

THE REWARDS OF PREVENTING SEXUAL HARASSMENT ON THE JOB

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Lately, it seems that sexual harassment and misconduct allegations have been all over the news. As sexual harassment can do costly and lasting damage to a business, not to mention the personal impact it can have upon those involved, it’s important to prevent misconduct before it occurs, as well as handle situations that may arise in a proper and professional manner.

Allegations of workplace sexual harassment can become expensive for a company to investigate and defend against, especially if the complaints are found to be credible. Here are some examples of what is being awarded to accusers when their allegations were found to have merit:

- \$168 million was awarded to a California physician’s assistant.

- Fox News paid \$13 million to settle sexual harassment claims filed by five women.

- In 2015, the Equal Employment Opportunity Commission (EEOC) recovered \$164.5 million from employers for those who filed workplace harassment complaints.

It’s important to understand what constitutes sexual harassment in the workplace. There are two categories of conduct that can be considered sexual harassment:

QUID PRO QUO: “Quid pro quo” is a Latin term for “this for that”. In these situations, one person forces another to tolerate or participate in sexual misconduct against their wishes, either in anticipation of receiving something in return, such as a promotion, raise, or desired position, or to avoid having something taken away, such as their job.

HOSTILE WORKPLACE: Conduct of a sexual nature, including jokes, emails, gestures and printed materials, which interferes with the work of another or creates an undesirable working environment.

Preventing sexual harassment can have a direct impact upon the well-being of an organization and its operations. Studies have shown the most noted effects of sexual harassment in a workplace are decreased job satisfaction, lower performance on the job, increased absenteeism, reduced workplace morale, mental and physical health issues with employees, greater potential for workplace conflicts, as well as increased employee turnover.

In addition to the financial costs, accusers can go public and do great harm to a company’s reputation. Last year, a Charlotte res-



taurant employee was forced to discuss her sexual harassment allegations in front of the manager she accused of misconduct – and fired during the short meeting. The employee released a secretly-recorded video of the meeting to the news media, which resulted in several local and national news stories as well as a flood of negative comments on the company’s social media sites.

Focusing upon these areas can help protect both your employees and your business from sexual harassment:

EMPLOYEE HANDBOOKS: A first line of defense against sexual harassment is to clearly define appropriate conduct in your workplace and communicate these with employees. When people know the rules, they are more likely to follow them – and when they don’t, you can stand on more certain ground in handling them. Max Richardson, Senior Vice President for Marsh & McLennan, a Charlotte insurance agency, advises “Employers should have a well-developed employee handbook outlining their company’s culture and ‘no tolerance’ policy on this topic – sexual harassment.

TRAINING & COMMUNICATION: Employees should understand the rules of conduct. Periodic meetings and training materials can play key roles. Managers should be coached to set positive examples, step in when they see misconduct and handle employee complaints fairly and in a manner consistent with company policies. Courts have recognized the presence of training programs as a defense that employers can use in court to reduce awards and even get cases dismissed.

INSURANCE COVERAGE: Ensure you have insurance coverage for employee misconduct with Employment Practice Liability Insurance (EPLI) coverage, which can be obtained as part of your business insurance coverage. This coverage will help defray the costs of handling lawsuits and EEOC complaints, limiting a business’ cost to a per-instance deductible. Ask your insurance agent or broker if your organization is covered.

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(Continued from page One) **The Rewards of Preventing Sexual Harassment on the Job)**

BEST PRACTICES: Allegations should always be handled consistently and fairly with clear rules & instructions in how situations involving sexual harassment are to be handled. Max Richardson cautions that each instance of suspected misconduct “should be handled in the exact same manner. Both employee handbooks and procedures for handling complaints should be reviewed by an attorney.”

DISCRETION AND SENSITIVITY: While not every allegation may seem credible, allegations should be taken seriously, and the accuser treated with respect – with the knowledge everything said and done can appear in a court of law, the court of public opinion – or both. In a time where a phone can record video and emails can be printed or forwarded, it’s easier than ever for someone to prove their case or present evidence of inappropriate handling of complaints.

