



INJURED WORKER'S GUIDE
OHIO CONSTRUCTION
ACCIDENTS

KNOW YOUR RIGHTS. BE INFORMED.
DON'T BE A VICTIM TWICE.



CHARLES E.
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Injured Worker's Guide
OHIO CONSTRUCTION ACCIDENTS

A Guide to Dealing with Personal Injury and
Wrongful Deaths on Construction Sites

Charles E. Boyk Law Offices, LLC

www.BoykLaw.com

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All rights reserved. This informational book is intended to provide an overview of OSHA standards and safety standards of care related to the construction industry. It also discusses an injured Worker's rights under Ohio workers' compensation laws and in civil litigation. The information is intended and offered for educational purposes and not offered for sale or resale. With the exception of information that is contained in the public domain, no part of this publication may be adapted, reproduced, stored, or transmitted, in any form or by any means, without the prior written permission of the Charles E. Boyk Law Offices, LLC. Inquiries concerning reproduction should be sent to:

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Introduction

The reality is that if you are reading this book, you may be doing so because you or a loved one has been hurt, or worse. We realize that you are probably not turning to this book because of an interest you have in the importance of workplace safety, but because you may be confronting a real, life-altering issue and you are looking for some guidance. That's why we wrote this book – to help give you the information and resources you need to understand the rights you may have and to make informed decisions as you move forward. It is important for us to help you understand the options you may have and recognize that what you decide to do, or not to do, can have far-reaching consequences.

About This Book

Let's talk about a few assumptions we make about you, the expected reader, of this book:

- You are not a legal professional;
- You don't know much about construction law or the litigation process itself;
- You are NOT intending to represent yourself, but simply want a better understanding of construction law so you are better educated when consulting with and selecting a legal professional to help you.

With these assumptions in mind, the book was intentionally written in a language that is easy to understand. It was

written in the effort to introduce you to particular jobsite hazards, the importance of protecting Workers from these hazards, and law and legal processes involved when a failure to do so results in an injury. While we try to provide enough detail to be meaningful, it is not our goal to be exhaustive.

Even though the book presents the material in a comprehensive manner, we do not want you to be under illusions that you should tackle a construction injury case without legal counsel. Construction law is complex. Very complex. It involves numerous areas of laws that can be challenging to the most seasoned attorneys. We certainly want you to be informed as to your rights, but also want you to recognize when you may benefit from an experienced attorney.

How This Book Is Organized

The law governing construction injury cases and/or the rights of injured Workers is “dynamic” and not easily described. The rules are not set out in a single comprehensive code book, but come from a variety of different areas such as: statutory law, administrative regulations, employment law, contract law, property law, industry standards, insurance law, and common (court-made) law. While it is not the intent of this handbook to be an “all encompassing” treatise on construction injury law, it is our intent to give you a big picture understanding of the law at work. To accomplish this we have organized the book into two distinct parts:

-

- Part I: (Chapters 1 – 6) Introduces readers to some of the most common and serious hazards encountered on construction sites and the responsibilities of various parties to identify and control the risks of injury presented by these hazards.
- Part II: (Chapters 7-9) Looks at what happens when a Worker is injured. We review the potential remedies available under Ohio's Workers' Compensation laws, as well as possible remedies available against other parties who may be responsible for causing the Worker's injury.

Throughout the book we will include real life client case examples to help bring some real world application to what is being discussed.

While the book is designed to give you an overview of construction law, it is not a novel. You do not have to start at the beginning of this book and read it straight through. If there is a particular area you're interested in – go straight there.

DISCLAIMER

While the information in this book is written to apply to most situations, construction litigation often involves multiple parties and multiple causes of action. Cases are unique and frequently complicated and involved. Existing rules and laws are continually challenged, affirmed, discarded, and replaced. As such, this guidebook is not intended to fully describe all rules, exceptions, courses of action, and statutory deadlines that may apply to your case. The book is meant to be instructional, but it is not legal advice and should not serve as a substitute for the counsel of an experienced attorney.

That said, we do hope after reading this book, you are in a better position to participate in the process of protecting and pursuing your rights. Should you have any questions or need assistance with your case, please call us directly at 419-241-1395 or 800-637-8170 and we'd be happy to help you.

Forward

I loved to work – that’s just the type of guy I am. I used to build electrical bridges for Fort Defiance Construction Company and loved every minute of it. That all came to a screeching halt on August 25, 2003, when my boss told me to stand in the bucket of a backhoe so he could lift me up to fix some low-hanging cables and telephone wires. Allegedly he was on his cell phone when I came into contact with an energized line and was electrocuted: 7200 volts of electrical current went through my right hand, across my chest, and blew out my left wrist. I was thrown out of the backhoe bucket and fell to the ground. I woke up in St. Vincent’s Burn Unit. I didn’t know what happened to me or how it happened until they explained what happened.

I spent the next 28 days in a coma and another 87 trying to recover from multiple surgeries, nearly 20 skin grafts, and cardiac arrest, among other things. We called three attorneys after I woke up in the hospital and Chuck was the only one who would come down and visit me there. He went above and beyond from day one; he really had a lot of work involved in the case and he really helped me out. Financially I was hit pretty hard because of the accident and Chuck got right to work.

He handled the worker’s compensation claim and had expert witnesses come in who specialized in electrocution and fall accident cases. They seemed to know exactly what was

going on so that was a good move on his part. Chuck and his staff did so much. They had piles and piles of paperwork on my case and worked hard to get me a settlement that would take care of me for the rest of my life since I can no longer work. He also fought for permanent total disability on my workman's compensation case and social security benefits. Chuck did good. Very good. I would highly recommend him to anyone injured on the job, especially on a construction site. You won't be disappointed.

Robert Lucas
Injured Worker
Boyk Law Client Since 2003

Chapter 1

The Basics of Construction Injury Law



Construction is one of the most dangerous industries to work in. One out of every five Worker deaths last year was in construction, a percentage that has remained fairly constant over the last several years. Despite the prevalence of construction injuries, construction accidents are preventable.

The goal of this Chapter is provide readers with a general overview of the responsibilities of a Contractor to protect its Workers, construction accident prevention and enforcement of worksite safety. In subsequent Chapters, we will get into more specific hazards and safety requirements.

Protection of Workers

The Occupational Safety and Health Administration (OSHA) is responsible for insuring that Contractors protect their Workers. To achieve this, OSHA sets and enforces federal standards for the construction industry. These standards apply to most private sector employers and their employees as well as some public sector employers.

Contractor Responsibilities in General

Under OSHA, Constructors are required to:

- Follow all relevant OSHA standards.
- Provide a safe work environment for Workers.
- Find and correct all safety and health hazards.
- Provide Personal Protective Equipment (PPE) to Workers at no cost.
- Inform Workers of safety hazards through training.
- Keep accurate records of work-related injuries and illnesses.

Accident Prevention in General

OSHA regulations should not be viewed as a “goal”, but as the absolute minimum that a Contractor should do to ensure Worker safety. To achieve this level of Worker protection, Contractors must actively and intentionally commit themselves to Worker safety. This requires the implementation of a comprehensive accident prevention program. This program should include:

- Establishing general safety standards/policies
- Safety Training
- Establishing clear lines of communication between

management, supervision, and Workers.

- Comprehensive accident investigation and safety related record keeping.

The Contractor should hold regular safety meetings for the entire company. These meetings should discuss safety, provide training, discuss issues and reinforce safety objectives.

Project Specific Accident Prevention

Each construction project is unique and presents its own specific safety issues. As such, in addition to having a general safety program, a Contractor needs to also have project specific safety plans. Before a Contractor ever submits a bid or quote for a job, it should study the job plans and requirements and construction schedule to better understand the safety issues involved. It is critical that the Contractor allocate adequate funds in its expected job costs to provide for safety items such as personal protective equipment, traffic control, adequate working platforms, barricades, and other items necessary for the protection of Workers and the general public.

Worker Personal Protective Equipment in General

To ensure the greatest possible protection of Workers, Contractors, as part of their jobsite assessments to identify hazards, must determine what personal protective equipment (PPE) Workers require for safety. PPE must properly fit Workers, be of safe design and construction, and meet or exceed standards developed by the American National Standards Institute (ANSI).

Protection Matters

Ear Protection

- use in noisy areas to avoid hearing loss

Safety Helmet

- use to protect your head from falling objects

Respiratory Equipment

- use to protect from inhaling dust and other contaminants

Safety Glasses

- use to protect eyes from flying particles

Safety Gloves

- use to protect your hands from injury

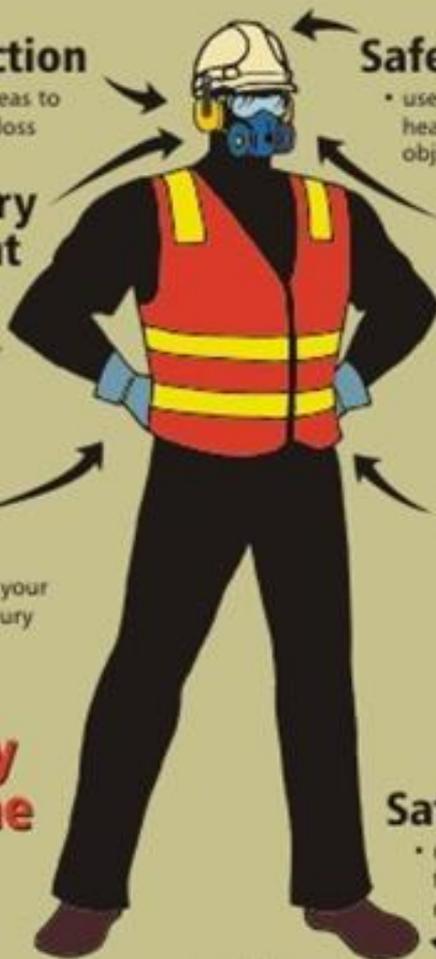
Reflective Clothing

- use to make sure you are highly visible to other personnel

You only have one body!

Safety Shoes

- use to protect your feet from falling or rolling objects



Worker Training

It is the Contractor's responsibility to provide and ensure Workers are trained in all aspects of safety, including hazard recognition, using PPE, and following safe work practices. To accomplish this training, Contractors must ensure that it has competent personnel who are thoroughly trained in safety compliance, instruction, and supervision. Workers must ensure they follow all safety procedures. It is the Contractor's responsibility to correct or remove Workers who pose a safety hazard to themselves or others.

Project Safety Meetings

Generally, at the beginning of a construction project, supervisory personnel meet to review the job and discuss safety. All safety policies and procedures applicable to the work should be discussed and reviewed. A "competent person" who has authority and responsibility for the Contractor's safety obligations should be designated. This individual must ensure the safety policies/procedures are disseminated to all Workers.

Safety Meetings

Designated safety personnel across all trades on site should meet on a regular basis to review accident and other safety issues/deficiencies that have occurred. Corrective measures should be established and safety controls implemented/revised to ensure potential hazards to Workers are communicated and addressed.

Toolbox Talks

“Toolbox talks” are regularly held informal group discussions with Workers that are led by management/safety personnel. These talks focus on a particular jobsite safety issue. Accidents and near accidents are discussed. The goal of these talks is to facilitate jobsite safety and compliance.

Housekeeping

Good housekeeping is a very important element of jobsite safety. Contractors must have a procedure for keeping the jobsite/work areas free of materials & debris that could affect safety. In general, housekeeping procedures should ensure:

- Work areas are free of unnecessary tools, equipment, materials, and waste, particularly in walkways and on elevated work platforms.
- Storage materials are kept in an orderly manner for easy access and clear of jobsite walkways and traffic.
- Worksite debris is disposed of in bins suitable for waste and scrap materials. All waste is disposed of in accordance with environmental laws and regulations. Scrap materials that pose a particular hazard to Workers (sharp/protruding nails) is safely handled and removed.
- Spills of oil, grease, and other substances that could lead to slipping are immediately cleaned up.

First Aid

Contractors must ensure that prompt first aid is available for injured Workers. This can be accomplished by provid-

ing trained first aid responders or by ensuring that emergency response services are in close proximity to the jobsite. First aid supplies should be located at each jobsite and their location known to every Worker.

OSHA Inspections

Providing a safe workplace is a Contractor's responsibility and having a safe workplace is a Worker's right. If a Contractor fails to provide a safe workplace or fails to follow OSHA rules, a Worker can file a complaint (confidentially if requested) with OSHA, asking OSHA to inspect their workplace. If an OSHA compliance officer finds a violation of OSHA standards, OSHA may issue citations and fines and order corrective action of the Contractor. The Contractor is prohibited from retaliating or taking any adverse action against Workers who report injuries or safety concerns.

OSHA's "Fatal Four"

Type of Retaliation
<ul style="list-style-type: none">• Firing/Laying Off• Blacklisting• Demoting• Denying Overtime/Promotion• Disciplining• Denial of Benefits• Failure to hire/rehire• Intimidation/Harassment• Making Threats• Reassignment Affecting Prospect of Promotion• Reducing Pay/Hours

Year after year, OSHA investigations identify that four particular construction hazards that are constantly responsible for the majority of Worker fatalities. These hazards are:

- Falls
- Electrocutions
- Struck by an Object
- Caught-in/between (caught in equipment/objects or struck, caught or crushed in structures, equipment, or material:

These four leading causes of construction Worker fatalities have been dubbed by OSHA as the “fatal four”.

We will take an in-depth look at each hazard and the duties and responsibilities of various parties to ensure safety and guard against risk of injury.

FATAL FOUR

Construction

Hazards

Out of 4,386 worker fatalities in private industry in calendar year 2014, 899 or 20.5% were in construction—that is, one in five worker deaths last year were in construction.

39.9%



FALLS

A fall hazard is any situation that could cause you to lose your balance or bodily support and fall to the ground – either from a dangerous height, down stairs, or at the ground level.

8.2%



ELECTROCUTIONS

Occurring when a person is exposed to a lethal amount of electrical energy, this hazard can happen when a person comes in contact with a live wire or even when another object is energized.

8.1%



STRUCK

Struck-by injuries are produced by forcible contact or impact between the injured person and an object or piece of equipment, including being hit by a vehicle.

4.3%



CAUGHT-IN/BETWEEN

Often referred to as “crushing” injuries between objects, these hazards can occur when an injured worker is compressed between rolling, sliding, or shifting objects.

Eliminating the Fatal Four would save 545 workers' lives in America every year.

Chapter 2

The “Fatal Four”: Falls



Historically, jobsite falls are a leading cause of serious injury and account for nearly 40% of all jobsite construction fatalities. Fall hazards can be found on almost every jobsite. The goal of this chapter is provide readers with an understanding of the specific fall hazards on a jobsite and the responsibilities and methods to manage those hazards and protect workers from serious injury, or worse.

Whose Responsibility?

Contractors/Employers

Workers have a right to a safe workplace. The law requires, Contractors to set up the jobsite in a manner that provides adequate protection for employees from the various fall hazards that may exist on the job.

Contractors are required to provide a training program for each employee who might be exposed to fall hazards. Such program must enable workers to recognize fall hazards and train employees in procedures to be followed to minimize the hazards.

Contractors have the obligation to ensure that this training is conducted by a "competent person". A "competent person" is defined as "one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them". The proper use of real and effective "competent persons" can have the greatest impact on saving lives. Unfortunately, year--to-year, the failure of a Contractor to have a "competent person" is among the most frequently cited violations by OSHA. This failure results in a proportionate number of fall accidents and fatalities.

Workers

Workers have a duty to take reasonable care for their own

safety and to work in a manner that does not adversely affect the safety of others. While it is the responsibility of Contractors to eliminate or minimize the risks of falls, it is the obligation of the Worker to comply with the safety training and instructions given by Contractors.

What is a Fall?

Understanding what a “fall” is, at least in its broadest sense, is not obvious to everyone. However, having a thorough understanding is necessary to providing thorough safety measures to protect workers. To better understand what a “fall” means, it is helpful to consider this simple example:

Roy, a roofer, is up on a flat roof of an old three-story building and falls. He is seriously injured.

Many reading that basic fact pattern will, understandably, assume Roy fell from the roof to the ground. While falls from heights to the ground are the leading source of “fall” fatalities, they are surprising not the most commonly experienced fall-injury.

Breaking apart the generic term of “fall” is helpful to better understanding the actual hazard that creates a risk of falling. Typically “falls” fall into one of three categories:



Falls from high-levels

Workers who perform tasks at an elevation (generally higher than 6 feet) are at risk of falling from that elevation. Falls

can occur when workers are up on structures, on scaffolds, ladders, or in bucket trucks.

