



# THE BASESHEET

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VOLUME 15, NUMBER 4 | FOURTH QUARTER, 2014

## GREETINGS FELLOW ARCA MEMBERS:

*Last quarter I quipped about dreams of golf ball sized hail raining down and kick-starting a strong fourth quarter. While we did get a few isolated hail storms, the damage was very limited, but the deluge of rain we received certainly was greatly appreciated. It's always great to hear roofers talk about the phone ringing off the hook and backlogs for repairs and estimates stretching from weeks to months. This is the kind of problem we need more of and let's all try to get financially healthy as we work through the requests and backlogs.*

*For those of you who were not able to join us at the 45th Annual Convention and Trade Show in Laughlin you really missed a unique experience. Overall the weather cooperated with mild temperatures and the venues at both Harrah's for the Get Acquainted Party and the rest of of functions at the Aquarius were all well received by attendees. The golfers had to overcome some strong wind gusts but everyone took it in stride and a good time was had by all playing some very beautiful top rated courses. At members request the convention committee moved the location from our traditional setting in Prescott and it proved to be well worth the additional driving time. Moving the site was a risky decision and I want to thank all of sponsors and attendees for backing our decision and their continued support. The diversity of restaurants, free time activities and the larger feel of our surrounding all added a little something extra to the experience. We will be back in Prescott the first week in October next year so mark your calendars.*

*Looking ahead we have much to accomplish before the year ends. ARCA staff and key committee chairs are continuing their efforts to get issues clarified on the ongoing fall protection controversy. It is no longer a question of if residential will return to the 6' standard but really just a matter of when. We have already been told there will be no phase in date and total compliance will be required when the transition date is announced. On this issue we at least know what is expected of us and we have the ability to comply. Not everything is a clear regarding numerous provisions, processes and timelines required in the Transaction Privilege Tax that becomes effective Jan 1st. ARCA was a signatory, along with numerous other construction trade organizations, business leaders and tax consultants, on a recent request to Governor Brewer to call a special session of the legislature to address inadequacies in this bill --- she subsequently denied the request. This flawed legislation is a real mess and no one knows how to comply because of all the vagaries that puts all members at risk, despite best intentions, of failing an audit. We will continue to be at the table trying to get clarification of what is needed to comply.*

*Charity bowling, convention, sporting clays, golf and numerous other activities all start ramping up for those events the first of the year so now is an ideal time to think about increasing your involvement. ARCA staff can help you connect with the event chairs to discuss how your volunteer time can help. The 2014 membership and sponsorship renewal notices will be mailed on November 3rd. Membership dues for 2015 will remain at \$400 and there have been some slight modifications of the Sponsorship amounts and benefits. Your continued financial support of ARCA allows us to offer the free safety training to all members and pursue legislation that eases the regulatory and tax burden on construction / roofing professionals. I thank you in advance for your continued support.*

Sincerely,

*John Yoder*



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## OSHA tightens rules on reporting of workplace deaths, injuries

The federal government on Thursday moved to tighten its rules on the reporting of workplace deaths and severe injuries, declaring that employers beginning Jan. 1 must report any fatalities within eight hours of the accident or incident.

Work-related hospitalizations, amputations or losses of an eye will now have to be reported within 24 hours, under the final rule announced by the Labor Department's Occupational Safety and Health Administration.

Previously, OSHA's regulations required such reports to be filed only if three or more workers were killed or hospitalized while on the job.