A recent story in the New York Times talked about the “Pence rule”, a long-running practice by Vice-President Mike Pence to not eat alone with women or drink alcohol without his wife present to avoid accusations of misconduct. While this may help avoid situations, it important to note that courts, beginning with the 1998 U.S. Supreme Court ruling in *Oncale v. Sundowner Offshore Services, Inc.*, recognize same-sex sexual harassment. This means one should always be on their best behavior with all employees, not just those of the opposite sex.

If you aren’t sure about how these issues are being handled, you may want to reach out to your insurance agent/broker or an attorney you trust. They’re usually glad to provide guidance and ensure your interests – as well as those of your employees – are protected.

Most employees believe in fair treatment and respect towards each other and most business owners and managers share those beliefs. The biggest challenge often lies in putting those principles into practice. Having sound policies and practices regarding sexual harassment in place – and enforcing them fairly and consistently – can help you look out for your employees, protect your business and build your company’s reputation as a fair and professional employer.


2017—2018
ASAC Event Calendar

- 12.07.17 **Midlands Chapter Christmas Social** @ Pearlz
- 12.08.17 **Charleston Chapter Christmas Party/Awards Banquet** - Charleston Country Club
- 01.09.18 **Triangle Chapter Meeting** - NC OSHA—Silica Panel Discussion
- 01.11.18 **ASAC Board of Directors Meeting**
- 01.22.18 **Charleston Chapter Meeting—**
Dave Berstrom, Palmetto Railways Project
- 01.23.18 **Midlands Chapter Meeting**
GC Roundtable w/AGC Participation
- 02.09.18 **Charleston Oyster Roast**
Truluck Island
- 02.13.18 **Triangle Chapter Meeting**
GenConnect Social
- 02.23.18 **ASAC Midlands Chapter Oyster Roast**
- 02.28.18 **ASA National SUBExcel, Tempe, Arizona**
- 03.23.18 **Triangle Chapter 2nd Annual Skeet Shoot @ Deep River**
- 04.10.18 **Triangle Chapter Meeting**
Delay Claims featuring Daniel Knight, Anderson Jones Law
- 05.08.18 **Triangle Chapter** - Legislative Conference & Reception with local Government Representatives
- 06.06.18 **Annual Convention**
Embassy Suites, Wilmington Riverfront Hotel, Wilmington NC

*For additional meeting details visit
www.asacarolinas.com
or call ASAC at (803 or 877) 285-3356*


OSHA Extends Electronic Reporting Deadline to Dec. 15

To allow affected employers additional time to become familiar with a new electronic reporting system, the Occupational Safety and Health Administration has extended the date by which employers must electronically report injury and illness data through the [Injury Tracking Application \(ITA\)](#) by two weeks to Dec. 15, 2017. OSHA’s final rule to Improve Tracking of Workplace Injuries and Illnesses requires certain employers to electronically submit injury and illness information they are already required to keep under existing OSHA regulations. The following OSHA-approved State Plans have not yet adopted the requirement to submit injury and illness reports electronically: California, Maryland, Minnesota, South Carolina, Utah, Washington and Wyoming. Establishments in these states are not currently required to submit their summary data through the ITA. OSHA is currently reviewing the other provisions of its final rule to Improve Tracking of Workplace Injuries and Illnesses, and intends to publish a notice of proposed rulemaking to reconsider, revise or remove portions of that rule in 2018.



