

MAY 2020

inside



CALIFORNIA LANDSCAPE CONTRACTORS ASSOCIATION
EAST BAY CHAPTER

On the cover: The Waterford Sustainable Rehabilitation by Terra Landscape, winner of the award for Sustainable Landscape Installation at the 2019 CLCA East Bay Chapter Beautification Awards.

Terminating An Employee on Workers' Comp

Steven Cesare, Ph.D. The Harvest Group, Landscape Business Consulting
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A business owner from Pennsylvania contacted me the other day to complain about the job performance of an employee who was previously on workers' compensation leave and was now back to work on modified duty. The employee was injured in a job-related incident that left him with a sprained ankle, knee, and back. Per company policy, the injured employee was escorted to the local MPN clinic for a physical assessment. That assessment suggested one month off from work as part of a physical therapy regimen, followed by extended modified duty, premised on various work restrictions which included not standing more than 45 minutes per hour and not lifting more than 15 pounds. Bi-weekly follow-up visits at the clinic were scheduled to track the employee's rehabilitation status.

Prior to the injury, the employee was a subpar performer, characterized by consistent failure to achieve daily and weekly goals as a Chemical Applicator, frequent absenteeism and tardiness, and the often-cited "poor attitude." Despite those indices, the company chose to keep the employee rather than dismiss him due to ineffective performance, because it did not want to pay unemployment insurance.

While on restricted duty operating a ride-along mower, as approved by the clinic, the employee continued his poor

performance (e.g., incorrect mowing patterns, damaged equipment, severe rutting). Fearing a retaliation claim, the owner remained patient for the first couple of weeks of modified duty. Things only got worse, and he finally called me.

First, I told the owner that as long as the employee was on restricted duty, he was nearly untouchable sans a major policy violation (e.g., sexual harassment, safety, workplace violence, criminal activity), in that any such personnel action would likely be attributed to retaliation. Next, I instructed the owner to keep the workers' compensation vendor apprised of all current performance issues. In the same breath, I reminded the owner to review the company EPLI policy with the insurance representative to ensure legal compliance. Then, I suggested that the owner and employee's supervisor have weekly meetings with the employee to discuss performance goals for the week, his physical well-being, and then an evaluation of the employee's weekly job performance each Friday. All documentation was carefully crafted, delivered, and naturally, signed by the employee, and ultimately sent to the workers' compensation vendor and EPLI representative.

Eventually, per company policy, upon written release from the MPN clinic, the employee was required to complete a

fitness for duty examination prior to returning to work. The examination and written doctor's note yielded a full return to work statement without any restrictions.

Upon return to his Chemical Applicator position, the employee's performance continued to be below standard. The weekly communication sessions continued during his transition from mowing to spraying to ensure no physical relapse occurred. Similarly, the weekly performance evaluations remained in place.

After a month of documented ineffectiveness, ongoing communication, and periodic absenteeism, it was time for a decision to be made. Proceeding carefully, the details of this issue were resolutely scrutinized and it was determined that termination was the solution. As a predicate, based on facts, it was shown that:

- The termination was not applied in any retaliatory manner,
- The termination was based solely on his inability to complete the essential functions of his job as a Chemical Applicator, unrelated to the workers' compensation claim, and
- The termination was not associated with any protected class status.

Given the high stakes involved in terminating in these circumstances, it's in the company's best interest to have a rigorous protocol in place to avoid violating any state or federal law (e.g., FMLA, ADA, WC, EEO).

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president's message

Inspiring Words for Difficult Times

Leeanna Schoeder, CLCA East Bay Chapter President

It's been a very different spring than most of us have ever experienced. Personally, this has been difficult. Being a social creature, it's been stressful being alone most days and keeping focused on tasks and projects.

A few weeks ago, during a low point, I was cleaning out yet another closet. I ran across a small book my father gave me many years ago. My father was a school principle, inspirational speaker, a comedian, and... a football coach.

Yes, sports were a big part of our lives. Name a sport, and at one time or another either my brother or I participated. Years ago, during rehab from a sports injury, my father gave me this book by another football coach – Vince Lombardi. Lombardi passed away in 1970, and in 1971 the NFL renamed the Super Bowl Trophy to the Vince Lombardi Super Bowl Trophy, a very prestigious honor.

