

MERIT SHOP

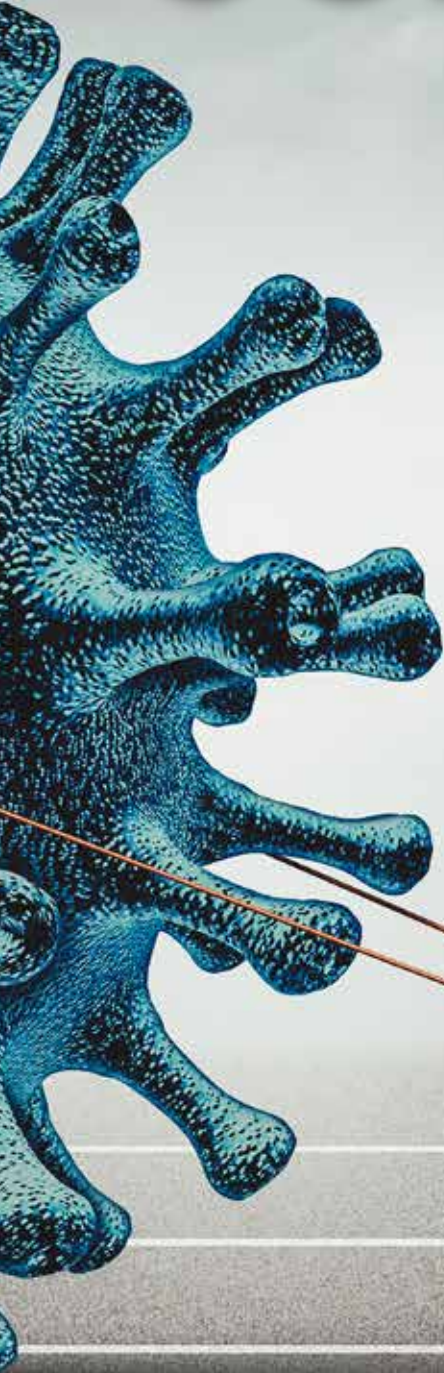
# CONTRACTOR

WISCONSIN

**COVID-19**  
GUIDANCE FOR THE  
CONSTRUCTION INDUSTRY

**INVEST IN SAFETY**  
UTILIZING ABC'S STEP  
SAFETY MANAGEMENT SYSTEM

# WORKPLACE SAFETY & WELLNESS



ALSO INSIDE:

**INSURANCE PREMIUMS  
FOR UMBRELLA  
COVERAGE SKYROCKET**  
PAGE 10

**SURVIVING SCA**  
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# WORKPLACE SAFETY & WELLNESS

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**FROM OUR PRESIDENT**

# Perceptions about COVID-19 make safety compliance challenging

**WHEN IT COMES TO SAFETY, THE BEST PRACTICE IS TO GO BEYOND BASIC COMPLIANCE.** In addition to preventing deaths or injuries, we want to avoid the ripple effect of other consequences that injury or death can cause for workers, their families and employers. That's what makes safety so important for our members, and that is why we dedicate the November/December issue of the *Wisconsin Merit Shop Contractor* magazine to safety. The safety and well-being of our members and your employees are critical.

As you know, the COVID-19 pandemic has come with its own set of health and safety issues. ABC of Wisconsin has worked hard to keep you informed on these seemingly ever-changing protocols. These protocols add a new layer of safety mandates to your jobsite. While these measures sometimes seem unreasonable and political, it's what we have to go on to reduce the likelihood of employees contracting the virus.

The virus is out there; there's no denying it. Most of us know people who have been affected. Reasonable people can come to their own reasonable conclusions about how big of a threat it really is, but it still poses a threat to the safety and health of each of us. Even a small threat is still a threat. The likelihood that someone will contract COVID-19 and suffer death as a result of

working on one of your jobsites is very small, but there is still that chance it could happen.

If our overall position is to go beyond basic compliance for safety standards on our jobsites, then our approach to the pandemic should be no different. The first part of the General Duty Clause of Section 5 of the Occupational Safety and Health Act requires that we provide employees with a place of employment that is free from recognized hazards that could cause death or physical harm to employees. This would include COVID-19, at least until a successful vaccine is developed and broadly distributed. If we want to avoid exposure to our workforce, specific protocols must be exercised.

We are all tired of COVID-19 and the many obstacles, added costs, and hassles that come with it. But regardless of how tired we've grown of it, we have to avoid any hazard that could pose a threat to our jobsites. A commitment to safety doesn't end with hard hats, safety vests and fall protection. If there's even a small risk that someone on your jobsite could contract any disease, the risk should be mitigated.

Our workers and their families are counting on us to keep them safe. We need to go beyond compliance to show them we are committed to safety, regardless of how big or small the threat.

— John Mielke

“  
WE NEED TO GO BEYOND COMPLIANCE TO SHOW THEM WE ARE COMMITTED TO SAFETY, REGARDLESS OF HOW BIG OR SMALL THE THREAT.”



