



THE BASESHEET

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GREETINGS FELLOW ARCA MEMBERS:

As the new year begins, let's all take a minute and figure out what we did right last year and try to do more of it in 2016. I know I have somehow made one or two bad decisions last year (Oy!) that I pledge not to repeat again this year.

ARCA has a full slate of activities planned for this year and all the key committees –sporting clays, golf, bowling, membership & marketing, training & career promotion and convention all have meetings scheduled for January. If you are not already involved in one of these events, this is a great time to get in on the initial planning and make a difference. I plan on bringing all the chairs of the various committees together in the first quarter to get a feel for where we are and what can be done to achieve even higher member participation, higher satisfaction and increased value to our members. Remember: you, our members, are our customers for these endeavors and we want to provide a quality experience.

As an industry roofing had a relatively safe 2015 but we continue to see rash of trip, slips, falls and strains in the workplace. As part of our new years' resolutions lets' commit to keeping our workforce safe and police the work sites for debris, place even greater emphasis on ladder, tie off and lifting safety.

The Training & Career Promotion Committee has put together a solid foundation to build on and launch the "Apprenticeship Program" during the coming year. This is not an easy task and we need a co-chair to assist in this long term effort to grow our workforce. Committee members will be meeting and contacting members willing to integrate the apprentices into their companies during the first quarter and plan to be operational by the third quarter of 2016. Additionally, I also plan on calling a meeting for all owner members of our association to have a round table to 'get on the same page' as to the WWWWWH (Who, What, Where, When, Why and How) of this program and to identify how this program will potentially change and benefit our companies and industry as a whole.

Our Membership & Marketing Committee has put together a dynamic outreach effort to grow our contractor members. If any of you have any leads on non-members refer them to either Valorie or Larry Miller for follow up. Thanks to all those sponsors and members that pre-paid their 2016 dues. I would like to encourage everyone else to get in their renewals---your early and continued financial support allows us to budget, schedule and provide the programs and services you have come to expect from the Association

Sincerely,

Rhonda LaNue, President
Arizona Roofing Contractors Association



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Assistant Secretary of Labor Issues Statement Regarding Workplace Injuries and Illnesses

The Bureau of Labor Statistics released the results of its Survey of Occupational Injuries and Illnesses Oct. 29, showing that private industry employers reported nearly 3 million nonfatal workplace injuries and illnesses in 2014, according to www.osha.gov. Although the total recordable cases incidence rate fell 0.1 cases per 100 full-time workers, the rates for cases involving days away from work and for cases of job transfer or restriction only were unchanged.

After reviewing the report, Assistant Secretary of Labor for Occupational Safety and Health David Michaels issued the following statement:

“Today’s Bureau of Labor Statistics report shows that too many workers are still being injured or sickened on the job. Every year, millions of workers are injured at work and that is simply unacceptable. We must redouble our efforts to make sure that employers provide workers with the protections and training they deserve.

“Workplace injuries and illnesses have a devastating effect on workers, their families, and the businesses where they occur. These injuries and illnesses contribute to the pressing issue of income inequality: they force working families out of the middle class and into poverty, and keep the families of lower-wage workers from entering the middle class and achieving the American Dream.

“Everyone benefits when there are fewer injuries and illnesses. OSHA is committed to continue increased efforts to ensure every employer is fulfilling its responsibility to protect the safety and health of its workers.” 

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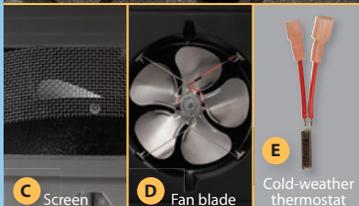
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Mount	Color	Model #
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Surface	Brown	31001287
Surface	Weathered Wood	31001288
Curb	Black	31001281
Curb	Brown	31001282
Remote	Black	31001284
Remote	Brown	31001285
Gable	Black	31001283
Thermostat	N/A	31001280

All housing material is UV-enhanced ABS plastic and may be painted to match roof color. All models available with optional cold-weather thermostat.

*1,600 sq. ft. based on 3/12 roof slope with open attic space. For larger areas, multiple ventilators will be necessary. The number of ventilators required will vary depending on roof slope, attic configuration and sq. ft. of open air inlets. For the ventilation requirements of your building, please contact an architect or building professional.

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Legislative Update



State of Arizona

The Arizona Legislature will convene January 12th. As usual over 1,200 bills will be introduced with a yearly average of 300+ becoming the law of the land. Of primary concern to ARCA this session is the ongoing Transaction Privilege Tax (TPT) quagmire. A business supported bill has been drafted that lays the foundation to eventually adopt a point of sale process to truly simplify purchases and tax remittance. As of the writing of this report it is unknown how the bill will be received. For the latest on the TPT issue please read the James Busby article in this issue of Basesheet.