Some of you are probably wondering what this possibly has to do with the green industry or the CLCA? Well, he was one of the most inspirational coaches who every lived. His quotes are timeless and just as pertinent in today's world as they were decades ago. During times of challenge such as we are facing today, leadership and positive thinking become even more important. His spirit and attitude can help us get through this uncertainty and pertain to any position, job or relationship.

With the way I was feeling that day, it was a gift to run across this book. I flipped through the pages and read a few of his quotes and instantly felt better. I quickly realized that with the world we are experiencing right now, it is a perfect time to get inspiration from a simple guy who knew how to engage a team and inspire

people to rise above the gloom. I thank my dad every day for the inspiration and guidance he gave me, which led to my life and career success. Below are a few of my favorite quotes from the book:

Teamwork

"The achievements of an organization are the results of the combined effort of each individual."

"People who work together will win, whether it be against complex football defenses, or the problems of modern society."

"Individual commitment to a group effort – that is what makes a team work, a company work, a society work, a civilization work."

Success/Sacrifice

"To achieve success, whatever the job we have, we must pay a price."

"Success is like anything worthwhile. It has a price. You have to pay the price to win and you have to pay the price to get to the point where success is possible. Most important, you must pay the price to stay there."

"Once you agree upon the price you and your family must pay for success, it enables you to ignore the minor hurts, the opponent's pressure, and the temporary failures."

"A man can be as great as he wants to be. If you believe in yourself and have the courage, the determination, the dedication, the competitive drive, and if you are willing to sacrifice the little things in life and pay the price for the things that are worthwhile, it can be done."

"In order to succeed, this group will need a singleness of purpose, they will need a dedication, and they will have to convince all of their prospects of the willingness to sacrifice."

"Success is based upon a spiritual quality, a power to inspire others."

"Most important of all, to be successful in life demands that a man make a personal commitment to excellence and to victory, even though the ultimate victory can never be completely won. Yet that victory might be pursued and wooed with every fiber of our body, with every bit of our might and all our effort. And each week, there is a new encounter; each day, a new challenge."

Leadership

"Leaders are made, they are not born. They are made by hard effort, which is the price which all of us must pay to achieve any goal that is worthwhile."

"It is essential to understand that battles are primarily won in the hearts of men. Men respond to leadership in a most remarkable way and once you have won his heart, he will follow you anywhere."

"Leadership is based on a spiritual quality --- the power to inspire, the power to inspire others to follow."

"Having the capacity to lead is not enough. A leader must be willing to use it."

"Leadership rests not only upon ability, not only upon capacity – having the capacity to lead is not enough. The leader must be willing to use it. His leadership is then based on truth and character. There must be truth in the purpose and will power in the character."

"A leader must identify himself with the group, must back up the group, even at the risk of displeasing superiors. He must believe that the group wants from him a sense of approval. If this feeling prevails, production, discipline, morale will be high, and in return, you can demand the cooperation to promote the goals of the community."

"Leadership is not just one quality, but rather a blend of many qualities; and while no one individual possesses all of the needed talents, each man can develop a combination to make him a leader."

(continued on page 6)

CLCA Responds to Coronavirus

For more information on how CLCA is working to help the green industry during this time, visit <https://www.clca.org/news/clca-responds-to-coronavirus/>

With advocacy, action on upcoming events and a Company/HR information portal, the California Landscape Contractors Association is taking action to help you survive the coronavirus pandemic.

New Unemployment Insurance Guidance

Our friends at the California Employers Association – the voice of CLCA’s member benefit HR Hotline – offer updated advice and guidance on unemployment insurance and federal relief, based on new input on the Coronavirus Aid, Relief, and Economic Security (CARES) Act from the U.S. Department of Labor.

CEA encourages employers to avoid advising employees about their eligibility for benefits. Employees with questions about their benefit eligibility or claims should direct those questions to the EDD — even if the EDD is slow to respond. MORE at <https://bit.ly/2W2Tyg5>.

Are Your Workers Essential?

