Safety Programs & Insurance
Safety Programs

- Recognize and anticipate construction hazards and how to eliminate them with a safety program.
- Reduce or eliminate the risks to hazards
- Safety Manual
- Toolbox Talks
- LIVE THE SAFETY PROGRAM
Does not have a safety manual
Does not have a safety manual
Does not have a safety program
Does not have a safety program
Does not have a safety program
Top Three OSHA Violations

1) Scaffolding
2) Fall Protection
3) Ladders
US Construction Accidents

- 5,147 workers were killed on the job in 2017
- Construction has one of the highest fatality rates of any industry sector
- Out of 4,674 worker fatalities in private industry in calendar year 2017, 971 or 20.7% were in construction – that is, one in five worker deaths last year were in construction.
- Falls - 381 out of 971 total deaths in construction in CY 2017 (39.2%)
- Struck by Object - 80 (8.2%)
- Electrocutions - 71 (7.3%)
- Caught-in/between* - 50 (5.1%)
How to Prevent Injuries

- Inadequate construction planning
- Lack of proper training
- Deficient enforcement of training
- Unsafe equipment
- Unsafe methods or sequencing
- Unsafe site conditions
- Not using safety equipment that was provided

In a European study, 60% of fatal accidents resulted from decisions made before site work began.
Considering Safety During Design Offers the Most Payoff

Think before starting...

Ability to Influence Safety
High
Low

Project Schedule
Start-up

Conceptual Design
Detailed Engineering
Procurement
Construction
Consider Human Factors

- Sequencing of work (can create unplanned hazards)
- Worker misjudges a situation
- Deficient management
- Distractions
- Perception errors
- Lack of training
- Lack of equipment (for example, no place to tie off, worker makes do)
A Few Facts

- First day of project is the most dangerous
- Accidents are more frequent at the end of the day
- Safety helmets, Hi-Visiable jackets/clothing, and safety boots do prevent injury and death
Basic Safety of Philosophy

- All Accidents are preventable
- No job is worth getting hurt for
- Every job will be done safely
- Safety is everyone’s responsibility
- Incidents can be managed
- Safety is a way of life - Live it 24/7
Lockout-Tagout
Lockout Tagout - Intro

- Lockout-Tagout is a hazard avoidance technique used to prevent energy from being accidentally released during the servicing of equipment.
- The Lockout-Tagout standard requires the adoption and implementation of written practices and procedures to:
  - Shut down equipment
  - Isolate it from its energy source or sources
  - Prevent the release of potentially hazardous energy while maintenance and servicing activities are being performed.
Lockout Tagout - Intro

- Workers servicing machinery and equipment are exposed to injuries from the unexpected energization, startup of the machinery or equipment, or release of stored energy in the equipment
  - Workers injured from exposure to hazardous energy lose an average of 24 work days for recovery
- Most injuries and fatalities are a result of improper hazardous energy control procedures
  - A Bureau of Labor Statistics study on injuries suffered when servicing equipment showed
    - 80% failed to turn off equipment
    - 10% equipment activated by someone else
    - 5% failed to control potential energy
    - Remaining 5% failed to verify effectiveness
The “Fatal Five”

Main Causes of Lockout/Tagout Injuries:
1. Failure to stop equipment before servicing
2. Failure to disconnect equipment from power source
3. Failure to dissipate (bleed, neutralize) residual energy
4. Accidental restarting of equipment
5. Failure to clear work areas before restarting

All injuries resulting from inadequate hazardous energy control procedures can be prevented
Forklift Operation

- OSHA 1910.178 states “Only trained and authorized operators shall be permitted to operate a powered industrial truck.”
Interesting Facts - Forklifts

- Forklifts weigh thousands of pounds.
- Are extremely powerful.
- Use rear wheel steering.
- Can turn in a very tight circle.
- Are not very wide for use in aisles.
Safety - Forklifts

- Speed
- Load Capacity & Centering
- 8 inch rule (From the bottom)
- Blocked view
- Loose and wide loads
Safety & Insurance

- Insurance is the most common method used by business to protect against unexpected loss.
- Insurance - Spread of risk
- It is required for commercial business (Auto & WC - Statutory) - Can’t get on jobsite without insurance
- Not all risks are insurable (Wear & tear)
What is Insurance & Why is it important for NOMMA members?

