-6 crashes a year, lowering their losses and insurance rates dramatically.

The Whiners

Yet some drivers complain:

- "These things are too annoying." So were seat belts at one time, yet like seat belts, the safety features outweigh the annoyance.
- "Drivers will rely too much on these safety features." And studies have shown that poor driving reminds them NOT to rely on the features. Sort of like potty training.
- "The safety features themselves are too distracting." That's when you learn NOT to drive poorly.

So how about it? Wouldn't you like

- 1) Safer and better drivers?
- 2) Fewer accidents?
- 3) Lower insurance costs?

Rate yourself. All of the listed items in the chart have been shown to improve driving habits.

How many points can you rack up (in a good way!)?

Jim Berriatua is a Risk Management Executive within Gallagher Global Construction Services. Protecting Employees while they drive is one of his focus areas for his clients. CSP, PE, ARM designations. Contact Jim at Jim_Berriatua@ajg.com. For more information on Gallagher, [click here](#).

Fleet Safety Record		
Pts	Y/N	Risk Management Action
20	[]	Car allowance vs. Co.-owned vehicles
20	[]	Written Policy Who can drive, when, where, discipline
20	[]	24/7 MVR Checks
20	[]	Dash cams, front, 180°
20	[]	Telematics w/ policy and managed well
10	[]	No cell phone while driving policy
10	[]	Driver education
50	[]	Collision-avoidance system: Safe following warns Lane departure warnings
___	[]	Other? _____
___		Total Points

NATIONAL SAFETY COUNCIL

HANDS-FREE IS NOT RISK-FREE

Every day, 9 people are killed and more than 1,000 are injured in crashes involving distracted drivers.

Over **100 PEOPLE** die every day in car crashes.

Drivers looking out the windshield can miss seeing up to 50% of what's around them when talking on a cell phone.

Field of view narrows while talking on a phone

THE ESSENTIAL TRIO: requirements for driving

- Eyes on the road
- Hands on the wheel
- MIND ON DRIVING**

You can't talk on the phone and read a book simultaneously because your mind can only process one task at a time. So why would you think you can safely drive while using your phone?

Eyes to read | Mind to comprehend
Hands to hold the book

TAKE THE PLEDGE TODAY!
Handheld and hands-free cell phone use are deadly distractions while driving. Take the pledge to drive phone-free at nsc.org/pledge

JustDrive
nsc.org/justdrive



Human Reclamation Through Bricklaying

by George F. Will, Columnist

In the 1940s, Steve Shelton's grandfather dressed up — white shirt, tie, fedora — to take the streetcar to the steel mill where he would change into work clothes, and would shower before dressing up to return home. "There was," Shelton says, "such dignity in the trades back then."

There still is at the Trade Institute of Pittsburgh (TIP) that Shelton launched. There, in what used to be a Westinghouse Electric factory, some men, many in their 30s looking for their first legal jobs, and a few women learn to wield trowels and mortar, thereby deriving from bricklaying (and welding, carpentry and painting) a dignity they did not feel when they grew up on this city's meanest streets, or when, for 85 percent of them, their incarcerations ended.

Shelton, 59, was 12 when he first was taken to a construction site. "I just wanted to build stuff," so after enjoying two things in high school (wood shop, metal shop), serving in the Navy and working in the trades, he started a business "out of the trunk of my car." Eventually, however, he wondered: "Where are all the young guys?" He saw: "Everyone was being pushed to college." He thought: "Having guys 55 or 60 years old on top of scaffolding, laying bricks, is not sustainable."

He knew there were guys like him "who want to work with their hands." Many were coming out of jail. Shelton talked with churches and civic organizations, and eventually the local Mellon (banking) and Heinz (ketchup, etc.) foundations. One thing led to another, and to this: The abandoned factory — deindustrialization has upsides — has a floor covered with bricks, cinder blocks, tubs of mortar and people trying to get the hang of building things, and get on the bottom rung of the ladder of upward mobility.

Things were made in the factory in the 1920s when Pittsburgh, then America's ninth-most-populous city (in 1920 it was just ahead of Los Angeles) made the nation's steel ligaments. In 2020, builders are made in the factory. Pittsburgh, now 66th in population, has put aside smokestacks and remade itself around technology and health care. It has, however, a construction boom — partly a result of Pennsylvania's fracking — and a shortage of workers in the building trades.