Federal

Federal Regulatory Agenda

On Nov. 20, the Obama administration released its fall 2015 regulatory agenda, which provides an overview and estimated time of completion for all regulations currently in development. There are many items of interest to the roofing industry on the agenda. The Department of Labor leads the administration's regulatory charge with 10 significant regulations that may be finalized in 2016. These include several regulations by the Occupational Safety and Health Administration (OSHA), including a rule that requires employers to submit injury and illness records to OSHA electronically so the agency can post them online for public review; a rule that extends the statute of limitations for recordkeeping violations from six months to five years; and a rule that lowers the exposure level for respirable crystalline silica and adds new mitigation requirements, such as exposure monitoring, training and testing. NRCA has submitted detailed comments regarding each of these proposed OSHA regulations, outlining strong opposition to the rules and urging they be withdrawn. Absent intervention by Congress, it appears these and other regulations will be finalized sometime before President Obama leaves office in January 2017.

Tax Legislation

Congressional leaders are in negotiations to renew and extend a package of tax provisions that expired at the end of 2014. Republicans would like to make some of the provisions permanent, including Section 179 business expensing, bonus depreciation and the research and development tax credit. Democrats are hoping to expand and make permanent several tax credits used by low-income individuals. The package also could include an extension of the investment tax credit (ITC) for renewable energy (including rooftop solar) with improved language to allow taxpayers to use the credit when construction begins rather than when the project is placed in service. NRCA advocated for extension of the ITC during its Fall Committee Meetings and Legislative Conference in October and has continued doing so. Additionally, tax credits for commer-

cial and residential energy-efficiency projects may be extended through 2016 and there is consideration of repeal or delay of several taxes associated with the Affordable Care Act. However, there is concern among deficit hawks regarding the increase in the budget deficit resulting from this bill, which could cause the negotiations to collapse. In that case, the fallback plan is to renew the expired provisions for 2015 and extend them through 2016.

Hearing on Effect of Regulations

The Workforce Protections Subcommittee of the House Committee on Education and the Workforce held a hearing—"How the Administration's Regulatory Onslaught is Affecting Workers and Job Creators." The hearing followed a familiar pattern on Capitol Hill in which witnesses representing business organizations cited an array of statistics as evidence that regulatory activity has increased substantially during recent years and that increased regulator activity has a significant negative effect on economic growth and job creation. Brad Hammock, a private attorney with whom NRCA has worked and a former OSHA attorney, testified that recently issued OSHA regulations "have questionable benefits for employees, place significant burdens on businesses (and) may actually take resources away from workplace safety and health." In contrast, a witness from the National Employment Law Project testified that the Obama administration's "regulations and sub-regulatory guidance" are beneficial to workers and "do not deter economic growth or cost us jobs." The hearing ended with an exchange of sharp disagreements between Republicans and Democrats regarding the effect of regulations on workers, employers and the economy.

Affordable Care Act

Senate Republicans used the arcane "budget reconciliation" process to advance legislation that repeals major portions of the Affordable Care Act (ACA). Legislation considered under reconciliation rules must reduce the deficit and can be approved in the Senate with a simple majority (51 votes rather than the 60-vote threshold needed for most other legislation). This was how Democrats originally passed the ACA in 2010. The Senate voted 52-47 to pass a reconciliation package that repeals the ACA's individual and employer mandates and repeals several ACA taxes: the medical device tax, the so-called "Cadillac" tax on high-cost health plans and the ACA health insurance tax that NRCA has worked to repeal. The bill also repeals the ACA's controversial expansion of Medicare in 30 states. The Senate package expands on a similar reconciliation bill approved by the House. This effort is largely a political exercise because President Obama has said he will veto the legislation. By making the president veto the bill, Republicans hope to make the ACA a major issue in the 2016 elections 🏠



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Prevent COLD STRESS



We hear about heat stress much in Arizona for much of the year, but workers in our state also can suffer from cold stress. This happens when one's skin temperature is driven down, eventually reducing the core (internal) body temperature. Cold stress may lead to serious health problems, such as tissue damage or even death.

People who work in a cold environment, like sanitation, construction, emergency and first responders, landscaping and agriculture and delivery drivers may all be subject to cold stress.

Contributing risk factors that can lead to cold stress include:

- Cold rain or dampness
- Workers not dressed for cold weather (layers)
- Fatigue
- Workers who have health conditions (hypertension, hypothyroidism, diabetes)
- Poor physical condition

Cold stress injuries and illnesses include frostbite, hypothermia and immersion (trench) foot.

Hypothermia is a physical condition that happens when the body's heat is lost faster than it can be generated, dropping below 98.6°F to less than 95°F. While workers in very cold temperatures may suffer hypothermia, even

cool temperatures (above 40°F) may cause the condition, especially if a worker has become chilled from sweat or getting wet.

In a mild case of hypothermia, the worker is alert but may show signs of shivering; he or she may begin patting arms and stamping feet to induce more body heat. More moderate to severe cases occur when a worker's body temperature falls; although shivering will stop, other symptoms will worsen.

The worker may seem uncoordinated, confused or disoriented, may be unable to stand or walk. The pupils of the eyes will be dilated while the pulse and breathing slow; he or she may suffer loss of consciousness. Immediate help is needed to prevent the worker from dying.