- **CONSTRUCTION PROJECT DELIVERY (FIVE SESSIONS)**

Online, Dec. 1, 3, 8, 10, 15

- **WEBINAR: IS YOUR STRATEGY PASSING THE STRESS TEST?**

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- **THE CONSTRUCTION TEAM WEBSERIES (FIVE SESSIONS)**

Online, Dec. 7, 9, 14, 16, 21

- **FIRST AID/CPR**

Madison, Dec. 9

- **OSHA 10-HOUR**

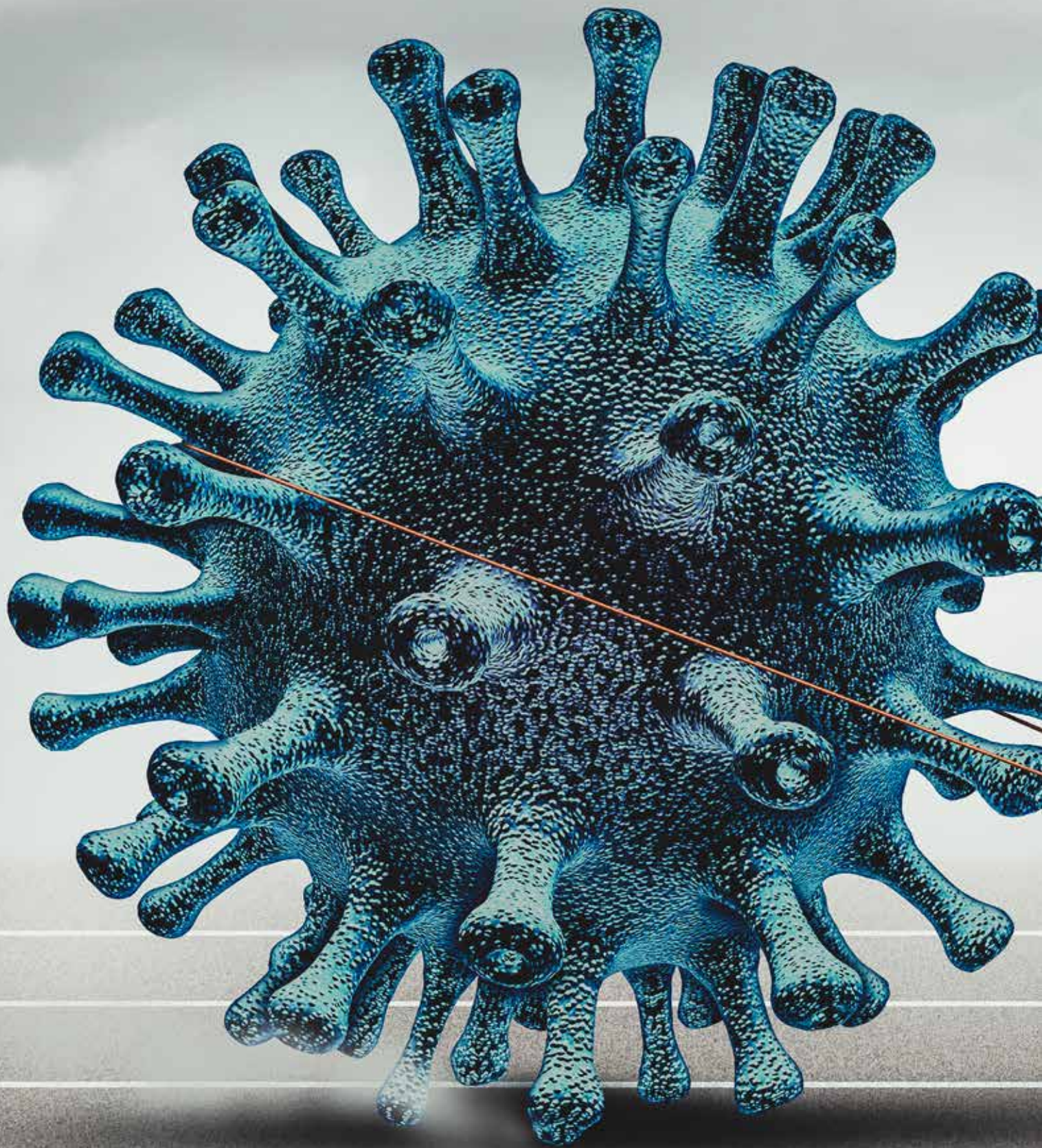
Pewaukee, Dec. 10

- **FIRST AID/CPR**

Pewaukee, Dec. 11

- **PROJECTS OF DISTINCTION AWARDS PRESENTATION**

Online, Jan. 28



# COVID-19 GUIDANCE



## CONSTRUCTION INDUSTRY

By Charles B. Palmer – Partner, Michael Best

**W**e are all well beyond fed-up with COVID-19. But with the current trends in Wisconsin, all employers need to redouble their efforts at prevention. This includes construction employers, where the challenges are greater, due to the continuously changing work environment, and inability to observe employee behavior throughout the workday.

The business response to COVID-19 “fatigue” needs to be consistent with regular communication, and defined

efforts to track and prevent infection among the workforce. Local health departments in the state have mostly run out of capacity to do contact tracing. This means employers who hope to keep the virus out of their workforce will need to do their own tracing and quarantine employees who are either symptomatic, have a positive test, or were exposed to someone with COVID-19.

This should be part of your company business plan, at least through the end of 2020. This article discusses communication and contact tracing.



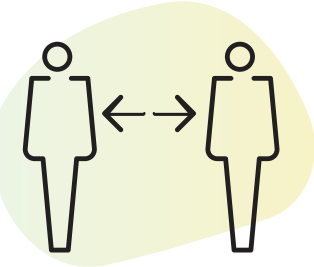
### Communication (Reminders)

Recently, the emails I have been receiving from the CEO of a large pipeline construction company in the Milwaukee area have started to contain the following closing:

I wear my face covering in public for three reasons – (1) HUMILITY – I do not know if I have COVID as it is clear that people can spread the virus before they have any symptoms. (2) KINDNESS – I do not know if the person I am near has a child battling cancer or cares for an elderly parent. (3) COMMUNITY – I want my community to thrive, businesses to remain open and employees to stay healthy. Keeping a lid on COVID helps us all!

### Stay Safe & Healthy!

This is a simple example of communication that will help to overcome the natural reaction we all are having to the pandemic and burden of wearing masks. It does not just address workplace compliance. It reminds employees and those who have a connection with your company (i.e. potential close contacts to your employees) that this responsibility is broader than just work hours. Craft your own message and share it often.



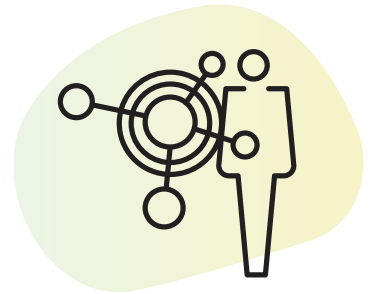
### SOCIAL DISTANCING

We want to get back to normal, so compliance with distancing, mask wearing and hygiene practices have lapsed across the state. And we are seeing the consequences in the number of cases. As leaders of businesses, it is up to us to fight against these lapses, and to communicate your commitment to efforts to prevent the spread. Watch for lapses in compliance among your employees and encourage renewed efforts at compliance.

Remind them that as the holidays and hunting season approach, distancing, mask-wearing and hygiene practices are still important. Share information from the CDC on safe holiday gathering practices found here: <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/holidays.html>

As the quote above points out, wearing masks (and distancing) is a part of business planning, since increased COVID-19 cases threaten our community and therefore, the success of your business.

