



The California Contractor

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Know what you don't know

By Mary Eule

“**Y**ou don't need to know what you don't know.” This is the most pervasive, far-reaching and detrimental marketing myth of them all! It is an equal-opportunity fantasy whose believers are corporate CEOs; entrepreneurs; male and female; young and old; rich and poor; tall and short; moms and pops; etc.

It is also the most difficult one to correct because the “patient” doesn't know he/she is ill! It serves as the foundation for prejudice, ignorance and failure and influences all of the sufferer's decisions and behaviors—personally and professionally.

Ironically, this myth often serves as the very basis for becoming an entrepreneur in the first place. Michael Gerber, in his classic book, “The E-Myth,” says that most small businesses are started by technicians (folks who are proficient at some skill) who have an entrepreneurial “seizure.”

Just because they know how to do the work of the business does not mean that they know how to run a business that does that work. For example, just because a hair stylist knows how to cut hair, does not mean he/she can run a hair styling business.

This is a classic case of not knowing what you don't know. For instance, any business run in the U.S. today has to



understand how the following business requirements (just to name a few) impact them and how they must comply on a daily/monthly/yearly basis:

- Payroll taxes
- Workmen's compensation
- Income Tax Laws
- Local and State Sales Tax Laws
- Business Licensing
- Profit and Loss Statements
- Overhead Expenses
- Finance Reporting
- Employee Management
- Human Resource Regulations
- OSHA Regulations

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- Social Security, Medicare
- Withholding Taxes
- Costs of running a business
- Quarterly Taxes



The problem arises when technicians assume that all they need to know is the work of the business, not how to run a business. The actual costs of owning and operating your own company are far greater than the expenses associated with your rent, office furniture, utilities, etc.

Because of this many small business owners never earn a true profit...one that allows their business to grow, and provide them sufficient income to enjoy the lifestyle they envisioned when they began. Essentially, they've traded one job for another. Before they collected a paycheck, now they must earn a profit... the two are not the same. They are responsible for paying themselves and well as all of their other business partners—federal, state, city, and local governments; city municipalities; employees; suppliers.

Herein lays the trap: Most entrepreneurs do not know what they don't know and go into their business thinking "I'm the best widget maker; therefore my business is bound to be successful!" Statistics say otherwise.

Then there are a group of people that I call "know-it-alls." The business world is full of these people, and unfortunately they are their own worst enemies. Why? There are a myriad of specific reasons but they all begin with their reluctance and/or refusal to seek wise counsel.

Essentially, they do not believe that it's smart business to pay experts for their years of study, experience and expertise. For instance, just because they can write their own ad copy (i.e. it doesn't require a license or certificate) they think they should! These are the very same folks who would diagnose their own diseases and write their own prescriptions if it weren't against the law! What they fail to see is that for

every one dollar they spend paying experts, they potentially save five dollars in actual money and even more in wasted time; preventable mistakes; lost earnings and stress. However, marketing is not the only area these misguided "know-it-alls" reside. Although the industry certainly has more than it's fair share (even though study after study confirms that a company is only as successful as its weakest skill) it is prevalent in every field.

On the other hand, there are many more folks who are far from insufferable know-it-alls. They actively seek counsel, but sometimes simply don't know where to begin, who to contact or the right questions to ask! I experienced this firsthand as I began working on my website, StrategicMarketingAdvisors.com.

I had no delusions that I was an expert in Internet marketing right from the start... no problem. Yet, as I learned more about the process, I became more and more panicked. Cyberspace jargon is like a foreign language to me and the more I tried to do myself, the more lost I became. And it wasn't as though I did want the help! Quite the contrary... but I was so lost that I didn't even understand what I really needed, let alone who to contact! Gratefully, I used my tried-and-true methodology and "baby-steps" process and found a wonderful coach who made all the difference! The philosophical concept is not difficult to grasp... but identifying

our own level of incompetence is another story all together. Like most things it begins with an open mind and heart; insatiable curiosity; careful research and a very large mirror! And what makes it even more challenging is the opposite fact... There are many marketing strategies and tactics that even a beginner can use successfully. I'm not suggesting that you hire an expert for everything! However, you must first learn one from the other.