If someone on the job site looks to be suffering these symptoms, take these steps:

1. Call 911 as soon as first symptoms are recognized.
2. Place workers in a warm, dry area. If their clothes are wet, remove and replace them with dry garments. Use layers of blankets to cover the body, head and neck; add a vapor barrier (a tarp or plastic garbage bag will do). Do **NOT** cover the worker's face.
3. If emergency medical help is more than a half hour away, administer warm, sweetened non alcoholic drinks to help generate a higher body temperature. Put warm bottles or hot packs in the worker's armpits, on side of the chest and on the groin area.
4. If the worker has no pulse or has stopped breathing, or there is no pulse after 60 seconds, trained personnel may start rescue breaths for 3 minutes. A recheck for breathing and a pulse should be conducted for the next 60 seconds. If still no breath or pulse, continue rescue breathing. Always check with a 911 operator or medical first responder before starting chest compressions; continue to reassess worker's physical status every few minutes.

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Prevent Cold Stress *Continued*

According to first-aid guidelines, chest compressions should be used only if the patient won't receive medical care within three hours.

Immersion (trench) foot can occur when outdoor workers' feet endure prolonged exposure to wet, cold temperatures. According to the Centers for Disease Control, even if the water temperature is 60°F, immersion foot can occur if the limbs are constantly wet.

To prevent heat loss through the feet, the body constricts the limbs' blood vessels, shutting down circulation. Lack of oxygen and nutrients cause skin tissue to blacken and start dying, while toxic elements begin building in the feet.

The symptoms for immersion foot include:

- Skin on the feet is red, swollen; worker may feel numbness or see blisters
- Leg cramps
- Tingling pain
- Bleeding under the skin
- Gangrene (foot may turn dark purple, blue or gray)

To treat this condition:

- Seek medical assistance as soon as possible; if an emergency, call 911 immediately for help
- Remove the shoes, boots and wet socks
- Gently dry the feet
- Avoid walking on the injured feet, as this may cause tissue damage

Another symptom could be the development of chilblains, which is caused by repeated exposure of skin to temperatures just above freezing to as high as 60°F, causing damage to the small blood vessels in the skin. Injury is permanent; redness and itching returns with subsequent exposures, typically affecting cheeks, ears, fingers and toes. In severe cases, ulceration can occur.

In these cases, slowly warm the skin. Do not scratch the affected areas; instead apply corticosteroid creams to relieve itching. Keep any blisters and ulcers that form clean and covered.

To prevent cold stress and the development of any of these health issues:

- Learn prevention strategies and how to spot cold stress injuries and illnesses, as well as proper first aid treatments.
- Consider using engineering controls: radiant heaters to warm workers; wind shields for outdoor workers; thermal blankets for drivers.
- OSHA recommends outdoor workers wear at least three layers of clothing for better insulation:
 - First layer (next to skin) wool, silk or a synthetic to keep moisture or sweat away from the body
 - Middle layer of wool or synthetic provides layer of insulation, even if it gets wet
 - For third layer, use outerwear that provides protection from wind and rain; should allow for some ventilation to avoid overheating. Wear a hat or a "hoodie," as heat escapes from your scalp, putting your overall body temp at risk. If temperatures demand, consider using a knitted mask that is designed to cover the face and mouth.
- Wear insulated gloves and boots (waterproof, if necessary)



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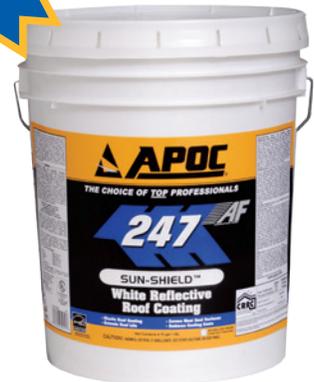
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Responding to an ROC Complaint

A new policy statement issued by the ROC provides useful clarification of what constitutes a timely response to a workmanship or non-payment complaint.

By Kent Lang

Responding to a Registrar of Contractors complaint is governed by specific requirements and deadlines set forth in Arizona law. To clarify those requirements, the ROC has issued "Substantive Policy Statement 2015.01: Filing Timely Answers under A.R.S. § 32-1155."

Substantive Policy Statements are not designed to impose additional requirements or penalties; rather, they are intended to clarify existing law.

The Policy Statement covers:

- how the date of service is calculated when the ROC serves a citation and complaint by mail;
- the contractor's general duty to file a written answer;
- specific issues that arise when determining the date on which the licensee's written answer is due; and
- the question of whether mailing a written answer to the ROC has the same legal effect as filing a written answer with the ROC.

Highlights

The full version of the ROC's Policy Statement is on the ROC website. Following are the highlights, which we have adapted from the Executive Summary contained in the statement.

