

The background image shows a construction site at sunset. An orange excavator is positioned on the left, with its arm raised. To its right is a white dump truck with a rusty metal bed. The ground is uneven and covered in dirt and debris. The sky is a mix of orange, yellow, and blue, indicating the time is either dawn or dusk.

MDOT DBE Small Business Conference 2016

Attracting, Developing and Retaining Talent

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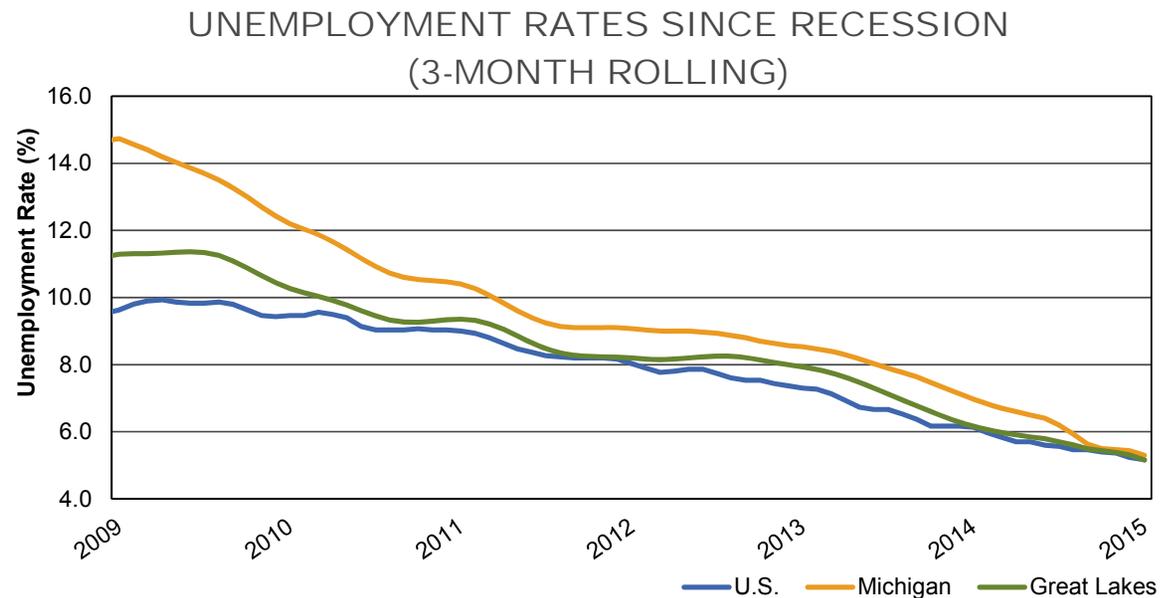
KOTZ SANGSTER

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Regional jobless rate recovers at a faster pace

While the cyclical peak for joblessness in the Great Lakes region was well above the national average, its decline has also been much more pronounced.

The jobless rate for the Great Lakes region stood at 4.9% in November, compared to 5.0% for the U.S. and 5.1% for Michigan, respectively.