Shelton's \$1.4 million annual budget, from private and public sources, enables him and his staff "to take someone from nothing to a living wage in 10 weeks." Cameron Meadows, TIP's assistant masonry instructor, served 10 years for shooting someone in a bar fight, long before TIP changed his life. Shelton notes that when his human reclamation program prevents someone from spending 60 years in prison, costing Pennsylvania \$50,000 a year, "I've saved taxpayers 3 million bucks."

One in 38 American adults is incarcerated, on probation or on parole. Many former inmates return to communities where they had barely been connected to its constitutive units — families, schools, and civic, religious and commercial institutions. Reintegration — acquiring residences, driver's licenses, bus passes, bank accounts, health care, child care, employment — can be bewildering, demoralizing and exhausting. Some of TIP's trainees are "couch surfing" — moving from one residence to another, night by night. All receive financial counseling. And there are driving lessons in the factory's parking lot.

But every morning at 8 a.m. — not 8:01, because, Shelton says, in construction, time is money — the

trainees sit in the "gratitude circle." There, each says something for which he or she is thankful. They all can mention this: 10 weeks — 340 hours — of free training. And a job on the horizon, sometimes a union job at \$22.58 an hour.

To a person from a fractured family, a job says: Someone objectively values you — enough to pay you to spend eight hours a day adding value to a project. To a person fresh from prison, a job says: You are a welcomed, functioning part of the society that decided it had to put you in a cage for a while. To a person whose education conferred only rudimentary skills, a job says: You have risen from among the unskilled to the rank of craftsman.

An expert bricklayer's virtuosity with a trowel and mortar — Shelton's is magical — as he or she manipulates bricks with motions so fluid that the bricks seem weightless, has the elegance that characterizes all craftsmanship. The recidivism rate among formerly incarcerated Pennsylvanians is around 43 percent. The rate among Shelton's former trainees is 9 percent.

It is an old saying that the devil fills idle hands. But not hands holding trowels.

George F. Will writes a twice-weekly column on politics and domestic and foreign affairs. He began his column with The Post in 1974, and he received the Pulitzer Prize for commentary in 1977. His latest book, "The Conservative Sensibility," was released in June 2019. Read more from George F. Will's archive or follow him on Facebook. This article was originally published January 31, 2020 in the Washington Post. The article is reprinted with the author's permission.



FEATURE

Paving the Way for More Women to Build Construction Careers

by: Claire Andreesen, Senior Project Engineer, McCarthy Building Companies



In fifth grade, a summer science camp ignited my passion for problem-solving and opened the door to my future construction career.

I loved that experience, but was surprised to be the only girl in a class of nearly 30 kids. It was my first exposure to the gender disparity that continues to constrain the construction industry and most other STEM fields. Today, more than a decade later, only about one out of every 10 construction workers is a woman.

I've been fortunate to have the support of many teachers, mentors and peers to guide and encourage me during every step of my career.

While pursuing a civil engineering degree at Iowa State University, I secured an internship with McCarthy Building Companies and gained hands-on field experience working on the construction of a new high school in Mount Vernon, Illinois. As I learned about construction management, I was most excited by the fact that my coworkers invested in me and cared about my success.

Through that internship experience, I also gained an enormous respect for the role of subcontractors—or “project partners,” as we like to call them—to the success of every project. These talented individuals truly take pride in their work and often go the extra mile to be excellent teammates.

After completing a second McCarthy internship the following summer and earning my civil engineering degree, I joined the company's Omaha office as a

project engineer in 2017.

And just a few months ago, I had the opportunity to join McCarthy Mapping, a new team that uses state-of-the-art tools to accurately locate buried utility lines and other underground hazards that can pose a significant risk to construction projects. Our team maps the past to build the future—one utility at a time.

I also recently completed a two-year career development program offered by the McCarthy Partnership for Women, a resource group that supports the recruitment, development and retention of the best women in our industry to broaden diversity of perspectives. The curriculum includes strategic communication, negotiation, decision-making and other topics designed to help women build their strengths and be more effective in their roles throughout McCarthy.

Other construction companies may not offer the same breadth of in-house assets, but they can access a growing array of community resources devoted to attracting women to construction careers and providing a supportive community for them to thrive.

Each year, the first week of March is designated as Women in Construction Week by the National Association for Women in Construction (NAWIC). During this annual celebration, our industry bands together to raise awareness of the many construction career opportunities available for women and to acknowledge the growing role of women in construction roles.