- Most citations issued by the ROC are served by mail.
- Service of a citation and complaint will be considered to have been completed five days after it is mailed to the licensed contractor.
- If the ROC issues a citation, the contractor must file a written answer.
- From the date of service of the citation (i.e., five days after the mailing date), the contractor has only 10 calendar days – i.e., not business days – to file a written answer.
- A phone call does not count as a contractor's answer. The answer must be in writing.
- The written answer must be filed with – i.e., received by – the ROC within the 10-day statutory deadline. Therefore, depositing the written answer in the mail within the 10-day deadline does not, by itself, fulfill the 10-day deadline. (Note: Mailing the answer five days before the deadline does not guarantee that the ROC will actually receive your answer in a timely

fashion.)

- The ROC is not allowed to extend the statutory 10-day deadline for filing a written answer.
- If a mailed answer is not received by the ROC within the 10-day deadline, the answer must be considered late.
- If the contractor fails to file a written answer within 10 days after service, that failure shall be deemed as an admission that the contractor committed the act or acts charged in the complaint.

Contractors must understand that the ROC will mail the citation and complaint to the most recent address that the contractor has provided to the ROC. If a contractor has moved, or if the address is incorrect, a contractor may lose its license merely because it did not receive timely notice of the citation and complaint. Visit the ROC website today and check your address.

If you have questions about the Policy Statement or responding to an ROC complaint, please call Kent Lang or Mike Thal at 480-947-1911.

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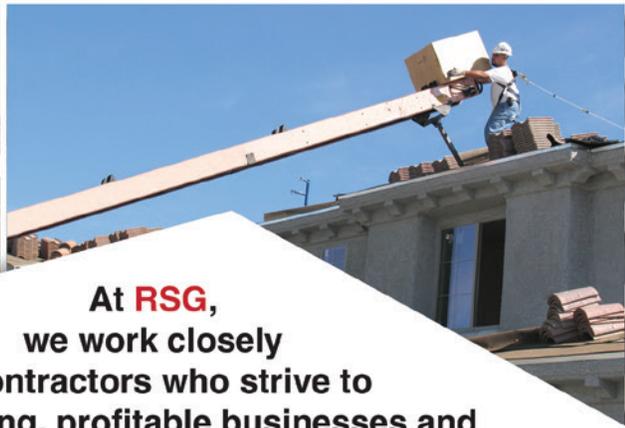
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2016 OSHA Predictions...

By
Fred Hosier

As the Obama administration gets ready for its last full calendar year, OSHA could enact some of the most significant changes its made in recent memory.

Here are five areas to watch this year regarding OSHA:

1. **Penalties:** The 2016 federal budget allows OSHA to increase the maximums for fines for the first time since 1990. The bill allows OSHA to play catch-up, with a one time increase that could be up to 80%, potentially increasing the maximum for a serious violation from \$7,000 to \$12,500 and the top willful and repeat penalty from \$70,000 to \$125,000. The budget calls for the adjustment to “take effect not later than August 1, 2016.”
2. **New inspection priorities:** OSHA officially launched its new Enforcement Weighting System (EWS) on Oct. 1, 2015. The EWS gives the green light for OSHA to conduct fewer inspection, but increase the number of facility check-ups involving more complex hazards, including process safety management, ergonomics, heat hazards, permissible chemical exposures, workplace violence and combustible dust.
3. **Company injury records online:** OSHA’s “Improve Tracking of Workplace Injuries and Illnesses” draft final rule arrived at the Office of Information and Regulatory Affairs on Oct. 5, one of the last steps before a regulation is enacted. The proposal would add new electronic injury reporting requirements for companies. It would also make companies’ injury data avail-

able online to the public. That part of the regulation has been unpopular with some business and safety groups. In a Safety News Alert poll this fall, only 38% of respondents said they were in favor of the idea, with 31% opposed and 31% unsure.

4. **New/revised regulations:** OSHA’s fall 2015 regulatory agenda listed four rules for final action

in the first four months of 2016: Occupational Exposure to Crystalline Silica; Walking Working Surfaces and Personal Fall Protection Systems (Slips, Trips and Fall Prevention); the above-mentioned injury reporting rule; and Updating OSHA Standards Based on National Consensus Standards: Eye and Face Protection. The silica rule is being closely watched by safety advocates who consider this a must-do rule before the end of the Obama administration. The rule would update the permissible exposure limit for silica.

5. **Permissible exposure limits:** OSHA expects to complete its analysis of comments in April 2016 on its proposal to update PELs for hazardous chemicals. Various approaches to updating PELs are being considered. Meanwhile, some jurisdictions aren’t waiting for federal OSHA. “It is clear that federal OSHA will never be able to keep the regulatory levels sufficiently up to date, at least until a completely new approach is developed and adopted,” Oregon OSHA administrator Michael Wood said. Wood’s statement was followed by the announcement that Oregon would look for ways the state can better encourage employers to adhere to more updated PELs, such as NIOSH Immediately Dangerous to Life or Health Concentrations, and it would tackle four to six of the most significant and outdated PELs at its own state level. 

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13 Steps to Lowering Your Workers Comp

By CopperPoint Insurance Company

CopperPoint specialists are always looking for ways to reduce your workers compensation costs. But a safe workplace just doesn't happen; it takes commitment from everyone – from the top down.