Example: Roy, a roofer, is up on a flat roof of an old three-story building. Should Roy fall from the roof to the ground, his fall would be a “high-level” fall.



Falls at same-level

“Slip and trip” falls are one of the leading causes of job injuries across all industries and are particularly common in the construction industry. Slip and falls account for nearly 40% of all non-fatal fall injuries in construction.

These types of falls can occur when a worker unexpectedly loses traction with the surface he is walking on, or inadvertently comes into contact with an uneven surface or an object that disrupts his balance.

Example: Roy, our roofer, is up on the same roof. If Roy trips over an extension cord and falls to surface of the roof, his trip and fall would be a “same-level” fall.



Falls into lower-levels

Often, construction workers are required to perform tasks in the vicinity of a hole, shaft, pit, or trench into which the worker could fall. Workers also may encounter fragile or unstable surfaces that could suddenly give way and cause

the worker to fall.

Example: Roy, still working on the roof, steps on to a rotted sheathing that gives way causing him to fall through the roof and into the third story floor. This fall would be a “lower-level” fall.

The significance of the examples above is that each different type of fall has a different set of hazards that give rise to the risk of falling. Clearly identifying, assessing, and controlling those hazards better protects the worker. If Roy’s employer erected a guardrail at the edge of the roof, this may have protected Roy from a high-level fall, but would not have protected him from hazards that gave rise to either of the other two falls. Protecting workers from falls is much more involved.

It takes most people about 1/3 of second to become aware they are falling. It takes about 1/3 of a second for the body to react. A person can fall up to 7 feet in 2/3 of a second.



Identifying Fall Risks

There are many areas of a worksite that present a fall hazard to workers. To manage these risks, it is important for Contractors to identify, assess, and control all jobsite locations, activities, equipment, and tasks that create a fall hazard.

Fall hazards are foreseeable. They can be identified and the risk eliminated or controlled. To identify fall hazards, a Contractor should conduct thorough workplace inspections, consult with workers and other contractors on site, and, in some instances, with technical experts. Particular attention should be given to areas where exposure to falls exist or are expected to exist over the course of the project. At a minimum, inspecting and assessing the workplace for potential hazards should include determining:

- Stability/strength of surfaces/work area/structures;
- Slip potentials on surfaces;
- Slope of work surfaces;
- Safe movement on, to, and from work area;
- The amount of movement and congestion on the site;
- Surface/level changes in work area;
- Exposed edges/opening in floor or wall to another level;
- Adequacy of lighting;
- What conditions (weather or otherwise) the work area is exposed to;
- The suitability and condition of equipment and tools
- The suitability and condition of footwear and other personal protective equipment;
- The adequacy of knowledge and training of workers to safely perform the tasks; and
- Adequacy of safety plan and procedures to address potential safety hazards.
-

Where the workplace presents different or distinct work areas or fall hazards, the Contractor should not merely car-

ry out a “generic” assessment, but should specifically assess each individual hazard a worker may be exposed to.

Common Fall Hazards

Fall hazards can be found on every construction site and many times, multiple factors/hazards may contribute to a fall. A fall can be caused by something as seemingly insignificant as an extension cord or to something as obvious as Workers out on a narrow beam hundreds of feet above the ground with no protection. The most common sources of fall injuries are: (1) Ladders; (2) Unprotected Edges & Openings; and scaffolds.

Ladders

Ladders are one of the most commonly used pieces of equipment to elevate Workers to higher or lower levels. They are also one of the most common sources of injury. Annually, more than 22% of all fatal and nonfatal construction fall accidents involve a portable ladder.

The risk of falling associated with ladders can be traced to five primary causes: (1) a failure to **select** the appropriate ladder for the job; (2) a failure to **inspect** the ladder before using; (3) failure to properly **set-up** the ladder; (4) a failure to properly **use** the ladder and (5) a failure to properly **care and store** the ladder. Each risk is briefly discussed below:

Ladder Selection

Selecting the right ladder for the task and the environment the task is going to be performed in is critical. There are

four components a Contractor needs to consider for proper ladder selection: (1) ladder type; (2) ladder size; (2) ladder strength; and (4) ladder material.

Ladder Types

There are many different types of ladders. It is critical that Contractors select and provide Workers the right ladder, ladder material, and ladder size for the job. Generally, there are three main portable ladder types: (1) leaning ladders; (2) non-leaning ladders; and (3) combination ladders.

Leaning Ladders



Leaning ladders are “non-self supporting”. That is, they do not stand up by themselves, they lean. They require a stable base to be placed on and stable structure to lean up against to support the climber. Leaning ladders can be a single section or a multi-section extension ladder.

Non-Leaning



Non-leaning ladders are self-supporting. They depend on an even, stable ground surface to place all four legs. The most common type of non-leaning ladders is a step-ladder or an “A-frame” ladder. Another type of self-supporting ladder is a “trestle ladder”. A trestle ladder is similar to an “A-frame” ladder but has a vertically adjustable extension section.



Combination

A combination, or articulated ladder, is a portable ladder with one or more pairs of locking hinges which allow the ladder to be set up in a variety of configurations. The ladder can be used as a leaning ladder, step-ladder, or can be locked in multiple positions of these to allow set-up on different surface levels. Some ladders can be locked in one or more positions to accommodate the various configurations.

Ladder Size/Strength

Equally as important as selecting the right type of ladder, is selecting the right size and durability of the ladder needed for the particular job. Not all ladders are created equally. Some are built for light household use (like reaching a ceiling light bulb) and some are built for heavy industrial use (like reaching a work area several stories above ground). A contractor needs to evaluate the work environment and the task to be performed to properly determine both the length and the weight capacity (duty rating) of the ladder.

- Ladder Length: One of the most common and potentially dangerous ladder selection mistakes is using a ladder that is too long or too short. Additionally, Contractors must ensure Workers understand the highest permitted standing level for each ladder and the maximum safe reaching height of ladders. Shown below are guides for extension and stepladders:

EXTENSION LADDERS

Height to Top Support	Use This Ladder	Max Reach
9'	16'	15'
9' to 13'	20'	19'
13' to 17'	24'	23'
17' to 21'	28'	27'
21' to 25'	32'	31'
24' to 28'	36'	34'
28' to 31'	40'	37'

STEPLADDERS

Ladder Height	Max Reach
4'	8'
6'	10'
7'	11'
8'	12'
10'	14'
12'	16'
14'	18'
16'	20'

- **Ladder Strength:** Ladders are each specifically designed and constructed to hold a maximum amount of weight. A ladder’s strength is referred to as its duty rating (also known as its performance rating). A duty rating is the indication of the maximum weight load capacity the ladder can safely hold (including weight of worker and material/tools). Ladders are generally broken down into five rating types as shown below:

Ladder Type	Duty Rating	Description
IAA	375 lb.	Extra-heavy duty industrial
IA	300 lb.	Heavy-duty industrial
I	250 lb.	Heavy-duty industrial
II	225 lb.	Medium-duty commercial
III	200 lb.	Light-duty household

Ladder Materials

Selecting the right ladder materials is another very important factor influencing safety of Workers. Ladders are generally built from three different materials: (1) wood; (2) fiberglass; and (3) metal (aluminum/steel). The type of working environment and task to be performed will dictate

which ladder material is most appropriate for safety.

- Wood: Wood ladders are usually the least expensive and are most popular for consumer use. Wood is subject to splintering and warping and they typically do not hold up well in outdoor use. Over time, they can lose their strength and stability.
- Metal: Aluminum ladders are light weight, and often inexpensive. However, they are prone to bending under heavy use. Steel ladders, on the other hand, are much more durable and better withstand stress than aluminum. Use of metal ladders should be avoided anytime work is being performed around electricity.
- Fiberglass: For most construction tasks, fiberglass ladders are the preferred choice for safety. They are nearly as light as aluminum ladders, but significantly more durable. However they are generally the most expensive ladder which causes some contractors to look to less expensive options.

Ladder Inspection

Once the proper ladder has been identified for the job, a Contractor is required to inspect the ladder prior to each day's use and after any occurrence, such as a fall, that could cause damage to the ladder to ensure the ladder is free from any defect that would impair its safe usage. That inspection should, at a minimum, include ensuring:

- There are no worn, damaged, broken, loose, bent, or

missing parts.

- All parts, hardware, and components are in good, operable condition.
- There are no substances (dirt, oil, grease) that impair or affect safe use
- All manufacturer labels, warnings, ratings are in place, readable, and actually read.

The inspection should also ensure that the ladder itself complies with all federal, state and local, laws, codes, and regulations , including OSHA. If a ladder is found to be damaged, defective, or non-compliant, it should be tagged and removed for repair or disposal. A repaired ladder should not be placed back into service until it is thoroughly inspected and tested for safety.

Ladder Set-up

A major cause of falls from ladders is improper set-up. Contractors must ensure workers are properly trained by “competent persons” to set-up and use ladders and super-vise ladders before actual usage.

It is critical to Worker safety that ladders are placed in an area free of hazards, secured at the bottom, and secured at the top. To achieve this, Contractors should, at a minimum, ensure:

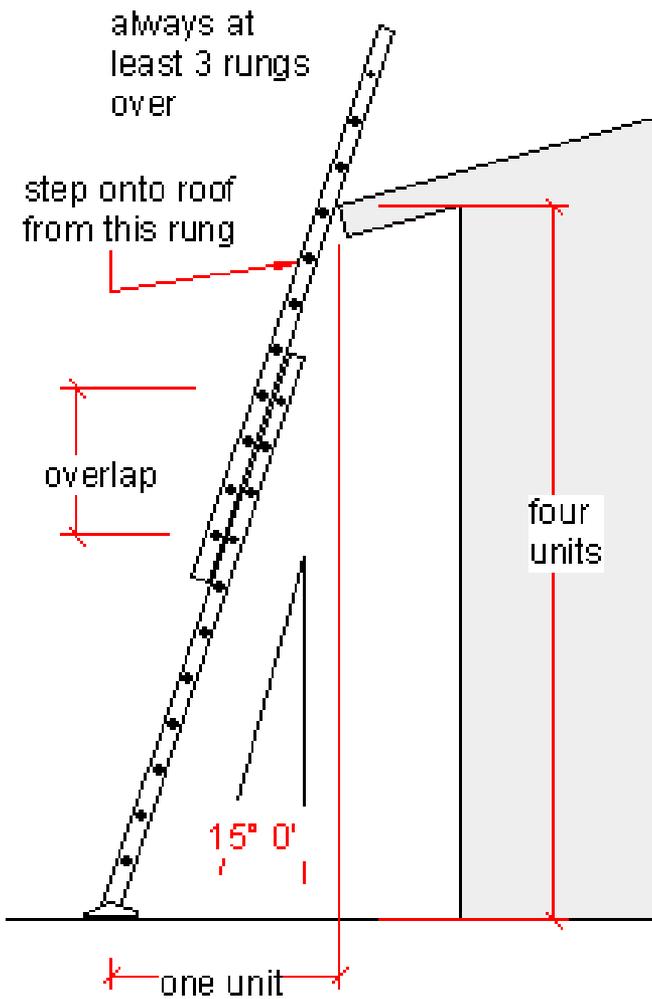
- All manufacture labels, warnings, instructions are read.
- The area the ladder is to be set-up is free of both ground and overhead obstacles (particularly electri-

cal wires)

- The area around the ladder is secured if there is a risk that the ladder could be displaced by other activities/workers.
- The ground is stable, level, and solid.
- If the ground is slippery, the base of the ladder is be secured to prevent movement.
- The structure the ladder is placed against is solid and strong enough to support the ladder.
- The top of the ladder extends at least three rungs beyond the upper support point.
- The ladder angle is correct. The base of the ladder should be 1 foot away from the building for each 4 feet of height to the upper support point. This should result in an approximate 75 degree angle. **See following figure.**
- The upper support of the ladder should be tied off anytime there is a risk the ladder may slide.

A ladder that is not completely set-up should never be left unattended. The Contractor must ensure others do not use the ladder and understand it is not set-up properly.

Proper Ladder Angle/Placement



Case Example

Gary, was a construction manager who spent his career on work sites and was looking forward to retirement. Since graduating from college in the 1970's with a construction management degree, he had worked on hundreds of construction sites and was employed as an estimator and project manager before planning to hang up the hardhat. Six months before he was due to retire, he was on a job site when he fell from a ladder that had not been secured. The ladder kicked out from under him when he put his foot on the rung, and he fell 12 feet down onto concrete, crashing onto his shoulder.

The bones were so crushed that one of the bone pieces cut the main artery in his arm, and he was bleeding internally. Gary was life-flighted from a local hospital in Findlay to a trauma hospital in Toledo, where he underwent vascular surgery to have a stint put in to seal off the bleeding, since the artery was not healing on its own. He was joking and talking before the surgery and joked around with the doctors during the procedure as he wasn't all the way under from the sedative. At the end of the two hour procedure, however, he went unresponsive. A rapid response team went by the waiting room where his wife, Jan, was waiting and when a chaplain came in to see her, she knew they were in trouble.

Doctors did a CT scan but nothing showed up. Later that night in ICU, Gary suffered cardiac arrest and flat-lined momentarily. They jolted his heart rhythm back and he stabilized but he was still on a ventilator and feeling tubes. After 48 hours, the doctors performed another CT scan and saw that many blood

Case Example, *continued*

clots had showered his brain, causing strokes in many parts, but the most damaged area was the right side.

On the fourth day since the accident, doctors sat down with Gary's family and delivered the tragic news about his brain damage and that there was a large blood clot that was making it impossible for them to perform surgery. No one thought that he would wake up.

Day five, a Sunday, showed a true miracle. Gary woke up and opened his eyes. On day eight he was off of the ventilator and on day 15 he was released from ICU, transferred to a step-down unit at the hospital, then transferred to in-patient rehabilitation at a local nursing home.

The typically athletic, larger-than-life man who was devoted to his trade and to caring for his family now faced over six months in a rehab facility, learning how to walk, talk, and function all over again. Instead of being able to enjoy a young retirement with his grandkids, he is now completely dependent on his wife as they adjust to their new normal, all because of a seconds-long accident that occurred because someone on the job did not take the time to secure the ladder.

Our office continues to help Gary and his wife with the ongoing litigation. This includes obtaining worker's compensation to help pay for his medical care and obtaining additional compensation for his pain and suffering through a lawsuit against the subcontractor who put up the ladder.

Ladder Use

There is a right way and a wrong way to use a ladder. Contractors must ensure that all workers are well-trained to properly use ladders and to recognize hazards associated with ladder use before being permitted to use a ladder.

This training, which should be conducted by a “competent person”, should include ensuring Workers know to:

- Read and follow manufacture labels and instructions.
- Keep ladders free of any slippery substance.
- Face the ladder when climbing up or down.
- Maintain a 3-point contact (two hands and a foot, or two feet and a hand) when going up and down a ladder.
- Keep the body inside the side rails.
- Carry tools in a tool belt or raise tools up using a hand line (NEVER) carry tools in hands while climbing up/down a ladder.
- Use extra care when getting on or off the ladder at the top or bottom.
- NOT to exceed the ladder’s maximum load rating.
- NOT to extend beyond the maximum reach point of the ladder.
- NOT to leave the ladder unattended.

Ladder Storage/Care

Ladders should be cared for and stored when they are not in use. Proper storage and care, including the handling and transportation of ladders, is vital to its safety function. If a

ladder is dropped or hit by another item, the ladder could become damaged. Proper ladder care includes:

- Promptly cleaning ladders after use – remove any slippery material, as well as any other substance, such as dirt/mud, that could affect the function of the ladder or the safety of the Workers using it.
- Using enough people to safely support, carry, and transport the ladder.
- Ensuring ladders are properly secured in transit and not vibrating or bumping against other object that may cause damage.
- Storing ladders in areas that are clean, out of direct sunlight, and not exposed to harmful interior/ exterior elements that may cause decay/damage.
- Storing ladders horizontally with support sufficient to prevent sagging/bending/warping.
- Not storing materials on ladders.

In addition to the pre-use inspections discussed above, ladders and their storage areas should be routinely inspected.