### COVID-19 Case Response – Contact Tracing



### CONTACT TRACING

If you wait for a positive test result to act, you are too late. The communication on the spread of the disease and causes has been confusing. But over the past eight months, we have worked with employers on thousands of COVID-19 cases, day in and day out. We engaged a medical doctor who also has a PhD in epidemiology to assist our clients and firm to manage COVID-19 response. And from this experience, here is what we found works.

Respond to symptoms early; even minor ones. Time and again we have worked with clients to quarantine individuals who have minor symptoms such as a scratchy throat, headache, cough or congestion. The company asked the employee to stay home. The symptoms worsened and the employee tested positive. Managing minor symptoms avoided infection of others. The lesson learned was to keep reminding employees to stay home if any symptoms occur. The challenge was to catch the case early, but not put somebody out of work for two weeks for allergies or a headache.

The solution to this challenge: If the symptoms are minor, we send the employee home for three days and ask that they get a test. Tests are free. If the symptoms go away after a day, and stay away, and they test negative, they can return to work on the fourth day, subject to precautions set forth below. If the symptoms start as major symptoms or progress, then the quarantine is longer. Major symptoms include loss of taste or smell, fatigue, dry cough, fever, body aches. In those cases, the employee is asked to quarantine for 10 days (the last day must be fever free) in accordance with CDC guidelines. They are also requested to get a test, but don't wait for a test result to quarantine a symptomatic person.

Perform Contact Tracing Immediately: If an employee is reporting any symptoms, we look at the 48-hour period before the symptom on-set. Who was exposed to the employee during this period? Was the exposure within six feet for a "cumulative" 15 minutes over a 24-hour period? If so, then that "close contact" is also quarantined. This should all be documented on a standardized questionnaire. The data from that questionnaire should be added to a spreadsheet of all cases. This information should be maintained as confidential by HR.

Again, if the person with symptoms, has only a very minor symptom (as noted above), and resolves quickly (in a day or two), and also tests negative, you may consider returning both individuals to work with the advice of a medical professional. But they must be committed to taking certain precautions: take their temperature twice a day, wearing their mask at all times, maintaining a six-foot distance at all times, reporting any new symptoms and maintaining hygiene practices.

Where an employee reports a positive test, the employee must not be returned to work. Also measure a 48-hour period



# YOUR COMPANY CANNOT OPERATE IF A LARGE GROUP OF YOUR EMPLOYEES IS ILL FOR WEEKS – ESPECIALLY AS YOUR JOBS ARE PREPARING FOR THE WINTER MONTHS.

prior to that test having been taken (the date the swab was taken, rather than the date of receipt of results). Perform the same contact tracing among your workforce noted above.


Reports of Exposure by an Employee: Employees should be encouraged and required to report exposure to someone with COVID-19 symptoms or a positive test (on or off the job) immediately. If the employee is reporting that they were exposed to someone with COVID-19 during the period starting two days prior to that person's positive test or symptom on-set (i.e. the beginning of the contagious period), then they may have been infected. Upon receipt of this report, the employee (employee #1) should be quarantined for 14 days.

But don't stop there. Now you need to determine if other employees (employee #2) had close contact with this employee #1. The period of concern is the period starting two days after employee #1 was exposed. The science on the subject indicates that a person who is infected will become contagious two to 14 days after exposure to the virus. If employee #1 was exposed to someone with COVID-19, and came to work any time in that two to 14 day period after the exposure, then perform contact tracing as described above. We do this because if your employee #1 becomes symptomatic or tests positive, you can immediately quarantine employee #2. Many times, nobody looks for


employee #2, until employee #1 becomes symptomatic or tests positive. By then employee #1 may not remember who he/she had contact with. So, it is important to do this additional contact tracing step, as soon as you know one of your employees was exposed and was at work two or more days after that exposure.

This process is complicated and can be confusing in the real world. Ideally it should be left to experts. But that is not possible because, given the vast number of cases, there are only a fraction of the contact tracers that are needed. And in Wisconsin, we have exceeded capacity.

## Conclusion

These are challenging times for everyone. Build into your business plan the response needed to keep Wisconsin open. Communicate often about the importance of safe practices. Be a creative leader. Do the contact tracing that is needed to control the spread. Tell employees to stay home if they are sick, to wear masks and follow guidelines on and off the job. Your employees are more likely to listen to you than to political leaders. 

*Charles B. Palmer is a Partner and Sub-Practice Leader, Workplace Safety & Health with Michael Best. He can be reached at [cbpalmer@michaelbest.com](mailto:cbpalmer@michaelbest.com) or 262.956.6518.*



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*Insurance Premiums for*  
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*IDEAS FOR CONSTRUCTION INDUSTRY  
COMPANIES AND THEIR INSURANCE BROKERS*

By Roy E. Wagner – Partner, Michael Best

**MANY CONTRACTORS HAVE TAKEN ADVANTAGE OF THIS  
HIGHLY-BENEFICIAL STRATEGY IN A COST-EFFECTIVE MANNER.**

## Rising Insurance Premiums Creating Difficult Choices

Some businesses are low risk and insurance costs do not make a big dent in cash flow. Yet businesses in other industries – especially the construction industry – face greater day-to-day risks and mandatory insurance requirements imposed by upstream owners and customers. For construction companies, robust insurance coverage is a necessary risk mitigation tool to protect hard-earned assets and cash from lawsuits and casualty losses; especially if your company has lots of cash or equipment and you want to protect your hard-earned gains from claims. Insurance coverage is a logical way to protect assets, but it comes with a cost: premiums.

Amidst the ongoing challenges associated with the COVID-19 pandemic, hurricanes and wildfires, insurance premiums, particularly rates for critical umbrella coverage policies, are surging across the Midwest. General liability and auto insurance rates have risen an average of 10%. The most dramatic rate hike has occurred in the umbrella and excess insurance market, where the average increase for lead umbrella in Q2 2020 was 20-30%. Unfortunately, this rising trend for umbrella policy premium rate increases shows no sign of slowing and likely will continue over the next 12 months. Umbrella coverage is one of the most important risk management tools available, providing asset protection coverage for businesses with a balance sheet north of \$1 million. With umbrella premiums rising, how should construction businesses respond, especially during a period of such economic uncertainty?

