

Legal Connections



The Columbus Bar staff wish you an enjoyable Thanksgiving filled with peace and joy.

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LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

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BALANCED CONTRACTS MEAN BETTER RESULTS

Construction projects can range from small office remodels to mega-projects like the Intel semiconductor complex in New Albany. Whether the project is small or large, public or private, one fundamental principle remains true: fair and balanced contracts that appropriately allocate risk foster better relationships between owners and contractors, which often also results in lower costs and faster completion. The opposite can be true when project participants attempt to make agreements too one-sided.

Public and private construction contracts are usually initiated by the owner and often developed by their legal teams who typically start with industry standard form contracts that are widely accepted as being fair and balanced agreements. These include contracts and supporting documents prepared by the American Institute of Architects (AIA), ConsensusDocs, the Engineers



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Joint Contract Documents Committee (EJCDC), and the Design-Build Institute of America (DBIA). Industry standard form contracts offer a valuable resource for owners and contractors that are looking for contracts that address all issues that arise on commercial construction projects. These contracts distribute project risk in predictable ways and allow owners to obtain competitive pricing from multiple potential contractors.

Problems emerge, however, when individuals or legal teams substantially deviate from these industry form documents with provisions that destroy the documents original intent and significantly reallocate risks – most typically from the owner to the contractor. Heavily modified industry standard documents have become increasingly popular amongst public owners on projects such as school districts, community hospitals, and other public works projects. This presents challenges as the contracts still bear the markings of the standard form but are increasingly recognized as wolves in sheep's clothing.

Business owners and developers should carefully consider whether substantially deviating from industry standard documents to shift risk to contractors is a prudent business decision consistent with their overall goals. Particularly in today's business

climate, many contractors are electing to forgo projects offered with modified contract terms in favor of projects where the risks and rewards are more easily determined and balanced. For projects employing highly stringent and onerous contract requirements, the cost and schedule of those projects is more volatile and therefore involves more risk. Where the risk is greater, contractors are inclined to account for that risk with higher pricing. For owners that want to receive proposals from the best contractors in the region (for cost, schedule, and quality), maintaining standard, well-known, and widely accepted contract language is usually the better course of action and will deliver better overall value at the end of the project than the cost of pursuing overzealous construction contract terms. ■

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EMBRACING CHANGE: RECRUITING AND RETAINING A DIVERSE, MULTIGENERATIONAL WORKFORCE

What does it take to recruit and retain a productive, diverse, satisfied and committed workforce in today's labor market? Employers grappling with this question must develop strategies to adjust to the profound shift in the employer-employee relationship, all while ensuring compliance with evolving workplace laws.

A More Holistic Value Proposition

Beginning in early 2021, employees began voluntarily resigning from their jobs en masse, leading to what has been termed The Great Resignation, a topic of heavy



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debate and discussion in recent months. Possible causes include long-standing job dissatisfaction, wage stagnation, COVID safety concerns, and increased caregiver responsibilities. At the root, there is a desire for more than what the traditional employment relationship offered. Employees are seeking a different value proposition that includes connectivity, flexibility, better wages, an increased focus on wellness, work-life integration, and opportunities for growth and purpose.

Strategic Flexibility

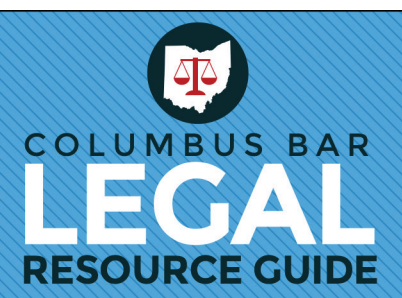
It is impossible to talk about recruitment and retention today without hearing the

"F word" – Flexibility. After over two years of making remote arrangements work, we are at a pivotal moment. As return to work expectations increase, employers should not assume that they can simply resume the pre-COVID approach to workplace issues. For example, in response to a disability accommodation request, it may be difficult to assert that an in-person requirement is essential when an employee has successfully performed their job from home during the pandemic. More importantly, many employees have become accustomed to working from home and given the current labor market have substantial leverage in asserting their preferences. When presented with options, women and racially diverse

employees are also reportedly returning to work settings at a lower rate than men for a variety of reasons.

With the current war for talent, strategic flexibility can be a source of competitive advantage for companies. Strategic flexibility combines consideration of flexible work options with a plan to keep employees connected and engaged. This includes ensuring that training and development opportunities can occur for employees working remotely to avoid allegations of disparate impact or discrimination in promotion or advancement decisions down the road.

Part Two of this article will appear in the 12/2 edition of Legal Connections. ■



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