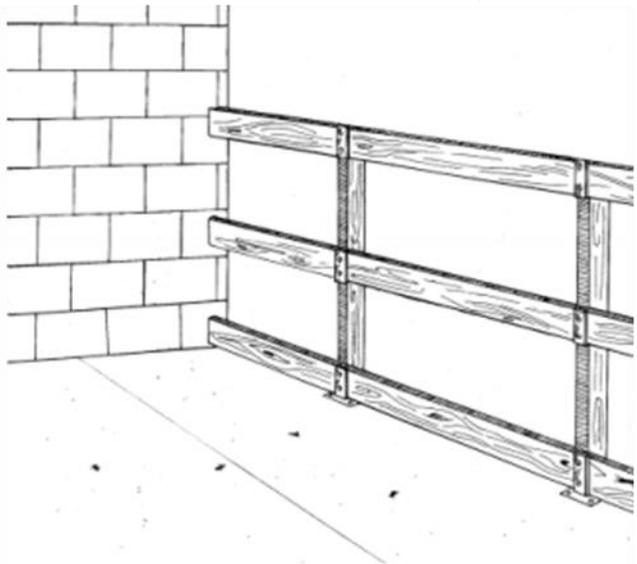
Unprotected Edges & Openings

Workers who are six feet or more above lower levels are at risk for serious injury or death if they should fall. Given that almost all sites have unprotected sides and edges, wall openings, or floor holes at some point during construction, it is critical these workers are protected.

To ensure Worker protection, the law requires Contractors to ensure that each of its Workers walking/working on a surface with an unprotected side or edge which is 6 feet or more above a lower level/hole, to be protected from falling by the use of: (1) guardrail systems; (2) safety net systems, or (3) personal fall arrest systems.

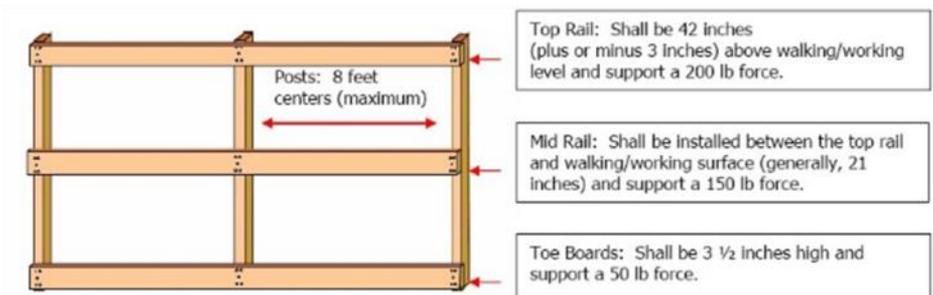
Additionally, a Contractor must provide fall protection, regardless of height, if its workers are working above sharp objects (like exposed ends of rebar for concrete) or working above dangerous equipment.

Unfortunately, a failure to protect workers from open edges/holes is one of the most frequently cited serious OSHA vi-



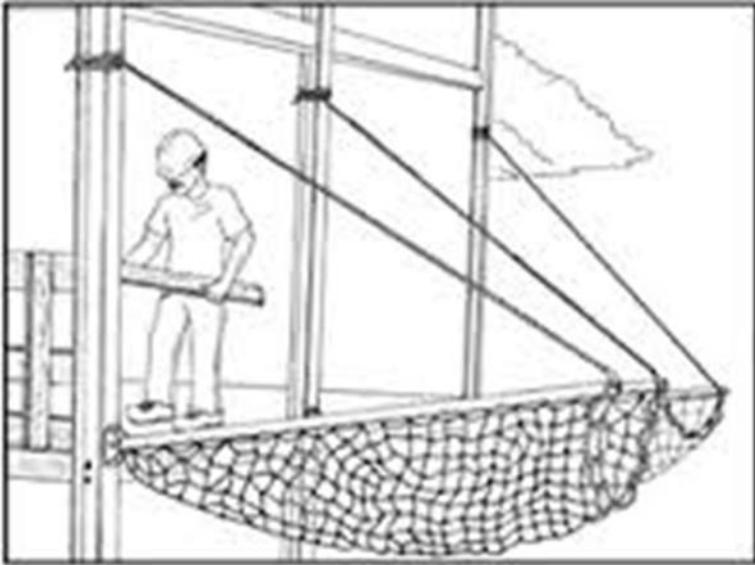
are a variety of different types of rails and mounting systems, they generally all consist of vertical-rails, top-rails, mid-rails, and toe-boards. If a Contractor uses guardrails, it must be sure that:

- Top-rails are between 39 and 45 inches from the working surface. Top-rails, vertical-rails, and anchoring points need to be capable of withstanding at least 200 lbs. of force;
- Mid-rails are at least 21 inches high and leave no opening of more than 19 inches. Mid-rails need to be able withstand least 200 lbs. of force.
- Toe-boards must be at least 3 ½ inches high and withstand at least 50 lbs. of force.



If guardrails are used around holes at points of access, like a ladder-way, a gate must be used to prevent someone from falling through the hole, or be so offset that a person cannot walk directly into the hole.

Safety Nets



Safety nets are used where it is difficult or impossible to arrange for guard railing, or to provide a proper anchoring and lifeline system for fall arrest. The most common applications for safety nets are structural steel erection and bridge work. Contractors are permitted to utilize safety nets as a form of fall protection for Workers, provided they meet specific requirements.

If a Contractor uses safety nets, it must be sure that:

- The nets must be as close as practicable under the working surface, but never more than 30 feet below.
- They must inspect the safety net every week for damage.
- Each net has a border rope with a minimum strength of 5,000 lbs.

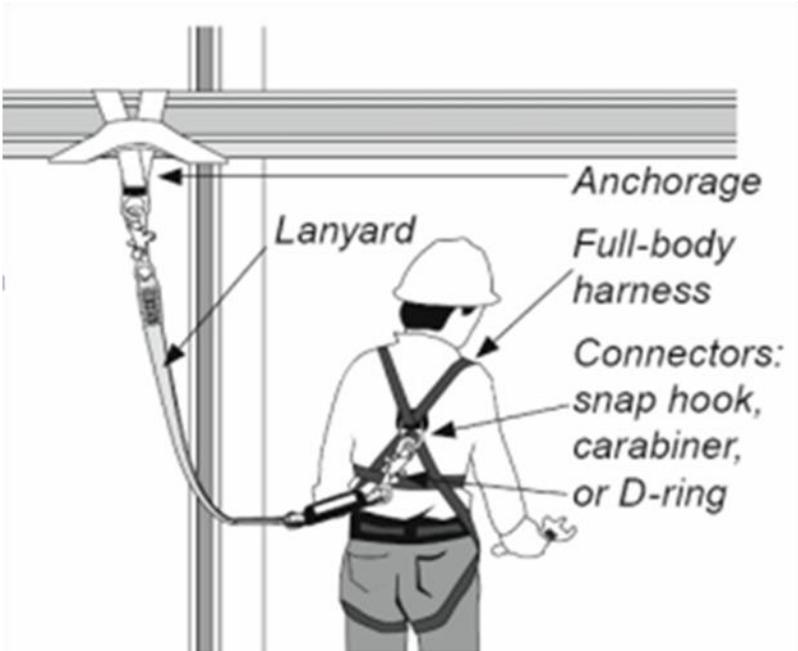
- The safety net can absorb the force of a 400-pound bag of sand dropping on to the net (“the drop test”).
- The safety net extends outward a sufficient distance, depending on how far the net is from the working surface (OSHA has a formula Contractors must follow – see following example).

Working level above netted area	Minimum distance net must extend out from edge
Up to 5'	8'
5' to 10'	10'
More than 10'	13'

Case Example

Jeffrey, a Boyk Law client, was assigned to sand blast a bridge by a painting contractor. His work area exposed him to an unguarded edge. Jeffery fell off the edge of the bridge down to the road surface below. He suffered a fractured back and head trauma.

Personal Fall Arrest/Restraint



While the best fall protection a Contractor can provide is generally a passive system (like a guardrail or safety net) because it does not require active participation from the Worker, utilizing an active system in addition to passive protective systems, is a best practice and should be part of every fall protection program.

An active system, such as a Restraint or Personal Fall Arrest System (PFAS), must be used when a Worker is exposed to a vertical drop of 6 feet or more and where use of other fall protection systems are not practical.

A Restraint or PFAS is a system that is designed to safely stop a fall before a Worker strikes a lower level. There are three major components of a PFAS. They are often referred to as the “ABCs” of PFASs:

A - Anchor Point:

The anchor point (tie-off point) is a secure point of attachment for the fall arrest system’s lanyard or lifeline.

- Anchor points need to be planned out before work begins.
- Anchor points must support at least 5000 lbs per worker.
- Anchor points should be attached to a substantial structure (i.e., beams, girders, rafters) and not to pipes or sheetrock.
- Anchorage connectors should be positioned to avoid a “swinging fall”.

B - Body Harness

A full-body harness is required for a PFAS. The body harness distributes the force of a fall to reduce the chance of bodily injury. It includes shoulder and thigh straps, and a D-ring.

- Body harnesses are the only acceptable PFAS. Body belts are not acceptable and should not be used
- The D-ring needs to be larger than the snap hook that connects the lanyard/lifeline. This is to ensure the D-ring does not press against the outside of connecting snap/carabineer and force it open.
- Contractors should ensure that the body harness fits

its Workers. It should not rely on “universal” sizing.

- Contractors need to ensure that harness meets all ANSI and OSHA standards.

C - Connecting Device

The third major component of a PFAS is the connecting device. A retractable lifeline or shock-absorbing lanyard and its connectors are used to connect the anchor point to the body harness. The type of connecting device used is largely dependent on the potential fall distance.

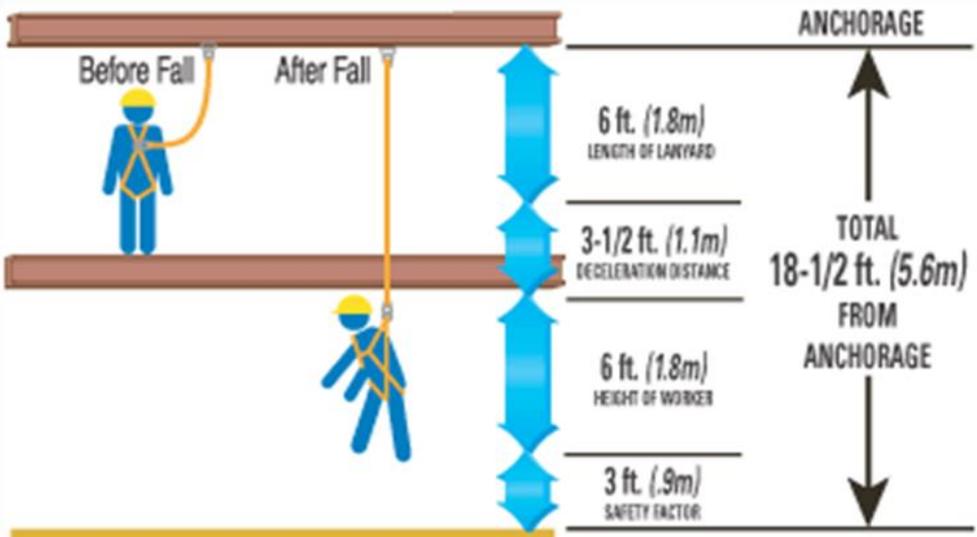
OSHA provides that the maximum “free fall” distance a Worker may be exposed to, is 6 feet. OSHA further provides that a PFAS must bring a falling Worker to a complete stop within 3.5 feet. As such, a Worker must be stopped from a fall within 9.5 feet. To provide for this, Contractors need to take several factors into consideration, including:

- The length of the lanyard;
- The stretch of the lanyard when “arresting” a falling Worker (many shock absorbing lanyards stretch up to 42 inches); and
- The height of the Worker.

Note: A full body harness is not intended for use in extended suspension applications – which can cause serious circulation problems for the Worker. If a Worker is going to be suspended for an extended length of time the Contractor should use some form of seat support in addition to the PFAS. A seat board, suspension work seat, seat sling, or a boatswain chair may be appropriate.

Case Example

Derriss, a Boyk Law client, was on his first day on a commercial roofing project. He was not provided any safety equipment or warned of any hazards on the roof. While on the roof, the section he was standing on gave way and he fell 25-30 feet to the concrete below. He survived, but sustained serious, life altering injuries, including a broken back, left arm, and hand. We were able to secure worker's compensation for Derriss, as well as additional funds through a VSSR claim for the OSHA violation.



Retrieval

The retrieval and rescue of a fallen Worker is a necessary component of a Contractor's fall protection program. OSHA requires that where a Worker is exposed to a risk of a fall, the Contractor must have a rescue plan in place for the retrieval or self-rescue of that fallen Worker. That rescue plan must provide for the "prompt" rescue of the fallen employee or assure the employee can rescue themselves in time to prevent serious injury.

Training

It is essential Workers are properly trained to use a PFAS. This training is the responsibility of the Contractor. A Contractor must have a "competent person" train Workers on the care and use of PFASs and ensure they are aware of the operating characteristics, application limits, and the consequences of improper use of the equipment.

Inspection & Maintenance

Before each use, a Contractor must make sure all parts of a PFAS are in good condition/working order. Particular attention should be given to:

- Labels: Ensure labels are in place and readable.
- Hardware: Inspect all hardware (buckles, grommets, D-rings, etc.) ensure no damage or corrosion to metal. Ensure snaps function.
- Lanyards: inspect entire circumference
- Webbing: Ensure all harness webbing/stitching is intact and free of rips, tears, fraying, and discoloration.

If any damage whatsoever is found on any component, the Contractor is required to immediately remove it from service and destroy it.

Like ladders, a PFAS should be stored in a cool, clean, dry place out of, and away from, elements that may cause decay/damage. Harnesses should not be cleaned with any product that may weaken it.



FACT

The rate of work-related deaths among ironworkers is 10 times higher than the construction average. The most frequently cited serious OSHA violations involving steel erection involving failing to provide fall protection, fall hazard training, and fall protection.

Scaffolds

Scaffolding is one of the most commonly used and effective forms of performing work at a height. However, it is also one of the most common sources of construction fall fatalities. On an annual basis, scaffolding accidents account for approximately 15% of all construction fall fatalities.

Scaffolding, as used in the construction industry, is most basically described as a temporary work platform used to place the Worker at the elevation needed to perform the required work.

Most injuries associated with scaffolding can be traced to five primary causes: (1) a failure to **select** the appropriate scaffold for the job; (2) failure to properly **set-up** the scaffold; (3) a failure to **inspect** the scaffold before using; (4) failure to properly **use**; and (5) failure to properly **care and store** the scaffold.

Given the serious risks presented by scaffolding, OSHA requires each Contractor to have a designated “competent person” oversee scaffold selection, set-up, use, set-up, inspect, and care. We will start with a discussion of the duties of the “competent person” followed by a discussion of each of the primary causes of scaffold injuries.

Competent Person

Critical to the scaffolding safety are the use of “competent persons”. OSHA requires that Contractors ensure that they

have a competent person who is responsible for training all persons who:

- Erect;
- Disassemble;
- Move;
- Operate;
- Repair;
- Maintain; or
- Inspect scaffolds.

This training must cover the nature of the hazards involved in scaffold use, as well as the correct procedures involved in each of the above areas – for each specific type of scaffolding the Worker is required to use. Contractors must not only provide this training to all Workers required to use scaffolds, but must also retrain such Workers when they believe they lack the necessary skill, understanding, or proficiency to work safely.

Scaffold Selection

There are numerous types of scaffolds, each designed and constructed for specific uses and with specific load limits. Accordingly, it is critical that Contractors select and provide Workers with the right scaffold for the job. Generally, the most common scaffold types are categorized as: (1) self-supporting; (2) suspension; and (3) specialty.

Self-Supporting



Self-supporting scaffolds are where one or more work platforms are supported from below by tubing, brackets, poles, legs, frames or other similar supports. These types of scaffolds require Contractors to ensure that:

- Structural components are set on stable, firm foundations and plumb.
- The structure is braced to prevent swaying and displacement.
- Scaffolds with a height to base width ratio of more than 4:1 are restrained with tying or bracing.

Suspension



Suspension scaffolds consist of one or more platforms suspended by ropes or other non-rigid means from an overhead structure. They can be suspended from a single point (boatswains' chair) or multiple points (swing-stage). Self-supporting scaffolds are generally used where work needs to be performed at varying heights for only a short period of time. These types of scaffolds require Contractors to ensure that:

- All supporting devices are secured on surfaces capable of supporting at least four times the load imposed by the scaffold.

- The suspended scaffold is secured to prevent swaying.
- The scaffold has guardrails and/or personal fall protection where Workers are 10' or more above a lower level.
- Suspension ropes are long enough to be safely lowered to lower levels.

