



The California

Contractor

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Trading disability management for injury prevention

Off-the-job injuries can affect your bottom line

By Martin Lesperance

It was a warm November Saturday afternoon. Richard was hanging Christmas lights on his house. A couple of feet to go, and the entire house would be lit for the season. He was up about 5 feet up on the ladder when he leaned too far, lost his balance, and came crashing down to the ground. The few minutes it would have taken to move his ladder a foot closer, cost him a fractured pelvis, femur (thighbone) and a smashed kneecap. Richard would be off work for four months as a result of this "accident".

Incidents like this keep thousands of people off work in North America each year. Many organizations do not seem concerned about the cost to productivity and the increased employee benefit expense. They are, however, very concerned about the on-the-job injuries and its associated costs. Yet, they continue to ignore the bottom line detriment of off-the-job injuries.

Last week while instructing a safety course at a gas plant, I noted a sign at the gate: "We Have Gone 1,485 Days Without A Lost Time Injury." Obviously, on-the-job safety is paying off. Then, during my presentation

with those employees, I asked if anyone had missed work because of injuries sustained while off the job. In fact, there were several. Two injuries had kept people away from work for two months. When they returned, they had to be put on restricted duties for another six weeks before they could return to their regular jobs.

In the past seventeen years while working as a paramedic/fire fighter, I've noticed that the majority of the emergency calls I attended were to homes, or related to outside recreational activities. At work, there are safety rules and regulations, which, for the most part are followed. The money, time and effort spent, usually prevents unnecessary injuries. But once a worker leaves for home, the caution, hard hat and steel toed boots are left in the locker room. I've noticed that someone who refuses to use an unsafe ladder at work, may not give a second thought to going home, drinking a few beers, starting up the chainsaw, and standing on a three-legged stool to cut the branches off a tree in his backyard. If the person falls and is injured he will pay with pain and the inconvenience that

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What you need to know about AB 2774

... and more

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AB 2774: What you need to know about the Cal/OSHA law

California employers are legally bound to provide employees a safe workplace. California law has authorized DIR's Division of Occupational Safety and Health, better known as Cal/OSHA, to enforce applicable safety and health regulations and issue citations when investigations reveal that an employer has committed violations of those standards, including serious violations that cause an employee to suffer or potentially suffer, among other things, "serious injury or illness" or "serious physical harm". AB 2774, introduced by Assembly member Sandré R. Swanson (D-Alameda), amends labor code section 6432 to define serious physical harm and establishes a rebuttable presumption as to when an employer commits a serious violation of these provisions. The bill further establishes new procedures and standards for an investigation when issuing serious citations. (See IR #2010-28, "Cal/OSHA enforcement strengthened with signing of new law")

Governor Arnold Schwarzenegger signed AB 2774, which went into effect January 1, 2011. The new law

is designed to improve Cal/OSHA's citation process by redefining how serious violations are cited. The legislation also clarifies procedures for issuance of a serious citation and procedures for the appeals process when determining if the citation was issued correctly.

"The previous definition was inadequate and made it exceedingly difficult to prove that a serious violation existed," said DIR Director John C. Duncan. "This significant clarification allows Cal/OSHA to better identify serious violations, as well as provide improved guidance for the Appeals Board in cases where the issuance of a serious citation is in question. The new law also establishes procedures for notifying employers of the possibility that they may face a citation for a serious violation and requires that Cal/OSHA staff consider certain factors before issuing a serious citation."

"This new interpretation of a serious violation will help strengthen the Cal/OSHA program, improve enforcement efforts and better protect California's workers," said

Cal/OSHA Chief Len Welsh. "It will help us accurately issue serious citations to more effectively address the most egregious violations."

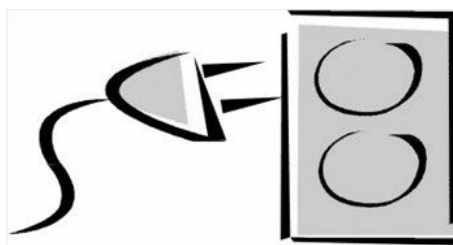
New factors used to accurately issue serious citations include any training given to employees and supervisors, existing workplace safety procedures, supervision of employees exposed to the hazard, as well as any contributing information the employer wishes to provide to explain why the employer believes that no serious violation exists.