Some construction companies may opt to purchase lower umbrella coverage limits to save \$3,000–\$50,000 on umbrella premiums. Though this decision to avoid higher premium expenses by settling for lower coverage may seem appealing, it may turn out to be a “penny wise and pound foolish” decision that exposes a contractor’s cash, equipment, building and accounts receivable to uninsured excess losses. Take, for example, a construction contractor that has only purchased \$5 million in umbrella insurance coverage in order to pay a lower umbrella premium. If that contractor’s employee causes an accident, flood, fire, or defective construction resulting in a \$12 million-dollar loss, that contractor may face \$7 million in uninsured excess losses. Believe it or not, huge claims like this one are becoming more common.

### Construction Business Owners: How to Protect Your Assets When Challenged with Rising Insurance Premiums

*If opting for lower umbrella coverage is not the wisest option to respond to rising umbrella premiums, what should your construction business do to mitigate your exposed asset risk?*

The answer is a carefully planned corporate legal strategy that decreases your exposed asset


risk while bolstering your business’s succession preparation. An effective strategy will segregate certain assets into separate legal entities that can generally be excluded from most claims, even those that exceed insurance coverage.

Under this strategy, the original (operating) company sets up a separate company (“Leasing Company”) to which the original company can transfer certain assets, thereby making the Leasing Company the new owner of those assets. The ownership of the Leasing Company can mirror that of the operating company. By creating a separate Leasing Company, the original company can “silos off” assets from claimants – even those with a \$12 million claim against the operating company and a plan to go after other business assets with an “excess claim.” Traditionally, business owners have employed this strategy by creating separate entities to hold operating company building and real estate, which then is leased back to the operating company. Such a system mimics a tenant-landlord relationship. This real estate lease structure enables the business owner to take advantage of tax benefits, provides rental income, and removes the real estate from their operating business balance sheet.

When this strategy is applied to equipment-heavy construction companies, it can efficiently and effectively mitigate the threat of uninsured claims. The construction contractor can separate valuable equipment (and its associated exposed asset risks) from the operating construction business by setting up an Equipment Leasing Company to own the construction equipment. In addition to reducing threats to the business’s balance sheet, the creation of the separate Equipment Leasing Company may produce separate income for the owner, facilitating the future sale of the business or succession planning. Many contractors have taken advantage of this highly-beneficial strategy in a cost-effective manner; often for less than the cost of the premium increase for higher umbrella coverage.

### Insurance Brokers: Understanding Risk Mitigation Options Beyond Insurance Products

While construction business owners should employ common-sense corporate legal strategies to protect themselves against uninsured claims, lawsuits and losses, insurance brokers must stay up to date on their contractor clients’ insurance coverage and exposed risk. For example, if you have a client with \$10 million in net assets, do not facilitate their purchase of \$5 million in liability or umbrella coverage without thorough scrutiny, discussion and documentation.

By remaining vigilant in your scrutiny of your clients’ business needs, you can shield yourself from post-claim criticism. Always ask your clients about their asset value to ensure that they’re fully insured or are considering strategies to manage risk. Furthermore, consider advising them to seek legal advice and corporate planning assistance to reduce their exposed asset risk by using the strategy described above: transferring equipment or real estate to a separate Leasing Company to silo these assets from claims, especially if coverage is limited. These separate Leasing Companies will still need insurance coverage. 

*Roy E. Wagner is a partner with Michael Best and can be reached at [rewagner@michaelbest.com](mailto:rewagner@michaelbest.com) or 414-270-2707.*



# INVEST IN SA

## UTILIZING ABC'S STEP SAFETY MANAGEMENT SYSTEM

By Don Moen – ABC of Wisconsin HR & Safety Director

Owning or managing a construction company means you are likely to have a lot on your mind; from hiring employees to managing projects to paying bills. One thing that probably isn't top of mind is implementing safety policies and procedures. Overlooking safety is never a good idea.

When you fail to put safety measures in place at your business, you run the risk of losing everything you have spent so many years to build.

**WHEN YOU FAIL TO PUT SAFETY MEASURES IN PLACE AT YOUR BUSINESS, YOU RUN THE RISK OF LOSING EVERYTHING YOU HAVE SPENT SO MANY YEARS TO BUILD.**

That's because one on-the-job accident can end up costing you a tremendous amount of money.

So how can you keep your jobsite safe when you know little to nothing about implementing safety procedures? Chances are you will probably need to enlist help and ABC of Wisconsin is here to assist you in making sure that you and your workers are protected in the case of an incident/accident. While you may believe you cannot afford such an investment, here are some important reasons why you cannot afford NOT to:

**❶ Even small injuries cost big money.**

According to the Department of Labor, if an employee has a lost time accident on the job, the business owner can be looking at nearly \$100,000 in direct and indirect costs.

**❷ Insurance doesn't cover everything.**

If you are counting on your insurance plan to pick up the tab, think again. Insurance carriers usually cover only a portion of the costs associated with on-the-job injuries.

# SAFETY

❸ **Worker compensation costs skyrocket after just one injury.** If you think worker's compensation insurance is high now, just wait until you have an accident. Just one claim can cause a huge spike in your premium.

❹ **Injuries hurt more than an individual.** A good reputation is something that takes years to build, but only seconds to destroy. When people are injured at your site because you didn't do what was necessary to keep them safe, you can bet people are going to question your judgment.

Being an owner is exciting and can be very lucrative. However, it also brings with it a responsibility to keep your workers safe. And while it may be tough to shell out money for things like safety audits and training, it is well worth the money. Studies repeatedly show that employees who feel safe at work are more productive than those who do not. This means that investing in worker safety will pay off in more ways than one.

So how do you benefit from safety training? First, losing 10 to 30 hours of labor, multiplied by the amount of people who need the training, is an awfully big expense. The first thing that comes to my mind is always, "You're crazy, if something were to go wrong with no training records, the expense will be immense." Furthermore, federal law requires that all employees are trained on the hazards they face prior to work commencing. Back to the question, the benefits your company will receive are:

- ❶ Increased employee awareness of workplace safety hazards.
- ❷ In-depth training on the hazards that cause the most injuries.
- ❸ Safety training promotes safer work practices.
- ❹ Helps reduce accidents and injuries.
- ❺ Increased awareness of the need for personal protective equipment.