Specialty



Special use scaffolds, include mobile scaffolds and aerial lifts – such as “cherry pickers” or “boom trucks”. As to these types of scaffolds, Contractors must ensure:

- Only authorized personal are permitted to operate such devices.
- Scaffolds are stabilized to prevent tipping during movement or use.
- No unauthorized modifications are made.
- Load limits are not exceeded.
- Scaffolds are not moved unless the Workers on them are all aware and they are moved slowly and safely.
- Personal fall protection is attached to the boom or basket.

In addition to selecting the right “type” of scaffold, Contractors must ensure that the selected scaffold has the capacity, without failure, to support its own weight and at least four times the maximum load applied or transmitted

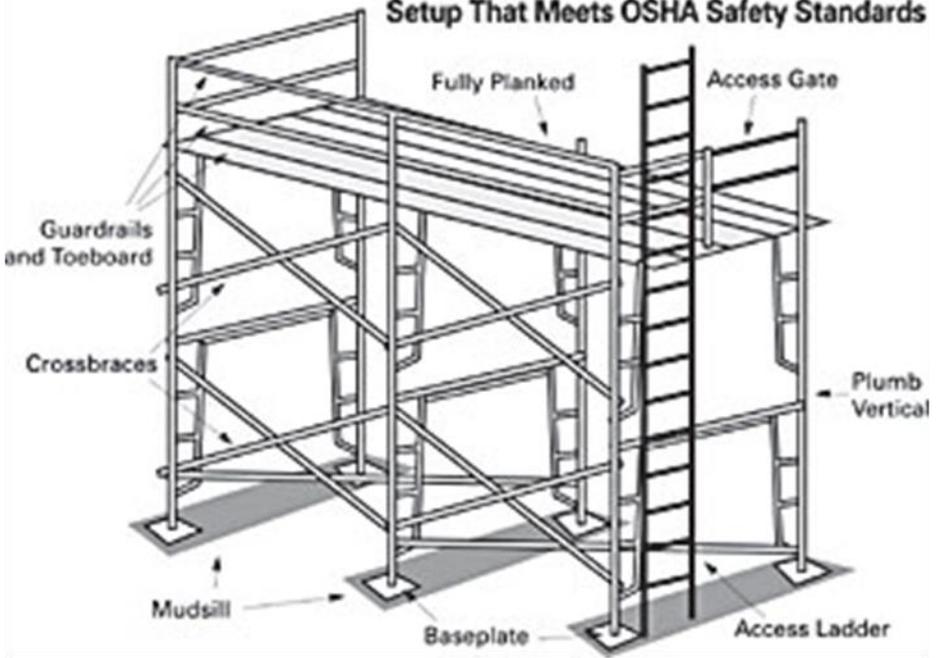
to it. This capacity requirement not only applies to the frame of the scaffold, but also to the platform of the scaffold.

Scaffold Erection

It is vitally important to ensure that everyone who is involved in scaffold erection is properly trained. To accomplish this, a Contractor **must**:

- **Pre-plan:** determine the proper scaffold for the job, the maximum load needed, ensure scaffold foundation and footings are level and capable of supporting the scaffold.
- **Supervise:** scaffold erection must be supervised by a competent person to ensure safe erection according to design specifications.
- **Electrical Sources:** nearby power lines should be deenergized or, if not possible, Contractor should ensure scaffold is a minimum of 10' away from power lines and all Workers are aware of the hazard.
- **Guardrails:** install along all open edges. Ensure toprail is between 36" to 45" and able to withstand at least 200 lbs. of force. Mid-rail must be able to withstand at least 150 lbs. of force.
- **Fall Protection:** determine the feasibility and safety of using fall protection in the erection.
- **Material Handling:** ensure scaffolding material is properly handled and staged in order to avoid damage.

Various Components of a Scaffolding Setup That Meets OSHA Safety Standards



- **Material Conditions:** Ensure scaffolding materials are free of damage and substances, like snow or ice.
- **Hoisting/Rigging:** ensure hoisting and rigging equipment is available to lift components as needed to eliminate the need to climb with components.
- **Assembly:** ensure components are assembled according to design and fit together properly without force.
- **Planking:** set platform planks as close as possible with gaps no greater than 1 inch wide.
- **Access:** a safe access to the working platform must be provided.

- **Overhead:** ensure overhead protective measures (like use of containment nets) are taken to eliminate or minimize the risk of falling objects injuring scaffold Workers.

Scaffold Inspection

Following scaffold set-up and prior to Worker use, the Contractor must have the scaffold inspected. This inspection must ensure the scaffold is erected to at least OSHA standards. Footings must be level, sound, and capable of supporting the loaded scaffold. Frames and bracing need to be inspected to confirm proper construction. Ropes on suspended scaffolds must be free of defects.

The scaffold must be plumb and braced/tied to ensure it doesn't sway or tip. Planks must be inspected to confirm they meet specifications and to ensure they have not been damaged or warped.

Contractors need to ensure guard-rails meet requirements and fall protection is established.

As discussed earlier in this Chapter, the most frequent fall-from-elevation accident is a fall off ladders. Contractors need to ensure that if a ladder (as opposed to direct access or a walkway) is being used to provide the Worker access (whether it is a portable, attachable, or fixed ladder) it must be in good working condition and properly set-up.

If a scaffold is determined to be unsafe for intended use, the scaffold should be removed from service until the safety issue is corrected.

Scaffold Use

Even after a scaffold is properly set-up and inspected, fall hazards remain. To guard against these risks Contractors must ensure only Workers trained by a competent person use scaffolding or operate mobile/aerial equipment.

During the course of scaffold work, the Contractor must constantly ensure:

- Scaffolds and scaffold components are inspected.
- Workers have safe access to scaffold (ladders free of slippery substances).
- Scaffolds are not overloaded.
- Scaffolds are not loaded in a way that affects stability.
- Ground conditions are regularly monitored to ensure stability (water/excavations can affect stability and lead to collapse).
- No makeshift devices are used to increase height/reach.
- Scaffold work is not performed during storms or winds.
- Scaffold platforms are kept free of slippery substances, tools, or debris that may affect Worker balance.
- Scaffolds are protected from vehicular traffic on the site.
- Scaffolds are protected from unauthorized access, particularly while the scaffold is incomplete or unattended

Scaffold Storage/Care

Scaffolds should be cared for and stored when they are not in use. Proper storage and care, including the dismantling/

handling/transportation of scaffolds, are vital to its safety function. If a scaffold component is dropped or hit by another item, the scaffold could become damaged and the safety of the Worker compromised. Proper scaffold care includes:

- **Clean Scaffolds:** Promptly cleaning ladders after use – removing any slippery material, as well as any other substance, such as dirt/mud, that could affect the function of the ladder or the safety of the Workers using it.
- **Keep Scaffold Planks Dry:** The strength and performance of a scaffold plank is reduced by moisture.
- **Storage:** Store in a dry, well-ventilated area. Storing in wet or unventilated areas will accelerate wood decay and plank deterioration. Always allow wet planks to dry quickly by providing proper air circulation.
- **Protection:** Protect planks from extreme weather conditions, including excessive exposure to water and temperatures. Store planks under a roof or under a porous cover that will shed water while allowing moisture to escape.
- **Stacking Stored Planks:** Keep planks stacked in bundles off of the ground and supported by sticks spaced no more than eight feet apart. Be sure to line up the sticks between the bundles with the ground sticks. This will allow easy forklift access and provide air circulation. Misalignment of the sticks can damage the planks by creating a bow.
- Do not store heavy objects on the planks.

Fall hazards, and in particular ladders, unprotected edges, and scaffolding, are a leading cause of serious construction injuries and fatalities. To protect Workers, it is critical that Contractors take a “safety first” approach. Contractors must provide proper equipment and ensure proper training. Failure to do so may result in injury or death to Workers.

Case Example

Robert, a Boyk Law client, was working on scaffolding that was more than 40' above ground. The scaffolding was not equipped with guardrails around all edges and Robert tripped and fell off the edge. He suffered serious back injuries.

Chapter 3

The “Fatal Four”: Electrocutation



Electricity is an integral part of nearly every construction project. Perhaps because it is so commonplace, the hazards associated with it tend to get overlooked. It is estimated that there are more than 30,000 electrical construction accidents that occur each year. While most of these are non-fatal injuries, electrocution continues to be the second leading cause of construction related fatalities. Electricity is also responsible for over 140,000 fires each year, resulting in even more injuries and deaths.

The goal of this Chapter is to provide readers with an understanding of the various electrical hazards that are found

on jobsites and the responsibilities required to manage those hazards and protect Workers from serious injury, or worse.

Electrical Hazards

Electricity presents three primary categories of injury: (1) electrical shock; (2) burn from arcing; and (3) consequential injuries from shock or arcing.

- **Electrical Shock:** This may occur by direct or indirect contact (where electrical current flows through or across a medium) or by arcing. Electrical shock can be fatal or non-fatal.

Effect of Electrical Current in the Human Body	
Current (milliamps mA)	Reaction
Below 1 mA	Generally not perceptible
1 mA	Tingle
5 mA	Slight shock – not generally painful
6-25 mA	Painful shock. Loss of muscular control
9-30 mA	A “freezing current” where the a person cannot voluntarily “let go”
50-150 mA	Extreme pain. Respiratory arrest, severe muscle contractions. Possible death
1 – 5 amps (Ah)	Nerve damage. Interference with heart’s rhythm. Muscular contraction. Death likely
10 Ah +	Cardiac arrest. Severe burns. Death probable

- Burns from Arcing: Electricity can cause two types of burns: electrical burns from direct contact with current; and thermal burns from arc flashes and blasts. An arc flash occurs when high-amperage current “arcs” through the air across a gap between conductors. The intense heat released by the arc can cause severe burns, and destroy skin and tissue.



An electrical “arc” can result in a release of tremendous amounts of energy. Temperatures as high as 36,000°F have been recorded in arc flashes. As a matter of comparison, the surface of the Sun is a comparatively chilly 10,000°F.

- Consequential Injuries: an electrical shock or the flash/blast of an arc is frequently responsible for Worker falls, eye injuries, and hearing loss. *See the book Forward for stories.*

Most accidents result from unsafe work practices, unsafe equipment, or unsafe environment.

Contractors’ Responsibilities

OSHA requires Contractors to provide Workers with a safe and healthy work environment. To achieve this, Contractors are to identify all relevant standards, rules, and regulations, and ensure they comply. The basic responsibilities of a Contractor with respect to electrical hazards can be broken down into five categories: (1) Planning; (2) Training; (3) Inspecting; (4) Supervising; and (5) Accident Reporting/Investigation. Each responsibility is discussed in detail below.

Planning

Prior to the start of a project, a Contractor needs to undertake a hazard analysis to identify all electrical hazards that are present and develop a plan to safely address and control them. At a minimum this should include:

Site Specific Safety Plan: a hazard analysis needs to be conducted into all hazard categories including:

- Aerial work near electrical sources
- Electrical hazards
- Energized electrical work
- Trenching/Excavation where underground electrical could be encountered
- Utility work.

Case Example

Toby was working with a utility crew, installing underground cable. He was operating a directional drill when it struck an underground power line, shocking him. The Contractor had a duty to identify the hazard and guard against it but failed to do so.

For each hazard, the Contractor must determine what training or special training is needed and provide it to Workers. The Contractor also needs to identify a “competent person” to oversee the hazardous work.

The Contractor’s plan must include specific “controls” to be utilized to mitigate the identified hazards. This can include:

- Engineering controls: changing the construction work/process to eliminate or minimize hazards. This would include having power sources completely de-energized.
- Administrative controls: setting out procedures and safe work practices – using signs, warning, and training. This would also include using lockout-tag out procedures.
- PPE: identifying and obtaining necessary PPE for work, particularly insulated PPE.

Training: Not every Worker has the same experience, even if the Workers are highly trained journeyman electricians. The Contractor, via the competent person, must make all Workers aware of the electrical hazards and controls in place and ensure all Workers on the jobsite are “qualified” for the work. All Workers should be given an orientation that includes, at a minimum, a review of:

- General safety rules & policies
- Hazard communications/procedures
- PPE
- Electrical safety and lockout/tagout
- Emergency plans
- Tool & equipment safety
- Safety signs and meanings
- Procedures to reporting safety violations, accidents, and near-misses
- Specific jobsite hazards and procedures.

Contractors should also engage Workers in regularly scheduled “toolbox talks” to discuss specific safety issues. These

short talks should identify a safety topic and objectives concerning the issue. The Contractor should ensure Worker understanding and document the talk.

Inspections: Regular inspections should be performed by Contractor. These inspections should include identifying all areas where there is a hazard of arcing, electrical shock, or burn. Inspections should also ensure workers understand the existing hazards and how to avoid/control such hazards.

Supervising: Effective safety must be a culture promoted by the Contractor. Contractors must designate competent persons to supervise electrical hazards and the work surrounding them. This supervision should involve:

- Making observations to identify Work practices and risk.
- Prompting safety by reinforcing safe behavior and practices
- Coaching employees regarding any corrective work/safety procedures needed.
- And, as necessary, disciplining Workers who place themselves or others at risk of injury.

Accident Reporting/Investigation: Contractors must ensure that accident response policies are in place and known to ensure an immediate response can be made to an accident. After ensuring first-aid or emergency care is provided, a Contractor must gather as much information/evidence regarding the incident as possible. This should include:

- Incident location/conditions.
- Description of the incident (where incident occurred, who was injured, what were injuries, was rescue/medical response there, what equipment was involved, who witnessed, etc.,).

Following the incident investigation and a determination of the cause or causes, the Contractor needs to take corrective measures to prevent future incidents.

Electrical hazards are foreseeable. They can be identified and the risk eliminated or controlled. Despite this, a failure to comply with OSHA's electrical standards is regularly among the most frequent citations issued by OSHA. The failure to protect Workers against these dangerous hazards is what makes this one of the "fatal four".

Chapter 4

The “Fatal Four”: Struck by Objects



According to the Bureau of Labor Statistics, there are more than 50,000 “struck by object” workplace injuries every year. So it is not surprising that being “struck by an object” is one of the leading causes of construction-related deaths. What is surprising, is how preventable these injuries and deaths are.

The goal of this Chapter is provide readers with an understanding of the various “struck by object” hazards that are

found on jobsites and the responsibilities required to manage those hazards and protect Workers from serious injury, or worse.

“Struck by Hazards”

“Struck-by” injuries are, most basically, exactly what they sound like – an injury caused by getting forcibly hit by something. Having said that, it is important to point out that in construction, “struck-by” hazards often resemble, but are distinct from “caught-in or -between” hazards. The key factor in whether something is a “struck by” or “caught-in or-between” event, is determining whether the “impact” of the object *alone* caused the injury. If so, it is a “struck by” injury. If, however, the injury is created more as a result of crushing injuries after contact with an object or objects, it is more suitably treated as a “caught” injury by OSHA. To better understand the distinction, it is helpful to consider the following examples:

Ex. 1

Struck By Injury: Larry, a laborer, is walking on the jobsite when he unknowingly walks into the path of a dump truck and is struck. Larry is injured by the impact.

Ex. 2

Caught-In Or Between Injury: Larry, a laborer, is ground guiding a dump truck that is backing up when the dump truck backs up too far and pins Larry up against the building. Larry is injured by being crushed between the truck and the wall.

Struck-by hazards generally fall into four different categories: (1) flying objects; (2) falling objects; (3) swinging objects; and (4) rolling objects. Each type is discussed in more detail below.

Struck-by Flying Objects

Flying object hazards exist when something has been thrown or propelled through the air. This includes tools or being materials being tossed, debris flying off the back of a truck, or a part breaking/flying off of a tool. The hazard also exists if an object is ejected under power by a tool, such as a nail gun.



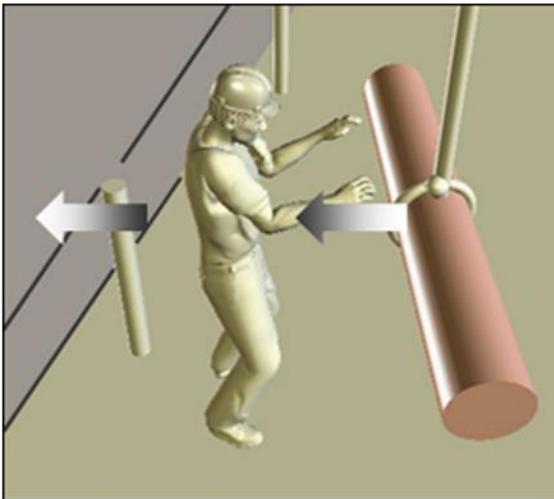
Struck-by Falling Objects

Falling object hazards exist where an object falls from an elevation to a lower level. The most common injuries are from tools or materials being knocked off unprotected edges or where elevated material is dropped (e.g. from a crane/backhoe). Falling object injuries also frequently occur where material is improperly stacked.