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Contract Changes and Claims: Accounting Systems, Part 2

The cost accounting monitoring and accounting system should strive to meet the following objectives:

- Permit correlation of the original project estimate to a detailed project budget showing labor, material and equipment projections for separate, definable work items.
- Permit separate cost allocation of labor, material, equipment and subcontractor expenses for each defined work item. This can be done by assigning cost codes or account numbers to each separable work item in the budget, which then can be used for reference by the project management staff in recording time and cost.
- Permit regular and accurate monitoring of actual cost performance relative to budget for such work items.
- Permit monitoring of labor productivity by comparison of actual labor costs or manhours to output of work accomplished relative to planned rates.
- Permit assignment of separate work order accounts or new cost codes relative to specific items of directed or required extra work which can be segregated and identified apart from the base contract performance. This permits:
 - Extra work to be segregated in separate cost accounts reflecting associated labor, material, equipment and even overhead costs.
 - Tracking of the direct cost impact of changes and modifications on a concurrent basis.
 - Proof of both cost causation and quantification of the impact resulting from changes or changed conditions.

ASA's [Contract Changes and Claims](#) is a series of articles providing tips for the management of changes and changed conditions and how to realize full adjustment to the contract price or contract



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Evaluate Your Customers:

Use ASA's *The Prime Contractor Factor*

When considering whether to bid on or sign a subcontract for a construction project, it's easy to focus on just the costs of internal factors that you control, but remember that external factors contribute to the success or failure of the project. Your customers' decisions and work relationships can make or break a project for you. The external factors may seem harder to judge, but a good customer evaluation program will yield important information that you would not otherwise have. Take the time to ask questions such as:

- Does the prime contractor seek bonding through reputable sureties?
- Does the owner or prime contractor have the financial capacity for the project?
- What is the prime contractor's record on bid shopping?
- Is the prime contractor willing to negotiate contract terms that you view as unbalanced?
- Do the prime contractor's field personnel provide regular updates on project progress?

The answers to these and potentially hundreds of other questions will help you rate the factors that you have decided to consider in deciding whether or not to take work. Some factors will weigh heavier than others. Perhaps for your company, the experience of the prime contractor in performing the type of project will count more than whether it holds pre-bid conferences. Once you have worked out the factors that you will consider and the factors' relative weights, it's simple to draw up a chart to calculate the overall "score" of the customer. ASA's white paper on [The Prime Contractor Factor](#), which is free to ASA members, provides a guide on how an individual subcontractor can set up its own prime contractor evaluation program.

Protecting Your Subcontracting Firm from Retainage

One of the outdated tools in the construction industry is retainage in which owners and prime contractors retain a percentage of payments that otherwise are owed to subcontractors pending completion of certain agreed upon project milestones. While a 10 percent base retainage is still too frequently used, many public and private jobs have limits of 2 percent to 5 percent. It is increasingly common to retain no additional funds after a job is 50 percent complete if job progress is satisfactory. However, a prime contractor may use a predatory retainage clause that can be destructive to a subcontractor's ability to collect payment. A subcontractor should look out for subcontract language that unfairly hampers its collection capability. Some subcontract language does not allow for a reduction in a subcontractor's retainage to the same extent that the owner reduces the prime contractor's retainage. If the owner releases retainage for a subcontractor's portion of the work, the subcontractor should be entitled to the money. Whenever practical, a subcontractor should find out the percentage of retainage in the prime contract, and also whether retainage is to be reduced or eliminated as certain milestones are achieved. A prudent subcontractor would then make sure that it received the same entitlement. Some subcontract language delays the release of retainage until the entire project is complete and paid for in full. This usually is much later than completion of an individual subcontractor's work. A wise subcontractor will make sure that release of retainage hinges on the date of completion of its own part of the work. Many early finishing trades routinely negotiate payment terms that either involve no retainage or early release of retainage. A subcontractor also should watch out for subcontract language that allows delays of funds until the end of the job and then only provides for payment after deducting unauthorized or unsubstantiated backcharges. If a subcontract provides for prompt pass-through of owner payments, the subcontractor's cash flow is improved and the funds are not available to the prime contractor to assert back charges and offsets for work not authorized by the subcontractor. If a prime contractor is retaining more from its subcontractor than the balance it is owed by the prime contractor for completion of the project, there is an obvious disincentive for the prime contractor to finish the project. Jobs have dragged out for years and subcontractor retainage remained unpaid on one pretext or another, in spite of the fact that the owner had released practically all project funds to the prime contractor. In addition, protracted retainage may put subcontractor lien and bond rights in jeopardy if filing of required notices must be made within a short period of last performance of jobsite work. Release of retainage to subcontractors upon substantial completion of their work is beneficial to both owners and enlightened prime contractors. This practice is known as line-item release of retainage. It motivates each subcontractor to complete its work as soon as practical, instead of holding off until the slowest trades on the job are ready to finish. It is not unusual for a prime contractor to seek authority in the subcontract to hold back 100 percent to 200 percent of the estimated cost of unperformed work. This is reasonable because it offers further motivation for each subcontractor to complete all of its work quickly. This obviously is more appropriate than the practice of retaining large amounts of money pending completion of a few minor items of work. In addition, it also is wise to make sure there is a provision in the subcontract for payment of interest on delinquent prime contractor payments. Generally, it is best to get a reasonable interest rate established specifically in the subcontract. Entitlement to interest can be used as positive leverage to speed up payments. For more information on negotiating improved retainage terms, see ASA's no-cost benefits available to ASA members by logging-in under "[LogIn/Access Member Resources](#)" on the ASA Web site.