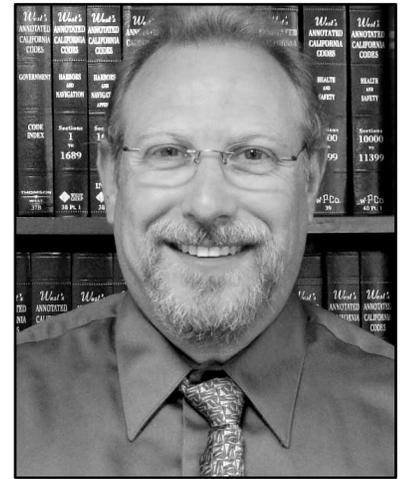
It's like trying to save a few bucks by changing your car's oil yourself... Now this is not an overly complex task, and one even I can manage. But is it a smart thing to do? Think about what's involved. You drive to the store; wait in line; ask questions; look at the merchandise; select the oil, pan, funnel; wait in line to check-out; pay the cashier \$24.97; drive back home; try to jack up the car so you can get underneath it to put the pan in place; undo the screw; get some oil in the pan; get most of the oil on you; get the funnel and fill it with the new oil; figure out what to do with the old oil; close everything down; throw your oil-laden shirt in the trash; and take a shower. The cost? \$24.97 in stuff; \$1.32 in gas; \$25.00 ruined shirt; 3.25 hours of your time; and \$1,000,000 in frustration... All this, when you could have had it done for you for \$25.00!! Lesson learned: Know what's best left in the hands of professionals. Low cost is not always best cost! Oh, and by the way, never try to hang your own drywall either! Trust me on this one.

Mary Eule specializes in helping small and medium-sized businesses get and keep profitable customers. Formerly a Fortune 500 marketing executive; founder of two successful small businesses and award-winning speaker, Ms. Eule is President of Strategic Marketing Advisors, LLC. and co-author of a new book, "Mandatory Marketing: Small Business Edition." Log onto her website: www.StrategicMarketingAdvisors.com for free articles, newsletter and helpful marketing tools, tips and templates.



LAW TALK

By Bruce D. Rudman
of Abdulaziz, Grossbart & Rudman



Be wary of contracts with release language

Over the years, we have cautioned our clients about release language contained within documents that are presented on a regular basis. One recent Court of Appeal case brings this issue into the forefront, holding that a release in a purchase agreement is effective to waiving any future defect claims, even where other statutory protections might have applied.

As background, California has a policy that a release generally does not waive unknown claims. However, it is a simple matter to insert language that waives unknown claims. All one has to do is insert a waiver of Civil Code section 1542 and the right to make a claim against the other party for any claims that are not even addressed in the agreement can be effective. Section 1542 was enacted in 1872, and the language of it is so ambiguous that it may not alert one to know what they are waiving. Section 1542 provides, “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.” When a contract specifically states that it waives this language, then the person is waiving every claim, known or unknown, related to their dispute.

In a case from the Court of Appeal entitled *SI 59 LLC v. Variel Warner Ventures, LLC*, the contract at issue concerned the purchase of an 85-unit apartment complex. The apartment complex was constructed by a contractor, using subcontractors, for the

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seller, Variel Warner Ventures. The purchase agreement was entered into even before the construction was completed. The agreement called for escrow not to close until “final completion,” which among other things, was defined as “all improvements have been constructed in substantial accordance with all plans and specifications and other applicable provisions of the general construction contract.” The purchase agreement also contained a general release stating that the buyer should rely solely on its own knowledge of the property based on its investigation of the property as well as its inspections. Except as to the general contractor warranty, all claims were released that the buyer may have had against the seller, including claims for breach of representations, warranties and covenants for fraud. In a typical residential purchase agreement, this might not be enforceable due to the duty to disclose. However, since the seller was selling the commercial

property before construction was completed, it is unlikely one could ever prove it failed to disclose something.

When the buyer sued the seller for construction defects, among other claims, the Court dismissed the lawsuit, relying upon the release language. The argument made to the Court was that another Civil Code section prohibits contracts, which would exempt someone from responsibility for his or her own fraud or willful injury to the personal property of another. Interestingly, the Court held that this statute was intended to apply to future actions by the parties and not past events.

In this case, it is unknown who reviewed the documents and whether the release language was negotiated. However, more to the forefront concerning our construction clients, it is becoming very routine to see this type of release language to include in common documents such as a change order. Indeed, on larger public works projects, it is very common to see a change order, including those given to a contractor by a public entity, include a waiver of unknown claims. When there is pushback on those issues, it is almost always explained to the person that they want to sign the change order that this is only talking about claims related to the specific change order request, and is intended to make that change order all inclusive. A court could impose a much broader effect of the release.