Under the Labor Code, Cal/OSHA can also issue citations for violations that do not meet the "serious" designation. The criteria for a regulatory violation and general violation will remain unchanged. These violations are generally considered not as egregious as a serious violation.

For more information on how AB 2774 could affect you, read a detailed analysis at <http://www.littler.com/PressPublications/Lists/ASAPs/DispASAPs.aspx?id=1586>.

CSLB announces zero tolerance for C-10 violations

Only certified electricians to perform work as electricians



Effective immediately, the Contractors State License Board (CSLB) establishes a zero-tolerance enforcement policy and will issue legal action against any C-10 Electrical contractor who willfully employs even one uncertified electrician to perform work as an electrician. CSLB is legally

required to open an investigation and initiate disciplinary action against the contractor, which may include license suspension or revocation, within 60 days of receipt of a referral or complaint from the Division of Apprenticeship Standards (DAS).

Subsections within Labor Code Section 3099 clearly state that certification by DAS is required for anyone who performs work as an electrician for C-10 Electrical contractors. DAS is required by Labor Code Section 3099.2 to report violations to CSLB.

Electricians are defined as all persons who engage in the connection of electri-

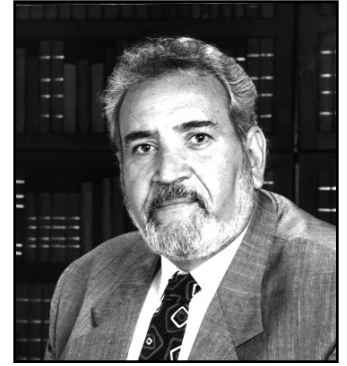
cal devices for C-10 contractors. It is CSLB's position that electrical work must be performed by a certified electrician or an approved apprentice. Trenching, concrete, framing, and other work that does not involve connecting electrical devices may be performed by noncertified workers.

Learn more about electrician certification by visiting the Division of Apprenticeship Standards website.



LAW TALK

By Sam K. Abdulaziz
Law Offices of Abdulaziz, Grossbart & Rudman



Written settlement terms may be inadmissible

In the case *Fair v. Bakhtiari*, Thomas Fair sued his ex wife (Maryann Fair), Karl Bakhtiari (a previous business partner) and other various business entities. Fair believed that they had all left him out of real estate ventures that Fair should have rightfully been involved in and also alleged there was other wrongful conduct, all of which caused him monetary damages.

The complaint was filed, the defendants answered, and the case went to a two-day mediation. Thomas Fair's attorney handwrote a memo of settlement terms including (but not limited to) over \$5 million being paid to Fair, which would be a "...purchase of all T. Fair's stock & interests (as capital gain to Fair)." It also included Maryann Fair giving up community property interest in this same settlement, as well as other items and a paragraph that indicated, "Any and all disputes subject to ... arbitration rules." Each of the parties filed their Case Management Statements with the court and let the court know that the case settled in mediation and that the parties were in the process of getting the formal settlement agreement signed by all.

Shortly before the scheduled Case Management Conference, some of the defendants discovered that Thomas Fair did not believe the agreement for the \$5 million for purchase of his stock and interests applied to some of the business interests. There were also tax issues that were still to be resolved and not addressed. At the Case Management Conference, Bakhtiari's attorney asked for a continuance indicating that they had reached a settlement and were in the process of ironing out some of the complicated tax

issues.

Another Case Management Statement was then filed, which said that the parties "...were ultimately unable to reach an agreement as to the scope and subject matter of the proposed settlement... should be resolved through the regular court process." Fair's attorney demanded arbitration of the matter as per a paragraph of the settlement memorandum signed by all parties at the mediation and filed a motion to compel (force) arbitration. Defendant's counsel stated that the settlement memorandum could not be binding (hold the parties to the agreement) because they had never actually come to a meeting of the minds (full agreement and understanding) on key provisions of the case and the memorandum was therefore inadmissible.

The trial court denied the motion to compel binding arbitration because the settlement papers signed at the mediation were inadmissible and therefore, there was no arbitration agreement. When appealed, the Court of Appeal reversed the trial court's decision because they saw the provision, "...[a]ny and all disputes subject to ... arbitration rules" to mean that all parties meant for the settlement memorandum to be enforceable. The Court of Appeal indicated that since the memorandum included "words to that effect" it was admissible.