There must be no doubts about the priority you place on your employees' safety and health. By following these 13 steps, you can impact the costs of your workers compensation insurance.

1 Management Commitment When management continuously demonstrates genuine interest in preventing accidents and in providing a safe and healthful workplace, supervisors and employees more likely will do the same.

2 Supervisory Accountability Because supervisors or team leaders work with line-level employees daily, the job of reinforcing safe work behavior falls to them.

Management specifically should instruct supervisors about the steps they need to take when directing employees to work safely.

3 Observe Careful Hiring Practices Company personnel who do the hiring need to ensure that job candidates are matched carefully with the skills and abilities for the job. Job references always should be checked, and specific questions dealing with former safety practices should be explored.

4 Prevent Accidents In any business, accident prevention is the key to keeping claims costs low.

5 Danger Awareness Be aware of and immediately fix any hazardous conditions. Report hazards immediately, so that they can be corrected.

6 Set Up and Publicize Your Company's Safety Policy CopperPoint's loss control consultants work with you to provide safety and educational training programs. We will show you how to conduct a safety audit, which assesses your entire safety system and involves all your employees.

7 Report Injuries Immediately All accidents and significant incidents should be reported promptly and investigated to determine the causes.

Promptness is essential, as those involved may forget important facts.

Filing First Notice of Loss (Form 101), also called Employer's Report of Injury, is the first step in determining compensability and helps to ensure that your employee will get the required medical treatment. For your convenience, you can file a claim online at copperpoint.com.

The online service provides employers an instant claim number when filing is completed. Once the form is sub-

mitted, a copy can be printed or can be saved to your computer in PDF format.

CopperPoint will mail a hard copy of the filed claim on your behalf to the Industrial Commission of Arizona (ICA) within 24 hours.

8 Partnership is the Key Work with your CopperPoint claims adjuster to report any pertinent changes or facts relating to a claim.

Staying in close communication with CopperPoint helps us help you keep your costs down.

9 Exercise Medical Control Since medical bills make up the bulk of claims expenses, it is important to direct injured workers to a physician or clinic in the Preferred Connection Network (PCN).

Under Arizona law, employers are allowed to direct injured workers to a physician of the employer's choice for the first visit. Many will continue to be seen by the same doctor for follow-up visits.

All doctors and clinics that are part of CopperPoint's medical network offer quality care at rates discounted from the ICA physicians' fee schedule.

As an added bonus, PCN providers agree to make referrals only to other medical providers within the network.

CopperPoint suggests that employers preselect a preferred provider facility before an accident occurs and advise workers in writing of the designated site.

10 Encourage Transitional Work Programs Develop and maintain transitional work programs and encourage early return to work. Premiums are reduced; the risk of possible litigation is lowered; less retraining is required as there is no need to hire additional employees; employee morale is bolstered, which increases overall productivity – all of which help lower your costs.

11 Report Possible Subrogation Actions Subrogation actions involve cost recovery from any third party that may have contributed to the injury or illness.

At CopperPoint, our Legal Team will pursue subrogation matters at no cost to you. Depending on the circumstances, this could result in huge cost savings to you.

12 Look For and Report Suspected Fraud Our investigators aggressively pursue suspected fraud cases. When you fill out the First Notice of Loss (Form 101), if you question the validity of the claim there is an area (item 31) for you to express your concerns.

Our investigators maintain a confidential fraud hotline, 800.526.5226, to report suspicious activity.

13 Association Safety Program (ASP) participation By participating in the Association Safety Program, policyholders may earn a "bonus" dividend in addition to their individual dividends, based on the safety success of the association. 🏠



TPT Update — Arizona Postpones Key Sales Tax Reforms...Again!

This state and local tax (SALT) column addresses the latest, indefinite, delay to Arizona's effort to simplify its sales tax system.

In 2013, the Arizona Legislature passed a transaction privilege (sales) tax reform bill. As one of just four states that allow municipalities to administer their own sales taxes, one of the legislature's primary objectives was to simplify the state's sales tax system by doing away with the requirement for some businesses to:

- Obtain municipal sales tax licenses from up to 18 cities that administer their own sales taxes (non-program cities);
- File municipal sales tax returns with up to 18 non-program cities; and
- Remit sales taxes to up to 18 non-program cities.

The Intended Effective Date and the Initial Delay

Arizona's sales tax reforms were to be effective on January 1, 2015, and some of the changes did go into effect on that date — like Arizona's cumbersome new rules governing the taxation of construction contractors and the rule that prevents municipalities from initiating a new sales or use tax audit on a company unless the company is only engaged in business in one municipality or the municipality is authorized by the Department of Revenue (Department) to conduct the audit.

However, the most important simplifications, those that would have required the Department to issue all municipal sales tax licenses, to process all municipal sales tax returns, and to receive all municipal

sales tax payments, did not go into effect on January 1, 2015 as planned. Instead, late in 2014, the Department announced that these key reforms were being delayed until January 1, 2016 due to the "complexity and scale of programming" required.

