

SUMMER 2021

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CONNECTION



# 06

**Liabilities for Unused Time Off Rise as Pandemic Continues**

# 10

**A Primer On Construction Mediation**



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# THE MERIT CONTRACTOR CONNECTION



06

SUMMER 2021

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# Material Prices UP, Friends in the White House Down

I feel I know us contractors pretty well. If there is something that needs to be complained about, we'll get it done! No matter how good overall — there is always something we can find. How about the cost of construction materials? The year over year increase for softwood lumber is 83.4%. Or, how about steel mill product increases of 40.1%? Crude petro is up 90.6%, and there are many others with lots of options to choose from right now.



The problem is, contractors cannot control the big picture happenings that have spurred an 8% overall rise in construction input prices. The injection of unprecedented levels of financial stimulus and maybe even more massive government spending programs coming — along with some supply chain hiccups — have many worried that inflationary impact has only just started.

If we cannot control those factors, what can we control? We can have a big impact on who passes laws and sets monetary policy in the White House. I checked up on how our congresspersons were doing voting on issues important to ABC.

Our ABC PAC is our voice in elective politics. But there are consequences to elections whether you get involved or not. The more of us that get involved, the better chance we have to make a difference. As a single entity, it's tough to make waves in the big pond, but together we can make a splash that counts.

In 2019, ABC PAC launched a brand new ABC PAC portal. Check it out: [pac.abc.org](http://pac.abc.org).

**CONGRESSIONAL VOTING RATING**

	<b>Indiana:</b>		
	Frank Mrvan = 0%	Jim Banks = 100%	
	Andre Carson = 3%	Trey Hollingsworth = 100%	
	Jackie Walorski = 100%	Jim Baird = 100%	
	Larry Bucshon = 91%	Victoria Spartz = 100%	
	John Yarmuth = 3%	Greg Pence = 100%	
	<b>Kentucky:</b>		
	James Comer = 100%	Thomas Massie = 94%	
	Brett Guthrie = 100%	Harold Rogers = 100%	
	John Yarmuth = 3%	Andy Barr = 100%	

Contributing to an organization and making an effort that leads to a difference is something we can all do, so let's do it. **MC**

## Jake Gibson

Jake Gibson, Gibson Commercial Construction  
Chairman of the Board,  
ABC Indiana/Kentucky Chapter





# TRUST & THE LOSS OF TRUST

**“There is one thing that is common to every individual, relationship, team, family, organization, nation, economy, and civilization — one thing which if removed — will destroy the most powerful government, the most successful business, the most thriving economy, the most influential leadership, the greatest friendship, the strongest character, the deepest love.”**  
- Steven Covey, 2006

**M**r. Covey wrote that statement some fifteen years ago and over the last decade and a half, there have been many forces in our lives that have continued to chip away at our sense of trust in our government, most all institutions (churches, schools, commerce) and most unfortunately, each other. I personally believe that the destruction of trust to a great degree has been a goal of some who want to destroy this country, and they know that is a more effective way than another country attacking us militarily.

Our system of government was set up on the honor system. We want to be free and respect the freedom of others, so we go about our business mutually following the Golden Rule. Our founding documents established basic rights and independence and some guard rails because we error.

But 2020 has brought the issue of trust/distrust crashing down on us. Distrust of police to distrust of the common citizen to make their own health decisions.

Speaking to the 2021 graduating class of Purdue University was Purdue President Mitch Daniels, former Governor of Indiana: Too many adults in all walks of life “let their understandable human fear of uncertainty overcome their duty to balance all the interests for which they were responsible. He continued, “In times where

certainty feels like an illusion and perfect safety seems like a mirage — balance your priorities, assess relative risk and have the courage to act on the conclusions you make.”

Finally, he challenged the graduates who want to live a life of freedom. “Take that hope (to live free) into a fearful, timid world crying for direction and boldness, where the biggest risk of all is that we stop taking risks at all.”