Are your workers essential? CLCA’s exclusive legal opinion suggests “Yes, for some Californians!” CLCA is continuing its efforts to help members and the entire California green industry navigate the challenges of the past month. A key assist came from CLCA’s legal counsel, who crafted a powerful opinion on how your work as landscape professionals fits the

state’s definition of “essential.”

To receive a PDF with the exclusive legal opinion tailored to members of California’s green industry, complete the form at <http://clca.org/essential>. You will also receive a sample cover letter you can complete and use should any of your crew be approached about “why are you working?”

CLCA Creates Coronavirus Guidance Summary

Looking for an easy-to-understand one-page Coronavirus Guidance summary? CLCA created just what you need! In addition to outlining key safety protocols, it describes best practices for interactions with customers and staff. Added bonus: Key resources from CLCA and various government programs. This PDF is a free download at <https://bit.ly/2WCbhKr>.

Apply Now For Business Financial Relief

Over the weekend, new Federal legislation was signed to enact the CARES Act. Business financial relief is a significant part of the CARES Act and provides critical help to businesses that may have been negatively impacted by COVID-19. CLCA recommends that applications be submitted as soon as possible. <https://conta.cc/2YqsEAi>.

Support for Small Businesses

California Senator Dianne Feinstein has two informative documents outlining the CARES Act.

- User-friendly guide to programs and initiatives in the bill. Download at <https://bit.ly/3b2ti9C>.
- Detailed explanation of business provisions in the bill. Download at <https://bit.ly/3ccW8W8>.

Impact of \$2 Trillion Stimulus Package

In partnership with the National Association of Landscape Professionals, CLCA is sharing a comprehensive summary of the \$2 trillion stimulus package recently passed by the Senate. Created by the lobbying firm DCLRS, the summary highlights the measure’s tax relief provisions, corporate and small business loan programs and the taxpayer rebate program. Download PDF at <https://bit.ly/3fqt5AK>.

CARES Act: Small Business Owner’s Guide

Acting to provide small business owners with “whatever needs they have right now,” a U.S. Senate Committee has released a focused guide on the programs and initiatives in the Coronavirus Aid, Relief and Economic Security (CARES) Act. If you need capital to cover the cost of retaining employees, a quick infusion of a smaller amount of cash or just some quality, free business counseling, the guide provides solutions. <https://bit.ly/2WlSx6w>.

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CLCA Member Benefits

Did you know that your CLCA membership entitles you to a plethora of invaluable benefits? Visit www.clca.org >>Member Resources>> Member Benefits for the complete list of benefits.

- Peer Consulting Service
- Human Resources Hotline
- Certification/Water Management
- Networking Opportunities
- Supplier/Materials Search
- Professional Development
- Credit Card Processing
- Group Insurance
- Attorney on Retainer
- Lien Paperwork

East Bay Chapter Member Standings

30+ Year Members

Joe Korematsu (1956)
 Roger Fiske (1962)
 Cagwin & Dorward (1963)
 Ken Gerlack (1966)
 Lafayette Tree & LS (1967)
 Horizon (1970)
 Ewing Irrigation (1973)
 BrightView Tree Co. (1973)
 SiteOne Landscape Supply (1974)
 Professional LS Mngmt (1980)
 Delta Bluegrass Co. (1980)
 Landscape Care Co. (1985)
 LandPlan's LS Inc. (1982)
 Village Nurseries (1983)
 L.H. Voss Materials (1987)
 P.J. McNamara (1987)
 Suma Landscaping Inc. (1988)
 Berndt Landscape & Garden Maint (1988)
 Trimacs Maint. & LS Const, Inc. (1988)
 Diamond K Supply Ltd. (1990)

Life Members

George Sunayama, Joe Korematsu, Roger Fiske, Paul Schultz, Ken Gerlack, William Roger, Thomas Raeth, Dan Berger, Robert Battinich, Kevin Berndt, Stephen Lambert

26 Year Members

Cathy Lambert, Garden Lights Landscape Development Inc.

