



Church safety solutions

June 2009

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Coming next month:

July – Construction safety for volunteer based projects

Liability exposure from contractors on church property

A church is exposed to liability potential anytime a contractor is hired to work on church grounds. This month's publication is intended to provide suggestions and points to consider regarding a church's interaction with contractors.

In this month's Church Safety Solutions, we review the exposures of contractors and third party service providers working on site and how to mitigate the related risks via standard risk management measures. Contractors that are hired to provide new construction, renovation, and ongoing services will be the primary focus of this month's issue.

The information provided here is not intended to be used as a legal guide or to be inferred as a form of legal advice. The first step your church should take is to seek legal counsel for contracts or agreements when dealing with contractors who will be on your premises. There are common situations where your attorney may recommend a template-type risk management approach, such as hold harmless agreements for ongoing service or other contractor risk transfer methods for construction/renovation projects. Zurich Services Corporation cannot direct you on specifics of these or other types of agreements.

Instead, we will be discussing some common situations on contractor risk management and some discussion points to work through among church leaders.

Common contractors and third party service vendors

Third party contractors and service providers: they help maintain or facilitate the efficient running of church buildings and grounds.

Examples include:

- Interior/exterior maintenance services (landscaping services, cleaning contractors, snow removal contractors)
- Inspection and repair services (electricians, appliance repair, organ tuning, furnace/boiler inspectors, elevator inspectors, and fire alarm/system service technicians)
- Building construction contractors (general contractors, roofing contractors, masonry contractors, carpenters, painters, paving/sidewalk contractors, etc.)

What can go wrong?

Any of these third parties can be involved in events where people are injured or property is lost/damaged and restitution is requested. [Let's examine three examples:](#)

Scenario 1: A renovation is taking place at the church where a new addition is being constructed. A painting contractor is hired by the general contractor on a "hand shake deal" to paint the interior of a newly constructed area.

Result: While painting the ceiling in the church, an employee falls from the scaffold and sustains a serious injury. The painting contractor does not have workers' compensation insurance; the "hand shake agreement" between the church and the general contractor did not specify that the painting company must have workers' compensation insurance. The injured worker demands workers' compensation benefits from the church.

Scenario 2: While working the basement of a church, a contractor is in an area that has precious items being stored.

Result: The contractor steps on the organ pipes (for the new addition) and damages them beyond repair. The contractor does not cooperate with the church and insurance company on restitution and this delayed the usage of the organ in the new addition.

Scenario 3: A contractor was hired to repair the roof of the church and utilized an uncontrolled heat source in the process.

Result: The contractor was adding metal flashing to the roof, which requires a heat source to join together multiple pieces of flashing. A fire destroyed the church and the congregation had to relocate their services.

In these scenarios, the church may not have directly created the conditions for the resultant loss. However, the church also did not take all prudent steps available to them in order to mitigate their role in the incident. Such steps are commonly found in the form of a sound, formal agreement with the contractor's involved.

When a renovation or new construction project is first being considered, steps need to be taken prior to the start of the project. Additionally, it is recommended that the church's board(s) of trustees, board of deacons, finance, and/or administration review all contracts and service agreements at least annually. This due diligence should provide an added level of protection to identify and address third party agreements that church staff may have entered into without prior review and approval. If during these reviews it is determined that the church does not have a formalized agreement where one is needed, or that a contract is unduly skewed in the favor of the other party or parties, the committee can then take action with the assistance of their legal counsel.



Common contractor relationships

The formal written agreements between you and the service provider/contractor can be one means of protecting your church against potential liabilities that may arise from entering into agreements with outside parties. Contracts should never be considered a substitute for taking appropriate safety and risk control steps. In the following dialogue, we will discuss the most common contractual relationships churches have and additional points for churches to consider with regards to these relationships.

Contractors and vendors

When a church decides to engage in a construction project, repair work, or maintenance, it is important to select the right contractor or vendor for the job. Churches should carefully screen contractors or vendors before signing any contract. Some churches rely heavily on members who run construction or vendor-services businesses. There are pros and cons to this. Working with someone your church feels comfortable with and can trust is important. However, if more than one member can offer that service, choosing between the two can create long-lasting, ill feelings. Also, should the construction or building service not meet the churches' expectations, this may also create a difficult situation for the member and the church. Often, the member may offer to provide the work at a discounted rate. Some churches choose to have contractor and service work performed by non-members to avoid potential conflicts. If your church wishes to consider vendors and service providers who are members, a vetting and decision-making process should be established and implemented consistently and fairly.