**“If we can’t trust each other — our businesses to decide how to operate, our local officials to set reasonable rules, our friends and neighbors to look out for us and care about each other — it won’t matter who is in charge, because there would be nothing to be in charge of.”** - Leo Morris MC

*J.R. Gaylor*

*J.R. Gaylor, President  
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# LIABILITIES FOR UNUSED TIME OFF RISE AS PANDEMIC CONTINUES

By Kenneth J. Hedlund, CPA, CGMA, Somerset CPAs and Advisors

In the past year, many employees have opted to postpone using their allotted paid time off until COVID-related restrictions lift and safety concerns subside. Because of this, certain employers are experiencing an increase in accruals. If you need guidance in evaluating whether your company is required to report a liability for so-called “compensated absences,” or how to estimate the proper amount, keep reading.

## Balance Sheet Effects

Compensated absences can include:

- Paid holidays
- Paid vacation
- Paid sick leave
- Other forms of time off earned by employment

Accruals for compensated absences should be classified as other liabilities on a company’s balance sheets. Because companies can’t deduct paid time off until it’s actually paid under U.S. tax law, the liability also creates a deferred tax asset equal to the accrual times the effective tax rate.

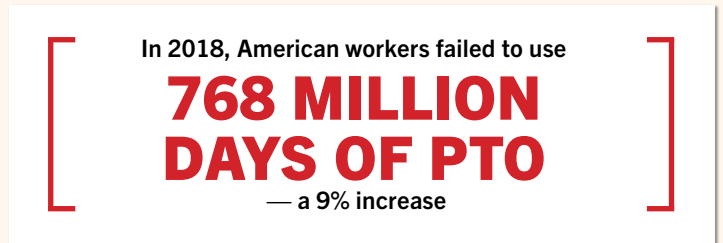
## When to Book an Accrual

Review your company’s policies and procedures related to paid time off before quantifying the compensated absences liability.

Ask the following questions:

- Does your company allow employees to accumulate unused paid time off for use in future years?
- Does your company provide vesting rights to accumulated paid time off balances that require payout to a terminated employee?

If you answered in the affirmative to either question above, your company may be required to record a compensated absences accrual.



THE HIGHEST INCOME EARNERS, THOSE EARNING MORE THAN \$150,000 ANNUALLY, TOOK AN AVERAGE OF 22.5 DAYS AND LEFT ONLY 3.1 DAYS ON THE TABLE.



**MORE THAN HALF OF AMERICANS (55%) ARE STILL NOT USING ALL THEIR PAID TIME OFF**

Source: Ipsos and Oxford Economics

According to U.S. Generally Accepted Accounting Principles (GAAP), employers should accrue a liability for an employee’s right to receive compensation for a future absence if the following four conditions are met:

1. The employee has earned the right to time off, but they haven’t taken it.
2. The employee’s rights accumulate or vest.
3. There is a probability the employee will exercise their right to paid time off, prompting payment.
4. The employer can reasonably estimate the amount of benefits the employee will receive.

It is possible that applicable laws in other states or countries may supersede your company’s policies, so it’s important to consider where your employees reside.





**A quarter (27.2%) of PTO went **UNUSED** in 2018 — up from 25.9%**

Source: Ipsos and Oxford Economics

**Calculating the Accrual**

For an employee paid by the hour, the compensated absences liability equals the hourly pay rate times the number of hours per day times accumulated days off. The hourly rate should include benefits and employer taxes your company incurs while the employee is not at work.

For a salaried employee, the calculation involves dividing annual compensation (including benefits and employer taxes) by the number of days worked per year. This will give you the employee’s daily pay rate. This daily pay rate is then multiplied by the accumulated days off.

You must also adjust the accrual for the probability that an employee will fail to exercise their rights to accumulated time

off. Often employers support this adjustment with historical data on the past behavior of their employees.

**Hidden Costs**

Increasing paid time off accruals have brought accounting issues related to compensated absences to the forefront. While companies don’t want to report higher liabilities, there’s also an intangible cost to consider: the well-being of employees. When employees forego time off, it can lead to lower productivity and increased turnover.

Talk with your advisor about the financial reporting requirements under GAAP, as well as to brainstorm ways to keep your employees informed about the importance of maintaining a healthy work-life balance. **MC**



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# ABC Graduation Commencement Ceremony

Indianapolis, Lafayette, Elkhart, Ft. Wayne, Muncie and Columbus' fourth year apprentices came together May 15th at the Indianapolis Marriott East for their graduation ceremony. There were 489 total guests to celebrate the 87 graduates in attendance.