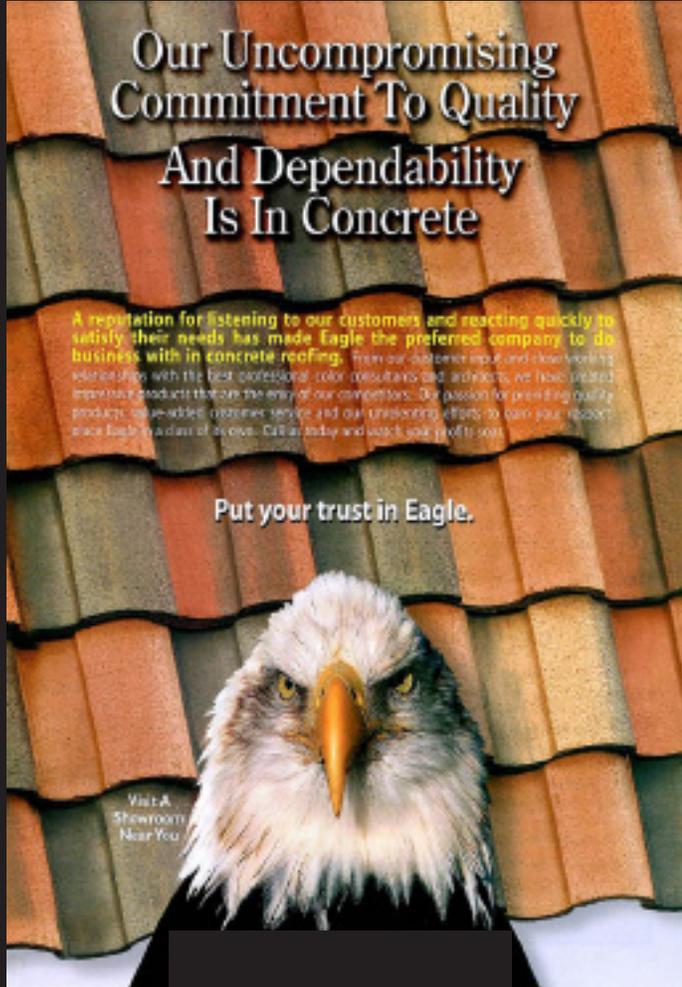
OSHA said no company will be exempt, no matter how small.

"We can and must do more to keep America's workers safe and healthy," Labor Secretary Thomas E. Perez said in a statement. "Workplace injuries and fatalities are absolutely preventable, and these new requirements will help OSHA focus its resources and hold employers accountable for preventing them."

The new rule followed the release Thursday of the annual report by the Bureau of Labor Statistics on fatal occupational injuries. It reported that 4,405 workers were killed on the job in the United States in 2013.

Reporting single hospitalizations, amputations or loss of an eye was not required under the previous rule.

Hospitalizations and amputations because of workplace incidents can be clear signals "that serious hazards are likely to be present at a workplace and that an intervention is warranted to protect the other workers at the establishment," said Dr. David Michaels, assistant secretary of labor for occupational safety and health. 



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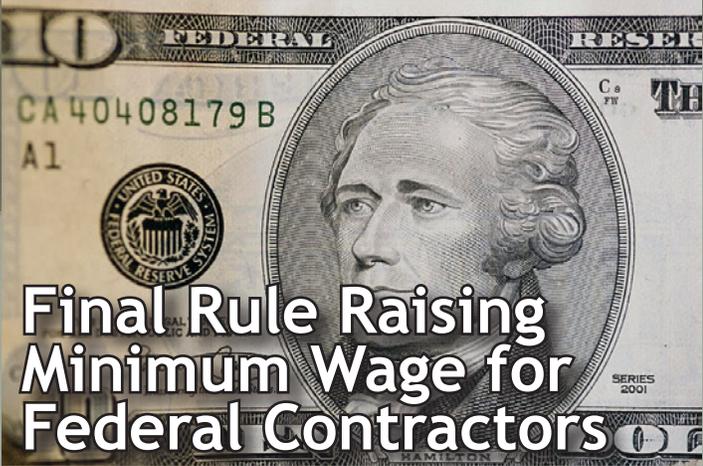
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NATIONAL ROOFING CONTRACTORS ASSOCIATION



# Final Rule Raising Minimum Wage for Federal Contractors

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The Secretary of the U.S. Department of Labor (DOL), Thomas Perez, recently issued the final rule raising the minimum wage for workers on federal service and construction contracts to \$10.10 per hour. The final rule enacts Executive Order 13658, “Establishing a Minimum Wage for Contractors,” signed by President Barack Obama on February 12, 2014. The executive order makes the wage increase effective January 1, 2015.