25 Year Members

Tom Del Conte, Del Conte's Landscaping
 Stephen DeBellis, Siteworks Landscape

7 Year Members

Allie Wilson-Plasck, Mariposa Gardening

6 Year Members

James Van Slyke, Jensen Landscape

5 Year Members

Sareena Grewal, HSG Safety Supplies

4 Year Members

Troy McGregor, Gondwana Flora

The East Bay Chapter Thanks Our 2020 Partners for Success

Gold - \$1500

- Four Dinner Tickets to the Beautification Awards Banquet and sponsorship of a prestigious Judges or Sweepstakes Award plaque.
- Four Tickets to the Baseball Event (includes tailgate party).
- Free Admission to All Dinner Meetings during the year.



Silver - \$1000

- Three Dinner Tickets to the Beautification Awards Banquet and Sponsorship of an Award plaque for one of the award categories.
- Three Tickets to the Baseball Event (includes tailgate party).
- Free Admission to Three Dinner Meetings of your choice during the year.



Bronze - \$750

- Two Dinner Tickets to Beautification Awards Banquet and Sponsorship of an Award plaque for one category.
- Two Tickets to the Baseball Event (includes tailgate party).
- Free Admission to Two Dinner Meetings of your choice during the year.



All Partners Receive

- Company Name recognition in the chapter's monthly newsletter, Inside Scoop and the mid-monthly electronic newsletter E-Scoop. Company event promotion in electronic newsletter, E-Scoop.
- Company Name recognition at every event, logo on table-tents or event fliers, Company logo on the chapter website and event announcements.

For information, or to become a sponsor, call Laura Leuer at (510) 207-4350.

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East Bay Chapter Monthly Board Meetings

Board meetings are held on the 1st Thursday of the month at 4:00 p.m. (some exceptions). Check the calendar for locations.

The CLCA East Bay Chapter newsletter is published monthly. Copy and advertising deadlines are the 10th of the month preceding publication. Materials may be mailed to: Jerrie Beard & Associates, PO Box 96, Coloma, CA 95613. Or email to: jsb@beardassociates.com. For information on advertising and rates, contact Jerrie Beard at (530) 621-1701.

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2020 CLCA State Executive Board

clca.org/about/board-of-directors/

Past CLCA State Presidents from the East Bay Chapter

2018	Aaron Huxley
2017	Tim Hendricks
1996	John Redmond Jr.
1986	Roger D. Fiske
1978	Joe Tanouye

East Bay Past Chapter Presidents

2018	Eric Santos
2017	Roxy Wolosenko
2016	Calvin Craig
2014-15	Peter Rosen
2012-13	Tim Hendricks
2011	DeeAnn Schuttish
2009-10	Nate Silin
2007-08	Barry Minor
2006	Gregory Wrenn, Rick Martens, CLT
2005	Dennis Brewer
2003-04	Rick Martens, CLT
2000-02	Gregory Wrenn
1999	Rob Solomon CLT, CLP
1997-98	Dave Wolkenhauer, CLT
1996	Diane McNally
1995	Dan Berger, CLT
1994	Craig Hutchinson
1993	Steve Schlitt
1992	Matt Schiller
1991	Robert Battinich
1990	John Redmond
1989	Jim Kwiat
1988	Thomas Raeth
1986-87	John Nishizawa
1985	Thomas A. Adan
1984	David Burnley
1983	Don Young
1982	David Gutru
1981	Joe Tanouye
1979-80	J. Warren Thurston
1979	Peter Rumore
1978	Pat Nichols
1977	Joe Korematsu
1976	Chuck Rich

East Bay Chapter Life Members

Congratulations and Thank You to the following CLCA East Bay Chapter Members for their continued support for over 25 years.

Roger Fiske	Ken Gerlack
Jeffrey Jones	Joe Korematsu
George Sunayama	Jack Rydman
Thomas Raeth	Kevin Berndt

CLCA East Bay Chapter Contractor's Honor Code

The CLCA East Bay Chapter exists to support Contractor's AND their employees. To successfully meet this objective, and encourage the involvement of all levels of the landscape industry, the Board of Directors is committed to supporting the following Contractor's Honor Code:

The solicitation, recruitment of, or attempt to hire another Contractor's employees while attending any CLCA function is strictly prohibited.

(continued from page 3)

"No leader, however great, can long continue unless he wins battles. The battle decides all."

Passion

"It is and has always been an American zeal to be first in everything we do, and to win..."