For the last two years, I've served on the Board of Directors for the greater Omaha chapter of NAWIC. This diverse group includes about 50 women who build each other up and engage with the local community to expand opportunities for women in construction. Our activities include an annual golf outing to fund scholarships; professional networking opportunities; and a Block Kids event where young people create, design and build LEGO® structures to spark their interest in construction.

Growing up, I did not see a lot of women in construction roles, so I wasn't really aware of the options available to me. As I continue building my career, I take seriously my role in helping other young women (and men) discover opportunities for charting their own construction career paths. Each time I visit a jobsite or participate in a community outreach event, I'm a visible representation of what's possible for them.

It gives me great satisfaction when young people today see me doing the job that I love. I hope through my example that they can begin to visualize construction as a viable career option for themselves.

I'm proud to be part of an industry that improves communities, enriches lives, and leaves a lasting legacy. That's why I'm committed to do what I can to open up opportunities for other women to make their mark.



Claire Andreesen is a mapping senior project engineer in the Omaha office of McCarthy Building Companies. As a member of the Mapping team, she collaborates with

*locate technicians to help owners and project teams visualize site-specific conditions, subsurface conflicts, design challenges and constructability issues before they negatively impact construction projects. Claire is an advocate for women in construction, a drone pilot and an enthusiast of lean practices. **Learn more about the McCarthy Partnership for Women.***



FEATURE



BE PRO BE PROUD

Working to Bring Skilled Professionals to the Trades

by Mary Klett and Jenny Harris, ASA Communications Team

We've heard the dire statistics, and maybe even gotten frustrated ourselves when searching for a good candidate to replace a valued employee. More than 82% of manufacturers report that they have a moderate to severe shortage of skilled workers. Nevertheless, two out of three parents say that a skilled trade career isn't right for their child.

The Initiative

Be Pro Be Proud plans to turn this problem around by educating students, parents, and teachers about the high tech, high-wage career paths of manufacturing, trucking and

featuring 13 highly interactive stations that utilize tools currently offered by companies to train their respective workforce. All are highly interactive virtual reality, augmented reality, or full-immersion experiences.

Supported by industry organizations and companies affected directly by this labor shortage,

the Be Pro Be Proud website has an information page for each profession, providing a link to a video about that profession, specifics on job responsibilities, 10-year future job demand, required education and training, and Dept. of Labor average wage information. Additional links take the visitor directly to a Find Training, Find Jobs page or to join the mailing list.

TARGETED SKILLED PROFESSIONS

Computer Programmer	Heavy Equipment Operator	Electrician
CAD/CAM Drafter	Lineman	HVACR Technician
Commercial Truck Driver	Tool & Die Maker	Diesel Technician
Automation Robotics	Machinist	CNC Operator
	Plumber	Carpenter
		Welder

construction industries. This initiative increases awareness of the skills gap as an existential threat to economic growth, and changes attitudes and perceptions about the skilled trade professions, instilling pride in what we know to be rewarding careers.

In 2016 the Arkansas State Chamber of Commerce started an initiative to take the "professions to the people" through their Be Pro Be Proud program. Since that time, almost 98,000 visitors have been wowed by their mobile workshops, while making 543 tour stops and visiting 285 cities.

Bigger and Better

In September 2019 the second generation Be Pro Be Proud Mobile Workshop debuted, consisting of a 78-foot, custom-built double-expandable trailer (1000 sqft)

Proven Results

During his remarks at the Be Pro Be Proud September 2019 Launch Event, Arkansas Governor Asa Hutchinson stated, "If you look at the last four years since this Initiative has been created, our high school graduation rate has gone up four consecutive years and in fact we have consistently moved up and are now 14th in the nation." He went on to say, "I believe that our graduation rate has increased because we have given young people options and hope, and an understanding that they can fit in through an education path that will lead to a good paying job. I think this is what [Be Pro Be Proud] has done, and this is a success story."

In addition, Arkansas Tech University - Ozark Campus has seen a 21 percent increase of entering freshman enrollment growth in the two years since making regular visits to the campus, and the Chancellor, Bruce Sikes, directly credited the Be Pro Be Proud program.

The Future

The Arkansas Chamber of Commerce has licensed its intellectual property regarding its initiative to both South Carolina and Georgia, and the Be Pro Be Proud rolling workshop has made stops in Kentucky, Georgia and Las Vegas. They are also having conversations with Maine, Oregon, North Carolina, Wisconsin and Kentucky.

For a publication describing the program and interviews with those who are in these careers, click [here](#).