Following publication of the proposed rule on June 17, 2014, the DOL received more than 6,500 comments. Comments favoring the increase came from groups such as the AFL-CIO, while opposition came from groups such as the U.S. Chamber of Commerce. The final rule amends the Code of Federal Regulations and “establish[es] standards and procedures for implementing and enforcing the minimum wage protections of Executive Order 13658.”

The final rule states that a contract clause regarding the minimum wage requirements must be included in lower-tier subcontracts, not just the prime contract awarded by the federal government. Note that the minimum wage is applicable only to “new contracts.”

A contract is a new contract if the solicitation for the contract was published on or after January 1, 2015. Existing contracts are also new contracts if, through bilateral negotiation on or after January 1, 2015, (1) the contract is renewed; (2) the contract is extended, unless the extension is made pursuant to a term in the contract as of December 31, 2014, providing for short-term limited extension; or (3) the contract is amended pursuant to modification that is outside the scope of the contract. A subcontract is not a new contract unless the prime contract under which the subcontract is awarded results from a solicitation offered on or after January 1, 2015.

Under the rule, employers are still permitted to make the usual deductions from wages for withholding taxes, withholding in accordance with court orders, voluntary assignment by workers to representatives (e.g. union dues), and the reasonable cost of lodging and other facilities.

Federal contractors should also be aware that, “to the extent a lower-tier subcontractor fails to pay its workers the applicable [] minimum wage even though its subcontract contains the required contract clause, an upper-tier contractor may still be responsible for any back wages owed to workers.”

While the new rule does not create a private right of action for employees, it does contain a provision prohibiting employers from retaliating against employees for filing complaints or testifying regarding violations of the minimum wage requirements.

Finally, federal contractors should note that they are required to make their covered employees aware of the new minimum wage. The rule provides a poster that federal contractors can use to satisfy this requirement.

The final rule is slated for publication in the Federal Register on October 7, 2014. [🏠](#)

## OSHA announces top 10 workplace safety violations for 2014

The Occupational Safety and Health Administration (OSHA) announced the preliminary top 10 most frequently cited workplace safety violations for fiscal year 2014 at the National Safety Council (NSC) Congress & Expo in San Diego, according to [www.inddist.com](http://www.inddist.com). The fiscal year runs from Oct. 1, 2013, through Sept. 30, 2014.

Following is the preliminary list of top 10 violations:

- Fall protection—6,143 violations
- Hazard communication—5,161 violations
- Scaffolding—4,029 violations
- Respiratory protection—3,223 violations
- Lockout/tagout—2,704 violations
- Powered industrial trucks—2,662 violations
- Electrical: wiring methods—2,490 violations
- Ladders—2,448 violations
- Machine guarding—2,200 violations
- Electrical: general requirements—2,056 violations

“We greatly appreciate our colleagues at OSHA sharing their most recent data at the nation’s largest gathering of safety and health professionals,” says NSC President and Chief Executive Officer Deborah A.P. Hersman. “This data is a poignant reminder that there is still much room for improvement in making our workplaces safer and that it is going to take all of us to make a difference.”

The final report on the top 10 most frequently cited workplace safety violations will be published in the December issue of the NSC’s Safety+Health magazine. [🏠](#)

# Legislative Update



## State of Arizona:

Early polling indicates that Republican Doug Ducey has a significant lead in becoming the next governor over Democrat Fred Duval. Which ever candidate prevails it is expected that all the key agency heads will turn over resulting in new administrators, personalities and agenda's for both the Department of Revenue and the Registrar of Contractors. ARCA along with our sub contract association partners has been pressing the Department of Revenue for clarification on new Transaction Privilege Tax protocols and processes. We have gained some concessions from them in that they delayed the single point for submission (portal) for one year until Jan 1, 2016. Still of major concern is the different taxing and tracking protocols required if purchased material is used for new construction or maintenance / repairs or replacement. The state association of CPA's has joined in the battle and we will keep the members apprised of our progress. For those who have not followed this issue please view the synopsis on the following page.