Also, the church's agreements and contracts with service providers who are members should be no less formal or rigorous than with service providers who are not members.

Casual agreements

Many churches enter into informal or casual agreements for activities that require more structure. It may seem impractical to require a formal contract with all work relationships; but churches should weigh the cost/benefit of

allowing these casual types of agreements.

The question church leaders need to ask themselves is, "Are we prepared to assume the risk of liability in the event of injury or property damage?", as this could result from not having a formalized agreement.

As a general rule, written agreements that are soundly written should be in place when at all possible. The following are situations where casual, non-formal agreements may be in place and may initiate your church to review risk management practices:

- Winter sidewalk maintenance (snow removal and ice control)
- Lawn service
- Maintenance of church computers, electronics
- Janitorial services
- Pest control
- Heating, ventilating and air conditioning maintenance (HVAC)
- Organ/piano tuning
- All new construction and renovation projects

In all contractor relationships, churches should adhere to common risk management practices, including the following steps. First, ask for certificates of insurance for general liability, workers' compensation and auto liability coverages (contractors/vendors). Ask your insurance agent to review these documents and confirm that the policies' insurance limits are adequate. If a contractor does not have liability insurance your church's board of directors (or other responsible group) needs to review their position. Selecting a qualified contractor may be more advisable than accepting the risk of an uninsured/underinsured contractor or vendor.

In a related point, vendors and contractors need to name your church as an additional insured. The intent of this step is for these third parties to extend insurance protection to the church with respects to negligence or damage caused by the third party while they are on the church's premises and engaged in their activity or work.

Key points to consider for selecting a contractor

- Understanding the contractor's commitment to safety and their behavior on site is very important. How do they compare to the other potential contractors that the church is considering?
 - For higher risk activities such as work at height (roofing, tuck-pointing), crane work, excavations, and hot work their safety commitment is especially important.
- There are several activities that should take place. The first is to have a contractor/service provider selection process in place. Included in the process should be a review of references, consultation with the Better Business Bureau, contract wording, and understanding of safety measures the contractor/service provider will take. [Also consider reviewing the contractors safety record by:](#)
 - Requesting their written safety program (do they conduct safety meetings, do they provide training/equipment for the tasks?).
 - Reviewing their experience modification rating (EMR). An average contractor is 1.0 and an above average contractor is below 1.0).
 - Reviewing any activity listed on OSHA's (Occupational Safety and Health Administration) website <http://www.osha.gov/oshstats/index.html>. This will list any safety or health violations a contractor may have incurred.
- Have a process for two or more church executive committee members to review all agreements before they are signed on behalf of the church.
- Always have an attorney review contracts and agreements.
- Make sure the contractor's license is current and legitimate. Ensure appropriate levels of any types of insurance are carried by the contractor. Consult with your agent to determine if a performance bond is necessary.



- If subcontractors will perform some of the work, research the subcontractor as you would the contractor. Determine which contractor will assume responsibility for any claims that may arise.
- Ensure that all measures to secure the construction area from public are in writing and the contractor's responsibilities are clearly outlined.
- Make sure all warranties for labor and materials are in writing.
- Review all casual relationships and agreements between the church and contractors/vendors to determine if these can/should be formalized.
- The church executive committee, trustees, finance committee, or board of deacons should review and approve all deviations from the policies and procedures on the contractor/vendor selection process.

[As an entity hiring the contractor, your contract wording can dictate a variety of items. A few items to consider are:](#)

- Requirements for the contractor to abide by church policies – see “Appendix A: Memorandum of Understanding”
- Experience modification rating at 1.0 or below
- Drug testing program in place
- Required background checks of contractor employees
- Active safety program with daily safety meetings
- Requirements for personal protective equipment on the jobsite
- Clauses for completing the project on time
- Requirements for fire protection when welding and other hot work activities take place
- Third party vendor to monitor safety on the jobsite (for large scale projects)

Tips on managing the construction process

- Once a contractor has been selected, it is important to manage the process as service is being provided or a construction project takes place.
 - Meet with the contractor on a frequent basis to discuss the construction timeline, safety requirements outlined in the contract, activities that may limit church activities and safety measures taken to protect contractors, church visitors, and church employees.
- Ensure that your contractor complies with all local work permit processes.
- Require the contractor(s) to sign a memorandum of understanding that outlines their responsibility and commitment to safety on the project or service being completed. This memorandum should be required for contractors that are providing routine services (fire alarm/extinguisher inspections, organ maintenance, interior/exterior cleaning, small handy man type services, etc.). A sample memorandum of understanding can be found on the next page.