"It is essential to understand that battles are primarily won in the hearts of men. Men respond to leadership in a most remarkable way and once you have won his heart, he will follow you anywhere."

"If you aren't hired with enthusiasm, you'll be fired with enthusiasm."

"To be successful, a man must exert an effective influence upon his brothers and upon his associates, and the degree in which he accomplishes this depends on the personality of the man. The incandescence of which he is capable. The flame of fire that burns inside of him. The magnetism which draws the heart of other men to him."

Truth

"The object is to win fairly, by the rules – but to win."

"Morally, the life of the organization must be of exemplary nature. This is one phase where the organization must not have criticism."

"Faithfulness and truth are the most sacred excellences and endowments of the human mind."

Want to read more about Vince? visit www.vincelombardi.com/

Inspirational Reads

Here are two inspirational books I highly suggest the read.

"The Impossible First" by Colin O'Brady

Prior to December 2018, no individual had ever crossed the landmass of Antarctica alone, without support and completely human powered. Yet, Colin O'Brady was determined to do just that, even if, ten years earlier, there was doubt that he'd ever walk again normally. From the depths of a tragic accident, he fought his way back. In a quest to unlock his potential and discover what was possible, he went on to set three mountaineering world records before turning to this historic Antarctic challenge.

"Can't Hurt Me" by David Goggins

For David Goggins, childhood was a nightmare - poverty, prejudice, and physical abuse colored his days and haunted his nights. But through self-discipline, mental toughness, and hard work, Goggins transformed himself from a depressed, overweight young man with no future into a US Armed Forces icon and one of the world's top endurance athletes. The only man in history to complete elite training as a Navy SEAL, Army Ranger, and Air Force Tactical Air Controller, he went on to set records in numerous endurance events, inspiring Outside magazine to name him The Fittest (Real) Man in America.

California Spray Sprinkler Body Regulation

By Silvia Gourian / Rain Bird

Distributor and retail store shelves are about to look a little different. Beginning October 1, 2020, California state law will mandate all spray sprinkler bodies sold into the state have integral pressure regulation (PRS). The goal of this legislation is to add spray sprinkler bodies to California's existing Code of Regulations and appliance efficiency standards that conserve water and energy resources. It also provides consumers access to more efficient appliances that will help reduce their water bills.

The Natural Resource Defense Council states "...California's standard requires new spray sprinkler bodies to come with built-in pressure regulation, so that the water pressure reaching the sprinkler nozzle is always close to the manufacturer's recommended operating pressure." ([https://www.nrdc.org/experts/ed-osann/ca-sets-standards-new-lawn-](https://www.nrdc.org/experts/ed-osann/ca-sets-standards-new-lawn-sprinklers-curb-waste)

sprinklers-curb-waste)

Four additional states, Vermont, Colorado, Hawaii, and Washington, have also passed laws requiring integral pressure regulation in spray sprinkler bodies. Vermont's law goes into effect July 1, 2020; Colorado, Hawaii, and Washington laws go into effect January 1, 2021.

How does this affect construction and maintenance contractors?

Contractors should start familiarizing themselves with pressure regulating spray heads ahead of the October 1, 2020 regulation effective date. Check with your local distributor to make sure they stock pressure regulating spray heads so you know you will have inventory for jobs.

- Beginning October 1, 2020 you will only be able to buy pressure regulating spray heads from distributors and retail sellers. This applies to new and retro-fit sites.

- To see the most water savings on aging systems, upgrade all spray heads on a zone to PRS.
- PRS is a larger investment up front, but saves water and energy over the life of the spray head, resulting in fewer worries and call-backs from customers.
- Spray heads are available in 30psi or 45psi options. PRS-30 psi is optimal for spray nozzles and PRS-45 psi is optimal for rotary nozzles.

How does PRS help save water and money over time?

PRS reduces high or fluctuating water pressure resulting in the following benefits:

- Reduced water pressure reduces water flow.
- Reduced water pressure creates larger water droplets that won't get carried away by wind, creating more even coverage.
- Running a spray head between 30 psi and 45 psi extends the life of a spray head.
- PRS saves up to a gallon of water a minute per spray head.

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