## Federal:

With Congress in recess so lawmakers can campaign full time, all attention is on the Nov. 4 midterm elections. Congress will reconvene in November for a "lame duck" session to take care of unfinished business.

With less than four weeks to go before election day, all eyes are on the battle for the Senate majority, which still could go either way. As many as nine Senate races currently are within the margin of error in polling data. Republicans need a net pick-up of six seats to gain the Senate majority in 2015, which would give the GOP full control of Congress for the first time since 2006.

House Republicans appear poised to add to their majority Nov. 4, perhaps significantly. Non-partisan election observers are predicting Republican net House gains of anywhere from two to twelve seats. Adding to their majority could help Republicans move forward on several legislative issues in 2015, including tax and immigration reform, a transportation bill and possibly other initiatives.

## OSHA Safety Standards

NRCA submitted comments to the Occupational Safety and Health Administration (OSHA) in response to a supplemental notice issued by the agency proposing enhanced whistleblower protections as a component of a new regulation proposed in November 2013. The original proposed regulation, if implemented, will require businesses to electronically file all injury and illness reports with the agency, and then OSHA will post the reports on the Internet for public review. During the initial comment period, some commenters asserted that the new reporting requirements could cause employers to adopt practices that discourage employees from reporting injuries. OSHA subsequently proposed additional whistleblower protections as a new component of the proposed regulation to handle these

alleged concerns. NRCA filed comments noting OSHA's supplemental notice is based on unsubstantiated claims, contains little or no empirical data to justify its remedy and would be duplicative because the Occupational Safety and Health Act already provides a remedy for the issue the agency seeks to address.

## Green Building Standards

NRCA has long been a proponent of increasing the number of green building standard options the federal government may use for federal building construction. Until recently, the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) standard was the only green building standard that could be used by the federal government. But because of pressure from NRCA and other industry groups, the General Services Administration recently authorized the use of the Green Globes building standard as an option for federal agencies to consider with respect to federal commercial and industrial construction. In September, NRCA joined a coalition of organizations in supporting an amendment to the National Defense Authorization Act that would provide for the use of the International Code Council 700 National Green Building Standard (NGBS) to be used in the construction of residential buildings by the Department of Defense (DOD) in addition to LEED. The coalition letter noted that NGBS has roughly the same market share as LEED in the private sector, promotes higher levels of energy efficiency and is developed using a consensus-based process certified by the American National Standards Institute. Allowing the use of the NGBS will help promote healthy competition between green building standards used by the DOD.

## Congressional Budget

In September, Congress approved a continuing resolution (CR) to provide funding for federal government operations for the new fiscal year, which began Oct. 1. A CR is a stop-gap measure that extends funding for agencies at existing levels and was necessary because Congress has not passed a single appropriations bill this year. The CR extends existing funding through Dec. 11, so Congress must address the budget again during the "lame duck" session that will take place after the elections. Lawmakers may enact another CR to extend existing funding levels for the remainder of the 2015 fiscal year, or they may take up an omnibus appropriations bill that would reprioritize funding for federal agencies. How Congress proceeds on this has implications for the roofing industry, as choosing to develop and pass an omnibus appropriations bill may provide the opportunity to adopt policy riders designed to block regulations from taking effect. NRCA and other organizations in the Construction Industry Safety Coalition have urged Congress to adopt an amendment to block implementation of OSHA's silica regulation, which is of great concern to NRCA and could be finalized by the agency as early as next year. 🏠

# How Arizona Sales Tax Reform Will Affect Contractors

By James G. Busby, Jr.