This matter was then taken to the Supreme Court of California. The same statutes were reviewed as well as the case of *Weddington Productions, Inc. v. Flick*, which had a similar situation and discussed that "consent" and "mutuality" must be in an agreement. Because of the ambiguous language in

the settlement memorandum, there is no definitive mutual consent in the settlement memorandum – particularly on the issue of what all of Fair's stock and interests were.

The Supreme Court of California agreed with the trial court, overturning the Court of Appeal. There was no "written settlement agreement" because the settlement memorandum signed at the mediation was not admissible.

Attorney Sam Abdulaziz of Abdulaziz, Grossbart & Rudman has been practicing construction law for over 30 years. He has written a book called "California Construction Law" which is updated annually. He represents numerous construction trade associations and contractors. He appears at Contractors State License Board meetings and has argued a number of cases before the appellate courts, including the California Supreme Court dealing with the "Pay-If-Paid Clause." Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients. This document is of a general nature and is intended to highlight areas of the subject matter being discussed and may not contain all of the information; it should not be used as a substitute for legal advice. This document does not create an attorney-client relationship, or protect any confidential information until a written agreement is signed. You should seek the aid and advice of a competent attorney, accountant and/or other professional instead of relying on the presentation and/or documents. Sam Abdulaziz can be reached at Abdulaziz, Grossbart & Rudman, P.O. Box 15458, North Hollywood, CA 91615-5458; (818) 760-2000, Facsimile (818) 760-3908; or by E-Mail at info@agrlaw.net. On the Internet, visit our Website at www.agrlaw.net

An ethics code is vital to your company's health

How important is the role of ethics in your company? Our society has seen a rash of cases over the last five years that suggest corporations could use some ethical improvement. But how can this happen? One of the most problematic questions raised in relation to business ethics is whether or not businesses can become more ethical in the real world. The majority opinion on this issue suggests that government, trade associations, and individual firms can indeed establish acceptable levels of ethical behavior.

The government can try to legislate ethical conduct by enacting more stringent regulations. But, rules require enforcement and when in many cases there is evidence of lack of enforcement even the ethical businessperson will tend to "slip something by" without getting caught. Increased regulation may help, but it surely cannot solve the entire business ethics problems.

Trade associations can and often do provide ethical guidelines for their members. Associations are in an excellent position to guide members away from questionable business practices using peer pressure and opportunities for industry participation. However, association membership - as important as it is



- can't always reach into the day-to-day running of a company. That daily leadership role falls to the employer.

Employees can more easily determine and adopt acceptable behavior when companies provide them with a "code of ethics." Such codes are perhaps the most effective way to encourage ethical behavior. A code of ethics is a written guide to acceptable and ethical behavior that outlines uniform policies, standards and punishments for violations. Because employees know what is expected of them and what will happen if they violate the rules, a code of ethics goes a long way towards encouraging ethical behavior. However, codes cannot possibly cover every situation. Companies must also create an environment in which employees recognize the importance of complying with the written code. Managers must provide direction

by fostering communication, actively modeling and encouraging ethical decision making, apart from investing in training employees to make ethical decisions.

Sometimes, even employees who want to act ethically may find it difficult to do so. Unethical practices can become ingrained in an organization. Employees with high personal ethics may then take a controversial step called "whistle blowing." Whistle blowing is informing the press or government officials about unethical practices in an organization. Whistle blowing could have averted disaster and prevented needless deaths in the Challenger space shuttle disaster, for example. How could employees have known about life-threatening problems and let them pass? Whistle blowing can, however, have serious repercussions for employees; those who make waves sometimes lose their jobs.

So, how can you improve the ethical footprint of your business? Write and enforce a code of ethics, model the right kind of behavior for employees ... and, most importantly, foster an environment where employees know they can come to you with questions and concerns and will be fairly treated.

Stress: 10 tips to keep it under control

Stress can be a real danger on the job. It can lead to low productivity, bad relations between employees and customers, and poor job performance. Untreated stress and emotional upset can also up the risk of workplace injury. Here are ten ways to combat stress.

1. Have a safety valve for your emotions. If you suppress your anger and emotions all the time, you are likely to blow up at the wrong time at the wrong person. Express your anger, frustrations, and emotions to your safety valve - friends and family you trust. If you can't "vent" to a trusted person, write your issues out in an email. Don't send

it - just the act of writing it will help clear your head.

2. Get plenty of rest. Do not deprive yourself of sleep. If you are overly tired, you are more likely to say and do irrational things. Know how much sleep you need each night. Most people need between six and eight hours of sleep each night.