One must be very careful limiting the wording of any release, or the

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What to do if you're audited by the IRS

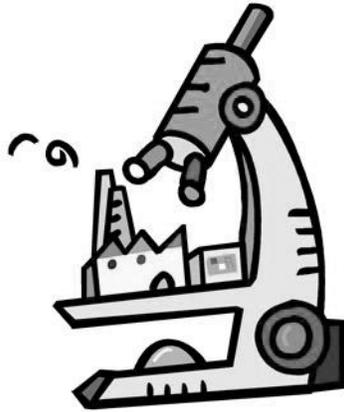
Now that your taxes are done and you're breathing a sigh of relief, do you know what you should do if you get the dreaded letter from the IRS saying they would like to audit your return?

The chances of an audit are slim if you've filed careful returns, but the self-employed continue to be a vulnerable group.

There are a few things you can do to help yourself receive a favorable outcome if the IRS questions your return.

Hire an experienced tax attorney. The IRS looks at this as a sign of good faith to resolve the situation.

Hire an "EA." That's an Enrolled Agent. These are people who have either passed a written test or worked for the IRS for more than five years. They are then able to negotiate on your behalf with the IRS.



Always file your tax return. It is a crime to fail to file the return when taxes are owed. It is not a crime to file your taxes and not pay them. Once the return is filed, you will need to work out a payment schedule with the IRS.

Don't file for bankruptcy unless your back taxes are more than three years delinquent. If they are less than three

years delinquent, bankruptcy will not apply and may even add penalties and interest.

If you are an employer, always pay your payroll taxes. The IRS takes this very seriously. Failure to do this results in penalties plus interest that is very steep and there is no relief; not even in bankruptcy.

Don't fall for television and Internet ads that promise to instantly end your tax troubles. These businesses are out to make money for themselves and not represent you. All too frequently they take information and tell you they will settle with the IRS for cents on the dollar and then sell that information to other leads and never even contact the IRS on your behalf.

If you do have to settle with the IRS and they place a tax lien on you, once you have paid your settlement, the IRS is generally required to remove all liens within 30 days. Make sure that happens.

Law Talk: If you sign it, you've agreed to it

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language of the agreement might waive all other claims they might have. As an example of one way to try to limit the effects of the release, if the release specifically states that this release only applies to those matters asserted in a change order, then the release may not be interpreted to be broader than it sounds. On the other hand, broad release language in any agreement that includes a waiver of Section 1542 could very well waive any and all claims.

The point of the foregoing is that one must be very careful about documents that

are presented to them. There are some people who think that if they do not read it, then it cannot be held against them. That is not the law. The law is that if you sign something, it is assumed that you read it and agreed to it.

Bruce Rudman has been practicing in the area of California construction law



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contract requirements, Mechanic's Liens and other construction related issues and remedies.

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Protect our most valuable resource!

As California enters into a record-breaking drought year, it's more important than ever to make sure we are all doing our part to conserve this natural resource. Luckily, there are many ways to make our offices, homes, and landscapes earth-friendly.

Americans use a lot of water. Some experts estimate that the average U.S. resident uses about 70 gallons of water; 280 gallons per day per family of four. At that rate, a typical neighborhood is using an Olympic sized swimming pool of water every day, just to brush their teeth, shower, cook, and flush the toilet! When you imagine how many neighborhoods there are in your city, each drawing that amount of water, it's easy to visualize the strain this puts on your local water supply.

Here are a few tips for how you can do your part to a little less water around your house and leave it a little more of it in your local lake or river for the benefit of nature and wildlife.

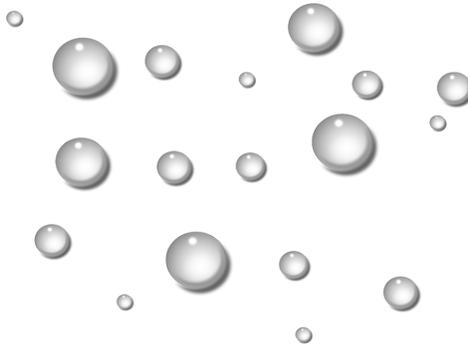
Check for Leaks

The worst way to use more water than you need to is to waste it. When your pipes leak, when your sink drips, and when you toilet runs, that's water and money going down the drain with literally nothing to show for it.

Here's a quick and easy way to see if you have any leaky plumbing in your home. You can involve the kids. They'll have fun playing "leak detective."