*This month's state and local tax (SALT) column focuses on how Arizona's transaction privilege ("sales") tax reform efforts will affect construction contractors.*

In 2013, Arizona Governor Jan Brewer successfully pushed for sales tax reform. Most of the changes, which will be effective on January 1, 2015, simplify the way businesses in Arizona report and pay their sales taxes and the way sales tax audits will be conducted and resolved. However, the changes also will substantively affect some construction contractors' sales tax obligations.

## How Construction Contractors Currently Are Taxed in Arizona

In most states, contractors simply pay sales tax on building materials when they purchase them. However, in Arizona, contractors currently are entitled to purchase building materials tax free because they are subject to a separate, "prime contracting," sales tax on 65% of their gross receipts from supervising, performing, or coordinating construction or demolition activities instead. So, for example, an Arizona contractor who is paid \$1,000,000 to construct a building is able to purchase the building materials used to construct the building tax free but is subject to Arizona sales tax on 65% of its gross receipts, or \$650,000. Under these existing rules, a plumbing company or another trade contractor that performs hundreds of small jobs all over the state in a particular month would have to keep track of where each job was performed, file a sales tax return to the state and, perhaps, multiple sales tax returns to different municipalities to account for its monthly sales tax obligations.

## Governor Brewer's Proposal

During the 2013 legislative session, Governor Brewer encouraged Arizona's legislature to repeal Arizona's separate prime contracting sales tax and just have contractors pay sales tax on the building materials they purchase instead, like contractors do in most other states. However, Arizona municipalities successfully lobbied against this proposal because they were concerned about the fiscal impact of this change (prime contracting taxes are paid to the city where the construction is performed, while retail sales taxes are paid to the city where the retailer is located).

## The Compromise

Accordingly, Gov. Brewer and Arizona's legislature agreed to a compromise with the cities under which: (1) new construction will continue to be taxed under Arizona's existing rules (i.e., no tax on building materials when the contractor purchases them because the contractor is subject to Arizona's separate prime contracting tax on 65% of their gross receipts instead), but (2) contractors who enter into a contract with an owner of real property only

to maintain, repair, replace, or alter that property are subject to tax on building materials when they purchase them, but they are not subject to Arizona's separate prime contracting tax.

## The Taxation of Contractors in Arizona, as of Jan. 1, 2015

Under the terms of this compromise, it will be business as usual for contractors who only engage in new construction activities (i.e., they will be subject to Arizona's prime contracting sales tax on 65% of their gross proceeds from new construction projects). And, contractors who only enter into contracts with owners of real property to maintain, repair, replace, or alter their property will only be subject to sales tax under the new rules (i.e., they will pay tax on building materials when they purchase them, but they are not subject to Arizona's separate prime contracting tax). The compromise should make it easier for trade contractors who perform hundreds of small jobs all over the state in a given month to comply with their sales tax obligations.

However, contractors who both engage in projects involving new construction and enter into contracts with owners of real property to maintain, repair, replace, or alter their existing property will have to comply with both Arizona's old sales tax rules for projects involving new construction and with Arizona's new sales tax rules for projects involving contracts with owners of real property to maintain, repair, replace, or alter their existing property.

Some issues to grapple with for contractors subject to tax under both the old and the new rules:

- How to separately account for and pay tax on building materials used on projects that fall under the new rules, but not on projects that fall under the old rules; and
- Distinguishing between projects that fall under the old rules versus the new rules (e.g., what is the dividing line between maintaining, repairing, replacing, or altering existing property versus new construction? And, the new rules may not apply to construction contracts with lessees versus owners).

*Practice Tip!* - CPAs who work with or for contractors may want to familiarize themselves with how Arizona sales tax reform will affect contractors by attending the ASCPA's Arizona Tax Luncheon on December 11, 2014. The ADOR employee responsible for implementing the new rules will make a presentation and answer our questions.

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James G. Busby, Jr., is a state and local tax attorney and CPA 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. A Dash of SALT™ is provided for informational purposes only and does not constitute legal counseling. Contact the author at (602) 322-4146 or [jbusby@cavanaghlaw.com](mailto:jbusby@cavanaghlaw.com). 