Construction overview

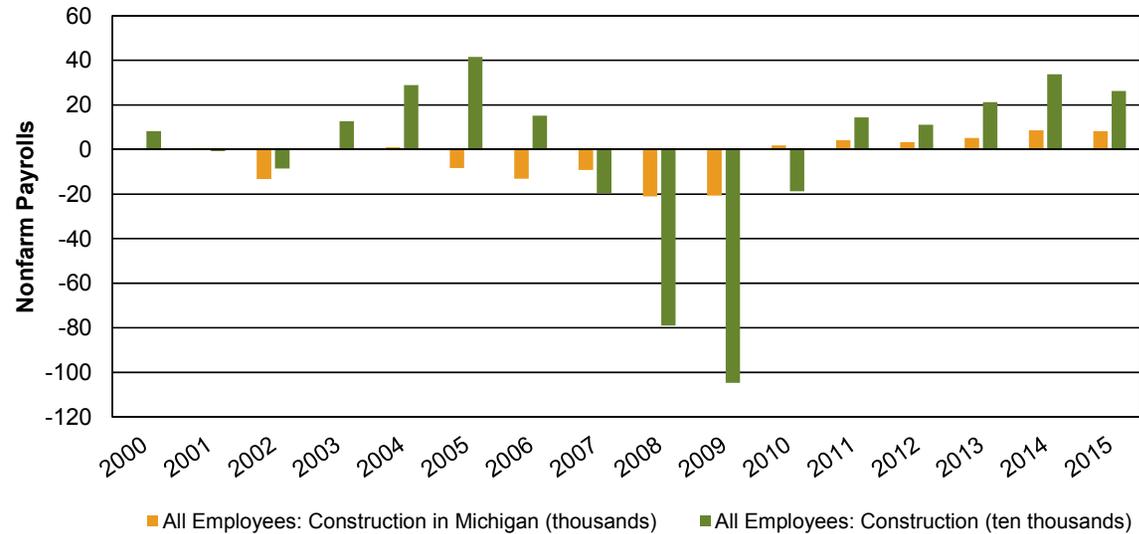
- December Construction Employment: 6.45 million
Near 7-Year High
- December Unemployment – Those With Construction Experience: 645,000
Near 16-Year Low
- November Construction Growth (YoY): +10.47%
Near 8-Year Peak in October

Source: PMFA, BLS, U.S. Census Bureau

Construction-related jobs have also expanded

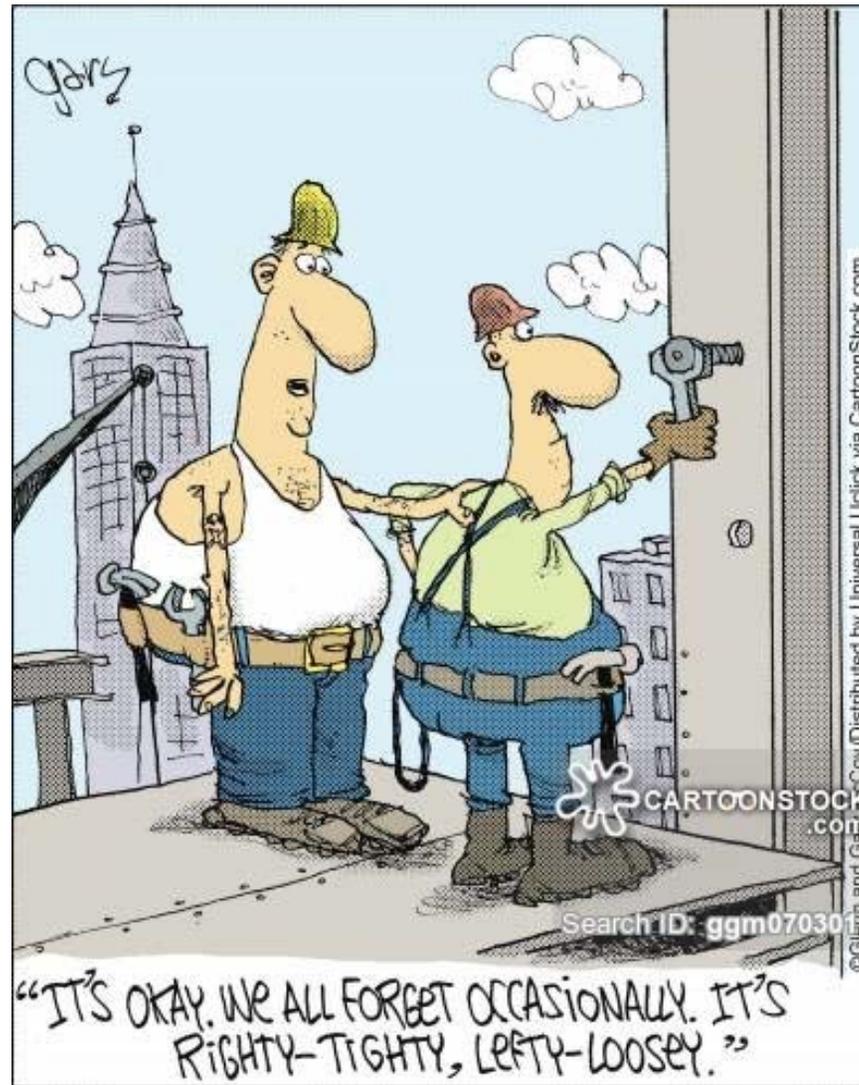
New construction jobs in the U.S. have shown steady expansion, after suffering a sharp, extended decline from 2007 to 2010. Michigan's construction job market has followed a similar path.

