

# RISK CONTROL CONSULTING

## Contractor Risk Management Guide

It is important to minimize your liability that may be related to the use of contractors or other non-employees working on your premises or performing services for you.

- Does your organization use temporary labor agencies or outside contractors to perform maintenance, construction or other work or services on your premises?
- Can you be held liable if they are injured?
- To fully protect your organization, you should be very clear on the answers to these questions.

Many organizations do not fully understand the potential for loss associated with the use of non-employees performing work or services on their premises. This lack of understanding can result in significant financial burdens on organizations if a non-employee is seriously injured or killed on your premises.



For example, a manufacturing company was recently handed a \$10 million judgment against them for a subcontractor injured on their site. An employee of a roofing contractor they'd used for many years fell through a dirt covered skylight to his death. The manufacturer's assumption that the contractor's insurance remained in effect year after year was incorrect, and as such, the contractor had no means to compensate the survivors for the loss, so the manufacturer was held partially responsible and sustained this major loss.

By taking some simple precautions, you can minimize your exposure to this type of loss and safeguard your organization's assets.

Answer the following questions to determine whether your organization is at risk. One answer of "yes" means you should take steps to implement full protection. Obviously, a higher degree of risk will mean a need for an increased level of controls.

- Do you subcontract any work to outside contractors?
- Do you use temporary agencies to supply workers?
- Do you use non-employees to perform maintenance or repairs to your facility?
- Are you building a new facility or adding on to an existing facility and using a contractor to do the work?
- Do vendors, clients, inspectors, or other non-employees visit your facilities or sites?

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## Guidelines and Best Practices

Here are some basic guidelines and best practices to consider when working with non-employees:

### Do

- Consider workers' compensation experience modifiers, drug free work place programs and safety programs when choosing subcontractors, contractors and temporary agencies.
- Have a written agreement signed prior to the start of any work involving non-employees such as subcontractors, contractors, etc.
- Include a hold harmless and indemnification agreement in your favor in this agreement.
- Specify insurance requirements in the agreement.
- Require proof of compliance with these insurance requirements.
- Request to be named as an additional insured.
- Request waivers of subrogation for workers compensation and general liability.
- Specify safety requirements in the agreement.
- Monitor work areas to verify the adherence of specified safety rules.
- Document monitoring efforts.
- Include subcontractors in your safety training efforts.
- Conduct documented safety orientations with all non-employees who may enter production areas or job sites.

### Don't

- Let any work begin without the agreement being signed.
- Let any work begin without proof of insurance.
- Sign a contract, agreement or proposal before it has been reviewed and approved by management.
- Allow any of the work to be re-subbed or reassigned without your written permission.
- Hold temporary agencies harmless.
- Ignore safety violations.
- Hire solely on price.
- Think it cannot happen to you.

## Written Contracts

Laws vary by state so consult your legal counsel before implementing new contracts or making changes to existing contracts. Make sure everything you request is written into the contract. This especially applies to insurance requirements, being named as an additional insured, being held harmless and indemnified, reassignment clauses and safety requirements.

Hold harmless and indemnification agreements are critical to the risk transfer process. They can be judged invalid if improperly worded, so it is crucial to consult qualified legal counsel. The additional insured status can act as a backdrop for the indemnification agreement. Reassignment clauses enable you to approve any second and third tier subs to ensure they meet the same contract requirements as first tier subcontractors. If you do not specify the exact safety requirements at the start, it will



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be difficult to enforce them later.

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## **Temporary Agencies**

Do not sign a temporary labor company's contracts or agreements without reading and understanding the terms and conditions. In many cases, the company's standard agreement would have you assume risks you do not contemplate which would hold them harmless and indemnify them from any and all claims. A better course of action is to offer your standard agreement to the labor company and then work toward a reasonable risk transfer arrangement.

## **Construction Contractors and Subcontractors**

Remember you get what you pay for, so the lowest bid is not always the best or most cost effective. When asking for bids, set contractor standards, including a drug free workplace program, workers compensation experience modification limits, a written site-specific safety program and verifiable experience with the size and scope of the project. It's a good idea to also check the contractor's OSHA citation history by going to [www.osha.gov](http://www.osha.gov), then clicking on library, inspection statistics and finally establishment search. Inspect contractor work areas frequently and document those efforts to ensure safety requirements are met.

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This Tribal First Risk Control Consulting fact sheet is not intended to be exhaustive. The discussion and best practices suggested herein should not be regarded as legal advice. Readers should pursue legal counsel or contact their insurance providers to gain more exhaustive advice. For more information on this topic, please contact Tribal First Risk Control Consulting at (888) 737-4752 or [riskcontrol@tribalfirst.com](mailto:riskcontrol@tribalfirst.com).