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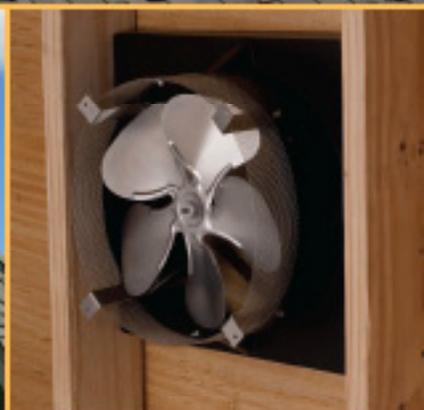


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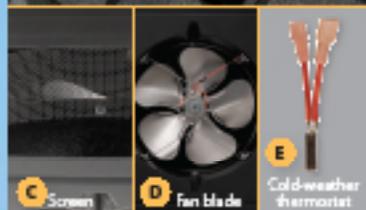
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Remote	Brown	31 001285
Gable	Black	31 001283
Thermostat	N/A	31 001280

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# Executive Order Requires New Disclosures for Federal Contractors

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On Thursday, July 31, 2014, President Obama signed an Executive Order called “Fair Pay and Safe Workplaces,” requiring covered federal contractors and subcontractors to publicly report labor violations, to forgo the use of mandatory arbitration agreements, and to ensure paycheck transparency. According to the White House, there are an estimated 24,000 businesses with federal contracts, employing approximately 28 million workers.

The Executive Order takes effect immediately, although it directs the Federal Acquisition Regulatory (FAR) Council to propose regulations for public comment to carry out the Order. In addition, the White House announced that it expects the Executive Order to be implemented on new contracts in stages, on a prioritized basis, during 2016.

This latest action is likely to fuel the ongoing controversy over the scope of executive powers, such as the recent lawsuit authorized by House Republicans challenging what they term presidential “imperialism.”

**Labor Law Violations.** For procurement contracts for goods and services, including construction contracts, where the estimated value exceeds \$500,000, the Executive Order requires reporting of labor and employment law violations that occurred in the past three years. A violation is considered an administrative merits determination, arbitral award or decision, or civil judgment. The laws covered span 14 federal laws and equivalent state laws, including the Fair Labor Standards Act (FLSA), Occupational Safety and Health Act, National Labor Relations Act, Family and Medical Leave Act, Title VII of the Civil Rights Act (Title VII), Americans with Disabilities Act, Age Discrimination in Employment Act, and Executive Order 11246, among others.

Under the Executive Order, each contracting agency is to designate a senior official who will serve as the agency’s Labor Compliance Advisor. With respect to reported violations, the Labor Compliance Advisor is directed to consult with relevant enforcement agencies and to advise the contracting agency whether agreements are in place or are needed to address appropriate remedial measures, compliance assistance, steps to resolve issues to avoid further violations, or other related matters.

During the performance of the contract, each agency must require contractors to update the information provided every six months and to obtain updated information from subcontractors. If violations occur during the contract performance, the agency may require an agreement for appropriate remedial measures and may take additional measures, such as opting not to exercise an option on the contract, terminating the contract, or referring the contractor for suspension or debarment.

The Labor Compliance Advisor is required to report publicly each year a summary of agency actions taken

to promote greater labor law compliance, including the agency’s response pursuant to the Executive Order to serious, repeated, willful, or pervasive violations of the enumerated labor and employment laws. To facilitate government-wide consistency in interpreting whether violations rise to this level, the Executive Order directs the FAR Council to consult with the Department of Labor, Office of Management and Budget, relevant enforcement agencies, and contracting agencies to develop appropriate standards.