Click the Acrobat Attachment tab (lower left corner) or advance to the end of the newsletter for a sample Memorandum of Understanding and Hot Work Permit.

For longer term renovation and construction projects

- Ensure that steps are in place to keep the construction area secure from unauthorized entry. Responsibilities need to be in writing at the time the contract is signed and the church must follow up to ensure these actions remain in force.
- Outline steps for contractors that limits access to selected areas of the church.
- Take pictures or video at various stages of the construction project.
- If any construction requires the use of “hot work” that includes welding, burning, or heating of areas of the church, then appropriate measures need to be taken. A “hot work” program should be implemented that covers activities that use heat or flame sources.
- Ensure that all fire protection systems (alarms, sprinklers, smoke detectors) remain active during the construction process. These systems need to remain operable at all times. If the project requires taking down a system at any time a “fire system impairment” program should be established. For more information please contact Zurich at churchsafety.solutions@zurichna.com.
- As always, the church executive committee, trustees, finance committee, or board of deacons should review and approve all deviations from the policies and procedures on the contractor/ vendor selection process.

Lessons of Loss

The following “Lessons of Loss” are summarized from actual church claims reported to Zurich. The details have been revised to help preserve the anonymity of those involved.

A church entered into an agreement with a contractor to refinish some existing woodwork. In the act of removing the old paint, a heat gun was used that started a fire in the church. The church sanctuary was lost and significant damage was incurred.

Lessons:

Anytime a contractor is scheduled to work on the church property, it is important for the church to think through the following:

- 1) Do we have a written agreement that protects the church from negligence caused or created by this contractor;
- 2) Has the church been named as an additional insured on the third party's liability, workers compensation, or auto liability policies?
- 3) Does the church have certificates of insurance from the third party?
- 4) Was the contractor's safety program reviewed prior to hiring them?
- 5) Did the church require appropriate fire protection/prevention measures for “hot work”? *See example hot work permit fire safety in Appendix.*

Understandably, churches will be faced with situations where one or more of these controls cannot be obtained from a third party. At that point, church leadership needs to carefully weigh the risks of the situation and make a wise decision as to whether or not that third party will be allowed to use or provide services within the church. All five of these controls should be sought out and obtained with few, if any, exceptions.



A church hired a heating and ventilation contractor to install a new system in the church. While the contractor was digging next to the church, they struck an underground electrical line that started an electrical surge that damaged interior electronics/lighting in the church.

Lessons learned:

When contractors are conducting excavations near the church, the following should be considered.

- 1) Was the church aware of the excavation required for the installation of this new heating/cooling equipment?
- 2) Did the contractor contact a utility locating company prior to digging?
- 3) Was the contractor qualified to conduct this type of work?
- 4) Was surge protection equipment properly installed inside the church?

This information was compiled from sources believed to be reliable for informational purposes only, and should be regarded as a guideline which you can use to create your own policies and procedures. You are in the best position to understand your business and your organization and to take steps to minimize risk, and we wish to assist you by providing the information and tools to assess your changing risk environment. We trust that you will customize these points to reflect your own operations. Any and all information contained herein is not intended to constitute legal advice and accordingly, you should consult with your own attorneys when developing programs and policies. We do not guarantee the

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accuracy of this information, any results and further assume no liability in connection with them. Zurich Services Corporation is a member company of Zurich in North America.

References and resources

National Fire Protection Association (NFPA)
<http://www.nfpa.org>

U.S. General Services Administration
Historic Preservation Technical Procedures

Preservation Briefs: 10
Exterior Paint Problems On Historic Woodwork
<http://w3.gsa.gov/web/p/hptp.nsf/cdf47dd33a5e7ac0852565d10060e609/db8d0f366837a51f852565c50054b4ac?OpenDocument>

http://www.dhr.virginia.gov/pdf_files/BurningPaint1.PDF

For more information on how PACT can assist in your ministry protection efforts, please contact Carol Alberts, Director of Ministry Protection, at the PACT Service Center: 1-877-UMC-PACT or visit the website at www.umpact.org.