3. Learn how to relax. Relaxing requires practice. Learn to relax your body and your mind. Put worry thoughts out of your mind. Replace them with pleasant thoughts. Only about two percent of what we worry about ever comes to pass. Heed the

words of Mark Twain: "I have experienced many terrible things in my life, a few of which have actually happened."

4. Exercise. It is one of the greatest tension relievers. Continuous exercise that is at least 15 to 20 minutes in duration, at least three times a week, is so valuable. Something as simple as a brisk thirty-minute daily walk can help you cope with life's tensions.

5. Prioritize your work and do only one thing at a time. People have a tendency to get very stressful when their minds are cluttered and they perceive

Please see **STRESS**, page 6

Don't let safety fall through the cracks

Every year workers lose their lives or are seriously injured when they fall through an unguarded or uncovered floor opening. Floor openings on a job site can occur during construction, renovations or repairs. There may be floor openings as each new floor in a building is added, for personnel and material access, and for stairwells, elevators or skylights. Floor openings are hazardous because workers may fall through them and/or may be struck by objects that fall through openings. Workers should know about floor openings, guarding, and covers, and understand and use the fall protection appropriate to their worksites and job duties.

One of the first ways to protect against floor opening hazards is to build floors or place temporary flooring below each level of work. This ensures that every worker has a covered floor not more than two stories below his/her worksite. Operations involving erection, riveting, bolting, welding or painting, require flooring

directly underneath the work area.

Wood planks or metal decking can serve as protective flooring. Flooring components should be tightly laid together to avoid gaps in which a person, tools or materials could fall through. For areas where the flooring cannot reach, wire mesh or plywood may be used to close the gaps. The flooring should be of the proper thickness, grade, and span to carry the working load, assumed to be at least 25 pounds per square foot. The flooring should be tightly secured to avoid displacement by high winds or other forces.

In buildings or structures that can't accommodate temporary floors, scaffolding or fall protection devices should be used. Safety nets should be installed if scaffolding and fall protection aren't used, and whenever the potential fall distance is more than two stories or 30 feet.

If construction work in progress requires floor openings to be tem-

porarily uncovered, access to the area should be strictly controlled at all times. The floor area near the floor opening should be barricaded or covered when it's not attended by authorized personnel doing the work. A qualified person, prior to each shift and after strong wind conditions, should verify the placement of floor opening covers.

All planking and other materials used to cover these temporary floor openings should support 400 pounds or twice the weight of the employees, equipment, and materials that may access one square foot area of the cover at any time. The floor covering should overlap the surrounding structure by 12 inches. It should have a sign that says, "OPENING-DO NOT REMOVE" in 2-inch high, black, bold letters on a yellow background. When working on a job site with floor coverings and floor openings, workers should mind their steps and the floor surfaces their feet will touch.

How to build a website in five minutes (or so)

You know you need a website for yourself or your organization. Now the only question is how you are going to go about doing it without breaking the bank. But at the same time, you don't want it to look cheap either, it needs to look professional and be easy to change when changes are needed.

Having a web site today has become a necessity for individuals and organizations alike. Your online presence matters much in the global world we live in, especially if you want to be heard, to make a difference,



then having your website is essential.

Making your own website is even more important if you want to do business online, or want to promote your products or services online. An effective website can do wonders in the marketing domain and get you the sales you desperately need. What's more is that a mere website can change you from having a local



presence to having a global one.

So what do you do if you want to have a website? The first thoughts that come to mind are thoughts that will

send jitters down your spine. Instantly when you think of making a professional, classy website, with a website design that is catchy, you think of hiring professional web designers, making them understand how you want your website to be, paying them hundreds (or thousands) of dollars to make the website and then paying them more, and possibly having to wait days or weeks, for every change you want in the future. That is sure to make you weary and your pocketbook thin. In the old days (a few years ago)

See **WEB CORNER**, page 8

Stress: Create specific goals on which to focus

Continued from page 4

they have too much to do in too short a period of time. If this happens to you, you may indirectly voice your frustrations in your tone of voice. If you prioritize, you will learn to work on only one thing at a time and keep your work in perspective. It is also very important to remember that so-called customer interruptions are not aggravations - they are part of your job!