Struck-by Swinging Object

A swinging object hazard usually exists where materials are being lifted. The load can swing, whip, twist, or turn while suspended or being moved. This movement can catch Workers by surprise and they could be hit by the swinging object. Windy conditions are especially hazardous because suspended loads may swing more. A swing hazard also exists where swinging or rotating equipment is being operated. Depending on where the Worker is standing and the force behind the load/hit, there is a hazard that the Worker could be knocked to another level after being struck and sustain even greater injuries.



Case Example

Jason, a Boyk Law client, was working for a concrete contractor. A concrete supplier brought a truck mounted concrete boom pump to the site. The pump operator started the pump, but there was a blockage that caused pressure to build up. The pressure finally blasted the blockage out and the sudden release caused the hose on the boom to violently whip – striking and throwing Jason. He suffered a fractured back, broken ribs, and a traumatic brain injury.

Stuck-by Rolling Object

A struck-by rolling object hazard is when an object is rolling, moving, or sliding on the same level at which the Worker is located. This includes instances in which the worker is struck or run over by a moving vehicle without being caught under it or instances in which the worker is struck-by a sliding object or equipment on the same level.



Case Example

Kevin was working for an excavating contractor when he was unexpectedly struck by a vehicle on the construction site and thrown through the air, causing him to lose consciousness. He suffered serious injuries to his neck and shoulder, and fractured his arm, back, and leg and had to be life-flighted to a hospital better equipped to handle the trauma. He was admitted to the Intensive Care Unit then underwent multiple surgeries to repair his fractures for which he needed over six months of physical therapy to recover from.

Boyk Law secured workers' compensation for Kevin and also filed a separate auto accident claim, for damages including medical expenses which totaled over \$100,000.

Protecting Workers

Workers can be protected and injuries prevented by ensuring Workers have proper safety training. That training must include following safe practices, including those associated with the operation of:

Heavy equipment (cranes, excavators). Safe practices include ensuring:

- All equipment is inspected and found to be in good working order.
- All operators are properly qualified, trained, and capable to operate equipment.
- All operators are protected by a cab or other shield from falling material.

- Operation of equipment only takes place on secure/safe ground.
- Operators do not exceed load limits of equipment.
- Ensure loads are properly rigged/secured.
- Operation during windy weather is suspended or additional measures are taken to ensure safe operation.
- Workers are trained to stay clear of equipment in operation or of loads being lifted and hazard areas are barricaded.
- Workers are made aware of the swing radius of equipment and remain out of that zone and visible to the operator.
- Spotters are used.

Motor Vehicles. Safe practices for preventing being struck by vehicles at construction sites include insuring:

- All vehicles are inspected and found to be in good working order.
- Only qualified, trained, and/or licensed Workers operate motor vehicles.
- Vehicles are not operated in reverse with obstructed views unless a ground guide is available.
- Parking brakes and other methods are used to ensure parked vehicles do not roll.
- Traffic signs, barriers, and/or flaggers are used to protect Workers from traffic movement.
- Only qualified and trained Workers direct traffic.

Power/Pneumatic Tools and Equipment. Contractors

can protect Workers by ensuring:

- All tools and equipment are inspected and in good working condition with proper guarding.
- Only Workers who are properly trained are permitted to use tools/equipment.
- When working with compressed air, air pressure does not exceed manufacturer specs and is reduced to 30 psi or less if used for cleaning.
- That when overhead work is being performed, that toe-boards, screens, guardrails and/or nets are used to prevent objects from falling. And that signs are posted warning Workers of overhead work. Contractors must protect workers from being struck by vehicles and objects on the job. While these hazards exist, there are ways to prevent or reduce injuries.

Personal Protective Equipment (PPE)

After a Contractor assesses all the potential struck-by hazards on the jobsite, it should provide the necessary PPE for those Workers exposed to such hazards. That PPE may include:

- Eye & Face Protection: Safety glasses to protect Workers who may be exposed to flying particles/objects (e.g., during welding, grinding, nailing)
- Head Protections: Hard hats of the appropriate class to protect against objects falling from above.
- Warning Clothing: Vests that are highly visible/reflective in all levels of light.

Struck-by object hazards can cause serious injury and even death. It is critical that Contractors proactively identify hazards and protect Workers from the risks they pose. The failure to anticipate hazards and protect Workers against the risks they pose is what makes this one of the “fatal four”.

Chapter 5

The “Fatal Four”: Caught in-Between Objects



“Caught in-between” hazards kill workers in a variety of ways. Most frequently, it involves being caught between equipment and fixed objects, or with “cave-ins” and other types of excavation work. While “caught” hazards account for the fewest deaths in the “fatal four” category, it is still responsible for nearly 5% of all construction fatalities. More alarming is that Workers involved in excavation are more than twice as likely to be killed as Workers in other construction trades.

The goal of this Chapter is to provide readers with an understanding of the most common “caught in-between” hazards that are found on jobsites and the responsibilities and methods to manage those hazards and protect Workers from serious injury, or worse.

Caught In-Between Hazards

As discussed in Chapter 4, a “caught in-between objects” hazard is distinguishable from a “struck by object” hazard in that the harm causing the injury to the Worker is not necessarily a forcible impact from a single object, but rather the crushing force of being caught or pinned between two objects.

Most construction “caught in-between” hazards/injuries fall into one of two categories: (1) “pinned” between objects; and (2) buried in or by an excavation collapse. Each type is discussed in more detail below.

“Pinned By” Hazards

A pinning hazard is when a Worker is exposed to a risk of being caught between a fixed object and a moving object – most often a vehicle. These types of hazards can result in



broken bones, asphyxiation, or death. Some examples include being crushed in a vehicle rollover, or between a dump truck frame and a lowering bed. It also includes being pinned by a moving vehicle against a structure or other solid object. Pinning injuries most frequently occur due to distraction, inattention, and/or failure to have or follow safe work practices.

Case Example

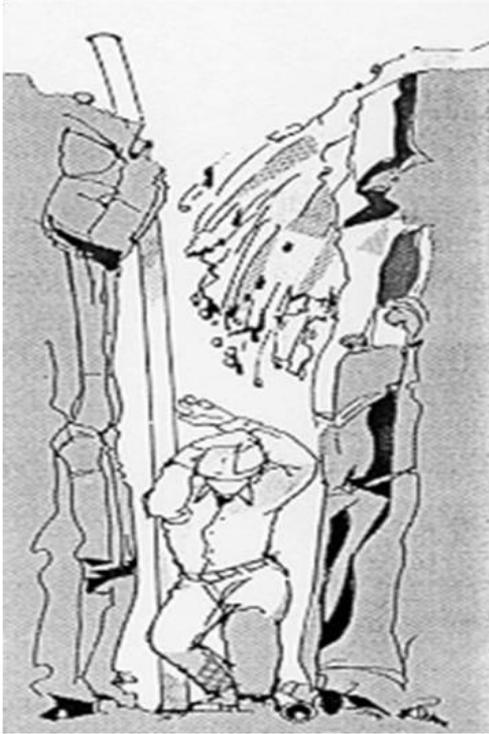
Jeff was instructed to unload industrial pipes by rigging them to a cable on a crane. While he was securing the cable, the crane operator began lifting. Jeff's hand immediately became caught between the pipes and cables and was completely severed before the operator stopped.

"Buried In or By" Hazards

A burying hazard most frequently exists when a Worker is involved in excavation work. An excavation is any man-made cut, cavity, trench or depression in the earth's surface formed by earth removal. This can include excavations for anything, from cellars to highways. Excavation is hazardous work in general. Excavation involving trenches, shafts, and tunnels are especially dangerous. Cave-ins are the most significant hazard. In addition to crushing a Worker, Workers can suffocate, be exposed to toxic gasses/substances, or drown in water or sewage.

Cave-ins can happen when soil is unstable, there is too much vibration from area trucks, traffic, or machinery,

there is too much weight too close to the sides of the excavation, or the excavation is exposed to water.



A single cubic yard of soil can weigh as much as a car. A typical trench collapse involves between three to five cubic yards of soil – which can amount to as much as 6,000 to 20,000 pounds.

Controlling Hazards

OSHA requires that Contractors provide Workers with a safe work environment free of serious recognized hazards. Pinned hazards and cave-in hazards are well known and must be identified pre-bid, planned for, and managed by

implementing measures to maintain control over the risks such hazards present.

Hazard recognition

OSHA requires that Contractors designate a “competent person” to inspect and eliminate excavation hazards before any Worker is permitted to enter the excavation site. The competent person must be capable of indentifying underground utilities, location of water table, soil types, existing and predictable hazards or working conditions that could be hazardous, unsanitary, or dangerous to Workers. The competent person is required to be able to identify the protective systems needed to eliminate these hazards and conditions and be authorized to take such measures. This inspection must be repeated before the start of each day of work. Where the competent person finds evidence of a situation that could result in a possible cave-in, indications of failure of protective systems, or other hazardous conditions, the Contractor is required to immediately remove exposed employees from the hazardous area until the necessary precautions have been taken to ensure their safety.

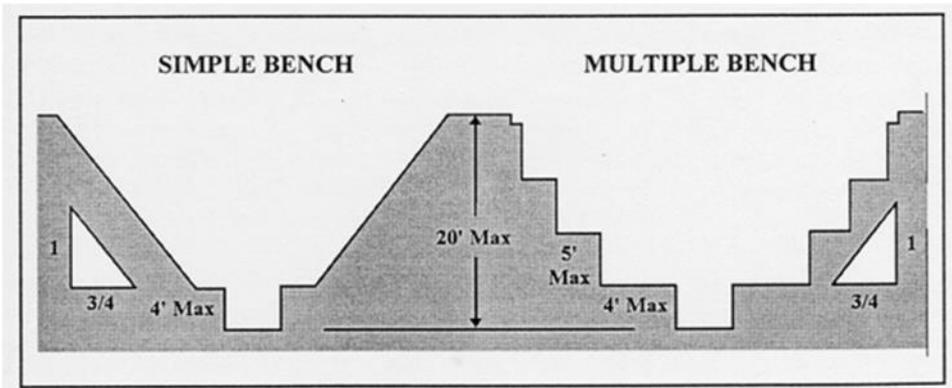
Managing Risks

A Contractor must first eliminate a hazard, which is the most effective control. If elimination is not practicable, the Contractor must minimize the risk of the hazard with: engineering controls, administrative controls, suitable Personal Protective Equipment (PPE) and a rescue plan. Some control measures are more effective than others. Control measures should be considered from the highest level of protection and reliability to the lowest.

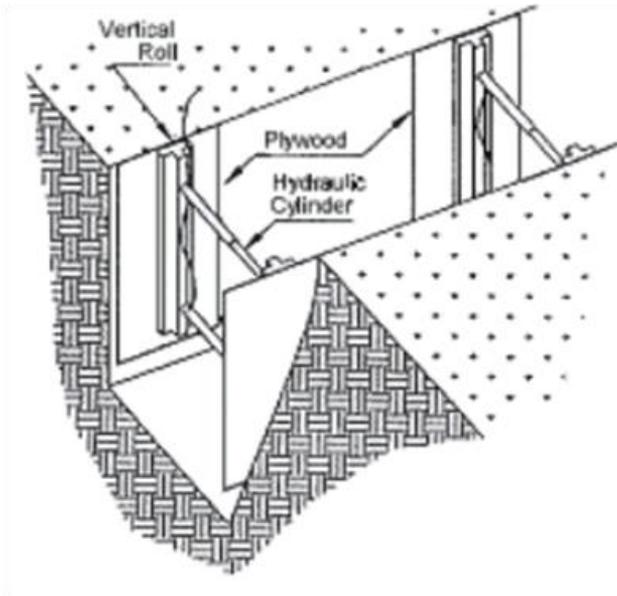
1. Engineering Controls

If the Contractor cannot eliminate the risk, it must implement protective systems to prevent cave-ins. OSHA requires that in all excavations Workers exposed to potential cave-ins must be protected by sloping or benching the sides of the excavation, by supporting the sides of the excavation, or by placing a shield between the side of the excavation and the work area. Designing a protective system can be complex because of the number of factors involved—soil classification, depth of excavation, water content of soil, changes due to weather and climate, or other operations in the vicinity. The standard, however, provides several different methods and approaches for trenches deeper than 5'. These approaches include:

- **Sloping & Benching:** Sloping is a method of excavation that involves ensuring that the slopes of the sides of the excavation are kept at a safe angle to prevent collapse. Benching is a variation that adds a series of benches (steps) that also approximate the safe sloping angle. The slope allowable depends upon the specific soil type and the depth of the excavation.



- **Shoring:** Shoring is the provision of a support system for trench walls to prevent soil movement. Shoring is used when the location or depth of the excavation makes sloping to a safe allowable angle, impracticable. These structures are typically built of timber, or with hydraulic systems, that support the sides of an excavation. Sheet piling is a type of shoring that keeps the earth in place. Since a Worker does not have to enter a trench to install or remove hydraulic shoring, it is a safer option than timber shoring.



Case Example

On June 25, 2008, employees of a Pennsylvania construction company were excavating a site in Delta, Ohio. Employee Christopher, a Boyk Law client, was working approximately 25 to 35-feet below ground level in the excavation pit when a large piece of clay weighing 150 to 200 pounds fell on him and caused him to be trapped for 45 minutes after it collapsed.

Chris was life-flighted to the closest trauma hospital where he stayed for a week to be treated for four compression fractures in his thoracic and lumbar spine. As a result of his injuries, he can no longer lift more than 20 pounds for the rest of his life.

After being discharged from the hospital, Chris wasn't sure what he should do. All he knew was that he was in pain, that he couldn't work, and that bills were piling up. He met with the attorneys at Boyk Law and they immediately got to work on his case.

Charles Boyk Law Offices was able to:

1. Work with a Pennsylvania attorney to obtain for Chris Pennsylvania worker's compensation
2. Obtain from first responders and emergency personnel fantastic photos that documented problems with the work site

Case Example, *continued*

3. Obtain an OSHA investigation that highlighted several serious violations

4. Analyze photographs of the scene to prove that the employer had cleaned up the site before OSHA arrived in an attempt to misrepresent information

5. Enlist a highly qualified expert to review all the evidence and demonstrate that the defendant had substantial liability

6. Obtain numerous witness statements before the lawsuit

7. Use to Christopher's advantage the OSHA investigation that concluded that the employer:

- Had actual knowledge of the soil collapse
- Refused to install lights in the shaft in order to save money
- Violated federal safety standards by failing to install adequate shoring at the base of the shaft
- Failed to train employees on potential safety hazards
- Failed to provide fall protection

8. File a VSSR claim and obtain for Christopher a substantial settlement

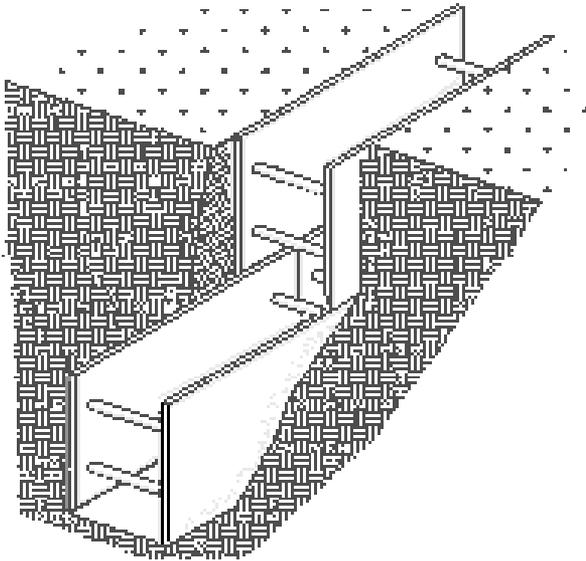
9. Settle the lawsuit to provide for Chris's future

Case Example, *continued*

One highly important factor in Christopher's case was the testimony of his crew leader who reported that she warned the foreman 5-6 times that the hole being dug was too deep and created a safety hazard. The weight of the soil above the workers' heads caused cracks to form in the walls of the site, which created instability and the risk of a cave-in. She also warned the foreman at least 10 times that there should be lights in the hole for safety reasons, so that workers would be able to see the cracks that were forming in the walls.