The Latest Delay Indefinite

Now, roughly two and a half years after former Arizona Governor Jan Brewer signed Arizona's sales tax reforms into law, the Department updated its website to indicate that it will not issue sales tax licenses for non-program cities, process sales tax returns for non-program cities, or receive sales tax payments for non-program cities beginning January 1, 2016 because its computer system still is not ready — and this time the Department did not indicate when its computer system will be ready to implement these important reforms.

A Silver Lining

When Arizona passed its sales tax reforms in 2013 there were 18 non-program cities. Since then, three cities — Bullhead City, Somerton, and Willcox — allowed the Department to begin collecting sales taxes for them beginning January 1, 2015 and, effective January 1, 2016, the City of Sedona will allow the Department to begin collecting sales taxes for it.

So, as of January 1, 2016, Arizona taxpayers will "only" have to juggle additional sales tax licensing, filing and payment responsibilities in up to 14 non-program cities — Apache



by James G. Busby, Jr., CPA

Junction, Avondale, Chandler, Douglas, Flagstaff, Glendale, Mesa, Nogales, Peoria, Phoenix, Prescott, Scottsdale, Tempe and Tucson.

Practice Tip!

CPAs who work for or consult with businesses that are subject to Arizona sales and use taxes should make sure their companies and clients realize that Arizona's non-program cities will continue issuing separate sales tax licenses and requiring separate sales tax returns and payments for the foreseeable future. ■

James G. Busby, Jr., CPA, is a state and local tax attorney at The Cavanagh Law Firm. Busby previously worked in the SALT departments at Arthur Andersen and Deloitte & Touche. Before entering private practice, Busby was in charge of all transaction privilege (sales) tax audits at the Arizona Department of Revenue. If you have any questions, please contact the author. He can be reached at (602) 322-4146 or JBusby@CavanaghLaw.com.



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Clarification on OSHA Recordkeeping Regulations

By Rob Foote, Roofing Risk Advisors

OSHA has recently proposed a clarification to its recordkeeping regulations, which, according to OSHA, emphasizes its long-standing position on employers' obligations to make and maintain accurate records on workplace-related illnesses and injuries. However, some industry experts believe that the clarification wrongfully extends OSHA's statute of limitations past the six months allowed by the OSH Act.

Current Regulations and the Proposed Clarification

The current recordkeeping regulations require employers to record information about certain workplace-related injuries and illnesses. These incidents must be recorded in a log of all workplace-related injuries and illnesses, in an individual incident report with additional details and in an annual workplace injury and illness summary. Employers are also required to retain these records for at least five calendar years.

In the proposed clarification, OSHA emphasizes that the failure to record a recordable illness or injury, or the failure to retain accurate records, is a continuing violation that is enforceable at any point up to six months past the five-year retention period.

U.S. Court of Appeals Decision

The proposed clarification is in response to a 2012 U.S. Court of Appeals decision, *AKM LLC v. Secretary of Labor*. In the decision, the court unanimously chose to va-

cate OSHA recordkeeping citations against an industrial contractor, Volks Constructors.

In late 2006, OSHA cited Volks Constructors for failing to properly record workplace-related injuries and illnesses during a period between 2002 and early 2006. Volks appealed the citations, arguing that OSHA issued the citations after the six-month statute of limitations allowed by the OSH Act.

The court ruled in Volks's favor, and stated in its written decision that under the current recordkeeping regulations, the five-year retention period could not extend the OSH Act's statute of limitations.

Ongoing Considerations

The proposed clarification has provoked various responses from labor and workplace experts. Some believe that the clarification is an attempt to circumvent the court's decision in *AKM LLC v. Secretary of Labor* by extending the statute of limitations past six months. However, others view the clarification as OSHA's attempt to address the decision and emphasize employers' obligations to monitor workplace safety. Nonetheless, employers are required to create and retain workplace-related injury and illness records. 🏠

ARCA Holiday Party

Held on December 9th, this was the first ARCA holiday party that took place before the actual Christmas holiday. It was also the first ARCA Christmas event without the words "ugly" or "sweater" in the title, although the party did feature a well-participated-in ugly sweater contest (proudly won by **Julie Hill** of **WRECORP**, pictured below). In addition to the costume-cardigan fun, plenty of delicious refreshments were enjoyed and promising connections made, with over 75 people in attendance. Thank you to **National Bank** and **Mike Hasenkamp** for being our gracious host; a great time was had by all.



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THIS IS A PAID ARCA EVENT. CANCELATIONS AFTER APRIL 8, 2016 WILL BE NON-REFUNDABLE, SUBSTITUTIONS ARE ALLOWED.



Important Changes to Four Arizona Tax Credits

By James G. Busby, Jr., CPA

For the first time in many years, the Arizona Legislature did not create any new income tax credits this year, but it did make five important changes to four existing tax credits. All of the changes either expanded the scope of existing credits or extended the deadline to make qualifying contributions.

