



AIA Best Practices: Site safety: Managing risks and liability

Contributed by Victor O. Schinnerer & Company Inc.

Summary

Risk management is important to all aspects of the architectural profession. We must always be aware of potential risks, especially on a job site. It is important to understand which situations have the potential to result in an architect being faulted, and how to manage a situation before it becomes critical.

Obligations assumed by a contract

All parties on a construction site have a duty to exercise reasonable care to avoid the risk of injuries to workers. Although design firms are not responsible for construction, courts have found that they can have professional, legal or contractual duties related to site safety. However, courts will not hold design firms responsible for work-related injuries or deaths if firms:

- Do not have contractual responsibility for site safety
- Are not involved in construction activity
- Do not assume site safety responsibility
- Act reasonably if an unsafe condition is identified

A design firm may be held responsible for a job site accident if it has contractual responsibility for supervision and control of the work. Standard contract documents state that the contractor who controls the job site has sole responsibility for site safety and the people on site. In litigation over an accident, the court will determine whether there is a connection between the design professional's contractual responsibilities and the on-site conditions that created the risk of injury.

In addition to examining contractually imposed obligations and limitations, courts also look at the specific facts of a case. They evaluate whether a firm's constant participation in ongoing activities at the site and specific actions at the time of an accident constitute an assumption of responsibilities for safety practices.

Obligations assumed by conduct

U.S. case law articulates a professional duty that may prevail over a contractual provision to the contrary. Often, the question is whether the design professional had both the opportunity and ability to alleviate the risk of harm. If the design professional observed and recognized a dangerous situation or condition, was there a reasonable opportunity to take steps to help prevent the injury?

How to manage the risks

When you recognize a dangerous situation, report it in writing. Record the date, the perceived unsafe conditions, and the name and position of the person on site who was notified. This notice should also be sent to the client, indicating that the unsafe condition is a breach of the construction contract.

At times, more direct action may be reasonable. Courts routinely determine that reasonable action to prevent an injury does not create a constant responsibility for site safety. Yet, even without a contractual obligation, a design professional's duty to protect public health and safety suggests that he or she take the following actions:

- A condition should be reported to the person most capable of remedying the situation.
- If the danger is more critical or recurring—or indicates that the contractor cannot meet contractual or legal requirements—it should be reported to the client, who retains the power to stop the work.
- If the danger is imminent, prudence and professionalism require immediate action.

In summary, contract language, conduct during construction, and the design professional's duty to protect the public can result in a professional liability exposure. All of these require that the design professional understand possible exposures and respond in a reasonable manner.

About AIA Best Practices

AIA Best Practices is a collection of relevant, experience-based knowledge and expert advice on firm management, project delivery, contracts and more, aligned with the *Architect's Handbook of Professional Practice, 15th edition*. See the full AIA Best Practices collection at aia.org/aia-best-practices.

This article corresponds to:

Architect's Handbook of Professional Practice, 15th edition Unit 1 - The Profession
Chapter 10 – Design Project Management
Section 09 – Construction Phase Services