



MANAGING CONSTRUCTION RISKS

Selecting qualified employees and examining backgrounds

Timothy G. Galarnyk

What if one new employee could cost your company \$1 million within a week of being hired? This may seem like a rare occurrence, but it is happening with alarming frequency. Managing the risks of construction involves following definitive steps to manage the process of hiring new employees. This article will outline steps to take during the hiring process to help you avoid risk.

A potential case of hiring woes

A union ironworker is performing the erection of a steel building. As the project nears completion, the ironworker assists with dismantling one of the cranes. Around midday, the ironworker approaches the site foreman and reports that he injured his lower back while moving a 600 lb (270 kg) stack of outrigger pads. Unfortunately, this event was not witnessed.

After filing the incident, your workers' compensation carrier settles the compensation portion of the claim for \$500,000. The ironworker then brings suit against the general contractor, whom you have agreed to indemnify. When the case is investigated, it is discovered that this ironworker had lower-back surgery 10 months prior to his claimed event, he had a steroid injection a week prior to the event, and he was taking a narcotic painkiller for his back condition every day for months up to and including the day of the incident.

The union never disclosed these medical issues to you when this person was referred to your company for employment. Of course, you did not ask any medical questions of this individual prior to employment because it is illegal.

So the questions you are probably asking yourself are:

- Why did the union refer this person to you?
- How did an injured worker make it into the union workforce?
- What can you do to guard against this type of situation in the future?

Barriers to determining qualified employees

Labor unions have an obligation to refer union members who are qualified and physically able to perform the required trade work. This unwritten rule has evolved because trade unions want prospective employers to hire only union members.

This obligation to provide qualified employees applies to providing an employee who has general training in proper work practices and safety and a basic understanding of the standards of the industry. Unions typically claim that union workers ensure a safer project site, a higher-quality project, and a more schedule-oriented environment. Can the unions back up this claim by providing qualified employees?

The search for qualified employees has become difficult. Federal law prohibits asking about an individual's gender, race, religion, national origin, sexual orientation, political preference, physical disability, and other such identifiers. Employers are not allowed to ask potential employees about medical conditions, their limited criminal record, prior work injuries, or prior work conduct. These restrictions generally make it difficult to evaluate your potential employee's ability to perform tasks such as operating cranes, forming and placing concrete, and operating motor vehicles.

Finding qualified employees

If you are a union shop, inquire with the union about its member screening practices. Does the union provide you with members who are physically fit to perform the work safely? Are the members required to complete any trade training and safety training?

If you are an employer who does not use union employees, I suggest that you consult with a qualified construction labor attorney in the states in which you operate. Employers must select and screen prospective applicants who not only are qualified to perform the work but will do so without injury to themselves or others or without claiming an injury from a past incident.

Your company should develop an application for employment consideration that includes details of the job description. This description should

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include the physical and mental demands of the occupation, such as lifting, stooping, climbing, and bending. Be specific in the description, for example, "The tasks you may be performing will include the lifting of objects weighing up to 50 lb on a frequent basis." Be sure to customize the physical and mental demands of the position to reflect the requirements for safely performing the tasks of employment.

Define employment tasks that you, as the employer, classify as safety-sensitive employment. This means working in elevated areas, operating any machinery and vehicles, working with rigging, and working around moving and operating equipment.

The questions you ask regarding a worker's ability to perform a task will likely identify people who take any medications that would prohibit them from safely performing any of the work tasks, are not physically able to safely perform the tasks, and have any driving-related convictions involving drugs or alcohol that would make them inappropriate for employment in a safety-sensitive position. You also might be able to establish whether the potential employee has a regular doctor who can provide the employee with a medical certification to establish current medical condition and fitness for employment.

Labor costs for manufacturing precast concrete elements generally represent a smaller portion of the total cost of the product. The risks associated with the labor, the potential for injuries and faulty work, increase the exposure to costs many times higher than the cost of labor itself. The entire U.S. manufacturing sector reports that more money is spent on litigation defense than on development of new products.

Know who you are hiring

During the investigation of the union ironworker who claimed to have injured his back, it was learned that the treating physician was not in the same state as the employee. When

the records were examined, it was discovered that this employee discussed with his doctor the fact that his insurance was running out for the current treatment program. His doctor was not informed about his plan to become employed as an ironworker.

The insurance carrier paid over \$400,000 to settle the claim of this worker in the civil suit.

You must investigate prospective employees, and when a claim is made, you must investigate all of the circumstances surrounding each claim. When claims are suspicious, unwitnessed, and questionable, it is not always less costly to settle. Settling claims will only ensure that you are the recipient of many more claims.



About the author



Timothy G. Galarnyk is CEO of Construction Risk Management Inc. (CRM). Galarnyk has more than 30 years of education, training, and field experience in construction and construction-risk management. He has traveled the world promoting construction-risk initiatives, injury and fatality prevention, and investigation of these events for legal adjudication.

Synopsis

Labor costs for manufacturing precast concrete products can increase greatly due to the potential for injuries and faulty work. Managing the risks of construction involves several definitive steps for managing the process of hiring new employees.

Keywords

Employee, employment, hiring, owner, risk, union, workers' compensation.

Reader comments

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