



Construction and Land Use Newsletter

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SUMMER UPDATE FOR CONSTRUCTION PROFESSIONALS

By Juanita F. Ferguson

The summer is a busy season in the construction industry. Additional employees are often hired to work at construction sites. As a result, increased preparations are made to accommodate employees as the employment experience at a construction site in the middle of summer is physically demanding. Even though summer is upon us, it is still worthwhile to take an inventory of various aspects of your business operation to ensure that you are in compliance with the applicable laws and regulations of the jurisdictions where you operate.

Employment - Hiring and maintaining skilled employees is a tedious, but nonetheless critical aspect of operating a successful construction project. If you have never experienced the challenges associated with managing construction employees, then consider yourself fortunate. The process begins before the employees are even on your payroll.

If you bid on state or municipal construction projects, you need to know the laws of the state or municipality regarding the makeup of your employment pool. Rising unemployment levels over the past few years have caused many states to enact laws that require contractors and subcontractors to employ certain percentages of residents in the location where a construction project is being built. If you are uncertain whether hiring a prospective employee will put you in jeopardy of violating local laws, check with the state or municipal employment division where the project is located to determine if you have to employ local residents and if there is a registry of available persons who are local residents and who are available for hire.

It is important to classify employees properly in order to avoid being subject to violations of the Fair Labor Standards Act ("FLSA"). FLSA applies to virtually all employers in the United States and it covers wage hour laws, overtime, and youth employment standards. Potential violations of FLSA include payment of wages which are less than the minimum wage and failing to classify employees properly. Depending on your jurisdiction, a penalty for an employer who misclassifies an employee as an independent contractor may consist of allowing the employee to seek up to treble damages for lost wages and benefits. An employer could also be required to pay restitution or be subject to a stop-work order or debarment. In order to come into compliance under the law, the employer could be required to provide notice to each employee of their status as an independent contractor and the implications of such status, and to maintain records of independent contractors working on their jobs sites.

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Administrative Oversight – The construction industry is regulated heavily in most, if not all jurisdictions. You should have a general understanding of what is required of your business in the jurisdiction where you operate. If required, ensure that your business cards, contracts, and invoices include your state license number displayed prominently. If your clients include homeowners be particularly mindful as home improvement contracts have even more stringent guidelines in place to protect the public.

Avoid being the subject of a formal complaint from your local regulatory board. Don't enter into an agreement to provide services if the cost of the services exceeds the type of license that you possess. For example, if your license allows you to work on projects that do not exceed the amount of \$100,000, entering into an agreement for a \$150,000 project will likely subject you to penalties. Even if the prospective client is unaware of the restrictions of your license or is willing to ignore the restrictions in exchange for a reduced sum, you could nonetheless be subject to stiff penalties for a failure to comply with the laws.

Licensure or certification may be revoked for misrepresentation or a fraudulent application or for incompetence as demonstrated by an egregious or repeated violation of the laws of your jurisdiction or the applicable building codes. If a contractor violates the local statutes or regulations, it could be required to participate in remedial education. It could also face suspension, revocation, or denial of the renewal of a license or certification card. Extreme sanctions could include prosecution by the law enforcement authorities, resulting in the payment of sums into a recovery fund or jail time for egregious or repeated offenses.

OSHA Compliance – The Occupational Safety and Health Administration (“OSHA”) does not regulate working in hot environments. However, Section 5(a)(1) of the OSH Act, also known as the General Duty Clause, states that employers “shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” Illnesses that result from working in the heat for prolonged periods are recognized hazards. These illnesses include heat rash, heat stroke, heat exhaustion, heat cramps, and heat collapse. Prior to assigning summer hires to work in

the heat, assess the work conditions and also allow a reasonable period of time for employees to become acclimated to working in excessive heat.

The Act also states that “each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.” Therefore, it is important for contractors to educate employees about how to recognize heat related illnesses and what to do to prevent the onset of such illnesses. Finally, monitor work conditions periodically to ensure that safe working conditions are maintained.

Juanita F. Ferguson is an attorney with the law firm of Bean, Kinney & Korman, P.C. in Arlington, Virginia. She can be reached by telephone at (703) 525-4000, extension 343 and by email at jferguson@beankinney.com.

This article is not intended to provide specific legal advice but, instead, as a general commentary regarding legal matters. You should consult with an attorney regarding your legal issues, as the advice will depend on your facts and the laws of your jurisdiction.