CONSTRUCTION EMPLOYMENT CONTINUES UPWARD TREND



Source: PMFA, BLS

It's not at this point....yet.



Cost of recession



TOTAL JOB LOSSES

5 Million

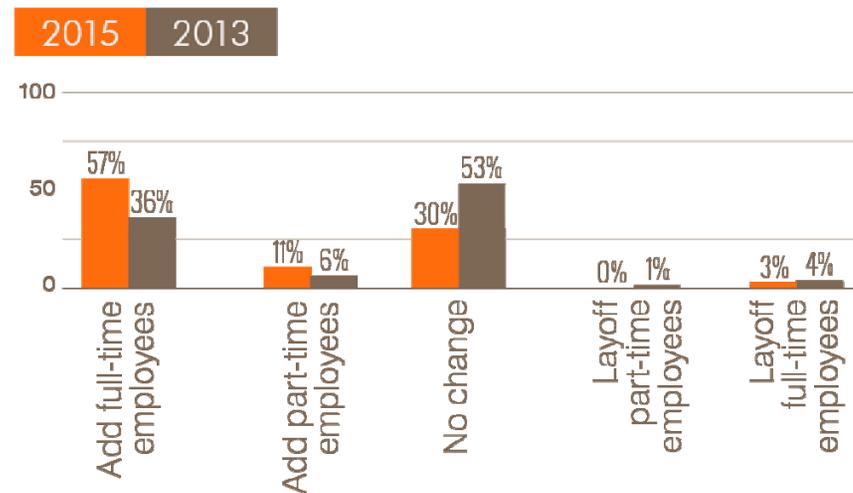


CONSTRUCTION JOB LOSSES

2 Million

What plans do you have for your workforce over the next 12 – 18 months?

57%
Add full-time employees



*57% of contractors plan to add full-time employees.
In 2013, 53% had no plans to change their workforce.*

Is your company experiencing difficulty finding skilled workers?

2015

Yes

82% of respondents
are experiencing difficulty finding skilled workers.

2013

Yes

53% of respondents
are experiencing difficulty finding skilled workers.

Over the next 12 -18 months, do you anticipate labor availability to:

2015

38%

Decrease slightly

4% Increase significantly

8% Increase slightly

34% Stay the same

38% Decrease slightly

12% Decrease significantly

2013

29%

Decrease slightly

1% Increase significantly

13% Increase slightly

35% Stay the same

29% Decrease slightly

5% Decrease significantly

Do you anticipate a skilled-labor shortage?

Yes

84% of respondents
anticipate a skilled-labor shortage.

CAM Biennial Business Survey sample comments

How should the industry address this issue?

- Promote trades in schools
- Steady jobs with good wages will draw people back
- It is too late! Most of the experienced talent left!

CAM Biennial Business Survey sample comments

How is your company dealing with this issue?

- Trying not to lose qualified personnel
- Hiring from competition
- Bringing in inexperienced people and training them
- Looking to subcontract more
- Developing an internship program
- Providing better working conditions and benefits
- Managing work differently