6. Keep a sense of humor. Laughter

is another great tension reliever. See the humor in life's situations. Learn to laugh at yourself a little. Do not take yourself or your situations too seriously. Spend time with friends who like to laugh and joke. It will help to keep difficult situations in perspective.

7. Develop hobbies. Have outlets that get your mind off work. They help you to be a well-rounded individual. Hobbies help you to relax and to focus on other aspects of your life.

8. Eat right. If you eat junk food and load up on caffeine throughout the day, you are likely to experience emotional highs and lows throughout the day. The sugar high and caffeine can make you hyper. Then when the high wears off, you may feel tired. Also, different types of foods affect people in different ways. For instance, some foods make people feel sluggish or stuffy. Listen to the

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Injuries: Lost days create trouble on the job

Continued from page 1

is to follow. However, his employer will pay financially with worker replacement, increased benefit costs and many more.

How big of a problem is this?

I have asked many safety professionals the following question. What is the ratio of off-the-job injuries compared to on-the-job injuries? Most admitted that they didn't measure the problem and they couldn't even guess. Some estimated that the ratio would be a low of 5-1 to a high of 17-1. The Petro Chemical System Safety Rating Guidelines tell us that the ratio is 10:1.

One large oil and gas company oil and gas company did track their total lost days for the past three years. They were shocked to find out that 95% of their lost days were attributed to non occupational injuries and illnesses.

Do you know how many lost days are attributed to injuries that happen off-the-job compared to on-the-job in your organization?

In the City of Thunder Bay, Ontario, eleven people came into its emergency departments with serious hand injuries. It was the first heavy snowfall of the year. All the injuries were caused by snowblowers.

There are millions of dollars spent every year on safety training and equipment to prevent injuries at the work site. Virtually nothing is spent to help employees prevent off-the-job injuries. Millions of dollars are spent on wellness programs to encourage healthy lifestyles. This is important but the return on investment could be years down the road for these programs. Preventing off-the-job injuries could pay off immediately. It should be included in all wellness programs or in a separate program. I spoke with a gas plant operator he told me he had jumped on his teenager's skateboard. He fell off and broke his leg in two places forcing him off work for four and one half months. A replacement worker filled his position at overtime rates. A high price to pay for a few seconds of fun.

Coincidentally, my brother-in-law, an engineer broke his leg trying out his son's skateboard, too. As paramedic, I have attended several adult males with skateboard related injuries. These are not unusual events, Could an awareness program on horseplay or making people aware of the consequences of their actions prevented this? There is a real possibility it could have.

Disability management versus disability prevention A new trend in organizations is the "return to work" program. The longer a person is off work, the more it costs, and the harder it is to get that person back to work. It only makes sense to assist an injured worker with re-entry into the workforce. And, it makes even more sense to help that person prevent those injuries in the first place. This can be achieved without infringing on personal sense of choice by encouraging a unified "buy in" by employees. After all, who wants to see a co-worker and friend injured?

Is it worth it for your organization? Before you decide if a program would be worth it for your organiza-

tion, start a measurement program. Track how many days are lost due to off-the-job injuries. Calculate how much these injuries have cost your company. Include all hard and soft costs. Then add up the costs you spend to promote off-the-job safety. Now total the lost days due to on-the-job injuries. Add up all the costs of your on-the-job safety training. You might be surprised at the figures you come up with. Taking company safety one step further can have a huge financial payoff for your organization.

If you decide to implement a safety awareness program you will soon note a surprising side effect --- it's a great moral builder for your employees. So get them involved.

Martin Lesperance is a firefighter/paramedic and best selling author who offers humorous talks dealing with injury prevention. His latest program is safetymoments.com. He can be reached at (403) 225-2011, or visit his website at www.safety-speaker.com.

SAFETY ... IT PAYS



Would you know a heart attack if you saw one?

By Martin Lesperance

We were called to a home at 2:00 a.m. A little girl answered the door and led us upstairs. Her Dad was on the floor and her Mom was doing CPR. We did everything we could, but the man died. I will never forget that little girl's fright and I still think how much her life will have changed. This may have been prevented – the man had been complaining of chest pain since 10 p.m. the night before.

Many people who go into cardiac arrest have had warning signs such as chest pain – often for hours. Even if Cardio Pulmonary Resuscitation is started immediately, once you are in cardiac arrest your chances of walking out of the hospital are not good.

Early recognition of a heart attack is crucial. The sooner you realize you are having a problem and the sooner you seek medical aid, the better your chances.

