

Avoiding Liability for Subs

by Quenda Behler Story & Sid Hymes

Like anyone else, subcontractors can make mistakes. But when your sub goofs, how do you protect yourself?

For example, suppose your electrical sub fails to ground a wire properly and one of his employees is injured. If the sub has all the right insurance, great. But if not, you, as the GC, could have a big problem.

Workers Comp Coverage

The GC is usually protected when a sub is covered by insurance. The general rule is that if the injured person is an employee, he can't sue his employer; an injured employee's sole recourse is a workers comp claim. If, however, the employer does not have workers comp insurance, many states allow the employer (here, the subcontractor) to be sued for negligence. Some states go further, making the GC directly liable for injuries to an uninsured sub's employees. While workers comp awards can be substantial, they are dwarfed by negligence awards in jury trials.

Make sure that all employees on your sites are covered by a workers comp insurance policy. As a GC, you need to verify that each of your subcontractors has workers comp insurance, and that the insurance remains in force throughout any of your projects on which a sub is working. It's best to have the insurer issue a certificate of insurance directly to you, and to arrange for the insurance company to notify you 30 days before the policy expires or is up for renewal.

General Liability Insurance

Suppose, in the above example, the person who is injured isn't an employee on the project. He or she might be delivering material to the job site or just passing by; worse yet, the injured person might be the homeowner. In this

case, the injured person is not an employee covered by workers comp rules and will sue for negligence. In a negligence action, the plaintiff's lawyer will name everyone involved in the project, for two reasons: First, the more potentially liable parties there are, the more likely the plaintiff will receive a favorable settlement; second, if the attorney misses a potential defendant, he or she can in turn be sued.

The legal rule of thumb is that a subcontractor is an independent contractor, not an employee; therefore, the contractor is not liable for the subcontractor's negligence. Unfortunately, any half-competent plaintiff's lawyer can make the argument that the GC, the architect, or someone else contributed in some way to the claimed injuries. And with the costs of litigation what they are, it becomes less expensive to settle than to fight.

As with workers comp, the GC needs to obtain certificates to verify that all subs carry general liability insurance. When your subs have the right insurance, your liability exposure (and often, your insurance rate) is reduced.

Inherent Danger

But even when your subs are "fully" insured, you're not totally out of the woods. Some activities fall outside of the traditional rules of responsibility. Over the years, some courts have concluded that liability for inherently dangerous work can't be subcontracted away; in other words, the GC remains potentially liable even when subs are independently insured. Blasting, trench work, and tunneling are examples of the kinds of work that have been found to be "inherently dangerous." If you or your subs are involved in this kind of work, talk with your attorney and your insurance agent about your potential liability.


Staying Out of Trouble

The fact is, accidents do happen, and when people are injured on construction sites, there's no way to prevent someone from suing you. The best you can do is to try to insulate yourself from liability. To protect yourself, start by taking the following four steps:

1. Get those insurance certificates from your subs before the job begins. No certificate, no work. While this could delay the project, you'll be the winner in the long run. Every legitimate employer should have both workers comp and general liability insurance. If your subs cannot produce proof of insurance, it could signal larger problems.

2. Set and enforce job-site safety standards for everybody, including your subs. You can't be sued for accidents that don't happen, so you should do everything you can to avoid accidents. Besides, OSHA requires safety standards and safety meetings on larger projects, and your state OSHA may have similar rules.

3. Know who's on your site. If necessary, gate it or lock it up. Construction sites have a way of attracting kids and curious passers-by. People wandering onto the site stand the greatest risk of injury, so keep them out.

4. Make sure your own house is in order. Check to see that you have adequate workers comp and general liability coverage for your own employees and the actions of your company. Make sure your employees have received proper training, and check to see that your equipment is in good working order. 

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