The high cost of turnover

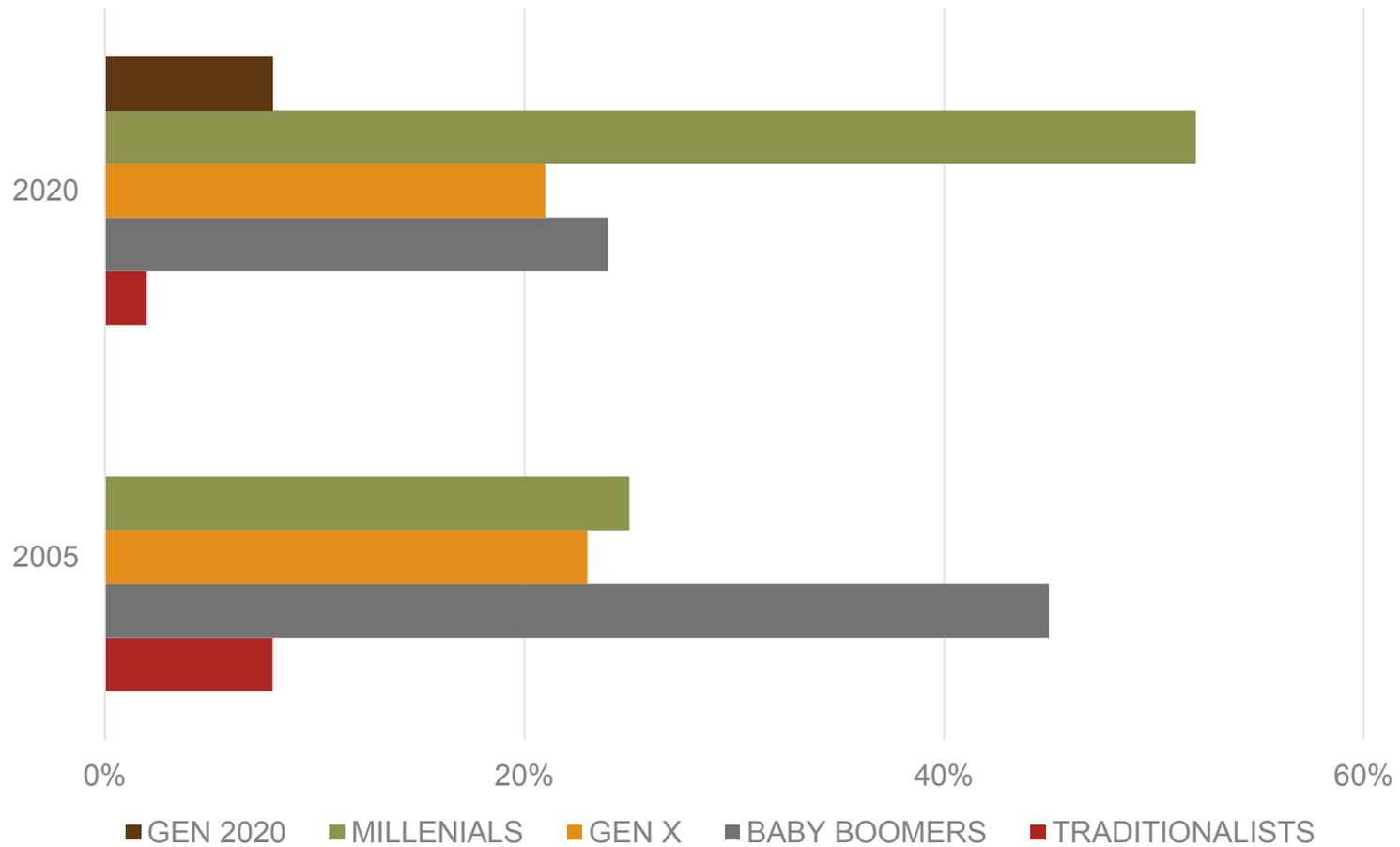
A \$75,000 position could cost an organization \$97,500 to \$142,500, plus the added stress, cultural impact, and more...

cost
of a wrong hire



Increasing diversity in the workplace

Five Generations in the Workplace



What is culture?

A company's culture is the collection of values and repeatable behaviors staff demonstrate on a daily basis. It consists of the values, attitudes, behaviors and practices of the organizational members.



How to build a great culture

There isn't one defined formula

First, we must understand the current state of our culture before we can change and improve it.

According to the Great Place to Work Institute, great cultures have the following 5 common characteristics:

1. Staff work closely together to build a sense of camaraderie
2. Individuals take great pride in their work
3. Importance is placed on fairness and fair practices
4. There is a shared sense of respect
5. Leaders are seen as having credibility and are TRUSTWORTHY

Other characteristics include: clearly defined mission, consistency in practices and policies, and adapting to change and challenge in a manner consistent with the culture.

