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# Lake County Contractors Association Safety News

August, 2003

**Safety Training** – For scheduled classes, check the enclosed 2003 Safety Training Reservation Form. For more information or to register on-line go to [www.lcca-il.org/events](http://www.lcca-il.org/events). The easiest way to get your employees trained is to let us schedule a class specifically for you. We will make sure the content is tailored to your employees and your industry.

Call Lisa at the LCCA Office for all your safety training needs.

**REMEMBER:** If you have ten or more (or will pay for 10 students) **we will bring the training to your office**, or a site of your choice, or hold your class at the LCCA Office.

First Aid, CPR, OSHA 10-Hour, Excavation Competent Person, Power Line, Confined Space, Respiratory Safety/Silica, Scaffold User or Competent Person, and much more are available for you. Since the LCCA Safety & Education Fund subsidizes the cost, the price is hard to beat.

Training dates are subject to our instructors' schedules, so if you want a particular date, call the LCCA Office as soon as possible.

## **Safety Committee Completes Zero Injury Plan**

– Everybody has a Safety Manual. This provides a reference book of safe practices. What it does not provide is a plan or a system to make sure that accidents are reduced or eliminated. This is where our new Zero Injury Plan comes in handy.

The Zero Injury Safety Plan is a program that will assist contractors to meet a goal of zero injuries. It is designed to direct your attention to the most important elements of a safety program. It is **NOT** a traditional safety manual. It is assumed that the person using this program is well versed in the safety requirements for your type of construction.

But knowing what hazards exist and having a plan to eliminate those hazards are usually two different things. This program is divided into four sections.

- Planning for Safety – Safety issues to consider when preparing a bid for a project.
- Jobsite Safety Management – Managing safety during the construction cycle.
- Safety Orientation & Training – Training requirements.
- Recognition Programs – Suggestions for incentive programs.

Checklists are provided to assist with meeting the goals of each major section. These checklists are not intended to cover all safety hazards to be found on the job. Rather, they are a guide to make sure that potential injury causing activities are identified so protective or corrective actions may be instituted.

The whole program is only 25 pages long and is available free of charge by sending an email requesting LCCA's Zero

Injury Safety Plan to [gdowny@lcca-il.org](mailto:gdowny@lcca-il.org). By return email we will send you a copy in Microsoft Word for your use.

## **Safety Investigations – Attorney-Client Privilege**

**by Bob Schneider, Thilman & Filippini, LLC**

When a safety professional responds to an accident call, he or she faces several important decisions which can create serious liability years down the road. Therefore, an initial assessment must be made to determine the possible outcomes of that investigation. Consider these guidelines:

### **PRINCIPAL #1: TRUTH WILL WIN OUT**

The purpose of a good safety investigation is to protect all parties and prevent loss. This is a "tall order". While you are filling that "tall order" much of your investigation will become discoverable in a future court of law. A professional seeks to take the truth and deliver it as proof. Careful documentation creates the baseline for how that truth will be played out.

Before you begin, you should seriously consider establishing an attorney client privilege. This is necessary for all fatality investigations, serious accidents involving the general public, and any occurrence that could lead to tort action such as a product liability lawsuit. Call your company attorney before beginning the investigation!

Statements taken must be recorded in the "I said - He said" format. Otherwise you may find your opinion, and other documented expert witness opinion, damaging to how the truth is interpreted.

All photographs, statements, diagrams, and 'chain of custody' evidence must be sent and controlled by the attorney of record and best stamped "For Attorney Use". Some day you may need to be able to state truthfully in court that "Under advise of council, my opinions are protected under the attorney client privilege."

### **PRINCIPLE #2: INSURANCE COVERS IT, RIGHT?**

Learn about the types of insurance coverage your company possesses for both your protection and that of the company. Workers compensation generally works as sole remedy-no fault coverage in most states. But in some states, such as Texas, employers are allowed to opt out of that coverage. There are ways for plaintiffs to create class action lawsuits, third party

actions, sole negligence scenarios, and even laws such as the Structural Work Act that subvert the principle of sole remedy. If you work as an independent contractor not covered as an employee of a given company, you may be personally exposed to tort actions. Some states, such as Illinois, have 'Good Samaritan' laws that protect would be first responders. Check out your state and ask about the limits of coverage.

### **PRINCIPAL #3: NEVER STAND ALONE**

Follow company policies. This means your company should have them. Crisis or Emergency management policies are important to a successful company.

- Be prepared to aid the injured. Many events and legal issues will stop here if the injured receive good immediate care.
- Secure and protect the scene. We all know how fast an accident scene can be changed. In transportation, the pictures and statements you take today will likely be impossible to get tomorrow. Construction sites are designed to change minute by minute. Be quick to identify and control all pertinent issues.
- Get all witness statements, in particular those who saw nothing. If you do not document the truth, you have unfortunately made it irrelevant. Resurrected memories anyone?
- Limit your opinions, summary judgments, preliminary conclusions, etc. My favorite phrase is "Unknown, still investigating" which is true!
- Separate the corrective action stage from the accident investigation stage. Do what needs to be done for the immediate safety of yourself and others. Be careful how you document those actions.

**OSHA Ruling on Recordkeeping Form** - In a ruling published June 30, OSHA has decided **NOT** to modify the form which employers use to record workplace injuries and illnesses to include a separate column for musculoskeletal disorders like carpal tunnel syndrome. Finally OSHA has done something beneficial for contractors - paperwork reduction!

OSHA concluded that an additional recordkeeping column would not substantially improve the national injury statistics or benefit employers and workers because the column would not provide additional information useful to identifying possible causes or methods to prevent injury. The agency also determined that useful information about MSD cases is available from other currently published statistics.

## **Construction Safety Center Dedicates**

**Training Wing** - On July 1, 2003, the Chicagoland Construction Safety Council (CCSC) hosted a ribbon cutting ceremony for the new Kenny Training Center. The new training facility was named in honor of John E. Kenny, Sr., the founder of Kenny Construction Company. It is located at CCSC's headquarters, located at 4100 Madison Street, Hillside, Illinois.

The new center boasts 4,500 square feet of space divided into four new state-of-the-art classrooms. In addition to classroom space, the Center boasts a 4,000 foot Learning Laboratory with 18' ceilings. Still a work in progress, the laboratory will be used for hands-on demonstrations in areas such as fall protection, confined space and scaffold training.

## **OSHA Interprets Storage of Materials**

**Regulation** - In response to a request from a contractor for clarification of the Materials Handling, Storage, Use and Disposal standard, OSHA maintains that **storing materials on scaffolds for more than one shift potentially violates three standards**. This could be a nasty surprise for many mason contractors.

First, OSHA clearly defined the term "immediate operations". In §1926.250(b)(5) the regulation reads, "Materials shall not be stored on scaffolds or runways in excess of supplies needed for immediate operations".

According to the OSHA explanation, "immediate operations" means work that will be done in the shift. That means no overnight storage as well as no multiple day storage.

OSHA also connected the clarification to the scaffold standard that specifies "Scaffolds and scaffold components shall be inspected for visible defects by a competent person before each work shift, and after any occurrence which could affect a scaffold's structural integrity". Any materials stored on a scaffold at the beginning of a shift would obstruct this required inspection.

In addition, if the scaffold or its components are constructed of wood, the standard prohibiting covering wood platforms in a way that obscures either the top or the bottom of the platform would also be violated.