Without lights, it is nearly impossible to see cracks in the soil when a worker is that far down below the surface. In response to her warnings, the foreman told the crew leader that the soil was OK and that it wouldn't cave in and that they would not be installing lights since the project was behind schedule and because lights would cost too much more. According to the crew leader, he always ignored her warnings did not take steps to correct the safety hazards, thus causing Christopher's injuries. Without her testimony and the photos obtained by our firm, Christopher may not have had such a positive outcome in his case.

Shielding: Shielding doesn't provide support for trench walls. Instead, it is used to protect workers from cave-ins. It involves excavating a trench and then placing a trench box in the trench and backfilling the sides to prevent movement.



Trench Shield

- ◆ **Access & Egress:** OSHA requires Contractors to provide safe access and egress to all excavations, including ladders, steps, ramps, or other safe means of exit for Workers working in trench excavations 4 feet or deeper. These devices must be located in the excavation within 25 feet of all Workers.
- ◆ **Water Accumulation:** The standard prohibits employees from working in excavations where water has accumulated or is accumulating unless

adequate protection has been taken. If water removal equipment is used to control or prevent water from accumulating, the equipment and operations of the equipment must be monitored by a competent person to ensure proper use. OSHA standards also require that diversion ditches, dikes or other suitable means be used to prevent surface water from entering an excavation and to provide adequate drainage of the area adjacent to the excavation. The competent person must inspect excavations subject to runoffs from heavy rains. Safety harnesses and lifelines should be provided and used.

- ◆ **Ventilation:** Contractors must ensure that Workers are not exposed to hazardous and/or toxic atmospheres. Oxygen levels must be monitored and engineering controls, such as ventilation systems, may be required.

2. **Administrative Controls:**

In addition to protective systems, the Contractor needs to utilize all necessary administrative controls (work procedures, rules, and policies) to minimize the risk of cave-ins. Such controls should include safety procedures for:

- Keeping materials or equipment that might fall, roll into, or influence an excavation sufficiently away from the edge of excavations.
- Providing warning systems such as mobile equipment, barricades, hand or mechanical signals to alert operators to the edge of an excavation. If possible, keep the grade away from the excavation.

- Prohibiting Workers from working on faces of sloped or benched excavations at levels above other Workers.
- Prohibiting Workers from standing or working under loads being handled by lifting or digging equipment.
- Monitoring the concentration of oxygen and atmospheric contaminants.

3. Personal Protective Equipment (PPE)

After engineering and administrative controls are implemented, any remaining risk must be further minimized with PPE. In addition to general PPE, such as hard hats, eye protection, and safety shoes, safety harnesses and life-line, and respirators may be needed. Workers must be trained in the use of all PPE and emergency rescue equipment.

4. Emergency Plan

The Contractor must ensure that there is an emergency plan in place that deals with unexpected incidents, such as ground collapse, flooding, gas leaks and the rescue of workers from an excavation. The plan should include securing the area and keeping non-essential personnel and equipment away from the hazard/rescue area, entry to the rescue area, victim removal/rescue, and emergency treatment.

Excavation failures are partially dangerous because of how quickly they occur and how they limit the ability of Workers to escape. The speed of an excavation collapse and the devastating consequences are significant and can quickly

result in serious crushing injuries or death by suffocation. Given the severity of the risk and the difficulty of rescues, it is critical that Contractors take every measure to eliminate or control the risks Workers are exposed to.

Chapter 6

Other Construction Hazards

Contractors have a legal responsibility to protect the safety and **health** of Workers. Many construction projects pose health hazards to Workers that go beyond the “fatal four”. These health hazards generally fall into three categories: 1) biological; 2) physical, and 3) chemical.

The goal of this Chapter is to provide the reader with a brief overview of each of the hazards and how the risks of harm they pose to Workers can be controlled.

Biological Hazards

Construction projects often bring Workers into to contact with numerous biological agents. These include bacteria, viruses, mold, and toxins. These all have the ability to cause infectious disease or otherwise adversely affect a Worker’s health. These agents can be found in water, soil, poisonous plants, and animals. Some projects present particular risks such as those involving work in health care facilities, the demolition of old buildings, the clearing of trees and plants, and where there is a presence of rodents and insects or an accumulation of animal waste.

Physical Hazards

There are numerous physical health hazards Workers are exposed to on a jobsite. The bulk of these hazards fall into three categories: (1) temperature extremes; (2) noise; and (3) ergonomic.

1. Temperatures: Construction workers generally work outside and are exposed to elements such as heat, cold, humidity, and the sun. Heat can cause heat exhaustion or heat stroke. Cold conditions can cause frost-bite and hypothermia. Sunlight contains UV radiation which can burn skin and is a known cause of skin cancer and cataracts.

NOAA's National Weather Service
(National Oceanic and Atmospheric Administration)

Heat Index
Temperature (°F)

	80	82	84	86	88	90	92	94	96	98	100	102	104	106	118	110
40	80	81	83	85	88	91	94	97	101	105	109	114	119	124	130	136
45	80	82	84	87	89	93	96	100	104	109	114	119	124	130	137	
50	81	83	85	88	91	95	99	103	108	113	118	124	131	137		
55	81	84	86	89	93	97	101	106	112	117	124	130	137			
60	82	84	88	91	95	100	105	110	116	123	129	137				
65	82	85	89	93	98	103	108	114	121	126	130					
70	83	86	90	95	100	105	112	119	126	134						
75	84	88	92	97	103	109	116	124	132							
80	84	89	94	100	106	113	121	129								
85	85	90	96	102	110	117	126	135								
90	86	91	98	105	113	122	131									
95	86	93	100	108	117	127										
100	87	95	103	112	121	132										

Likelihood of Heat Disorders with Prolonged Exposure or Strenuous Activity

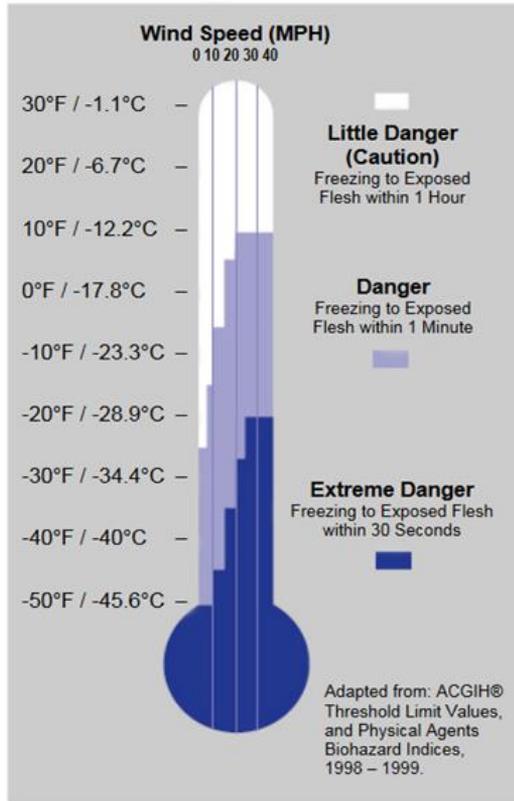
- Caution
- Extreme Caution
- Danger
- Extreme Danger

THE COLD STRESS EQUATION

**LOW TEMPERATURE + WIND SPEED + WETNESS
= INJURIES & ILLNESS**

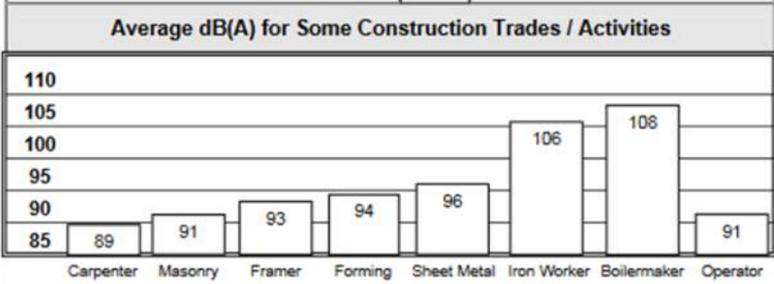
When the body is unable to warm itself, serious cold-related illnesses and injuries may occur, and permanent tissue damage and death may result.

Hypothermia can occur when *land temperatures* are above freezing or *water temperatures* are below 98.6°F/37°C. Cold-related illnesses can slowly overcome a person who has been chilled by low temperatures, brisk winds, or wet clothing.



2. Noise: Every year, approximately 30 million workers are exposed to hazardous noise. Most of the time this hazard is ignored because the harmful effects of overexposure are typically not visible and develop over an extended period of time. Damage to the ear could also occur from a single impact noise (explosion).

Average Sound Levels in Construction	
Tool	Sound Level dB(A)
Hammer Drill	114
Pile Driver	112
Chain Saw	109
Chop Saw	108
Impact Wrench	107
Powder Actuated Tool	106
Circular Saw	100
Jack Hammer	96
Grinder	86
Welding Machine	85 – 90
Equipment Operator & Task	Sound Level dB(A)
Heavy-Duty Bulldozer	97 – 107
Vibrating Road Roller	91 – 104
Asphalt Road Roller	85 – 103
Crawler Crane > 35 ton (non-insulated cab)	90 – 98
Crawler Crane > 35 ton (insulated cab)	80 – 89
Rubber-Tired Crane > 35 ton (non-insulated cab)	78 – 90
Rubber-Tired Crane > 35 ton (insulated cab)	59 – 87



Case Example

Greg, a utility line worker, was exposed to the sound of an opening and closing of a metal garage door at least 3x a day over a period of several years. The noise level of the garage door was approximately 113 decibels. He was diagnosed with moderate to severe noise-induced hearing loss.

3. Ergonomic: Ergonomic, or Cumulative Trauma Disorders, are musculoskeletal injuries that are usually the result of one or more factors. The most common health hazards are:

- **Repetitive motions** - doing the same task over and over again.
- **Forceful exertions** - pulling, pushing, lifting, and gripping.
- **Awkward postures** - body positions that are not the natural resting position.
- **Static postures** - body positions held without moving.
- **Mechanical compression of soft tissues** in the hand against edges or ridges, such as using tools or objects which press against the palm.
- **Fast movement** of body parts.
- **Vibration**, especially in the presence of cold conditions.
- **Lack of sufficient recovery time** (rest breaks, days off), which will increase the risk of developing a CTD by any of the above factors.

The most well known CTDs related to construction work are muscle strain, tendonitis, carpal tunnel syndrome, rotator cuff tendonitis, tennis elbow, golfer's elbow, thoracic outlet syndrome, Reynaud's syndrome, and trigger finger.

Hazardous Chemicals/Agents

The construction industry frequently exposes Workers to a variety of chemical hazards that often get overlooked.

While there is general familiarity with the dangers of sub-

stances like silica and asbestos, there are numerous other substances that Workers must contend with. Chemical agents are often in the form of dusts, fumes, gases and vapors and are usually inhaled. These agents can give rise to severe health disorders, such as poisoning, asphyxiation and cancer. Chemical exposure can also include burns, neurological injury, and birth defects. An exposed or contaminated Worker can also transport the hazardous agents home to family members, including children who may be very susceptible to injury. Workers in confined spaces, where ventilation is limited, are often at the greatest risk.

Protecting Workers

Like will all hazards a Contractor needs thoroughly inspect the site, understand the work, and the exposure its Workers will have. It then needs to implement control measures to eliminate or reduce risk of harm. Again, these can include engineering controls, administrative controls, and providing suitable Personal Protective Equipment (PPE). With respect to these “exposure” type hazards, Contractors should specifically consider:

- Monitoring the harmful conditions (weather, noise, and air contaminants).
- Monitor Worker health for exposure.
- Limit Worker exposure to reduce risk.
- Provide specific PPE to protect Workers (respirators and hearing protection).
- Warning Workers of chemicals they are exposed to and having first aid available to treat exposure.
- Utilize equipment and work practices that reduce exposure.
- Ensure Workers are thoroughly trained in hazard recognition, safe work practices, and use of PPE.



A serious accident suffered at work can devastate your life. One second you're working hard on the job, the next you suffer a physical injury that prevents you from working for days or months. In some cases, injured Workers never get back on the job.

Just being injured is bad enough. You're in pain and you'd rather be working instead of sitting around the house. Trying to navigate the complicated bureaucracy of the Ohio Bureau of Workers' Compensation system can make life that much more difficult.

The goal of this Chapter is to provide you with information so you can understand the workers' compensation process. Having that knowledge may help you learn how you can be compensated for the injury you've suffered at work, and also will give you a better understanding of your rights.

Legal Overview of Workers' Compensation

It used to be the case, more than 100 years ago anyway, that for an employee in Ohio to be compensated for a workplace injury, they had to file a negligence suit in court against their employer. The injured Worker was required to prove his employer negligently caused his injury. The employer had the right to defend the claim and often would assert that the Worker: voluntarily assumed the risk of harm that caused the injury; another employee (and not the employer) caused the injury and therefore the injured employee must sue them; and the injury was, in whole or in part, caused by the injured Worker himself.

These “affirmative defenses” were often very effective and left many injured workers who were unable to return to work, without any wage replacement or coverage for medical bills. Even when an injured worker prevailed, it was often after a considerable amount of time had passed and the worker was left without income and piling debt.

The Ohio Legislature’s response was to implement an alternative system of recovery for injured workers – a workers’ compensation system. This system is essentially a “no fault” system. Workers were required to give up their right to bring a negligence suit and recover damages for “pain and suffering” and employers were required to give up their ability to raise affirmative defenses that often prevented worker recovery.

The system for handling worker claims was removed from the courts and judges and administratively delegated, at least initially, to a Bureau of Workers’ Compensation (BWC) and hearing officers.

Proving a Workers' Compensation Claim

A Worker's claim for compensation is allowed if he can establish four basic elements:

1. **Employment Relationship:** Workers' compensation law requires that an employer/employee relationship exist. While this is often relatively straightforward, it can be a contested issue where the "employee" is, or alleged to be, a temporary employee or "independent contractor".
2. **Accidental Injury:** The Worker's injury must be accidental in nature. As such, the self-inflicted injuries, pre-existing conditions, or injuries caused by horseplay may be challenged. Although it is important to remember that a mere lack of common sense, inattention, or failure to follow work rules cannot be raised to challenge the claim.
3. **Accident Occurred in the Course of Employment:** The Worker's injury must have happened while he was on the job. However, there are many caveats to this requirement, such as injuries incurring on breaks, during personal errands, in parking lots, and during commutes.
4. **Accident Must Arise Out of Employment:** This legal requirement generally means that the injury was directly related to (and arose out of) an employment activity, risk, or hazard. For instance, while a heart-attack may have occurred in the course of employment, it may not have arisen out of the employment.

While an employer has lost most of its ability to assert affirmative defenses against the Worker's claim, some legal issues can be raised that may affect a claim:

1. **Worker Intoxication:** Impairment by drugs or alcohol at the time of the accident, may be grounds (not always) for denying a claim.
2. **Recreational Activities:** If an accident occurs during a company-sponsored recreational activity the claim may be covered. Contrarily, if it arises out of a recreational activity carried out by a group of co-workers, than it may not be.
3. **Horseplay:** As mentioned above, if an employee engages in “horseplay” and is injured, the horseplay may be grounds for denying the claim.
4. **Out-of-State Claims:** As is particularly frequent in the construction industry, an employee may live in one state, the Contractor located in another, and the project at which the employee is injured, in yet another. Some states may not honor an employee’s right to workers’ compensation if the injury physically occurs in their state.
5. **Mental Injuries:** Mental injuries are only compensated under workers’ compensation, if the mental injury at issue is related to, and flows from a physical injury.

Claims Process

BWC Initial Determination

The first step in establishing a claim is generally with the filing of a First Report Injury Form (FROI). The filing of the FROI triggers BWC to conduct an initial review involving contact with the employee, employer, and treating medical provider. Following the review, the BWC determines whether the claim should be allowed or denied and issues notice of its decision to all the parties.