Other factors that impact culture

- Understanding and respecting the mission of the organization
- Open communication and an open door policy
- Providing compensation and benefits that are reflective of the market
- Creating a vision of a path for success for the individual
- Training and coaching
- Timely and candid feedback
- Recognition
- Attention to personal needs
- Caring for and thanking people for their efforts
- Creating an environment of TRUST

What does having a great culture mean to your business?

According to statistics taken from companies that are part of FORTUNE Magazine's "Best Companies to Work For" ...

- These companies receive nearly twice as many employment applications
- Average turnover rate is less than half

What else can you gain on a long-term basis from having a great culture?

- Improvement in productivity/profitability
- Better work environment/sense of pride
- Better communication
- More engagement
- More team play/sharing credit
- Greater and faster skill development
- Development of mentors and successors
- More stress-free work environment
- More recognition and sense of achievement
- Easier to re-recruit/retain talent

Attracting and retaining millennials

Report by Construction Labor Market Analyzer

- In the next few years, U.S. construction projects will require 6.7 million skilled workers – about 50% more than are available today
- The average age of the skilled trade worker is older than the workforce as a whole
- Construction firms will need to attract the younger workforce

Millennials

- They are smart. They are the most educated group in the U.S.
- They are ambitious. This age group places a premium on jobs with opportunities for career progression.
- They are tech-savvy. Their comfort and familiarity with technology will make them a great asset.

How to attract and retain millennials

- Culture matters to them. Culture must be supportive
- They need to feel that their work matters and that they are appreciated
- Let them be innovative and respect their ideas
- Show them the path to success
- They thrive on regular communication – it builds trust
- Embrace social media and technology for recruitment
- Help them develop their skills
- They want mentors that care about them – they enjoy collaborating
- They want to work smarter not harder

Remember – Great culture is timeless as long as it evolves and grows



“The greatest human craving is
to be appreciated.”

- William James



“70% of U.S. employees feel either ‘not engaged’ or ‘actively disengaged’ at work.”

- Recent Gallup Poll



“People are two and one-half times more likely to remain with an organization if they feel they are ‘friends’ with their supervisors.”

- Recent Gallup Poll

“Loyalty To The
Individual Results In . . .
Loyalty To The
Organization”

Importance of culture fit

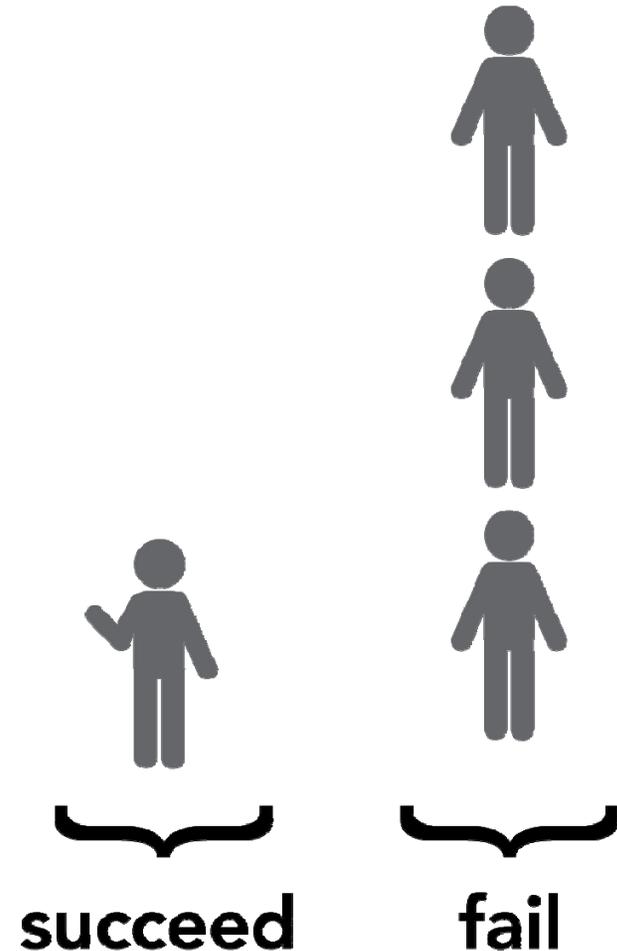
New managers and executives are

3 times more
likely to fail

because of not fitting with the

culture

and their peers rather
than because of not
having the skills.