Social media meets design, real estate and construction: DCN Group

By Timothy R. Hughes

I attended a recent event held by the Design and Construction Network at Spider Kelly's in Arlington. The event had a large turnout of what appeared to be more than 225 attendees. The really interesting point is that DCN is an online group from LinkedIn that, like Neo in “The Matrix,” jumped from the virtual world into reality.

DCN crosses boundaries that in previous generations felt untouchable. The old antagonistic model of contractors pitted against design professionals is all too often still a reality in some quarters, but many recognize this model is a financial drag on all parties. Establishing teamed relationships that are nurtured to mutual success amongst owners, contractors and design professionals offers far more upside and less stress. A group like DCN offers a medium, leveraged off social media, which cuts across all these boundaries.

Tim Klabunde, founder of DCN and director of marketing for William H Gordon Associates Inc. in Chantilly, has a long affinity to social media from his highly successful blog cofebuz. As Tim said to me at the event, “To succeed in the real estate industry you have to focus on building the

key relationships that will enable your business to survive and even thrive in a competitive economic environment. DCN is an example of using social media as a tool for relationship building in the new economic environment.”

I see social media in general and groups like DCN, in particular, as the canary in the coal mine. While the real estate vertical as a whole has been a slow adopter of social media and somewhat resistant to change, I am seeing some of these resistances break down in the face of economic reality and the “new normal.” We can anticipate these changes to gather momentum and become far more prevalent as the industry gets comfortable with social media.

Social media presents a great opportunity to meet and connect with a variety of people. It is not without risks, so companies need to develop proactive management of risks, clear policies, and establish reasonable “rules of the road” for participation in social media. Responsible use of social media can be a great additional tool for business development, and real estate and construction industry players need to understand this is the wave of the future and it is not going away.

Tim Hughes is a Shareholder in the law firm of Bean, Kinney & Korman, P.C. in Arlington, Virginia and lead editor of the firm’s blog at <http://www.valanduseconstructionlaw.com>. He was named a 2010 “Leader in the Law” by Virginia Lawyer’s Weekly and a member of the Legal Elite for Construction Law by Virginia Business Magazine. He can be reached at (703) 525-4000, extension 162 and by email at thughes@beankinney.com.

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Meet Our Attorneys

Meet Christian M. Lapham



Christian Lapham is a shareholder to the firm and has been practicing law since 2002. Mr. Lapham’s practice is concentrated in the area of family law. Mr. Lapham has a diverse background in domestic relations as well as civil litigation. His experience in family law matters has been extensive. Mr. Lapham has successfully litigated complex custody

matters, including cases involving relocation, mental illness, and substance abuse. He has also handled numerous complex equitable distribution matters, including matters involving federal employees and military service members, valuation issues pertaining to businesses, and sophisticated asset-tracing issues.

Christian is currently licensed to practice law in the Commonwealth of Virginia. He has appeared on numerous occasions before the Circuit Court, General District Court and Juvenile and Domestic Relations District Court of Fairfax County, Arlington County, Loudoun County, the City of Alexandria, Prince William County, and other jurisdictions throughout Northern Virginia.

Prior to joining Bean Kinney, Mr. Lapham was a partner in the law firm Cooch & Lapham in Fairfax. He is also co-founder of Stonebridge Title, LLC and Sunrise Valley Title, LLC. Mr. Lapham is a member of the Virginia State Bar, the Fairfax Bar Association, the Virginia Bar Association and the Virginia Trial Lawyers Association, including the Family Law Section of each association. In his spare time, Christian has devoted time to various community outreach programs. He is the founder of the Fairfax Chapter of the Second Saturday program, a program designed to promote awareness for individuals confronting separation or pending divorce. He has also participated in the Habitat for Humanity Global Village Program in Portugal, assisting in the building of a home for a deserving family near Braga, Portugal.

Mr. Lapham has a Bachelor of Arts degree from the University of Virginia, majoring in German and Foreign Affairs, and has earned his J.D. from George Mason University School of Law. He is

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This newsletter was prepared by Bean, Kinney & Korman, P.C. as a service to clients and friends of the firm. The purpose of this newsletter is to provide a general review of current issues. It is not intended as a source of specific legal advice. © Bean, Kinney & Korman, P.C. 2011.



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