- A contract between an insured and insurance carrier
- A transfer of the financial responsibility for specified events
- A promise to restore one’s financial position by a specified amount, or to one’s position prior to the loss
- It is not a means of financial gain
Common Coverages

- General Liability
- Workers Compensation - Statutory
- Automobile - Statutory
- Property/Inland Marine
- Umbrella
- EPLI
- Crime
General Liability Insurance

- Generally covers body injury, personal injury and property damage loss (3rd party)

- **Bodily** injury is death or harm to a person’s physical body resulting in medical expense
  - More claimants and exposure for insurance carriers
General Liability

- Admitted Vs. Non-Admitted
- Residential Exclusion
- Prior Work Exclusions
- Additional Insured Endorsements
- Deductibles
- Subcontractor Warranty
- Classification Limitation
Residential Exclusions

Most general liability policies have an exclusion that doesn’t allow you to work on any type of residential building, including apartment, condos, and single-family homes. With the rebound in residential construction, these policies can overlook a huge part of your business. General Liability polices that don’t include this restriction give you the peace of mind and flexibility to move from the commercial to residential markets.

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY,
2. Exclusions is amended and the following added:
This insurance does not apply to:

New Condominium, Townhouse, Apartment, Or Multiple House Development Construction Work

“Bodily injury” or “property damage” included in the “products-completed operations hazard” and arising out of “your work” performed on any new:
1. condominium;
2. townhouse;
3. apartment;
4. timeshare development; or
5. project or premises on which more than six houses or dwelling units have been built or are in any stage of development, planning or construction.

This exclusion does not apply to:
1. remodeling or repairs to a single dwelling unit on premises described in 1, 2, 3, or 4 above;
2. additions to a single dwelling unit in a development described in 4 above; or
3. maintenance, service or repairs to common areas of a competed and occupied development or project.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.
Residential Exclusion

Residential dwelling...

### SCHEDULE

**Description of Designated Ongoing Operation(s):**

Any and all work that arises out of, or is related to an insured’s or an Insurer’s sub-contractor’s operations, work product, or products that are incorporated into a “residential dwelling”.

This exclusion does not apply if the work occurs after the “residential dwelling” has been completed and certified for occupancy, unless the work is to repair or replace “your work” that occurred prior to completion and certification for occupancy.

This exclusion does not apply to “custom homes”.

**Definitions:**

“Residential dwelling” means any structure intended to be occupied as a private residence.

“Residential dwelling” does not include apartments, assisted living facilities, military bases, school or university dormitories, nursing homes, prisons or jails, or hotels or motels.

“Custom home” means any structure designed by an architect hired by the owner and is specifically designed to meet the specifications of the owner.
New construction..
Many General Liability policies contain a prior work exclusion. With a prior work exclusion, there is no coverage for any occurrences arising out of work the contractor completed prior to the policy period.

This insurance does not apply and the Company shall have no duty to defend any claim or "suit" seeking damages for "bodily injury", "property damage", or "personal and advertising injury" arising out of "your work":

1. completed prior to the date shown in the schedule of this endorsement; or
2. abandoned by the insured prior to the date shown in the schedule of this endorsement.
No Additional Insured Endorsement on Completed Ops

Policies will often include blanket additional insured endorsement on ongoing operations, but can excluded completed ops. Injuries completed out of completed work needs to be covered as well.

2. Exclusions

This insurance does not apply to "bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
Policies will often require Certificates of insurance from all independent contractors. The cost of insurance for uninsured subcontractors falls on the hiring contractors. Premium due for uninsured subcontractors is payable at audit. Certificates of insurance should be both examined and verified.

The following condition is added to SECTION IV-COMMERCIAL GENERAL LIABILITY CONDITIONS section of the policy:

10. CONTRACTORS SPECIAL CONDITIONS

You will obtain certificates of insurance from all independent contractors providing evidence of Commercial General Liability limits of insurance equal to or greater than $500,000 each Occurrence Limit, $1,000,000 Products-Completed Operations Aggregate, Liability Limit, and $1,000,000 General Aggregate Liability Limit (Other Than Products-Completed Operations).

Failure to comply with this condition does not alter the coverage provided by this policy. However, should you fail to comply a premium charge will be made. This premium charge will be based on the "Total cost" of all work subcontracted using the respective General Liability Classification for that subcontract work (Payroll or Gross Receipts).