Strategic business planning

- Be intentional! Key element in establishing a positive culture
- Establish a coherent/common vision and direction for the organization
- Establish clear strategic goals and objectives as well as near-term action items
- Communicate the plan, monitor progress and revisit often
- Provide basis for effective talent management initiative
- Do we have the talent to achieve our vision? If not, how will we acquire/develop the talent we need?
- Include succession plan as key component

Succession plan

Ensure the right people are in the right positions today, and 10 years from now.

- Growth plans
- New markets, services
- Pending retirements
- Unplanned departures

Not just for top leadership!

Focuses on development as well as acquisition.

Three Ps:

- Be Proactive
- Prioritize
- Be Practical

Needs to be an ongoing, sustainable process, not an event!

Recruiting strategies

First and foremost, be an employer people want to work for:

- Strong, positive culture
- Fair compensation and benefits
- Opportunity for growth/advancement
- PR approach – Image in the market
- Condition of equipment/vehicles
- Condition of the jobsite
- Condition of building/office
- Prominent signage

Recruiting strategies (continued)

Create a pipeline

- Tell the story/create interest in early high school years
- Work with high school counselors and vocational teachers

Targeting – Where to look

- High schools
- Vocational-tech schools
- Jr. colleges/colleges
- Veterans groups

Getting the word out

- Use social media – LinkedIn, Facebook, Twitter, etc.
- Develop high-quality website content oriented toward potential recruits
- Traditional job postings
- Encourage word of mouth: Offer incentive to employees for referring candidates who are hired

Recruiting strategies (continued)

Screening/Interviewing

- Aptitude
- Attitude/Passion
- Cultural Fit
- Present the opportunity honestly
- Consider testing
- Involve HR, supervisor and possibly a peer
- Training in effective interviewing

Offer formal internships/apprenticeships

On-boarding

- Proper education and training from the start
- Frequent check-ins
- Early relationship building – consider a “buddy” system

Employee performance evaluation/management

Start with your Company's strategic goals and objectives:

- Safety
- Quality
- Profitability
- Growth
- Talent Enhancement
- Cultural Enhancement

Create baseline roles, responsibilities, expectations by role

Implement an EPM process that promotes empowerment and engagement

Employee performance evaluation/management (continued)

Collaboratively, develop individualized goals and objectives – measurable is better

- Career path/progression
- Professional/skill development plan
- Contribution to company/team goals and objectives

Employee performance evaluation/management (continued)

- Provide ongoing, timely, informal feedback
- Provide formal project/job-specific feedback as appropriate (PPA)
- Conduct formal annual evaluation/planning session to review performance and plan for the next year
- Consider less-formal 6-month check-in
- Start with employee rating him or her self and drafting their plan for next year

Compensation/incentive compensation

- Know the market
- Reward performance – Tie to EPM process
- Incentive compensation
 - Linked to organization's goals and objectives
 - Company performance
 - Team/Group performance
 - Individual performance
- Focus on results
- Transparency

Compensation/incentive compensation (continued)

- Reward syndication of expertise/knowledge transfer
- Mentorship
- Requirement for advancement
- Consider deferred compensation/other techniques to encourage retention

People development

- Continuous focus on re-recruiting
- Ensure Professional Development Plan is tailored to employee's career path and strengths/weaknesses
- Offer/reimburse appropriate education and training programs designed to improve skills and facilitate advancement
- Provide stimulating/challenging work
- Implement mentorship program

Retaining Talent

John T. Below, Esq.

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Non-compete agreements

What are they?

Are they enforceable?

Yes -

- But they must meet certain statutory criteria
- Demographics and industry type affect enforceability

Non-compete agreements

Michigan's Anti-Trust Reform Act

- Must protect an employer's "reasonable competitive business interest"
- Must be reasonable as to duration, geographical area and the type of employment or line of business covered

Non-compete agreements

To whom do they apply?

- Employees
- Independent contractors (Yes – independent contractors)

Additional consideration not needed in exchange for a non-compete?

Non-compete agreements

What if an employee attempts to or breaches the non-compete?