To learn more about Be Pro Be Proud, please visit www.beprobeproud.org, or email [Trey Lamberth](mailto:Trey.Lamberth) or call 501-372-2222.





FEATURE

Fit? Experience? What About an Employee's "Add"?

by Brittany Bainum, Founder, Tradeworthy Jobs

In our industry, the demand for talent has never been greater. The construction industry has new builds and projects constantly popping up nationwide, which is great for developers and builders alike. However, moving at the speed of light also requires a strong subcontractor labor force to support such growth, which has left many exhausted in the hunt for laborers.

With more than 15 years working in the construction industry, serving in several HR leadership roles, Brittany Bainum, founder of **Tradeworthy Jobs** talks with *The Contractor's Compass* about the rapidly-growing need for talent, what to keep in mind when interviewing candidates - and what to do once they are hired.

What's more critical when it comes to filling roles in your organization: hiring for experience or hiring based on if the candidate will be a good internal culture fit?

We hear this often – "I need experience for this role – we need someone to hit the ground running." It makes sense; the construction industry often runs

at a breakneck pace. Having a father who ran his own commercial, interior contracting business, I would often hear from him that someone "always needed it...yesterday!"

But oftentimes, hiring based only on experience might result in faster turnover. Finding a mix of both culture fit (or culture add) and experience, generally proves to be the most effective long term. So - how do you find people that will 'fit' well within your culture? It all starts with the interview.

We hear the term "culture fit" used a lot during the interview process. Why should employers consider culture fit when hiring?

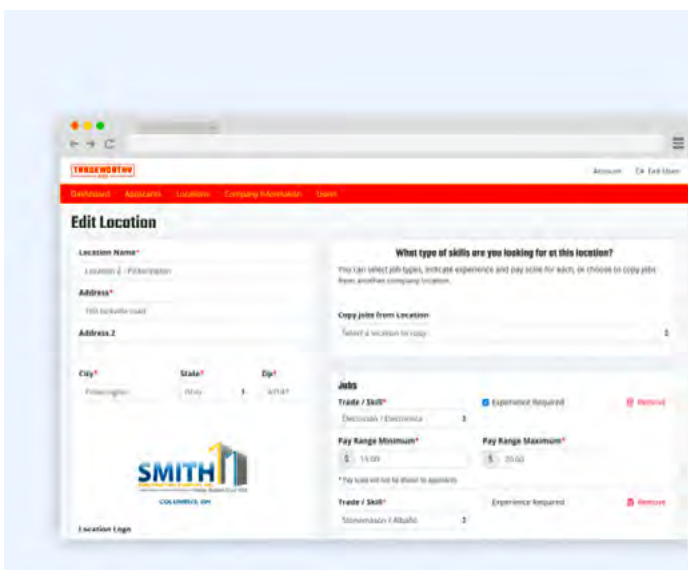
Culture fit is a word used a lot in the HR function - regardless of the industry. How well will an employee "fit" in the organization's culture. While culture fit is important, I generally prefer using the term culture add. To me, the word "fit" gives a vibe that we are trying to conform (or fit) employees into the organization's mold. Add on the other hand suggests that all employees bring something different and unique to the table. The

more diverse the workforce, the better. Without a doubt, culture add is incredibly important when interviewing potential employees.

So with the high costs associated with turnover, maybe a mix of experience and culture add would prove most valuable in the long run? So how do you find people that will add to your culture?

Yes - I've typically seen that a good mix when hiring a candidate is a mix of previous experience and culture add - or what they can bring to the team. The experience is straight forward -- but how do you arrive at what a potential employee can add to the team? Simply put, ask interview questions related to your values by asking for an opposite example.

For example...say one of your organization's core values is safety. A potential interview question could be, "tell me about a time when you were unsafe on the job." A possible answer could be: "Safety is incredibly important to me. I have a family and I work really hard for them. I won't put my own safety



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on the line for any job." Great answer – that aligns perfectly with your core value of safety. Another answer could sound something like, "I feel like safety is talked about at my work to just check the box. It's not something that we stress, so I don't know the rules very well or find them important." Most likely that's not someone who is going to work out well in your organization.

What are some potential other questions you can pose during the interview?

Another great question is: "Who do you find most difficult to work with? Tell me about a time when you had to work with someone like that and how you handled it." This provides insight into how you handle conflict, and if I know my workforce well, I can do my best to place you with someone you'll work best with; or possibly not bring them on at all?

Once the employee is hired and in the door, what's next?