"Total cost" means the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of the work and all fees, bonuses or commissions paid.
A Classification Limitation endorsement otherwise known as a Limitation of Coverage excludes coverage with respect to business operations of the insured for which no classification code is listed in the policy declarations.
Common CGL Exclusions

- **Expected or Intended** - Deliberate acts causing bodily injury or property damage are specifically excluded from coverage.

- **Liquor Liability** - This applies to businesses in the business of producing, serving or otherwise furnishing alcohol.

- **Workers Compensation** - Employees are covered under workers’ compensation.

- **Pollution** - CGL excludes coverage for damages caused by the release or discharge of hazardous materials or pollutants from the insured premises, regardless of when the release began or occurred.

- **Mobile Equipment** - Bodily injury or property damage that results when the mobile equipment is being transported is excluded.

- **Property Damage** - CGL excludes coverage for property owned, rented to or occupied by the named insured. This is covered under the property policy.
Experience Rating Definition

Merriam Webster defines experience rating as:

- “A merit rating that consists of the manual rate modified by the loss experience of a particular risk”.
- Can help or hurt getting on jobsites
- Large premium difference on workers compensation insurance
Experience Modification Rate

- Also knows as:
  - X-Mod
  - Experience rating
  - E-mod
  - EMR

- The purpose of experience rating is to provide a financial incentive for safety and to equitably distribute the costs of Workers’ Compensation claims.

- Riskier the work, the higher the manual rate

- Manual rates will differ greatly by state
  - CA vs. NV
X-Mod Application

Comparing three similar companies:

- Company A
  - 1.0 X-Mod = $100,000 WC premium
- Company B
  - .80 X-Mod = $80,000 WC premium
- Company C
  - 1.20 X-Mod = $120,000 WC premium
Three Main Elements of X-Mods...

1. Audited Payroll
2. Claims
3. Expected loss rates

- Best trend: high payroll, low claims and high expected loss rate
- Worst trend: low payroll, high claims and low expected loss rate
- How is a X-Mod calculated? It depends on the state.
Who Issues X-Mods?

- X-Mods are calculated and issued annually by either a state or national rating agency.
- NCCI, the National Council on Compensation Insurance, is the predominant state issuer. It also calculates rates for companies that have operations in multiple states.
- In California, X-Mods are calculated by the WCIRB, Workers’ Compensation Insurance Rating Bureau.
X-Mod Period - Three Years

Exhibit B—Experience Period

Rating Effective Dates

- 4/1/2012–4/1/2015 Policy Effective Dates
- 4/1/2013–4/1/2016 Policy Effective Dates
Severity vs. Frequency

Two companies with $30,000 in losses:

- Company A - one loss
  - $30,000 loss = $7,000 primary + $23,000 excess.

- Company B - three losses
  - $10,000 loss = $7,000 primary + $3,000 excess.
  - $10,000 loss = $7,000 primary + $3,000 excess.
  - $10,000 loss = $7,000 primary + $3,000 excess.

- Primary loss values vary by state.
What can you do about a high X-Mod?

- **Explanation:**
  - Write an explanation re: why the situation is unique or unusual.
  - Explain what loss control measures have been put in place since claims took place.
  - An X-Mod alone does not provide details that may be needed.

- Audit X-Mod worksheet for errors.
- Loss Control
- Claims Management
- Insurance carrier may provide scheduled credits to offset the EMR.
- GC’s/Owner’s may not allow NOMMA members on the jobsite.
Loss Control

- Safety training for management and supervisors
- Implementation of company wide safety program
- Hazard identification surveys
- Safety inspections
- Research and direction on OSHA regulations
- Accident investigations of serious injuries
Claims Management

- Obtain plan of action for each claim
  - Claim reviews
- Negotiate reserves reductions prior to carrier Unit Stat filing
- Evaluate current medical work comp clinic outcomes, consider changing if applicable
- Alert the claims adjuster if you suspect fraud - surveillance
- Review the X-Mod worksheet for errors
  - Includes wrap up payroll
- Forecast next year’s X-Mod
Subrogation

Subrogated, Subrogation or Subrogation Claim(s):

- When a workers’ compensation injury is caused by a negligent third party (other than the employer), the injured worker has the right to sue the wrongdoer for damages in civil court.

- A claim where an insurer received monetary reimbursement either in part or in whole under subrogation rights (the insurance company also has a subrogation interest).

- **Key Point:** Subrogation recovery can lower the X-Mod.
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