- Employer sends a cease and desist letter
- Temporary restraining order and/or injunctions
 - Maintains the *status quo* until the Court rules on ultimate issues
 - Litigation
 - The number of published decisions in state and federal court has doubled in the last 10 years.
 - Over the past year, the number of reported cases has risen 32%. Why the increase in litigation?
 - More employees signing non-competes and non-solicitation agreements (another form of non-compete)
 - Fierce competition for top-level talent

Non-solicitation agreements

What is a non-solicitation agreement?

- Form of Non-compete. Often used in sales or sales-related positions
- Protects an employer from former employees pilfering staff and customers/clients after they leave
- Evaluated for reasonableness under the *same standard* for non-competes

Other company protections

Take reasonable measures to protect your trade secrets and/or confidential and proprietary information.

- Written confidentiality agreements
- Consistent enforcement of policy to ensure you have not waived trade secrets

Confidentiality agreements

What are they?

- Prohibits employee from disclosing private confidential, proprietary or trade secret information learned during employment
- Applies during and after employment
- Trade secrets are also protected from disclosure under statute, Uniform Trade Secrets Act, irrespective of confidentiality agreement

Confidentiality agreements

What is a “Trade Secret” under the UTSA?

Information including a formula, pattern, compilation, program, device, method, technique or process that:

- Derives independent economic value from not being generally known to or readily ascertainable by third parties who can obtain economic value from its disclosure
- Is the subject of reasonable efforts to protect and maintain its secrecy

What is not a trade secret?

Customer lists.

If they cite only contact information.

Why?

- The identity of the customer is readily ascertainable

General knowledge within a particular industry.

- Example: An executive's knowledge of contact people within a given industry

Legal Issues and Current Labor Market

Sean P. McNally, Esq.

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LABOR COSTS AND COST ESCALATION

- Risk typically not assumed by owner.
- Prime contractor needs to be pro-active about managing this risk and flowing downstream to subcontractors.
- Caution-be very careful in attaching a subcontractor's quote as an exhibit to a contract (labor rates).
- Subcontractors also need to manage this risk and appropriately flow downstream to sub-subcontractors.
 - Be careful about a provision that incorporates the provisions of the prime contract.
 - If so, request and review those contractual documents.

AVAILABILITY OF MANPOWER

- Carefully evaluate acceleration provisions in contract during bid phase in light of available manpower.
- Carefully evaluation definition of "Force Majure", which is generally defined as: "An act or event that can be neither anticipated or controlled that frustrates or renders contractual performance impossible."
- Carefully review damage provisions, including provisions for liquidated damages and/or recovery of consequential damages.

QUALITY OF LABOR

- Risk assumed by contractors.
- Importance of evaluating acceleration and schedule provisions.
- Importance of knowing your labor pool.
- Need to evaluate contractual provisions and train your team on contractual provisions on change order, claims and the required notices.
 1. Change order- issues to watch out for.
 2. Costs impacts need to present real time.
 3. Any labor claim needs to consider overall impact on productivity and efficiency.
 4. Consultant or studies on efficiency/productivity.

Example of Change Order Provision

Through acceptance of this Change Order, subcontractor acknowledges it has reviewed the progress of work related to this project and the potential impact of the added work on the progress of the project in the future. As a result, the Change Order includes compensation to the subcontractor for any and all effects, delays, inefficiencies or similar demands associated with this project and the subcontractor recognizes that there is no basis for any such claim in the future.

About Plante Moran

Culture counts

We have an award-winning culture based on one simple premise: We care.

- 17 consecutive years on FORTUNE magazine's list of "100 Best Companies to Work For" in America, with a highest rank of 7
 - Staff turnover rate is one of the lowest among top 100 accounting firms
-

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About Kotz Sangster

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Kotz Sangster is a full service business law firm with a large and sophisticated construction law practice. With offices in Detroit, Bloomfield Hills, Grand Rapids, Niles, Buchanan, and South Haven, the firm is large enough to successfully manage complex matters, and at the same time provide true relationship counsel throughout the legal process. To learn more about Kotz Sangster, visit us at www.kotzsangster.com.