First, find your water meter. It's probably on the corner of the house closest to the street. At the start of the test, check the meter and write down the number of gallons you have used. Then, go 30 minutes without using any water. Don't flush the toilet. Don't brush your teeth. Don't take a shower. Don't wash your hands. If this second step is hard, think of it as a reminder how important water is.

After 30 minutes has passed, return to the meter and read the numbers again. Where are the numbers now? If they haven't changed, no leaks. If they have changed, now it's time to play leak



detective—where are the leaks? Start by going around the house and turning off the water to all the toilets. Then wait another 30 minutes. If the numbers don't budget this time, then you have found your culprit—a leaky toilet.

If the water numbers still go up after you shut off water to the toilets, then it's probably time to call a plumber, or your local water district: some may offer free leak detection or water saving services to help you pinpoint where the problem lies.

Install new fixtures, or fix the old ones with an aerator

Once you've found and fixed those pesky leaks, you can turn your attention to the fixtures that just use more water than they need to get the job done. You've probably been thinking about remodeling that bathroom or kitchen anyway, haven't you?

When buying a new fixture, look for EPA's new WaterSense label on the showerheads and faucets. Buy these with confidence that they will provide you with a comfortable, luxurious shower – without squandering life's most precious resource. The little savings each day add up to something important. By switching to an EPA WaterSense showerhead, a household with children can save an average of 2,300 gallons of water per year.

Three quarters of all indoor water

usage is in the bathroom. Low flow shower heads can help reduce that amount. Low flow shower heads are a great way to limit the water flow from your shower head. They deliver less gallons per minute (gpm) of water than conventional shower heads. The amount of water delivered from a shower head depends upon the gpm and the pounds per square inch (psi). The standard water pressure level in homes is 80 psi. This is a high pressure level and delivers a large amount of water through a shower head. Low flow shower heads help by decreasing the amount of water, while remaining at the same water pressure level. Conventional showerheads deliver 5-8 gallons per minute. Low flow showerheads deliver about 2.5 gpm. There are some new low flow showerheads on the market which deliver as low as 1.5 gpm. If you are not a seasoned DIY'er, then you may want to have a professional plumber install it for you.

Sink Aerators

Faucet aerators look like tiny screens and come installed with most faucets. Faucet aerators decrease the amount of water flowing out from the faucet and can be installed in kitchen and bathroom faucets. Without an aerator, the water comes out in a gushing-type flow. An aerator spreads the flow, which saves water. Not all faucets are installed with water-saving aerators. A water saving aerator is rated 2.75 gpm. The rated flow should be imprinted on the side of the faucet. Faucet aerators are simple to install and cost about \$10.

Install a new toilet

Forget what you think you know about water efficient toilets. Toilets that carry the EPA WaterSense label work great AND use less water than the older models. In fact, by replacing an older toilet with a new WaterSense toilet, your family can shave almost 5% off your total water use (and bill) per year. Toilet flushing is the largest single source of indoor water use, accounting for about 30 percent of water used inside the home. Upgrade to an efficient toilet for

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Water: Save by mulching and choosing the right plants

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substantial savings. Also, consider the old saying: “If it’s yellow, let it mellow. If it’s brown, flush it down.” If you’re working at home all day, or alone in the office, try flushing a bit less often if it’s only urine.

Other indoor water tips

Treat water like the precious substance it is. Turn off the tap while shaving, brushing teeth, and washing dishes. Oh, and you know how you’re supposed to lather your hands for 20 seconds while washing them? Turn off the water while you wash! 20 seconds of water going down the drain can be as much as a gallon, and considering the amount of hand-washing we’re all doing these days, it can really add up.

Upgrade to newer water-saving clothes washers and dishwashers, saving up to 25 gallons of water per load. Already have efficient models? Only operate them with full loads.

Install a water recirculation pump. These small devices, usually attached to the hot water line at one of your sinks or another output (and often tucked out of sight in your under-sink cabinet) are genius for saving water. With the press of a button or with a motion sensor, the pump circulates your water until it gets warm; when it shuts off, you turn on the water and get it hot in your shower or kitchen sink right away, saving all that cold water from going down the drain.

If a pump is not in the

cards for you, try a low-tech, but perfectly useful bucket method. Put a 10-gallon bucket in your shower or a smaller one in your sink. Run the cold water into it while waiting for it to heat up. Use that water for landscaping, watering indoor plants, washing dishes, or put it into your toilet tank.