## EIGHT CORE LEADING INDICATORS

A leading indicator is a system or process used to identify hazards and eliminate or minimize the condition to prevent injury. ABC focuses on eight core leading indicators that have the most dramatic impact on safety performance.

❶ **Toolbox Safety Talks** – Can you brief employees on safety too much? No matter what you may have heard, there is no negative effect to conducting daily toolbox safety talks – brief, single topic training session of 15 to 30 minutes held on the jobsite for all employees. The less frequently this type of training is conducted, the fewer safety topics covered, the higher the training indicators. Companies that conduct daily toolbox talks reduce TRIR by 85% compared to companies that hold them monthly.

❷ **Substance Abuse Programs** – One-third of all incidents on construction jobsites are drug- or alcohol-related. Companies with substance abuse programs/policies with provision for drug and alcohol testing where permitted are 60% safer than those without a program. Plus, substance abuse testing can be an effective method of incident prevention if used properly.

❸ **Safety Program Performance Review** – A biannual review of safety program performance by executive leadership that evaluates whether the program is producing expected results and identifies opportunities for improvement leads to a 59% reduction in TRIR and a 60% reduction in DART rates.

❹ **Taking Action on Trailing Indicators** – Training personnel to know the meaning and relevance of key safety rates and numbers such as EMR, TRIR and DART leads to a 57% reduction in TRIR and a 62% reduction in DART rates.

❺ **Employer Supervisory Safety Meetings** – Conducting weekly safety meetings with supervisors and distributing minutes for review leads to a 56% reduction in TRIR and a 59% reduction in DART rates.

❻ **Use of Personal Protective Equipment** – Having a written PPE Policy that is consistently and universally enforced, conducting an annual needs assessment and continually investing in new equipment leads to a 55% reduction in TRIR and DART rates.

❼ **Pre-planning for Jobsite Safety** – Integrating safety pre-planning into the estimating, bid and pre-mobilization phases of a project leads to a 53% reduction in TRIR and a 54% reduction in DART rates.

❽ **Safety Program Goal Setting** – Implementing a formal process to annually assess safety program needs and establish safety goals leads to a 48% reduction in TRIR and a 50% reduction in DART rates.

ABC's STEP Safety Management System provides a clear picture of what world-class safety looks like. Analysis of each of the 25 Key Components' scores against lagging indicator performance will continue to provide statistical evidence of how individual elements of a safety program contribute to performance. Combined with the resources developed by ABC and the construction industry – and in development – companies will be able to identify and develop singular elements of their safety program to improve their safety performance further.

As construction industry professionals, we all have a moral obligation to protect ourselves and each other, to ensure that anyone who sets foot on our jobsites does so in the safest manner possible. Through this analysis and by identifying the elements that lead to improved safety performance, we can achieve our ultimate goal to send every single construction employee home in the same – or better – condition than which they arrived, every day.



- ⑥ Increased awareness to pre-operation inspections.
- ⑦ Daily safety best practices.
- ⑧ Knowledge learned in training will be used to prevent future accidents.
- ⑨ Encourages employees to take more responsibility for safety.
- ⑩ Reductions in accidents will reduce medical, insurance, and worker's compensation costs.

Many construction managers, general contractors and

subcontractors are now requiring every employee to receive at least a 10-hour OSHA Outreach Training card, and each management team member to receive at least a 30-hour OSHA Outreach Training card. An argument can be made that if a customer isn't requiring OSHA Outreach training, that a program designed specifically for your organization may be more effective. In certain cases, this argument could hold true. However, if you are just starting or developing your safety program, OSHA Outreach Training is a great first step for knowledge and awareness of the hazards out there.

Clearly, your company can't afford to skip out on safety training. Luckily, safety training can be completed

via open enrollment classes, or you can schedule a class at your facility or project. Safety training is a wise investment; setup training for your employees today.

If your safety education program is already developed and being executed, you'll want to ensure your company stays on the continuous path to safety excellence.

Relatively few studies have been conducted on the correlation between the use of measures companies can take to keep


workers safe on jobsites. Looking at STEP Safety Management Program participant data from past years, ABC is able to quantify the positive impact of proactive injury and hazard elimination programs on the jobsite.

STEP is a great safety benchmarking and improvement tool which, you as a member, can use to measure your safety programs and policies. STEP is a 25 Key Component detailed questionnaire to help you meet your goal of implementing and/or enhancing safety programs that reduce jobsite incident rates. First engage in STEP, then apply ABC's world-class processes to improve safety performance regardless of company size or type of work and you'll have an ultimate safety program. Our model for a world-class safety program utilizes STEP and contains the following elements:

#### **Leadership Commitment – C-suite Engagement and Commitment Matters**

Employer involvement at the highest level of company management produces a 63% reduction in TRIR, in high scoring ABC STEP member firms.

#### **Cultural Transformation - New Hire Safety Orientation**

New-hire orientations are standard practice throughout the construction industry and are designed to onboard new employees into the culture, policies and procedures of their new employer. This process is normally conducted before an employee sets foot on a jobsite or enters into a training program and can vary in length. The onboarding process can take many forms, but the most important aspect is introducing a new employee to the culture and norms of the company; to indoctrinate them and help them understand the how's and why's of what a company does and expects of new employees. Here the CEO or senior leadership delivers that introduction of the companies' safety culture and core values. This process is shown to lower incident rates by 50% compared with companies that limit their orientations to basic safety and health compliance topics. 

**STUDIES  
REPEATEDLY  
SHOW THAT  
EMPLOYEES  
WHO FEEL  
SAFE AT WORK  
ARE MORE  
PRODUCTIVE  
THAN THOSE  
WHO DO NOT.**



**Leadership  
Commitment**

**Cultural  
Transformation**

**Process  
and Systems**

**Results**

Make  
**SAFETY**  
a part of your  
company's  
**DNA**

The best companies strive for world-class safety and work to ensure that it is a part of their DNA, guiding their leaders and shaping their corporate culture. Are you ready to make the commitment to improve your safety performance?