Tom Doyle, Plante Moran



As leader of Plante Moran's national construction practice, Tom brings more than 30 years of experience providing tax, audit, and consulting services to general, heavy/highway, and specialty trade contractors. Under his leadership, Plante Moran's construction practice includes more than 100 professionals dedicated to providing insightful guidance and industry thought leadership to the firm's more than 400 construction clients. Tom spends 100 percent of his time working with and advising construction clients.

Tom has served as the construction industry leader for more than 18 years. He's also served as an Office Managing Partner and as a member of all of the firm's major committees.

Tom is a former vice chairman of the board of directors for the Construction Association of Michigan and is a member of the CFMA, MITA, DACA, and the AGC. He is a frequent industry speaker, trainer, and author, providing insight on current construction topics and trends. Tom earned a B.B.A. in accountancy from Western Michigan University.

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Laura Claeys, Plante Moran



Laura is a member of Plante Moran's construction and real estate practice, providing business consulting, accounting and tax advice to her closely held construction company clients.

Laura has more than 25 years of construction industry experience working with general and special trade contractors as well as real estate owners and developers.

She is a member of CFMA, AGC, and DACA.

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R. Edward Boucher, Kotz Sangster



R. Edward Boucher is a construction lawyer who helps his clients' projects become successful. He works with them in the project planning and negotiation phase to identify and reduce risk and, in many cases, to help them structure their overall approach to the project. He also works with them during the project to help manage difficult events and brewing claims, and he works with them after the project to resolve claims, ideally through negotiation or mediation but also through arbitration or litigation when necessary.

Clients seek out Ed for his depth of industry knowledge, for his talent in developing effective and practical solutions to problems that arises during projects, and for his strategic, cost-effective, and assertive litigation skills. His construction industry clients run the gamut from developers and institutional owners to general contractors and construction managers to trade contractors and subcontractors.

Education

J.D., Wayne State University Law School, 1997

B.A., Albion College, 1987

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John T. Below, Kotz Sangster



John T. Below aggressively solves problems and wins cases. Clients view John as their partner and, together, they forge strategies for success. John's litigation style can best be described as creative and aggressive. John gets things done.

John's areas of expertise are state and federal litigation of employment law matters, including:

- Discrimination litigation and arbitrations
- Wrongful discharge litigation and arbitrations
- Non-compete and confidentiality agreement litigation
- Traditional labor matters
- Administrative proceedings before EEOC and MDCR

He also handles complex commercial and banking litigation in the areas of foreclosures, receiverships, contract and loan disputes, fraud, lender liability and bankruptcy; as well as, construction litigation and arbitration.

John regularly presents seminars on employment law, banking litigation concerns, and he provides training services for management and executive personnel.

Education

J.D., magna cum laude, University of Detroit School of Law, 1993

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Sean P. McNally, Kotz Sangster



Sean P. McNally is a commercial lawyer with extraordinary experience in high exposure litigation and transactional management. As a result, he regularly advises companies and individuals in mitigating and reducing risk relating to either overall business planning or a single transaction.

As Leader of the Construction Practice Group and Automotive Industry Group, Sean maintains a diverse commercial and business practice with a primary focus on the construction, manufacturing, and real estate industries. He is a highly experienced commercial trial and appellate litigator, in both state and federal courts in the State of Michigan and throughout the country. As a result of his extensive litigation experience, he also regularly represents businesses in structuring and negotiating complicated or high risk transactions.

Sean has extensive background in litigating all types of construction and real estate disputes representing owners, real estate developers, general contractors, subcontractors, and suppliers. He also has significant experience handling all types of transactional matters in the automotive, construction and real estate areas, including supply agreements, commercial transactions, accommodation agreements, construction contracting, risk mitigation, real estate development, project financing and commercial leasing.

Sean is also a member of the Litigation Practice Group and has significant experience in various types of commercial disputes, including:

- Business tort claims
- Business divorce and shareholder disputes
- Trademark and trade name infringement
- Unfair competition
- Disputes under the UCC
- Products recall issues
- Automotive supply chain disputes
- Tooling disputes
- Commercial loan workouts
- Commercial collections
- Article 2 and 9 UCC disputes

Sean serves on the firm's Board of Directors and is responsible for the overall management of the primary operation in Grand Rapids. He also serves as the firm's General Counsel.

Education

J.D., cum laude, Michigan State University College of Law, 2003
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