John Delgado, U.S. Department of Labor, State Director, Office of Apprenticeship, and David A. Tucker, Vincennes University's Vice President of Workforce Development and Community Services, addressed the assembly before the processional.

Special recognition was made to winners of ABC Chapter Craft Championships, apprentices with perfect attendance of all four years of apprenticeship, and the achievement of lifelong learners.

The Keynote speaker, Chad Willet, author of 'Smash the Box' pointed out to the graduates that by choosing this educational path of a master craftsman, they were already an example of being "outside the box".

All graduates walked across the stage and received their ABC portfolio, and V.U. diploma.

A reception followed the ceremony where the honored graduates and guests were able to celebrate with one another and receive a congratulatory gift.



Rob Griffith, John Delgado, J.R. Gaylor, David Tucker



Graduate Adam Miller Receiving His Gift





Keynote  
Speaker:  
Chad  
Willett



Specially Recognized: Chapter Craft Championships  
Plumbing Winner, Wendy Becovitz-McKinzie



Jake Gibson, John Delgado, Rob Griffith, Graduate  
Chase Decker, David Tucker, Instructor Gabe Galvin

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# A PRIMER ON CONSTRUCTION MEDIATION

By: Daniel M. Drewry, Drewry Simmons Vornehm, LLP

**M**ediation can be a successful tool in resolving many different types of cases, but utilizing mediation can be particularly effective in resolving construction disputes. Construction disputes often involve a series of interrelated, complex issues and multiple parties. A single case may involve a dispute over payment, cost overruns, changes, defective work, and/or delays. The case may also have both construction and design claims asserted within the same action and can involve the Owner, Architect, Design Subconsultants, General Contractor, Subcontractors, and Suppliers. Often times the complexity of the issues and relationships between the parties in dispute require the engagement of third-party consultants to serve as expert witnesses. Frequently, parties may not want to try these cases in front of a judge or jury, and/or it may become very expensive to litigate or arbitrate through a trial or hearing. How then can construction parties resolve their disputes short of a protracted legal fight? The answer often lies with formal mediation.

## → THE PROCESS

For those that have not participated in a formal mediation, the process involves a neutral third-party mediator who brokers settlement negotiations between the parties. The mediation is typically hosted at the mediator's office, at the offices of counsel, or at a neutral location. Parties must have a representative attend

who has authority to settle the case on the parties' behalf. Parties attend with their counsel and any key project personnel needed in addition to the individual with settlement authority. In some cases, technical experts (such as a scheduling consultant) may attend the mediation to provide input and assessment of the claims and issues. Mediation is entirely confidential, and no statements or communications can be used as evidence in the subsequent proceedings with the goal being to facilitate open and frank discussions as to how (or why) the parties could/should settle the dispute.

Importantly, mediation is nonbinding — the parties commit to mediate a dispute, but they are not required to reach a settlement. The mediator leads the mediation, but does not serve as a judge or jury. The mediator typically:

- *Gathers all parties and their counsel together for an opening session;*
- *Discusses various claims and issues to gain understanding of the alleged damages;*
- *Breaks the parties up into separate rooms to begin the negotiation process.*



Oftentimes the parties will spend the majority of their time in mediation in their respective break-out rooms and have little to no interaction with the opposing parties — the mediator and attorneys handle the discussions. Other times the dynamics of the case warrant joint sessions. The actual process can adapt to the needs of the parties. The mediator will provide feedback on the salient issues and disputes but not for the purposes of adjudicating who is right and who is wrong. There is no decision on the merits at the conclusion. However, a good mediator will advise each of the parties of the strengths and weaknesses of their respective cases. This is beneficial for both parties to hear but also for counsel to gain a perspective on how their claims and arguments will be received by a neutral party. Sometimes the matter can be resolved relatively quickly, but frequently it takes most of the day (and sometimes several days) to reach an agreement.