**LEADERSHIP  
COMMITMENT**

Leaders take a stand  
not to compromise on  
safety

**CULTURAL  
TRANSFORMATION**

Safety ambassadors are  
empowered at every  
organizational level

**PROCESS AND  
SYSTEMS**

Information  
drives continuous  
improvement

**RESULTS**

Metrics are analyzed  
to deliver better results  
each year

STEP makes the highest-performing companies more than eight times safer than the industry average.\*

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\*Source: abc.org/spr



# SCA SURVIVAL

## PLANNING FOR THE SILENT KILLER ON THE JOBSITE



Cullen Schmeling, CHST, Safety Director with ABC member Stevens Construction Corp. shows one of the AEDs his company keeps readily available on its jobsites.

By Kyle Schwarm – ABC of Wisconsin Marketing & Communications Director

Sudden cardiac arrest (SCA) requires immediate action for survival. Human organs need oxygen-rich blood flowing to the body's vital organs. Currently, roughly 424,000 EMS-assessed out-of-hospital sudden cardiac arrests occur in the U.S. each year, according to the American Heart Association, and only one in 10 individuals survive. The only definitive treatment for SCA is effective cardiopulmonary resuscitation (CPR) and a life-saving shock from an automated external defibrillator (AED).

"With a first responder on the scene they at least have a chance," said Dan Parks, ABC of Wisconsin Safety Manager and First Aid/CPR (FA/CPR) instructor. "People walking out of



the hospital after a cardiac event are the ones who had help from first responders, including employees trained in FA/CPR," said Parks.

"A cardiac event hit very close to home earlier this year, when we had a family member who was the beneficiary of someone who was CPR trained," said Sam Daniels, chief operating officer at Daniels Construction. "That led to a life-saving event."

CPR training and access to AEDs could save tens of thousands of lives each year, especially in construction.

"We encourage all of our employees to be CPR trained and certified, which is why we provide constant training and education of our employees at our jobsites," Daniels said.

## CVD AND THE CONSTRUCTION INDUSTRY



### CARDIOVASCULAR DISEASES



1 out of 4 construction workers are obese

#### Obesity

Defined as having a body mass index of 30 or greater



Approx. 211,000 construction workers (1 in 25) have been diagnosed with cardiovascular disease. That's more than double the number of people who attended the Rose Bowl.



"In workplaces where serious accidents such as those involving falls, suffocation, electrocution, or amputation are possible, emergency medical services must be available within three to four minutes, if there is no employee on site trained to render first aid," Parks said.

"One thing that we do on each and every project is make sure that we have an external defibrillator on site. This is really great technology," said Cullen Schmeling, CHST, with Stevens Construction Corp. "Basically, I can turn this machine on. I hook it up onto the person and it does diagnostics. It tells me exactly what we need to do in that situation. It might administer a shock. It might give me other feedback, but it's here for the worker safety, because their safety is the most important thing to us," Schmeling said.

The majority of general contractors stay up to date with their FA/CPR courses to ensure that they have at least one worker on site that can perform FA/CPR if needed, according to Parks, but he said subcontractors need to be encouraged to do a better job. FA/CPR is the most requested safety course provided by ABC of Wisconsin.

"Having trained personnel on site capable of providing life-saving services can mean the difference between life and death," said Parks, who encourages contractors to retrain employees on CPR and first aid every two years. Parks understands this is a cost for contractors, but a cost that is well worth it. Schmeling agrees.


"We've had events actually where there's been a heart attack on a project. We've had to get someone treatment right away and we're up in the building. When we have the equipment to be able to do those things that emergency people that would be responding to can do. We know we're set up, and we know we're prepared for those events. It's an absolute expectation that we deal with health, health issues with our workers, our private lives. We need to set ourselves up and be prepared for those events," Schmeling said.

"Contractors should have an effective emergency action plan, which includes posted evacuation routes, emergency numbers, locations of closest clinics and hospitals and even lists of first responders on the site to help out in case of emergency," Parks recommends. He said some contractors even invite local fire departments to their job sites to practice rescue events and to help emergency services get an idea of the layout of the project.

We can control safety procedures in the operations of a construction jobsite, but we often have no knowledge of the underlying conditions of our workers who are performing strenuous tasks each day. Schmeling said that, along with advancements in technology, make this a no brainer.

"Our employees are constantly working in physically-demanding jobs. However, taking care of their bodies and eating habits sometimes takes a back seat," Daniels said.

Roughly 211,000 construction workers have been diagnosed with cardiovascular disease (CVD), known as a silent killer, according to the American Heart Association (AHA). ABC of Wisconsin and many of its members are active in promoting a campaign called Hard Hats with Heart, an effort by the American Heart Association to promote heart health in construction. It encourages construction workers to lose weight, refrain from using tobacco and get more exercise away from the job. It also encourages contractors to have a plan, in addition to equipping sites with AEDs and employees who are trained in CPR.

"The progression of safety in the industry has advanced to where we're continuing to do better things. And this is just part of that progression," said Schmeling. "Referencing back to what's most important to us, is making sure every single lady and gentlemen on this project is going to go home safely today." 

*For the latest listings on FA/CPR training sessions, visit [abcwi.org/events](http://abcwi.org/events) or email [info@abcwi.org](mailto:info@abcwi.org) to learn how ABC can bring this training to you.*

## CPR TRAINING AND ACCESS TO AEDs COULD SAVE TENS OF THOUSANDS OF LIVES EACH YEAR, ESPECIALLY IN CONSTRUCTION.



Nearly half of all construction workers don't get enough exercise

**Lack of Activity**  
A key risk factor for both heart disease and stroke.



121 million

Americans are living with some form of cardiovascular disease. That's equal to the entire populations of California, Texas, Florida, New York and Pennsylvania combined.



1 out of 4 construction workers use tobacco

**Tobacco Use**  
Smoking is the leading preventable cause of death in the U.S.



**D**ealing with mental health issues at work is challenging enough during “normal” times. The public health emergency created by COVID-19 has added to the difficulty. These issues require you to deal with medical, legal and practical concerns.

The medical and legal issues are often ambiguous and require you to engage in an iterative interactive process to clarify. At the same time, your managers expect uniform standards of conduct and productivity. This article will provide a framework for addressing these issues under the Americans with Disabilities Act (“ADA”).