You do not have to be old to have a heart attack! I seem to be attending more and more people who are in their thirties and early forties.

What Happens During A Heart Attack

Like any other muscle, the heart needs oxygen to survive. Oxygen is supplied through the blood, which is carried to the heart via the arteries. Many people have a fatty buildup inside the arteries that restricts blood flow. When the supply of oxygen is impaired or stopped, part of the heart will die and the person will suffer a heart attack.

What Happens In Cardiac Arrest

If enough of the heart muscle dies, or if there are other problems, the heart may stop. This is called cardiac arrest. When this happens, the heart no longer

beats effectively. Death follows quickly unless Cardio Pulmonary Resuscitation and Advanced Life Support are quickly provided. The trick is to get to a hospital before you go into cardiac arrest.

Signs & Symptoms of a Heart Attack

Pain

You may have a crushing or squeezing pain, usually in the center of your chest under your breastbone (sternum). This pain may be very severe or very mild, and it may radiate into the jaw, neck or arms (often the left arm).

The pain may start without any physical exertion. You do not have to be outside shoveling the snow in order to suffer a heart attack. I have attended more people who have had heart attacks when they were watching television or sleeping than when they were shoveling the snow.

Weakness

The person may feel very weak and tired.

Sweaty, Cool Skin

The victim's skin may be slightly moist or even very sweaty while still cool to the touch – a very unnatural situation. The person may also have very pale or an ashen gray skin, and look extremely sick. However, it is not unusual for a heart attack victim to look and feel normal.

Nausea and Vomiting

The person may have vomited or feel like vomiting.

Shortness of Breath

When a person is having a heart attack they may have difficulty breathing. In some cases with certain heart conditions, a fluid may back up into their lungs, making it extreme-

ly hard for the person to breathe. In some cases the person may even cough up frothy sputum that also may be tinged with blood. This is extremely serious.

Denial

As mentioned in the opening story, many people wait too long to seek medical aid. They deny that they are having a heart attack, even when they have all the signs and symptoms. This is a big mistake – a mistake that can kill you. If you are with a person who is having the signs and symptoms of a heart attack, don't let them talk you out of calling an ambulance. Try your best to convince the victim to seek medical aid.

Martin Lesperance is a firefighter/paramedic and best selling author who offers humorous talks dealing with injury prevention. His latest program is safetymoments.com. He can be reached at (403) 225-2011, or visit his website at www.safety-speaker.com.

OSHA CORNER

Please visit the following address on the web to download helpful safety posters, guides and pamphlets for a safer workplace.

<http://www.dir.ca.gov/dosh/PubOrder.asp>



Tension: Create specific goals toward which to strive

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signals of your body. Give it fuel that keeps it energized and emotionally sharp.

9. Give yourself quiet time each day. Have a hermit spot where you can go to be completely alone, even if it is for only ten minutes a day. You need time to yourself - to melt your tensions away.

10. Create a mental focus. Create specific goals to focus on and strive for. People who know what they want in life feel more in control of their lives. Thus, they are usually less stressful.

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Web Corner: Look for a friendly site building tool

Continued from page 5

that used to be about the only choice you had unless you wanted to grind it out on your own trying to learn HTML coding from scratch. Yuck!

Now with CSS programming, it's even more difficult to do on your own.

Fast forward to today: Now even a rank newbie can have their own professional website in just a few minutes. There are now some great options to make your very own website yourself with hardly any knowledge of programming or HTML or any of those complicated things. You can make your own website design,

choose from a range of website templates and fill out the content the way you want, and, if you get the right website builder, you can make changes any time you want, whenever you want without it costing you anything extra. Making your own website has now become an affordable, do-it-yourself and easy thing to do if you choose the right program..

But beware: choose the wrong web builder, and it could be a nightmare.

What you are looking for is an affordable, workable, professional looking website building tool preferably with a reasonable monthly fee of no more than \$50 (to start) and preferably no contract. If you see them ask

for a long-term contract, you should step back and reconsider.

Another thing to look for in a web page builder is a user-friendly interface that will take you right through the website designing and website publishing process from start to finish. You want to be able to choose from a range of website templates, and you want to be able to change the writing and pictures on your website anytime you desire, even at 2am in the morning, for no extra cost. With the right website builder, there is no need to buy or master expensive and difficult to learn graphics programs. Less effort, less time, less money and better results can be had with the proper website building program.

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