If you have any questions or would like to receive electronic copies of the materials referenced above, please send an e-mail to:
churchsafety.solutions@zurichna.com

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Risk Engineering



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*Because change happenz*SM

Example: **Contractor Safety Program
Memorandum of Understanding**

Contractor _____ Date _____

Contractor representative _____

Church representative _____

Contractor's Certificates of Insurance provided? Yes _____ No _____

Name of contractor's personnel responsible for accident investigation _____

List any hazardous chemicals being brought into the church to complete this project. _____

- **I understand that I may not bring hazardous substances into the church without proper consent.**

Contractor Safety Program evaluation

I have reviewed the church's safety expectations and all work to be performed will be in compliance with all OSHA, EPA, state, and local safety and environmental regulations. I shall inform all contract workers of the church's safety expectations which must be adhered to at all times. I will exert my best efforts to protect workers engaged in performance of the work and the public from injury and protect the church from damage during this process. In addition, I along with all other company representatives will also abide by the following actions to comply with the church's safety expectations:

- Provide a complete list of Material Safety Data Sheets (MSDS) and have an active hazard communication program in place during the project or service.
- Abide by the church's emergency procedures for fire, weather, and other emergencies.
- Contact underground utility location services if excavation work is to be conducted.
- Take appropriate action in case of an accidental chemical release, gas release, or underground utility strike.
- Prohibit smoking and other unauthorized flame sources while working on church grounds.
- Take all proactive measures to follow "Hot Work" procedures when welding, cutting, brazing and heating items on church property.
- Wear appropriate personal protective equipment while working on church grounds.
- Follow regulations on fall protection, confined space entry, ladder safety, scaffold safety, and all applicable electrical safety programs (lockout/tagout, safety related work practices, etc.) when required.
- Ensure that the fire detection/fire suppression system is un-impaired throughout the work project or service activity (if applicable).
- Take appropriate actions in the event of an injury while on church property.

I understand that I may not operate any church equipment or use any church materials or stock without prior written authorization.

I understand that I shall assume the risk of injury or death of any person or loss of damage to property by whomsoever owned occurring in and about the work. I shall indemnify and save harmless the church against any loss, cost or expense on the account thereof.

I shall assume the risk of loss or damage to all materials and supplies, machinery, tools, equipment, temporary structures, and the contents thereof which are used in the performance of the work and which are not owned by the church, however, such loss or damage may be caused or occasioned. I shall indemnify and save harmless the church against any loss, cost or expense on the account thereof.

The church shall, however, assume the risk of loss or damage to all completed work performed at the site or materials and supplies paid for and for which title has to the church caused by fire, extended coverage perils, vandalism, or malicious mischief, and shall indemnify and hold the contractor against any loss, cost or expense on the account thereof.

I have been given the locations in which contract operations will take place and I understand how to evacuate safety from those areas in the event of an emergency.

I have submitted all the necessary certificates of insurance including product liability coverage (if applicable) vendor coverage, with minimum limits of \$1,000,000 per occurrence and \$1,000,000 per aggregate and proof of state workers compensation insurance.

I have been given an opportunity to ask questions and to have any questions answered.

Contractor representative _____

Church representative _____

Risksolutions

Hot work permit

Good for one shift only

Date _____

From _____ a.m. p.m. to _____ a.m. p.m.

Building or area _____ Dept. _____ Floor _____

Work to be done	
Work performed by:	

Fire watch assigned? Yes No

Name(s) of fire watch
1.
2.
3.

Other special precautions taken

I have been instructed and I understand the hazards as well as the precautions necessary to do this work.

Signature of person performing work

I verify that the work site has been inspected, all necessary precautions have been taken to prevent fire, and the individual signed above is authorized to do this work.

Signature of supervisor

Date & time of signature

- 1. Have all flammable or combustible materials been removed from the work area (35 ft. radius)? Yes No
- 2. If any flammable or combustible materials cannot be removed, have they been properly covered by fire-resistive shields or tarpaulins? Yes No
- 3. Are fixed fire-extinguishing systems in service? Yes No
- 4. Are adequate portable fire extinguishers or hoses provided? Yes No
- 5. Have combustible floors or roofs been wet-down and/or properly covered? Yes No
- 6. Have wall or floor openings been properly covered? Yes No
- 7. Is hot work equipment in good working condition? Yes No
- 8. Are any of the following permits required?
 - Confined space Yes No
 - Lock-out / Tag-out Yes No
 - Other _____ Yes No
- 9. Has the atmosphere been checked with a combustible gas detector? Yes No
- 10. Is ventilation adequate? Yes No

Work completed (date/time): _____

I have inspected the work site after completion of the work and find the area to be in safe condition.

Signature of supervisor

Date & time of signature

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