Mental health issues are increasingly common in the general population. Substance abuse is often a co-morbidity. The National Institute of Mental Health (NIMH) has reported 30% of adults with a mental illness also have had a diagnosable alcohol and/or drug abuse disorder during their lives. In addition, 53% of adults who have had substance abuse disorders have had one or more mental illnesses during their lifetimes. Treatment and accommodation in these cases often must address both the effects of substance abuse and the effects of the person’s mental illness.

# MENTAL HEALTH IN THE WORKPLACE

*ADDRESSING  
THE  
CHALLENGES  
CAUSED BY  
MENTAL  
HEALTH  
ISSUES*

By Mark A. Johnson – Attorney, Ogletree, Deakins, Nash, Smoak & Stewart, P.C.



## **What is a Mental Impairment?**

According to the most recent version of the Diagnostic and Statistical Manual of Mental Disorders, a mental disorder is a syndrome characterized by a clinically significant disturbance in an individual’s cognition, emotion regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning.

Mental disorders are usually associated with significant distress in social, occupational, or other important activities. An expected or culturally approved response to a common stressor or loss, such as the death of a loved one, is not a mental disorder. Socially deviant behavior and conflicts which are primarily between the individual and society are typically also not mental disorders.

# SUPERVISORS AND MANAGERS SHOULD BE TRAINED TO “PASS THE BATON” TO HUMAN RESOURCE PROFESSIONALS UPON IDENTIFICATION OF POTENTIAL SYMPTOMS OF MENTAL ILLNESS AND REQUESTS FOR REASONABLE ACCOMMODATION.

## What is a Psychiatric Disability?

The term psychiatric disability is used when mental illness significantly interferes with the performance of a major life activity, such as learning, working, and communicating. The type, intensity and duration of symptoms vary from person to person. The symptoms of mental illness often are effectively controlled through medication and/or psychotherapy and may go into remission. For some, the illness continues to cause periodic episodes that require treatment.

## Mental Impairments in the Workplace

Mental illness may create problems establishing or maintaining consistent work patterns. Some individuals may need time off for medical appointments or to recuperate. The nature of mental illness might also impair an individual's performance and attendance.

Many individuals do not disclose an illness for fear of stigma and discrimination. This fear may be compounded if an employee feels his or her job is in jeopardy.

Despite their effectiveness for many, medications can have side effects that can also create difficulties at work.

## The ADA

The ADA applies to employers with 15 or more employees and requires employers to provide reasonable accommodations to qualified individuals with disabilities, unless doing so would constitute an undue hardship. A reasonable accommodation is a change in the work environment that enables a qualified individual with a disability to perform the essential functions of his or her job.

Employers may be unaware that an employee has a mental disorder; and, in some ways, concerns about privacy and liability may discourage asking an employee about such conditions. Most employees with mental disorders manage their symptoms through medication and psychotherapy. Some will need no support, others may need only occasional support, and still others may require more substantial, ongoing support to maintain their productivity.

To constitute a disability under the ADA, an impairment must substantially limit one or more major life activities. A qualified individual with a disability does not include individuals currently engaging in the illegal use of drugs. However, the terms disability and qualified individual with a disability do not exclude an individual who:

(1) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs; or

(2) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) Is erroneously regarded as engaging in such use but is not engaging in such use.

Major life activities limited by mental impairments differ from person to person. Examples of “major life activities” often limited by mental illness include learning, thinking, concentrating, interacting with others, caring for oneself, speaking, performing manual tasks, working, and sleeping.

Employers need only provide accommodations to the known mental or physical limitations of someone with a disability that can be attributed to that disability. Employers are not required to be clairvoyant or to accommodate limitations due to other characteristics. Unless it is obvious, you can ask the employee or a qualified professional to document the types of functional limitations the employee has due to the disability that require an accommodation.

To request a reasonable accommodation, individuals typically must let the employer know that he or she needs a modification of job duties or work environment because of a condition. There are no “magic words” required. Individuals need not mention the ADA or use the term “reasonable accommodation.” When an individual has a mental disorder, the individual may not be able to communicate as well as other employees and the employer may be required to inquire more than normal to try to clarify the situation.

Once an employer is put on notice of an individual's need for a reasonable accommodation, the employer should engage in an informal, interactive dialogue with the employer to determine whether there is an accommodation that will enable the individual to perform the essential functions of the position, without causing undue hardship for the employer.

Supervisors and managers should be trained to “pass the baton” to human resource professionals upon identification of potential symptoms of mental illness and requests for reasonable accommodation. Symptoms are not always obvious. Employers and supervisors may notice significant changes in their employees' behaviors, performance, and attendance. A pattern that continues may be more than just a bad day and may indicate an underlying mental health problem.

## Limitations Related to Mental Impairments and Potential Accommodations

Mental illnesses may interfere with functioning in different ways. Often, the employees or the professionals working with them can describe the functional limitations that are specific to each employee. For example:

Problems handling time pressures and multiple tasks – managing assignments and meeting deadlines, prioritizing tasks.

Example: An employee may not know how to decide which tasks should be done first or be able to complete tasks by the due date.

Possible solutions: Break larger projects down into manageable tasks, meet regularly to help the employee to prioritize tasks or to estimate time to complete project.

### Accommodating Employees with Mental Impairments

#### Questions to Consider

1. What limitations is the employee experiencing?
2. How do these limitations affect the employee's job performance?
3. What specific job tasks are problematic as a result of these limitations?
4. What accommodations are available to reduce or eliminate these problems?
5. Are all possible resources being used to determine possible accommodations?
6. Has the employee with a mental impairment been consulted regarding possible accommodations?
7. Once accommodations are in place, would it be useful to meet with the employee with a mental impairment to evaluate the effectiveness of the accommodations and to determine whether additional accommodations are needed?
8. Do supervisory personnel and employees need training regarding mental impairments?

### When an Employee's Mental Impairment Poses a Direct Threat

Employers often worry that employees with mental disabilities may go "postal" and harm themselves or co-workers. Under the ADA, an employer may lawfully exclude an individual from employment for safety reasons only if the employer can show that employment of the individual would pose a "direct threat." A "direct threat" means "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation." A "significant" risk is a high, and not just a slightly increased, risk. The determination for an individual posing a "direct threat" must be based on an individualized assessment of the individual's present ability to safely perform the functions of the job and must rely on the most current medical knowledge and/or the best available objective evidence. An individual does not pose a "direct threat" simply by virtue of having a history of psychiatric disability or being treated for a psychiatric disability. In contrast, if an employee makes an explicit threat, the employer may take action against the employee without conducting this direct threat analysis.