1. Changes to the Credit for Contributions to Public Schools

Two bills changed Arizona's individual income tax credit for qualifying contributions to public schools. This dollar-for-dollar credit is good for up to \$200 for single taxpayers and for up to \$400 for married taxpayers filing jointly.

First, in HB 2066, the legislature expanded the scope of the credit, which previously was available only for contributions to support extracurricular activities or character education programs at public schools. The credit is now available for contributions to public schools to support preparation courses, materials, fees for standardized testing for college credit or readiness, and contributions to support career and technical education certifications. These changes are retroactive to January 1, 2015.

Then, in HB 2483, the legislature extended the deadline to make qualifying contributions. Individuals may now make contributions to public schools on or before the 15th day of the fourth month following the close of the taxable year and claim a credit for the contribution in either the current year or the preceding year.

2. Changes to the Credit for Contributions to Charities that Assist the Working Poor

Two years ago, the legislature doubled the maximum dollar-for-dollar individual income tax credit taxpayers may claim for contributions to qualifying charitable organizations, from \$200 for single taxpayers and \$400 for married taxpayers filing jointly, to \$400 and \$800, respectively, if the donee is a qualifying foster care charitable organization.

This year, in SB 1103, the legislature expanded the scope of the credit available at the higher amounts to include donations to qualifying charitable organizations that spend at least 50 percent of their budget on, and provide services to, at least 200 persons less than 21 years of age who participated in a qualifying transitional independent living program.

3. Changes to the Credit for Corporate Donations to Private School Tuition Organizations

HB 2153 extends existing dollar-for-dollar corporate income tax credits for contributions to school tuition organizations by an S corporation to shareholders of the corporation, as long as the corporation contributes an aggregate of at least \$5,000 in the tax year. Shareholders of such corporations may claim pro rata shares of the credit and carry forward unused portions of the credit for up to five years. These changes are retroactive to January 1, 2015.

4. Changes to the Credit for Investments in Renewable Energy Facilities

Last year, the legislature added non-refundable dollar-for-dollar individual and corporate income tax credits that may be carried forward for up to five years for manufacturers - and lessors who lease qualifying facilities to manufacturers - that invest at least \$300 million in new renewable energy facilities that produce electricity used in the companies' own manufacturing processes.

Limitations to the credit added last year include: (1) the amount of the credit was limited to \$1 million per facility per year for five years; (2) no taxpayer may claim more than \$5 million in credit per year; (3) ADOR may not authorize more than \$10 million in credits per calendar year on a first-come, first-served basis; and (4) taxpayers may not claim both this credit and the credit for renewable energy production.

This year, in HB 2670, the legislature increased the amount of the credits available per taxpayer from \$1 million to \$5 million per year, and made the credits available to taxpayers that use the energy from the renewable energy facility primarily for an international operations center. These changes are retroactive to January 1, 2015.

Among other requirements, to qualify as an international operations center, the owner or operator of the facility must: (1) invest at least \$1.25 billion in new capital assets, including the cost of land, buildings, and equipment, within ten years of certification, and (2) make a minimum annual investment of \$100 million in new capital assets, including the cost of land, buildings, and equipment, for 10 consecutive years. Excess investments in prior years can be carried forward as credits in future years to meet this threshold. 



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Background Checks:



Minimizing Risks

or How to Reject an Employment Application Without Being Sued

This article will address whether an employer should conduct a background check and, if it chooses to do so, how to avoid potential liability.

When to Run a Background Check

Background checks allow the potential employer the ability to determine whether a job applicant has committed a crime or mishandled their finances. This information is valuable to protect the employer and others (i.e.: third parties). It protects the employer from harm caused by the employee directly upon the employer, for example, a future theft. It protects others from harm by the employee, for instance, a future car accident. When an employee harms a third party, the employer becomes susceptible to a claim of property damage and negligent hiring.

Negligent hiring claims most often occur 1.) when the employee is in a position of trust, for example, handling other people's money, 2.) when firearms are involved, for example, a security guard, 3.) when dealing with the public; or 4.) when the employee was driving a vehicle at the time of an accident. For roofing companies who are considering hiring a particular employee who will be driving on the job, obtaining a report containing the applicant's driving history is of the utmost importance. Doing so keeps the company vehicle safe and avoids liability from third parties. The easiest way to obtain driving records is to have the applicant sign a Consent To Release Motor Vehicle Record—One Time, form #96-0463, at the time he/she applies for the job. That form allows the employer to obtain the employee's driving records from Arizona Department of Motor Vehicles.

When hiring an employee who will operate a commercial vehicle, pursuant to rules set forth through the U.S. Department of Transportation, an applicant must be provided a detailed application with specific questions that are set out within the rules.

A criminal background check should be conducted on any potential employee who will be handling money or driving a vehicle. Employers should disclose on its job application that it intends to run a background check on the potential employee.