IC Appeal

Within 14 days following notice of BWC's initial determination, either party (the employer or employee) can file an appeal with the Industrial Commission (IC). The IC is the appeal branch of the workers' compensation system. There are three levels of administrative appeals:

1. **District Hearings (DHO):** this first level hearing is held within 45 days of the filing of the BWC appeal. It is heard before a District Hearing Officer. The DHO has the authority to modify, vacate, or affirm a BWC order. Decisions are issued within 7 days of the hearing.
2. **Staff Hearings (SHO):** Following the DHO decision, either party can file another appeal within 14 days. A second level hearing is then heard by a Staff Hearing Officer within 45 days of the appeal. Again, decisions are issued with 7 days of the hearing.
3. **Three Member IC Panels:** If a party disagrees with the SHO decision, the party can file a third level appeal within 14 days. This appeal is heard by a panel of 3 Industrial Commission Commissioners. Unlike DHO and SHO hearings, this appeal does not automatically result in a hearing. That is determined on a case-by-case basis. If no hearing is held, a decision is issued within 14 days of the appeal date. If a hearing is granted, the hearing is held within 45 days of the appeal and a decision issued 7 days thereafter.

Judicial Appeal

If either party still continues to disagree with an IC decision, they can appeal directly to the local Court of Common

Pleas. The procedures for filing this appeal are very specific and strictly enforced. As such, it is very important to obtain legal counsel to navigate your claim to and through the judicial system.

Benefits Available to Injured Workers

While you cannot get compensation for the pain and suffering you endure, there are several benefits available depending on the type and severity of the injury:

- **Temporary Total Disability:** Workers injured on the job, who are unable to return to work for 8 consecutive days, may qualify to receive compensation to help replace lost income. Their condition is referred to as a “temporary total disability”. The award of temporary total entitles the injured Worker to 72% of their average weekly wage for the first 12 weeks of disability. After 3 months, the temporary total compensation is reduced to 66 2/3% of the weekly average. Temporary total payments stop when the Worker returns to work (with any employer), or is released by the medical provider to return to work, is incarcerated, voluntarily quits.
- **Permanent Partial Disability:** Sometimes workers sustain physical or psychological injuries that will remain with them forever, but may allow them to continue working. In such a case, the worker would be eligible for a permanent partial disability award based on the level of impairment. The percentage of disability is typically done in accordance with the *Guides to Evaluation of Medical Impairment* of the

American Medical Association. There are several different editions to the *Guide*. Often times, the use of one edition versus another can have a huge impact upon the amount that an examiner assigns to your condition. If a Worker thinks the assigned percentage is too low, he can file an objection and opt for examination by his own doctor. Given that these are highly specialized examinations, it is important to be sure the examining doctor is qualified. Following the submission of the injured Worker's physician's findings, the hearing officer examines both of the findings and issues a decision on the percentage of impairment. Permanent partial disability awards are based on two-thirds of the injured worker's statewide average weekly wage, not to exceed a maximum one-third of the average weekly wage.

- **Working Wage Loss:** If an injured worker is able to return to work with restrictions or to another position, and experiences a reduction/loss of wages as a direct result, an application for wage loss compensation can be filed. The BWC will calculate wage loss based on the average weekly wage at the time of injury/disability and the present earnings.
- **Scheduled Loss:** In the event a Worker experiences an amputation or loss of use of a specific body part or joint, the Worker may be entitled to receive scheduled loss compensation. The award is calculated based on a scheduled loss of use chart and $\frac{2}{3}$ the injured worker's average weekly wage.
- **Death Benefits:** If a Worker dies as a result of a

workplace accident, his dependents may be eligible for ongoing death benefits, including funeral expenses. The formula for calculating and allocating death benefits amongst dependents is fairly complex. Generally, it considers the decedent's average weekly wage and sometimes potential increase in wages that would have occurred had the worker survived. The death benefit payments continue until the dependents' eligibility ends. In the case of a surviving spouse, they continue until death or remarriage, at which time the spouse would receive a lump sum payment worth two years of benefits. Children maintain eligibility up to the age of 25 so long as they are attending an educational institution full-time.

Violation of Specific Safety Requirement (VSSR) Awards

Ohio law provides that it is the responsibility of every employer in Ohio to provide a safe workplace and to adhere to all safety rules. An injured worker may be able to file a claim with BWC for an additional award if his injury was the result of his employer's violation of a specific safety requirement (VSSR). These specific safety requirements are set out in the Ohio Administrative Code. There is an entire section that relates specifically to safety requirements for those employers engaged in "construction activity" as its principal business. Areas that have specific safety requirements that are penalized for violation include:

- Safe storage of worksite materials;
- Provision of Personal Protective Equipment;
- Guarding/Protection of areas of a fall hazard;
- Equipping motor vehicles with safety devices;

- Heavy equipment operation;
- Scaffolding;
- Ladders;
- Trenches & Excavations
- Electrical conductors, wires, and equipment;
- Demolition;
- Cutting & Welding;
- Steel erection; and
- Exposure to contaminants.

To prevail on a VSSR claim, the Worker must show the employer violated a specific safety requirement and the violation caused the Worker's injury.

VSSR Process

In our office, we help clients file a report with the Occupational Health and Safety Administration, which oversees workplace safety issues. The administration conducts an investigation and cites the company if it finds violations. That report can be used to substantiate a claim alleging a VSSR. It is critical that this investigation is requested as soon as possible to best ensure any and all evidence is still available to the investigator.

The investigator will initiate contact with the involved parties and may conduct a site inspection, interviews, and request documentation. Upon completion of the investigation, a Report of Investigation will be filed with the Industrial Commission (IC).

The IC will forward copies of the investigation to all the parties. The parties will have a period of time to review

and supplement the report with any additional information. The IC will schedule a pre-hearing conference to review the matter, discuss possible settlement, and set a merit hearing.

A merit hearing is conducted on the record with a SHO. Witnesses are often called to testify and argument is presented. If a violation of a specific safety requirement is found by the staff hearing officer conducting the proceedings, an award is made to the claimant of between 15% and 50% of the maximum rate for compensation payments for the year in which the injury occurred.

The Importance of Hiring an Experienced Workers' Compensation Attorney

In all but the most straightforward of workplace injuries, the issues encountered in a workers' compensation case are highly technical. The hearing officers and lawyers who do this work seem to speak a different language to each other, punctuated by awkward statements like "we've filed a C-92," or "this hearing is set for a TTD before a DHO." If you have an injury that results in lost time and you don't know this language and your employer has hired an attorney who not only speaks the lingo, but understands the nuances of the issues, you're probably going to be at a serious disadvantage and may lose out on significant benefits. Whether you use our firm or not, it just makes sense for you to have legal representation as you navigate the work comp world.

A lawyer will be able to spot issues that will help maximize your claim so that you're compensated fairly. An attorney practicing in this field understands when it's time to file

certain claims or forms, and has been through enough hearings that he or she knows what to expect. Lawyers who don't handle this type of work likely will be as in the dark as you are about the technical aspects, so find someone who makes workers' compensation a regular part of his practice. Better yet, find an attorney who is also experienced with construction accidents as he or she will be best situated to determine whether there are additional claims for a VSSR and how to pursue those claims for you.

When you're talking about trying to replace a portion of the income you've lost from being hurt on the job, you really can't afford to handle the case yourself or with an inexperienced attorney and risk making a crucial mistake.

Chapter 8

Civil Litigation Claims



To consider whether a Worker has a construction injury claim beyond workers' compensation, it is necessary to be familiar with and understand the construction process and the legal duties of the various parties involved. Depending on the complexity of a construction project, there are often a number of relationships at work. The primary parties are generally the Owner/Developer; Contractors/Subcontractors; Prime Contractor; Architect & Design Engineers; and Suppliers/Manufactures.

The goal of this Chapter is to introduce you to the possible legal actions that may flow from a construction site acci-

dent, the damages that are recoverable, and the legal process for pursuing those claims.

Various Parties on a Construction Project

- A. **Owner/Developer:** Larger construction projects usually involve delegation of both work and legal responsibility from construction site owner to general contractor and from general contractor to “sub-contractors”. However, an owner’s simple delegation of work is not necessarily enough to insulate it from liability. Owners have a legal duty to use reasonable care to correct or warn against non-apparent site hazards which a Contractor and its Workers may encounter. The liability of an Owner typically hinges on the extent of operational control the Owner maintains over the premises and/or the work being done in determining whether the Owner can be legally held responsible for injuries sustained by Workers or members of the general public.
- B. **Contractors/Subcontractors:** As discussed in earlier chapters, under OSHA, both general contractors and subcontractors have a duty to provide Workers with a reasonably safe work environment. If a contractor or subcontractor cause an injury to a worker who is not their employee (e.g., an independent contractor, temporary employee, employee of another contractor/subcontractor) they could be liable to the injured worker.
- C. **Prime Contractors:** Primary contractors are generally only responsible for the work that is identified in their contract. However, they can be held liable for any work

they delegate, if they retain control, or direct, if an injury is sustained by a Worker as a result.

- D. **Architects/Design Engineers:** Architects and engineers are involved in structure design. Designs take the form of final drawings and specifications. If the plans or specifications are faulty and cause an accident, the design professional could be liable to any injured party.

- F. **Suppliers & Manufacturers:** Any party in the chain of distribution of a defective product, including manufacturers, equipment suppliers, and material suppliers, may be held liable if there is a defect in the product.

Available Legal Claims

A Worker injured on a construction site, may have a variety of legal claims that can be brought against a variety of parties. Aside from workers' compensation, discussed in Chapter 7, the most common claims are: (1) negligence; (2) premise liability; (3) product liability; and (4) wrongful death. While there are many nuances to each claim, including the deadlines that exist for bring such claims, they are generally discussed as follows:

1. **Negligence:** If someone fails to act with the care expected, they may be negligent. Generally, to recover against another party for basic negligence, a Worker must show the other party owed him a legal duty of care, breached that duty, and caused him an injury. The duty of care could be duty articulated by courts, set out by statutes or regulations, or provided for by contract. As it pertains to construction matters, a Contractor is generally not going to

be liable for the negligence of a subcontractor unless the Contractor retains control over the means and methods of the subcontractor's work, or knows work is being performed in an unsafe manner and has the opportunity to prevent it by exercising control it has retained. There are a couple other specific types of "negligence" that often come into play in construction cases:

- **Negligent Hiring/Retention:** If an incompetent employee is hired or retained and causes injury – the employer could be liable.
- **Negligent Entrustment:** If a Contractor permits an unqualified individual to operate equipment or a vehicle and such individual causes injury – the employer could be liable.

2. Premise Liability: The owner/possessor of land is subject to liability for the physical harm caused to those he invites on the land by a condition on the land, but only if he:

- Knows or should know of a condition on the property that involves an unreasonable risk of harm to such invitees; and
- Cannot reasonably expect that they will discover or realize the danger, or will protect themselves against it; and
- Fails to exercise reasonable care to protect them against the danger.

While a "possessor" of the land is often thought of as being the owner of the land, general contractors have also been found to be "possessors". Arguably then, the duty to exercise reasonable care to protect those invited onto the prop-

erty is independent of, and in addition to, the duty to exercise reasonable care where such a party retains control of the work.

3. Product Liability: Construction sites are full of machinery, equipment, tools, and materials, all of which pose risk of injury to workers. If a Worker is injured by one of these products, he may have a product liability claim against the manufacturer and/or supplier. In order to pursue a claim, it must be shown that there was a defect in the products:

- a. Design: the manner in which the product was designed rendered it unreasonably dangerous to use.
- b. Manufacturing: the product was negligently constructed/manufactured and/or failed to meet design standards/specifications.
- c. Warning: the product was placed into the marketplace and failed to adequately warn of danger or provide sufficient information for the Worker to use it properly and safely.
- d. Non-conformity: the product is not fit to use for the purpose represented or fails to conform to any warranty or representation made.
- e. Alteration: manufactures and sellers occasionally make alterations to equipment in order to make jobs easier or more efficient. If such alterations render the product less safe and cause an injury, the companies involved in the alteration could be liable.

4. Wrongful Death: If a Worker is killed as a result of the acts or neglect of another, Ohio statute permits the deceased Worker's estate to pursue a wrongful death claim

against the that party. The “wrongful death” can arise from negligence, product liability, or any other action giving rise to civil liability. Any damages recovered are for the benefit of the Worker’s “next of kin”.

- **Survivorship Claims:** If the Worker experienced pain and suffering, medical expenses, or lost wages, for instance, before they died, the estate may be able to bring what’s referred to as a “survivor claim”. While a “wrongful death claim” is also brought by the estate – it is a statutory claim for injuries suffered by the next of kin. That is, a wrongful death claim belongs to the family. A “survivorship claim” is brought on behalf of the estate for injuries suffered by the Worker himself. While these claims are often confused with each other, there are very significant differences.

Statute of Limitations

A statute of limitations is a statute passed by the state legislature that provides a “time limit” for bringing certain types of legal actions. When the time limit expires, so does the right to bring the action. The statute of limitations varies depending on the specific claim. When the time period begins to run on a claim also can vary and be very dependent upon the specific facts of a case. Very generally, if a Worker is injured or killed, a claim would need to be brought within two years. However, given the severe consequence of failing to file a claim within the limitations period, it is critical an injured party consult with an attorney about the applicable time periods.

Available Legal Damages

Damages, in the form of money, are an award of compensation for an injury, property damage, and monetary expenses and losses. There are three classes of damages which can often be pursued in a construction accident case: (1) compensatory; (2) wrongful death damages; and (3) punitive.

1. Compensatory Damages

Compensatory damages are award of money for actual injuries and losses sustained by the Worker in the accident. These losses can be economic or non-economic:

A. Economic Damages: Economic damages refer to actual losses or expenditures of money that are incurred due to the accident. They are generally easy to calculate. They include:

i. Medical Expenses. Emergency room care, medical treatment, diagnostic testing, prescription costs, and other medical care. **Note:** It is important to understand what right the initial payer of the medical bills (workers comp, medical insurance, Medicaid, etc.) has to be reimbursed from any recovery. This “right” can be contractual or statutory and is referred to as “subrogation”.

ii. Loss of Income. If the Worker’s injuries result in a reduction or loss of income, this loss can be recovered – not only for past loss, but for future wage loss as well.

iii. Property Damage: The Worker is entitled to be compensated for any loss to property,

such as vehicles, clothing, or personal items damaged in the accident.

B. Non-Economic Damages: Non-economic damages refer to losses that do not have a “receipt” or “market value” attached to them. They are “personal” to the individual injured. They include:

i. Pain and Suffering: Pain and suffering damages is a generic term that often is used to refer to several different “pain and suffering” injuries. These include: mental/emotional suffering, mental anguish, loss of enjoyment, embarrassment associated with a physical injury, physical impairment/disfigurement, and actual pain. “Pain and suffering damages” are one of the most difficult types of damages to calculate as they not inherently monetarily quantifiable. Despite this, an experienced attorney should be able to assign a legal value for each specific component of loss based.

ii. Loss of Consortium: Ohio law recognizes the existence of certain benefits and affections within relationships like husband-wife and parent-child. These include companionship, aid, and affection. When a Worker is injured, the injury may affect his ability to provide these benefits and affections. As such, the law permits a deprived spouse or minor child to assert a claim for loss of consortium claim.

2. Wrongful Death Damages

Wrongful death damages are set by statute. They include loss of economic support, loss of services, loss of consortium (care, assistance, instruction, society, advice....), loss of a child's prospective inheritance, and mental anguish suffered. A probate judge determines what amount each statutory beneficiary receives from any settlement or award.

3. Punitive Damages

Sometimes a defendant's conduct goes beyond mere "negligence" and involves elements of fraud, malice, or a conscious disregard for the safety of the Worker. In such instances, the Worker may be able to seek and recover punitive damages. Punitive damages do not compensate the Worker for injury or losses. Rather, they are money damages designed to deter "bad" behavior and punish defendants who disregard the safety of others. Punitive damages can only be awarded if compensatory damages are awarded and the Worker meets the burden of proof required to demonstrate the Defendant's egregious behavior.

Limits on Damages

The state legislature limits or "caps" the amount of "non-economic" and "punitive" damages (each discussed above) an injured Worker can recover in negligence and product liability cases. The caps are as follows:

- **Non-economic:** The greater of \$250,000 or 3x the total economic damages, up to \$350,000. If there are multiple plaintiffs, the most a defendant can be liable for, for non-economic damages, is \$500,000 total.

* **Exception:** There is no cap on damages if

the Worker suffers:

- a permanent and substantial physical deformity;
- loss of use of limb;
- loss of bodily organ system; OR
- loss of a permanent physical functional that prevents the Worker from being able to independently care for himself or perform life sustaining activities.

*** Exception:** There is no cap on damages in wrongful death claims.

• **Punitive:** Generally, if punitive damages are sought and awarded, they are limited to 2x the amount of compensatory damages. There may be further limits depending on the size and net worth of the Defendant's company.