### Conclusion

Mental illnesses at work can create multiple challenges, including legal challenges and lost performance/productivity. Accordingly, it is now more important than ever for employers to have strong policies and training to handle such issues. [ABC Wisconsin](#)

Mark A. Johnson, Attorney with Ogletree, Deakins, Nash, Smoak & Stewart, P.C. can be reached at [mark.johnson@ogletreedeakins.com](mailto:mark.johnson@ogletreedeakins.com) or 414-755-8289.

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*Jesse Adams*

801 N. Wisconsin St.  
Elkhorn, WI 53121

Phone: 262-723-6565

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**Sponsor:** Kevin Day, Corporate Contractors, Inc. (CCI)  
Beam Club Members-to-date: 12

### • Energy Edge

*Ben Rudin*

242470 County Road J  
Wausau, WI 54403

Phone: 815-441-7318

**Description:** Electrical Contractor  
**Sponsor:** Tom Altmann, Altmann Construction Co., Inc.

Beam Club Members-to-date: 42

### • First Choice Drywall, Inc.

*Dave Marty*

302 Moravian Valley Road  
Waunakee, WI 53597

Phone: 608-849-3018

**Description:** Finishes Contractor  
**Sponsor:** Tom Sheahan, Baker Tilly Virchow Krause, LLP

Beam Club Members-to-date: 1

### • Helping Hands Electric, LLC

*Ader Viloria*

6725 Seybold Road, Ste. B  
Madison, WI 53719

Phone: 608-219-8522

**Description:** Electrical Contractor  
**Sponsor:** Dan Bertler, Supreme Structures Inc.

Beam Club Members-to-date: 46

### • JSD Professional Services, Inc.

*Jan Schroeder*

161 Horizon Drive, Ste. 101  
Verona, WI 53593

Phone: 608-848-5060

**Description:** Civil Engineering Services

**Sponsor:** Greg Jones, Dave Jones, Inc.  
Beam Club Members-to-date: 30.5

### • Milwaukee Tool

*Michael Bruno*

13135 W. Lisbon Road  
Brookfield, WI 53005

Phone: 262-825-1568

**Description:** Tool Supplier

**Sponsor:** Jessica Cannizzaro, Milestone Plumbing Inc.  
Beam Club Members-to-date: 1

### • Phaze Electric, LLC

*Gary Weber*

N3427 Mohr Road  
Columbus, WI 53925

Phone: 608-225-5016

**Description:** Electrical Contractor  
**Sponsor:** Adam Kidd, WDS Construction, Inc.

Beam Club Members-to-date: 1

### • Plug Light Bulb Electrical Services

*Matthew Timler*

2300 Riverside Drive  
De Pere, WI 54115

Phone: 920-396-8745

**Description:** Electrical Contractor  
**Sponsor:** Mike Brod, Aon  
Beam Club Members-to-date: 1

### • RM Electric, LLC

*Ray Mielke*

1285 Morris St.  
Fond du Lac, WI 54935

Phone: 414-750-1288

**Description:** Electrical Contractor  
**Sponsor:** Troy Carlson, McCrone  
Beam Club Members-to-date: 20

### • Sipos Electric, LLC

*PJ Sipos*

N5190 Union Hill Road  
Oconomowoc, WI 53066

Phone: 414-807-5037

**Description:** Electrical Contractor  
**Sponsor:** Brian Wieser, Wieser Brothers General Contractor, Inc.  
Beam Club Members-to-date: 50.5

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### • DC Materials, LLC

*Chris Tatge*

2217 Hilldale Circle  
Stoughton, WI 53589

Phone: 608-228-5082

**Description:** Framing & Materials Supplier

**Sponsor:** Jon Koch, Stevens Construction Corp.  
Beam Club Members-to-date: 2

### • DIRTT Environmental Solutions

*Sarah Putman*

215 N. Water St.  
Milwaukee, WI 53202

Phone: 815-861-5108

**Description:** Design Services Supplier

**Sponsor:** Pat McKenna, Hausmann-Johnson Insurance  
Beam Club Members-to-date: 1

### • E & H Electrical Co.

*Angela Zganjar*

P.O. Box 511502  
New Berlin, WI

Phone: 262-439-8524

**Description:** Electrical Contractor  
**Sponsor:** Dave Murphy, PDC – Electrical Contractor  
Beam Club Members-to-date: 14

### • Gator Garb Promotions

*Cole Stark*

2104 N. Hillcrest Pkwy.  
Altoona, WI 54720

Phone: 715-834-0367

**Description:** Promotional Materials

**Sponsor:** Roger Thimm, Wondra Construction, Inc.

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### • JEM Painting & Contracting, LLC

*Mike Olson*

635 3rd St,  
Beloit, WI 53511

Phone: 915-985-4819

**Description:** Finishes Contractor  
**Sponsor:** Kevin Day, Corporate Contractors, Inc. (CCI)  
Beam Club Members-to-date: 13

### • Kollmann Electric, LLC

*Beth Kollmann*

N7415 Osborn Way  
Fond du Lac, WI 54937

Phone: 920-273-0701

**Description:** Electrical Contractor  
**Sponsor:** Jennifer Nolan-Baudry, Jackson Kahl Insurance Services, LLC  
Beam Club Members-to-date: 1

### • MasterFoam Spray Applied Technologies, LLC

*Gino Rinaldi*

2465 S. 170th Street  
New Berlin, WI 53151

Phone: 262-542-0816

**Description:** Specialty Contractor  
**Sponsor:** Bill Rozga, Rozga Solutions Inc.  
Beam Club Members-to-date: 25.5

### • Mueller Electric Of Central Wisconsin, LLC

*Karen Mueller*

111 E 4th Street, Suite 1  
Marshfield, WI 54449

Phone: 715-387-0842

**Description:** Electrical Contractor  
**Sponsor:** Dave Murphy, PDC – Electrical Contractor  
Beam Club Members-to-date: 15

### • Penta Technologies, Inc.

*Chris Damico*

PO Box 210  
Brookfield, WI 53008

Phone: 262-771-0471

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