Running a Credit Report on an Applicant

Employers can run a credit report on the potential

employee. The rules surrounding the disclosure of the use of credit reports are governed by the Fair Credit Reporting Act. Before obtaining a standard credit report, the employer must have the applicant sign a document, separate from the application form, authorizing the employer to run one. If an employer requests a more detailed investigative report, that is, one that includes interviews with persons who have personal knowledge of the applicant's lifestyle, reputation or personal characteristics, the employer must mail a written notice of the request to the applicant within three days of requesting the investigation. The notice must advise the applicant of the nature and scope of the investigation. If the applicant does request the information, the employer has five days to provide the applicant the name of the agency used for the investigation, questions asked of the witnesses, and types of witnesses. The employer is not required to identify the witnesses or the contents of their statements.

If the credit reporting agency provides information within the public record, for example, lawsuits, criminal records, and driving records, the credit reporting agency must report to the applicant that that information was provided to the employer. Otherwise, the credit reporting agency has no obligation to advise the applicant what information the credit reporting agency disclosed.

If the employer takes adverse action based upon what is in the credit report, the employer must provide oral, written or electronic notice of the adverse action. In addition, the employer must provide other information to the applicant. The notice requirements include contact information for the credit reporting agency, a notice that the credit reporting agency did not make any decision on hiring and that it cannot explain why the adverse action was taken, a notice of the applicant's right to obtain a free copy of the report from the credit reporting agency and another notice of the right to dispute the information in the report. An employer faces exposure to actual damages, in some cases, punitive damages, attorney's fees and costs, and even exposure to criminal liability for those who fail to comply with the Fair Credit Reporting Act. In spite of this exposure, credit reports should be run in the hiring situations described above. With a little care, including obtaining authority to run the reports when running a basic report, the employer can avoid potential liability.

Timothy D. Ducar is an attorney practicing general litigation matters, including business, construction, employment, ADOSH and Registrar of Contractor issues. He is Chair of ARCA's ROC Committee and practices in Arizona, California, Nevada, Utah, Idaho, and soon, Hawaii. He will provide you written materials that discuss increasing collections at no cost. If he cannot assist you with your particular legal matter, he will refer you to a competent attorney. He can be reached at (480) 502-2119.

DO YOU KNOW ?

How much fall protection does a **roofing supplier** need?

Question: *I am a supplier of roofing materials. I deliver roofing materials to the job and place the material on the roof. What are my obligations?*

Answer: Because your product will be used during the construction activity you will be required under Subpart M to protect your employees from falls of 6 feet or more to lower levels when possible. Therefore, employees must be provided with personal fall arrest equipment to attach to an anchor point if available. In case of vendors delivering roofing materials, OSHA will require the following:

Gaining Access to the Roof: A handhold (rope, chain, or other railing) must be attached to the conveyer belt so that the employee has something to steady himself with as he gains access to the roof or a ladder must be

used to gain access to the roof.

Distributing the Roofing Materials: Once on the roof the vendor's employee will receive the roofing products from a conveyer belt (lift truck or similar equipment) and then distribute the products onto the roof at various locations. During this distribution process, OSHA will not require the vendor's employees to install an anchorage point for fall protection equipment regardless of the slope off the roof or the fall distance.

Basis for Decision: Delivering the materials directly to the roof eliminates hazards for other employees on the job who otherwise would have to move the materials from ground level to the roof. In recognition of this and in recognition that the roofing supplier will only be on the roof for a short period of time and focused on one task, OSHA is issuing this compliance interpretation. However, if the contractor has a suitable anchorage point available for use by the vendor's employee, it should be used. 🏠



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CPR and ~Now Featuring~ First Aid in Phoenix (English) Jan 20
 ARCA office (4745 N. 7th St., Ste. 103, Phoenix) 8:00am

OSHA 30-Hour Training in Phoenix (English) Jan 22, 29, Feb 5, 12
 ARCA office (4745 N. 7th St., Ste. 103, Phoenix) 8:00am-3:30pm

february

Tile Roofing Installer Certification (Phoenix) Feb 11
 ARCA office (4745 N. 7th St., Ste. 103, Phoenix) 8:00am-4:00pm

Fall Protection Training in Tucson (English) Feb 12
 3143 N. Freeway Industrial Loop Tucson 8:00am-9:00am

march

Spring Training Networking Event March 7
 Salt River Fields, 7555 N. Pima Rd., Scottsdale 12:10pm

april

ARIF Spring Sporting Clays Tournament April 15
 Ben Avery, 5060 W. Skeet Street, Phoenix 6:30am

may

AZ State Contractors Coalition Spring Golf Tournament May 13
 ASU Karsten Golf Course, 1125 E Rio Salado Pkwy, Tempe, AZ 7:30am

ARCA Spring Golf Tournament May 20
 Ocotillo Golf Resort, 3751 S. Clubhouse Dr, Chandler 6:00am

october

ARCA 2016 Convention and Trade Show Oct 6-8
 Tucson Casino Del Sol, 5655 W Valencia Rd. 247

Welcome New ARCA Members

ARCA extends a warm welcome to our newest Members who recently joined the association:

- **Allphase Construction**
Anthony Chance Williams, 602-953-7750
- **Answer 1, LLC**
Sandra Broussard, 602-234-0111
- **Five Guys Construction**
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