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Coastal Resource Staffing opens in North Charleston in July 2017

North Charleston-based Coastal Resource Staffing company opened the doors to its pilot North Charleston location in July 2017, with plans to match residents with available jobs in Charleston County and surrounding areas. Coastal Resource Staffing is a full-service staffing agency focused on creating successful partnerships with local companies by understanding each client's unique needs and striving for excellence with every placement. Founder Kimberly Whelpley has spent 10 years in the staffing industry, primarily in business development and operations before starting Coastal Resource Staffing. She brought this expertise into her staffing business, and is now committed to providing companies with their single most important asset – their people.

Coastal Resource Staffing was recently established in July 2017 and is a sister company of North Charleston based Coastal Safety Products which is owned by Zeke Godfrey. Godfrey is an active partner with Whelpley in the new Coastal Resource Staffing venture. The agency currently has a labor force of 550 employees. Now, as both companies celebrate their new business partnership, it also celebrates 250+ clients across South Carolina from Little River, SC to Savannah, GA west of the I-95 corridor. Whelpley said the agency has temporary positions and long-term assignments available throughout South Carolina and currently conducts business primarily in the commercial and residential construction industry, and services clients in medical, hospitality and housekeeping arenas as well.

"We find jobs for individuals including temporary assignments, seasonal positions, and evaluation-to-hire opportunities that could lead to a full-time, permanent placement," Whelpley said. "But it is not as simple as it sounds, as we consistently provide quality service and pay special attention to what makes each business unique. We strive to help employers grow their businesses while helping employees develop their careers. Coastal Resource Staffing serves as a bridge to finding the right fit for both clients and employees. Our job is to be a part of the journey, lending a hand with a spirit of excellence." Whelpley said.

South Carolina has recently reported historically low unemployment rates. This is great news for our economy but can prove challenging for employers. So, while Charleston County is home to other staffing agencies, Whelpley said she's confident Coastal Resource Staffing personalized approach to recruiting and placement will be a tremendous asset to local businesses facing unprecedented obstacles due to the declining number of individuals seeking employment.

The new Coastal Resource Staffing branch is open Monday – Friday, 8 a.m. – 5 p.m.

"As a seasoned business owner, I understand the need for a strong workforce of dedicated employees," Godfrey said. "Fortunately, Coastal Resource Staffing is always recruiting and Coastal Safety Products is always hiring, and has been a loyal client of Kimberly Whelpley's because of her unprecedented customer service. Now together, we certainly can help our clients build their own all-star team, while experiencing exceptional client service."

For more information, stop by the new branch at 3236 Landmark Dr., Suite 102 North Charleston, call 843-793-2139 or visit us at www.coastalresourcestaffing.com.

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