Without a doubt, construction firms are shelling out significant time, money and resources to recruit the best talent into the company. How can they ensure their employees are being leveraged to their full capacity? What are we doing to keep our employees engaged? What are we doing to empower them to make decisions and learn and grow? The second an employee doesn't feel engaged they will likely begin searching for other jobs. And with how in-demand laborers are, we can't afford to lose our good, hardworking talent. We spend a lot of time in the industry recruiting - but what we often aren't putting as much emphasis on is RETENTION.

Once an employee is in the door, it is critical we shift the narrative and focus on retaining them. The best brand ambassadors are your own employees. But, without feeling valued or a sense of loyalty from their leadership, those employees will not reciprocate the loyalty in return and will leave the moment a better offer presents itself.

What are some easy, cost-effective ways to keep employees engaged - keeping retention top-of-mind?

Easy and low-cost methods can go a long way in showing employee appreciation. Those include tactics like:

- **Serve breakfast.** Rather than tossing a box of donuts on the table, serve breakfast to members of the team. Rally members of the sales, management, or leadership teams to literally stand behind the table and serve a warm breakfast. This simple tactic ensures personal connection, gives the team a chance to meet, and without a doubt is more meaningful than a nameless box of pastries on the counter.
- **Implement award programs.** Employee awards go a long way when it comes to internal recognition. Employee awards can come in two forms - peer-to-peer recognition and awards given from the top down (leadership to employee). One thing to keep in mind, if you are rolling out a peer-to-peer recognition program, it's important to make it easy to nominate co-workers - if the process is complex or daunting, you likely won't have repeat employees nominating team members again. Aligning awards to company values is also ideal. Remember, our interview question based on safety values? Awards based on safety measures would also provide symmetry within the organization.
- **Install ride alongs.** One of the best ways to get members of your sales team actively engaged is bringing them along on an install day and putting them to work on occasion. Not only does this build a sense of camaraderie, it also keeps the leadership visible with the field employees. Visibility and transparency are two of the most important qualities a leader can possess.

Last year you launched a new app called Tradeworthy Jobs dedicated to connecting construction employers directly to potential employees. It's certainly a new tool and approach for the construction industry. What does the app provide its users?

Tradeworthy Jobs' goal is to serve both construction employers - and potential construction employees - and get to the future faster. Born out of frustration with current recruiting methods and tools, Tradeworthy Jobs directly connects employers with construction candidates - truly adapting to the users needs. As construction firms create positions, our job is to serve them to the masses. The Tradeworthy Job app also allows employers to build a comprehensive company profile, allows candidates to message employers directly and gives candidates the ability to build their own profile with their experience (almost like a LinkedIn profile for construction candidates).



*With more than 15 years in the construction industry serving in a variety of HR leadership roles, and a rooted understanding of the challenges connecting construction employers to potential employees, Brittany launched **Tradeworthy Jobs** - an app and web-based platform dedicated to bridging that gap because of construction employers and candidates. Brittany earned her undergraduate and MBA degrees from Capital University, where she also played on the varsity volleyball team. Active in her central Ohio community, Brittany is married to Jason and has three amazing children, Ellie, Hali, and Brock.*

A few memories to share...



▲ This was the time to recognize those who have greatly contributed to the growth of the industry. Thank you all.



▲ A toast offered to retiring ASA of Arizona Executive Director Carol Floco on her many years of service on behalf of our members. Enjoy your retirement, Carol!



▲ The photographer has to stand a bit further back each year, as more and more women join the industry. Let's celebrate!



▲ ASA salutes our 2019 Certificate of Excellence in Ethics to construction subcontractors. These members represent the highest standards of internal and external integrity.



▲ ASA President Anthony Brooks presents the Chapter of the Year Award (50-100 members) to the ASA of Michigan and the ASA of Western Pennsylvania!



▲ Members of the ASA of Oklahoma accept the Chapter of the Year Award (over 100 members) from ASA President Anthony Brooks for their outstanding achievement in chapter operations!



▲ Warren Quinn, Executive Director of ASA of Baltimore, accepts the New Executive Director of the Year Award from ASA President Anthony Brooks. Congratulations, Warren!