• **Wrongful Death:** There is no cap or limit on damages.

The Legal Process

While every lawsuit is unique, there is a basic process that is common to most civil suits that reach trial. That process involves several distinct phases, each is briefly discussed as follows:

- I. **Filing a Complaint:** The first step to commencing a lawsuit, is filing a complaint with the court. A complaint is basically a legal document that sets forth legal claims against another party and

factual allegations that support those claims. The complaint cannot be filed with just any court. Rather, it must be filed with the court that has jurisdiction to hear the matter. The jurisdiction of a court can vary depending on the claims asserted, the parties involved, and the amount of damages being sought. Very generally, serious construction injury cases in Ohio are usually brought in the Court of Common Pleas located in the county where the accident occurred or the defendant is located. The most common exception to this are claims involving the Ohio Department of Transportation. In these cases, claims are filed with the Ohio Court of Claims. Occasionally, if the defendant and the injured Worker are from different states, the action might be able to be filed in federal court.

- II. **Service of the Complaint:** After filing the complaint, a copy of complaint must be served on each defendant. How this is accomplished varies depending on court and where the defendant is located.
- III. **Defendant Answers or Responds:** Once a defendant is served with the complaint, it must either answer the allegations of the complaint or file some other response permitted by the Rules of Civil Procedure. If a defendant fails to timely answer, a plaintiff can request what is referred to as a “default judgment” against the plaintiff.
- IV. **Initial Pre-Trial Conference:** Typically, after the defendant answers or responds to the complaint, the Court sets a pre-trial conference. At this con-

ference, the trial schedule is usually set and deadlines are given for disclosing experts, conducting discovery, and filing dispositive motions. A trial date is also usually given.

V. **Discovery/Investigation:** Discovery is the legal procedure by which parties in a lawsuit obtain evidence from each other that may be relevant to the lawsuit. While there are numerous discovery devices, the most commonly used ones in construction cases are:

- Interrogatories: Interrogatories are written questions from one party to another that seek information. The number of questions that can be asked are limited by rules.
- Requests for Production: Requests can be made that the other party produce documents, including electronically produced/stored information, that may be relevant to the lawsuit. Requests can also be made to non-parties by subpoena.
- Admissions: A party is permitted to serve statements upon another party that request that party conclusively admits or deny the truth of each statement.
- Site Inspection: With construction cases, it is frequently the case that a party needs to inspect the site of the accident.
- Depositions: A party can require another party or other witness to appear and give testimony under oath by oral examination. A court reporter is present to place the individual under oath and transcribe the deposition.

- Examination of Worker: In most injury cases, the defense has a right to have the injured party submit to a physical and/or mental examination. The examiner is required to prepare a report and provide it the plaintiff's counsel.

VI. **Summary Judgment**: Usually, following discovery, the parties have an opportunity to file a motion with court asking it for judgment on a particular issue or the entire case. This is referred to as summary judgment. Summary judgment is only available if there are no material facts in dispute and it is evident that one party is clearly entitled to judgment.

VII. **Trial Preparation**: While a good attorney has been preparing for trial from the outset of the case, researching the law, working with expert witnesses, and developing trial strategies, formal trial preparation generally begins 60 days out from trial. This typically includes preparing witness lists and subpoenas, trial exhibits, jury instructions, trial briefs, and motions to exclude certain evidence.

VIII. **Trial**: If a case has not settled, been dismissed, or decided on summary judgment by the court, the parties proceed to trial. If the case is in the Court of Claims, the trial is by judge. Otherwise, the trial will proceed by a jury, if one has been requested by either party. In jury trials, the trial generally proceeds as follows:

- **Jury Selection**: The Court and the attorneys engage in a process to select prospective ju-

rors. In state court, a civil trial requires 8 jurors. In federal court there can be 6 to 12 jurors.

- **Opening Statements:** Once the jury is selected the parties each give opening statements to the jury, telling them what the case is about and what they hope to prove with the evidence that will be presented.
- **Presentment of Plaintiff's Case:** The Plaintiff is the first party to present evidence. Plaintiff will call witnesses and conduct direct examinations of them. Defendants will then get the opportunity to cross-examine the witness on the matters just raised on the plaintiff's attorney. Further examination of the witness is often conducted in the form of a re-direct exam by the plaintiff and a re-cross by the defendant.
- **Directed Verdict:** At the conclusion of the Plaintiff's case, defense counsel may make a motion for a directed verdict. This is a request that the court find that the Plaintiff has failed to present sufficient evidence to support its case. If it is granted the trial is concluded. If it is denied, the Defendant presents its case.
- **Presentment of Defendant's Case:** Like Plaintiff, Defendant can call witnesses to provide testimony that support its defense. The witness examination follows the same procedure with defense counsel conducting the direct exam and plaintiff conducting the cross.

- **Closing Arguments:** At the conclusion of the Defendant's case, the parties usually move on to closing arguments. Starting with Plaintiff, each party discusses the evidence and the inferences that can be drawn from it.
- **Jury Instruction/Deliberations:** Following closing arguments the judge instructs the jury about the law that should guide their deliberations, including the burdens of proof that they should apply to the case. After receiving the instructions, the jury moves from the courtroom to the jury room and deliberates. Their deliberations continue day to day until they reach a verdict.
- **Verdict:** In a state court case, there must be at least a three-fourths majority (6 jurors) to return a verdict on the Plaintiff's behalf. Verdicts in federal court must be unanimous.

IX. **Appeals:** A case that is concluded by an involuntarily dismissal, summary judgment, or by verdict, can be appealed. There must be valid grounds for an appeal. Appeals are commonly filed where a dissatisfied party claims the court made a legal error (e.g., used wrong legal standard, incorrectly instructed the jury, or impermissibly permitted or excluded evidence). Statistically, there is a low chance of success on appeals. Without experienced counsel, the chances of success are even lower.

Alternative Dispute Resolution (ADR): ADR refers to any means of settling a dispute outside the courtroom. Efforts to resolve the dispute can occur pre-suit or any phase of litigation. In the civil injury context, this most frequently includes negotiations between the parties and mediations.

Settlement negotiations are an important part of the practice of law as it is estimated that less than 5% of all civil cases make it to trial. As such, it is critical that injured Worker's engage an experience attorney who is highly skilled in case valuation and strategic in negotiation. Settling a claim too early, or before the full extent of the injuries or damages are understood, could result in leaving money on the table and an unsatisfactory settlement. Failing to be realistic about the potential verdict value of a claim can keep the parties out of a "zone of bargaining" and result in no settlement where an acceptable settlement may have existed for both parties.

If the parties have attempted negotiation and not been successful, they could proceed to mediation. A mediator is an impartial third party that the parties to the litigation agree to utilize to assist them in resolving their dispute. Mediators do not have the authority to settle or decide a case. Rather, they assist parties by facilitating negotiations. The mediator should not merely be someone who shuttles back and forth between parties conveying offers and counter-offers. Instead, should be skilled in understanding the interests of each party and assist them in reaching their own agreement.

The practice of civil litigation is complex. Construction accident litigation is often more complex. Attorneys are required to know legal nuances, statutes, rules of procedure and evidence, and relevant case law that can make or break a claim. While injured Workers with minor workplace injuries can often handle their own workers' compensation claims, serious injuries put too much at stake for the injured Worker and his or her family to leave representation to anyone other than a highly skilled and experienced construction accident attorney.

Ohio's Employer Intentional Tort Statute

Historically, while employees injured in the scope of work were mostly limited to seeking benefits through workers' compensation, some "employer acts" were treated as falling outside the workers' compensation system and a separate action could be pursued against the employer in court. Specifically, in cases where an employer exposed an employee to a situation where the worker was substantially certain to be injured, the employer's conduct could be considered to be "intentional" and an action outside of workers' compensation could be pursued against the employer.

However, in 2005 Ohio lawmakers enacted a very controversial statute that virtually eliminated the ability of an employee, or the family of a deceased employee, to pursue such an action. The statute that was enacted provides that an employer shall not be liable for damages for an "intentional tort" unless it is proven that the employer committed the tortious act with the deliberate intent to cause an injury to the employee. The constitutionality of the statute was challenged, but has been upheld by the Ohio Supreme

Court.

The statute was designed to create a nearly impenetrable barrier of protection around employers, even those who knowingly exposed workers to danger or death. No longer is it enough to show the employer was careless, reckless, or even indifferent about an employee's safety. Now, it must be shown that the employer deliberately acted with an intent to cause its employee harm. This is a very difficult standard to prove. However, under very specific circumstances an action can be successfully be pursued. The most common and successful approach to proving this "deliberate intent" is where the employer removes a guard on equipment or tools that was designed to shield the operator from exposure from a dangerous aspect of the equipment. If a worker is injured as a result of his employer's removal of a safety guard, there is a "legal presumption" that the employer had intended to injure the worker. The employer then has the burden to show that while it may have removed the guard, it was not with an intent to injure the employee. This is usually a question of fact for a jury to decide.

What makes pursuing intentional torts even more challenging for many injured workers and their attorneys, is that the employer's insurance carrier may have excluded its obligation to provide coverage to the employer where the employer acts with a deliberate intent to cause an injury – the very standard the plaintiff must prove. If insurance coverage is not available, collectability can become a real issue.

Given the complexity and legal nuances of intentional tort claims, it is critical that injured workers consult an attorney

who is experienced in not only workers' compensation law, but also civil litigation, and employer intentional tort cases. Such an attorney can properly assess whether a viable claim exists and will have the experience and knowledge to bring the claim and challenge the employer's defenses to the claim.

Hiring the Attorney

Right



It is difficult to know where to turn to for legal help if you have been injured while working on a construction site or even while passing through a construction site as a bystander. You may not even realize how the accident happened or what can be done about it – all you know is that you are hurt, in pain, and unsure what steps to take next.

You may have questions like:

- Who is going to pay for my medical bills?
- What if I will never be able to do this kind of

work again or what if I won't be able to go back to my job?

- How are we going to survive as a family without the paychecks?
- Am I eligible for worker's compensation?
- Can I sue the construction company responsible for my injuries?
- Is there paperwork that I need to fill out?

Even though it may be hard to see right now, there *is* hope.

The attorneys at the Charles Boyk Law Offices, LLC have extensive experience in handling construction accident cases have secured millions of dollars in compensation for injured workers, while helping them get their lives back to normal. Whether the claim involves workers' compensation or a civil lawsuit our lawyers are involved in prosecuting such cases on a daily basis.

We believe strongly in continuing legal education (CLE) and we regularly attend seminars and courses on the latest trial tactics and strategy in order to make sure that we are at the forefront of construction injury litigation. In addition, we believe strongly in using technology in the courtroom in order to help present the most persuasive case possible so that it is absolutely clear to the jury that what the defendant did was wrong. Among other organizations, all of our attorneys are active members of the Toledo Bar Asso-

ciation, Ohio Bar Association, Ohio Association for Justice, and the American Association of Justice. We believe in keeping aware of the latest developments in the local, state, and national legal communities so that we can better serve our clients.

At the Charles Boyk Law Offices, LLC we return phone calls and we keep in contact with our clients. If you place a call to our office that we are not able to immediately take, we will return the call within 24 hours.

But perhaps the best reason to hire the Charles Boyk Law Offices, LLC is a simple, intangible quality: the fact that we truly care. Lawyers become lawyers for a variety of reasons. Some want to follow in the footsteps of an elder family member. Some are attracted to the potential to gain wealth and power. Some lawyers really can't give you a straight answer as to why they became a lawyer.

Then, there are those individuals who choose to become lawyers because they genuinely care about people and want to pursue a career centered on helping others. The lawyers at the Charles Boyk Law Offices, LLC fall into this last category. While we have been extremely successful at securing some of the largest settlements and jury awards for our clients, our practice is and has always been centered on one simple goal: helping our clients get the justice that they rightfully deserve.

Because our practice is centered on the goal of helping our clients get justice, success has followed naturally. We believe it is this intangible quality that sets us apart from the

vast majority of Ohio law firms, and we pride ourselves on keeping our client's interests first, and having everything else come second.

Our goal is to exceed the expectations of every client that walks through our door. This means discovering what their worries are, what keeps them up at night, and what they hope to have changed with the help of our firm. We have take a team approach to each client's case to leverage all of our collective resources, talents, and experience to give you the absolute best legal team possible. While each case is unique, we take a systematic approach to managing a case that ensures we are able to advance your case to the best result possible. This includes:

Pre-Suit

- The process begins with a phone call. After you contact us and tell us about your case, we will schedule a meeting with you to sit down with a team of attorneys and paralegals to go over every aspect of the injury accident, including the events leading up to the accident, the medical treatment, and the problems the client is facing now. After signing a letter of representation with our office, you will be sent home with the contact information of all staff you will be working with, as well as other information on your case.
- We immediately begin contacting the insurance company on your behalf to determine coverage and will send the insurance company a letter of representation and set up your accident claim.

- We are experienced in investigating construction accidents and know what construction documents and evidence is needed to discover each and every party that may be liable and prove your case. We will gather all necessary documentation related to the incident and develop a game plan and timeline with strict deadlines to ensure that all paperwork is filed with the state and federal government in a swift and timely manner.
- We will ensure evidence is preserved by obtaining any existing photographs and video surveillance in addition to taking our own photos and video on-site and of all parties involved. This includes sending a Preservation Letter to ensure that evidence is preserved by all potential defendants.
- We will open a worker's compensation claim on your behalf to ensure that you receive pay and medical treatment while you are unable to work.
- We will request an official OSHA investigation if one has not already been performed and obtain all related reports.
- We will secure the best expert witnesses to review the OSHA report to determine the standard of care.
- If applicable, we will file a VSSR investigation, which allows an additional compensation is a second form of settlement and acts as a second investigation,

which is a strategic way to leverage the worker's compensation claim.

- We will assist in helping injured parties who do not have a medical provider or cannot afford the medical treatment, get the treatment they need to recover. We know the best providers, as well as the ones to avoid.
- Our four attorneys and multiple staff members – including experienced paralegals, legal assistants, and medical records analysts - will investigate your case by obtaining police reports, interviewing witnesses, and gathering medical records. We meet as a team on a regular basis to review your case.
- Again, we are experienced in investigating construction accidents and know what construction documents and evidence is needed to discover each and every party that may be liable and prove your case. We also know and utilize the best construction experts in the industry to help us identify the risks Workers were exposed to and the failures of care that took place that led to their injuries.
- We have medical records specialist who will contact you regularly to get an update on your medical treatment. We also staff medical professionals to review client records.

Settlement Demands

or find someone who can.

Our attorneys are always available to discuss the progress of your case. We provide clients with personal cell phone numbers and the attorneys are available after normal business hours and on weekends.

A Bit About Attorney Charles Boyk

Chuck Boyk has been licensed to practice law in Ohio since 1983. His major areas of practice involve plaintiff personal injury, construction accidents, wrongful death, premise liability, and workers' compensation.

Chuck is licensed in all Ohio courts and the Eastern District of Michigan in Federal Court. During the past 33 years, Chuck has acted as counsel or co-counsel in numerous cases in other states, including California, Florida, Indiana, South Carolina, Michigan and New York. Chuck Boyk is a lifelong resident of Ohio.

He was born in Toledo, Ohio and graduated from Start High School in 1976. He attended Bowling Green State University on a debate scholarship and graduated with a Bachelor of Arts in Communication with a specialization in Political Science. After college, Chuck went directly to the University of Toledo College of Law and graduated with a Juris Doctorate Degree in 1983. As a legal intern, Chuck participated in numerous judge and jury trials before becoming an attorney. Chuck is a member of the Toledo Bar Association, Ohio Academy of Trial Lawyers, and the American Association of Justice.

Chuck has also received Martindale Hubbell's AV Rating, the highest an attorney can earn, and a 10.0 "Superb" rating from the Avvo lawyer ranking system. Avvo is one of the leading websites that provides information about lawyers to consumers. His Avvo profile also provides more information on some of his other awards and recognitions.

We ask that you keep us in mind when you are making the important decision of choosing the law firm that will handle yours or your loved one's injury case. If you would like to have one of the attorneys at the Charles Boyk Law Offices, LLC provide a free case evaluation, call us today at 419-241-1395 or toll free at 1-800-637-8170. You may also email Attorney Chuck Boyk directly at cboyk@charlesboyk-law.com or Live Chat on our website, www.BoykLaw.com. We are always here to help answer any questions that you may have.