Mediation can be invaluable in helping the parties truly gain an understanding of the other parties' factual and legal position. Again, with a complex construction case there are often many issues and claims to address. Gaining this understanding is often the first step in reaching a resolution. This process is also effective because it “sequesters” and brings the parties together to commit to the negotiation process — this may be the last opportunity to resolve the case before further litigation or arbitration. Most construction disputes are resolved at mediation rather than at trial.

#### → **IS IT REQUIRED?**

Most local county circuit and superior courts will require the parties to mediate a case at some point during the litigation. Federal courts will require a formal settlement conference administered by the Judge or Magistrate and/or mediation. The American Arbitration Association requires mandatory mediation for disputes over \$100,000.00. Regardless of whether the court or arbitrator requires mediation, consider making mediation mandatory under your construction contract. A typical construction contract will require mediation as a mandatory precondition to initiating a lawsuit or arbitration. The contract may also dictate who the mediator is, how the mediator is selected, the location of the mediation and/or the time within which the mediation should be conducted. Another consideration is to require stair-stepped settlement negotiations in addition to formal mediation. The contract could require that when a claim or issue arises, field level personnel must first discuss the issue and attempt resolution. If that process fails, the matter gets elevated to project managers and/or senior executives or principals to discuss and conduct settlement discussions. Only if that process fails does it elevate to formal mediation. Such a process is designed to facilitate an early resolution.

#### → **WHEN SHOULD YOU MEDIATE?**

There is no one-size-fits-all answer to this question. As mentioned above, the contract may dictate when mediation is to occur. Pre-suit mediation is designed to avoid litigation or arbitration all together, with the goal being to avoid the time and costs incurred with a lawsuit or arbitration proceeding. Pre-suit mediation presses the proverbial “pause” button on a dispute before a lawsuit or arbitration is filed. Once litigation or arbitration is initiated, the considerations may change. However, in certain cases, the parties need document or information exchanges to understand their respective positions and facilitate a more productive mediation — one which has a better chance of success. Mediation may be conducted before depositions are taken. In other case, depositions (or at least a limited number) or other procedural motions are needed to position the case for a productive mediation. Most importantly, two rounds of mediation may be needed particularly with a complex construction dispute. Many times, it takes an initial first day of working through the various claims and issues before progress is made, and the parties commit to a second day of mediation to truly attempt to negotiate a settlement.

#### → **FINDING THE RIGHT MEDIATOR**

For most construction disputes, finding a mediator with experience with construction cases is critical. It is extremely beneficial to utilize a mediator that can quickly gain an understanding of complex issues like construction defects or schedule delays. These experienced mediators are frequently:

- *lawyers with a dedicated mediation firm or company;*
- *a construction lawyer in private practice;*
- *a construction or design professionals such as an engineer, contractor or owner's representative.*

It is important to find the right mediator with the right personality fit for the parties and counsel. Mediation can be a difficult and painful process, so finding the right mediator is imperative. The wrong mediator will impede settlement discussions and harden party lines, making ultimate resolution of the dispute more difficult and expensive.

Understanding the mediation process and how it can be effective may resolve your next construction dispute. Consider how you want to address mediation in your construction contract, and work with your counsel to determine when mediation is right for you. Then, go out a find the right mediator to fit your needs. **MC**

*Dan Drewry is a partner with the law firm of Drewry Simmons Vornehm, LLP, ([www.dsvlaw.com](http://www.dsvlaw.com)) with offices in Carmel, Indianapolis and Crown Point, Indiana. DSV is Chapter Counsel for ABC of Indiana/Kentucky.*

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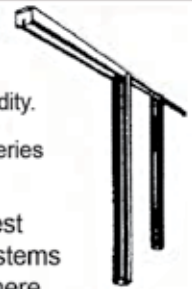
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Fax: (615) 224-1210  
sgreen@leecompany.com  
www.leecompany.com  
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Phone: (317) 773-7370  
Fax: (317) 773-7340  
dp@mcsinc.comcastbiz.net  
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**Warren County Stormwater**

Andrea Strange  
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Phone: (270) 843-5363  
andrea.strange@ky.gov  
www.warrencountyky.gov/  
*stormwater*  
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County Government

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Contact Felisha Anderson at (317) 596-4950 or via email at felisha@abcindianakentucky.org to learn more about the many benefits of being an Executive Club member!

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