Complimentary Webinars

TUESDAY, APRIL 14, 2020, NOON TO 1 PM

What Contractors and Subcontractors Need to Know About Integrated Project Delivery

IPD, in which Owner/Developers, Design Professionals, Contractors and Subcontractors agree in advance to work collaboratively in the design and construction process is becoming more commonplace in the Philadelphia construction marketplace. Kevin Amadio, a Kaplin Stewart partner, will discuss many of the practical and legal changes that come with the IPD process, and his experience using IPD. Join the webinar and learn about how IPD affects your role and responsibilities on a construction project. [Click here to register.](#)

Presenter: *Kevin Amadio, Esq.*

TUESDAY, MAY 12, 2020, NOON TO 1 PM

Practical Subcontractor Solutions to Common Legal Disputes in Construction

Jason Ebe will review and provide practical advice for subcontractors facing legal disputes common to construction projects, including recommendations on a wide variety of topics from work site conditions, delayed payment, and much more. [Click here to register.](#)

Presenter: *Jason Ebe*

TUESDAY, JUNE 9, 2020, NOON TO 1 PM

Setting the Table for Effective Contract Negotiations by Using ASA Bid Conditions

Conditioning your bid can be a powerful tool for negotiating and securing your preferred contract terms and conditions. In this workshop, you will receive suggested bid condition language and tips on how to negotiate using them. Registration coming soon.

Presenter: *Dan McLennon*

For all upcoming ASA events, go to www.asaonline.com

Coming Up

in the April 2020
Issue of ASA's



Theme:

Discussing Terms of Payment

- Tips to Getting Paid on Time
- Terms of Payment Thoughts
- Terms of Payment—the Legal Side

Look for your
issue in April.

To access past issues
of The Contractor's Compass,
please [click here.](#)

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ASA's SLDF supports critical legal activities in precedent-setting cases to protect the interests of all subcontractors.

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COMMUNITY NATIONWIDE**

ASA underwrites the legal costs of filing "friend-of-the-court" briefs to inform the Court regarding the broader impact of relevant cases throughout the country. We have won dozens of these cases since 1997, vindicating subcontractor rights today and into the future!

WE NEED YOUR SUPPORT

Funding YOUR Legal Defense

Each year, courts across the country hand down hundreds of decisions on federal and state laws, as well as court-made or "case" law, that apply to subcontractors' businesses. Many of the decisions impacting subcontractors interpret the contract provisions of subcontract agreements—provisions like pay-if-paid, hold-harmless, duty-to-defend, and no-damages-for-delay. Some of these decisions are precedent-setting and carry significance for subcontractors across state lines.

ASA's Subcontractors Legal Defense Fund supports ASA's critical legal activities in precedent-setting cases to protect the interests of all subcontractors. ASA taps the SLDF to fund amicus curiae, or "friend-of-the-court," briefs in appellate-level cases that would have a significant impact on subcontractor rights.

From its inception, the SLDF has been involved in many landmark decisions, starting with its first case in 1997, Wm. R. Clarke Corporation v. Safeco Ins., which prohibited pay-if-paid clauses in California.

Your financial support keeps the SLDF in operation - PLEASE DONATE TODAY

To make a contribution to this vital fund, visit <http://www.sldf.net> or send an email to soscar@asa-hq.com for more information!

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MARCH 2020


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by Brian Wood, Smith, Currie & Hancock, LLP


 **The Hidden Costs of Labor**
by Jim Welsh, Payroll4Construction.com

 **LEGALLY SPEAKING: Faulty Workmanship Coverage: An Evolving Oddity in Contractors Professional Liability Insurance**


Co-authored by: Jeff Slivka, President, Environmental and Construction Professional Practice; and Joe Reynolds, Assistant Vice President - Environmental and Construction Professional Practice, RT Specialty, LLC


 **Taxation in Construction: Contractors' Guide to Sales Taxes**
by Patrick Hogan, CEO, Handle

 **Turning the Corner on Auto Claims**
by Jim Berriatua, Vice-President, Gallagher Global Construction Services

 **Human Reclamation Through Bricklaying**
by George F. Will, Columnist

 **Paving the Way for More Women to Build Construction Careers**
by Claire Andreesen, Senior Project Engineer, McCarthy Building Companies

 **Be Pro Be Proud: Working to Bring Skilled Professionals to the Trades**
by Mary Klett and Jenny Harris, ASA Communications Team

 **Fit? Experience? What About an Employee's "Add"?**
by Brittany Bainum, Founder, Tradeworthy Jobs

 **SUBExcel 2020 in Pictures**

Thinking About Taxes, Insurance, Employment

Special Analysis:
COVID-19 Construction Impact

Brought to you courtesy of your NGA / ASA Alliance



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