The bucket method can also be used for graywater recycling while handwashing or rinsing dishes. A dish pan or bucket in your kitchen sink can catch your wastewater from washing hands or dishes, rinsing out a dishcloth, etc. This water can then be reused in the garden or on your lawn. Make sure, if you’re using graywater in your landscape, to use an eco-friendly dish detergent. Some graywater-friendly brands include Oasis, BioPac, Biokleen, Seventh Generation, and Dr. Bronner’s pure castile soap (Dr. Bronner’s is also safe for laundry, handwashing, and as a body soap, if you want to catch your extra shower water for reuse!

Outdoor water use

The Marin County Municipal Water District offers these tips for saving

water in your yard and landscaping:

Don’t overwater. Overwatering is the #1 cause of plant problems and wastes precious water resources. Symptoms of overwatering include algae, moss and mushroom growth; yellow lower leaves that fall off; and wilted young shoots. Try cutting back your watering times two minutes for every ten you normally water.

Irrigate efficiently. Upgrade to drip irrigation or improve the efficiency of your current sprinklers by changing them to high-efficiency rotor-type nozzles.

Get smart. Replace your standard controller with a smart irrigation controller.

If it’s broken, fix it. Inspect your irrigation system for leaks, pipe breaks, and clogged or missing emitters and repair if necessary. This summer, water districts including Marin’s will begin issuing violations for egregious irrigation leaks, so fix those broken sprinklers pronto.

Add a shut-off nozzle on your garden hose and save about 5 - 7 gallons per

minute.

Water while you sleep. Water early in the morning, or during the night, so less is lost to evaporation. Water conservation regulations prohibit irrigation between the hours of 9 a.m. - 7 p.m., except for system testing and repair.

Mulch, mulch, mulch. A 3-inch layer of mulch throughout your planting beds reduces water loss from evaporation and helps keep down water-hogging weeds.

Only water plants. Adjust sprinkler heads so they don’t water the pavement. Sweep sidewalks and driveways clean instead of using the hose.

Choose climate-appropriate plants and consider reducing the size of your thirsty lawn. Many water districts, including Marin’s, offer resources and rebates for converting lawn to water-efficient landscaping.

Sweep driveways and patios instead of hosing them down. Invest in a hardy broom and sweep dust and debris from your walkways and patios. Avoid power-washing patio furniture, concrete, and decks, if possible.

Lastly, keep that car a little dirty... or utilize a local carwash facility! Car washes are much more efficient than home washing. Look for one advertising a green or water-saving service.

For more resources, as well as 100 ways to conserve our most precious natural resource, visit wateruseitwisely.com.



SAFETY ... IT PAYS



Avoid the dangers of alcohol on the job

Working under the influence of alcohol is strictly prohibited. This means more than just not drinking on the job. Tests have shown that alcohol can still have an effect on your body up to 18 hours after you have stopped drinking. Alcohol use is a legitimate on-the-job safety issue - and not just an attempt to control off-the-clock lifestyles.

Alcohol is a sedative. Drinking any quantity of alcohol impairs a person's judgment, thinking ability, and coordination to some degree. Some people can "handle" alcohol better than others, but it is a fact that any alcohol consumed has some effect. Other factors which influence your body's ability to metabolize alcohol include your weight, medications, and previous medical conditions. You may not feel it right away, but remember, alcohol affects judgment.

After drinking, you are no longer in a position to assess your own capabilities.

You don't have to be drunk to have some impairment. If you can't make it through the day without a drink, you could have a problem and should seek professional help.

What should you do about a co-worker who is drinking on the job? Should you ignore the situation or report it? Most people would ignore the situation because they do not want to cause problems on the job or do not want to get involved. People would prefer to avoid conflict at almost any cost. But look at it this way—the drinker, no matter how nice a co-worker, is not doing you any favors. It's a fact that the drinker is less productive. Who has to pick up the slack? You do. It is a fact that the drinker is more likely to be involved in accidents. Who else is he or she placing at risk? You!



Are you allowing the drinking to continue?

You are - if you cover for the drinker's poor productivity

You are - if you cover their mistakes.

You are - if you make excuses to others for them.

Take control of the situation.

Don't allow the situation to continue. Stop covering for the drinker.

Talk to your supervisor. It is your responsibility to talk to your supervisor whenever any performance or safety issues affects your job. A drinking worker could be just as dangerous as a defective saw. You wouldn't hesitate to bring the saw to your supervisor's attention, would you?

If you are uncomfortable, suggest to your supervisor that there may be a problem. A good supervisor will take the initiative and pick up the issue from there.

Whatever you do, make sure you do something. Watch out for your co-worker as they may need help. If you don't, you may pay dearly for someone else's mistake.

OSHA CORNER

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

<https://www.osha.gov/publications>



Protect yourself from sun damage

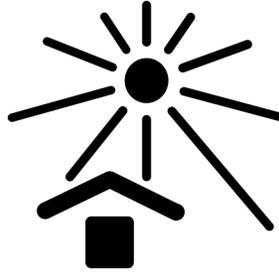
By Dr. James Fairfield

Sun damage ages your skin, and can leave it vulnerable to skin cancers. Sunscreen offers effective skin protection—if it's the right sunscreen, used properly. What most people think is adequate sun protection usually isn't. Here are tips to avoid the aging effects of sun damage.

It's one of the most frequent questions I get. Patients ask me all the time: Do I really need to wear sunscreen? And the answer is, "Yes, no matter who you are, where you live, where you work, you really need to wear sunscreen every day." Why am I so determined to get everybody slathered with skin protection? Well, nobody is in a better position than a dermatologist to see the harsh effects of solar radiation on human skin.

Most people know that exposure to the ultraviolet (UV) rays of the sun can lead to skin cancer, especially in fair-skinned people with light eye and hair color. But it's not only pale folks who are at risk: multiple sunburns, for any skin color or type, raise the risk of skin cancer. And sunscreen really can effectively prevent sunburn, if you use it right.

So how can we use sunscreen to get the skin protection we need? First, be sure you get the right product. The worst sun damage comes from UVA rays. UVA has a longer wavelength, so it can penetrate deeper into the skin, causing the aging effects we associate with sun exposure. We now know that UVA exposure also blocks your skin's natural repair mechanisms, so that previous damage and pre-cancers cannot be reversed. It's UVA radiation that can give you a sunburn on a cloudy day—it travels right through the clouds. And it can go through the glass of your car windows, which is why we dermatologists see the most skin cancers on the head and neck, on the left. Look



at the left side of your neck. Do you see brown spots? When you were 13, they didn't have UVA protection. That's the ray that's aging you.

So I always urge my patients to make sure they have the right product, and to use it correctly. First, look for a bottle or tube of sunscreen that blocks both UVA and UVB rays (UVB is the one that causes burning between 10 am and 3 pm). More tips for effective sunscreen use:

- Be sure you get a sunscreen with an SPF number of at least 30
- Apply it liberally, about 15 to 20 minutes before sun exposure
- Reapply every one to two hours, especially if you're going into the water or perspiring a lot

Once you have the sunscreen part down, there's more you can do to protect yourself from the sun:

- Limit your sun exposure, especially during the high sun hours of 10 am to 3 pm.
- Seek shade can whenever possible. If possible, set up an umbrella or sun canopy where outdoor work is performed. Shade doesn't negate the need for sunscreen, but allows sunscreen to work longer and better, and lessens the amount of UVA and UVB radiation being soaked up by the skin. It has the added benefit of cooling workers down, lessening the danger of heat

injury.

- Find sun protective clothing – it offers effective protection while you're outdoors. Luckily, clothing with high SPF is readily available these days.

Did you know you can get sunburned even under your clothes? Normal clothing does not protect fully against the sun's rays, and can lead to sun damage on skin in areas like shoulders, hidden under a t-shirt or work shirt. For people who will be outside for long periods of time, sun protective clothing is a good choice. Sun protective clothing features fabric with tighter weaves than normal clothing, which reduces the amount of UVB and UVA rays that can penetrate to your skin. Some brands may also use technology to reflect rays away from skin.

Brands like Coolibar, Solbari, and Solumbra, as well as protective clothing made by outdoor companies like Columbia and REI, offer breathable, wicking protection that may not only keep skin safe from sun damage, but help workers stay cool and comfortable on hot days. When buying sun protective clothing, look for the SPF on the label. It should be UPF 50 or above.

A good sun hat is very important for sun protection. The delicate skin of the scalp is hard to cover with sunscreen, and is among the top places on the body skin cancer may appear. A good sun hat will also shade the face and neck, will work all day without being washed away by sweat, and will keep a worker cooler than no hat.

For the take-home message, in case you skipped to the end: Use sun protection that blocks both UVA and UVB to their exposed skin each and every day. Seek out or create shade when possible. Look into sun protective clothing. And, finally, wear a hat! Your skin will thank you by staying healthy and beautiful for years to come.

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