**Mandatory Arbitration Agreements.** The Executive Order restricts contractors’ ability to use mandatory arbitration agreements for certain types of claims. For covered contractors or subcontractors, the Executive Order provides that the decision to arbitrate claims arising under Title VII or any tort related to or arising out of sexual assault or harassment only may be made with the voluntary consent of the employee or independent contractor after the dispute arises. Covered contracts are those where the estimated value of the supplies acquired and services required exceeds \$1 million, excluding contracts and subcontracts for the acquisition of commercial items or commercially available off-the-shelf items.

This provision does not apply to employees covered by any type of collective bargaining agreement. In addition, contractors that already have secured contracts valued at more than \$1 million and require their employees to arbitrate claims may continue to enforce the arbitration agreements, except that if the employer is permitted to change the terms of the contract or the contract is renegotiated or replaced, the arbitration requirement must be changed to comply with the Executive Order.

**Paycheck Transparency.** For those contractors and subcontractors subject to the labor law violation provisions, the Executive Order requires such businesses to provide to each individual performing work under the contract, in each pay period, a document with information concerning that individual’s hours worked, overtime hours, pay, and any additions to or deductions from pay. When employees are classified as exempt under the FLSA, the document need not include a record of hours worked, provided that the contractor has informed the individual of his/her exempt status. In addition, if the contractor is treating the worker as an independent contractor, rather than an employee, the contractor must provide a document informing the individual of this status.

**Next Steps.** It is possible that there will be legal challenges to the new Executive Order. In addition, the White House has announced that it will hold a series of “listening sessions” for the federal contracting community to share its views on how to ensure implementing policies and practices are both fair and effective. Input from these listening sessions, according to the White House, will be considered as regulations are drafted. In addition, regulations will be issued in proposed form for public comment. In the interim, employers who are covered contractors or subcontractors may want to consider compliance measures when creating or updating mandatory arbitration agreements and payroll reporting systems. 🏠

## Subpoena Power and the Arizona Registrar of Contractors

*Under a new, unannounced policy, the ROC is issuing subpoenas to investigate whether contractors continued to work while their licenses were suspended or revoked.*

*By Kent Lang & Mike Thal*

Under a new, unannounced policy, the ROC is issuing subpoenas to investigate whether contractors continued to work while their licenses were suspended or revoked.

Contractors whose licenses have been suspended or revoked sometimes continue to perform work for which a license is required. Such work violates Arizona law. The Arizona Registrar of Contractors has begun issuing subpoenas (see ROC draft policy dated June 6, 2014) to contractors whose licenses were suspended or revoked to determine whether the contractor ceased operations during the period of suspension or revocation.

It is unknown, at the time of this article, whether the ROC is targeting all suspended/revoked contractors or just those falling within certain categories, or picking contractors at random. Internal ROC documents indicate that a draft policy is being formed as to when such subpoenas will be issued, but it appears that, as of September 2014, no final and/or approved written policy is in place.

In any event, a contractor whose license is suspended or revoked should assume that it will receive a subpoena from the ROC. Typically, these subpoenas have requested production of documents generated during the suspension/revocation period as well as a week or two before and after that period. The form subpoenas currently used by the ROC request all of the following that relate to the specified period:

- invoices, contract, subcontracts, bids, estimates and proposals;
- bank statements, receipts, deposits, and checks received and issued;
- customer account records;
- work schedules, time cards, installation schedules, in-home estimate schedules and delivery schedules; and,
- correspondence (letters, emails and texts) between the contractor and its employees, subcontractors and agents.

If, during its disciplinary period, the contractor left a paper trail that would indicate business activity, and if the ROC uses that paper trail to conclude that the contractor performed work under a suspended or revoked license, the ROC will take legal action against the contractor. The penalties and other consequences can include:

- another investigation,
- another suspension,
- license revocation,
- monetary fine,



## Musculoskeletal Disorders Account for One Third of Lost Time Injuries and Workers Comp Claims

“Ergonomics” is a general term that has different meanings to different audiences. Most often, this term is applied to work-related musculoskeletal disorders (MSDs). The U. S. Department of Labor defines an MSD as an injury or disorder of the muscles, nerves, tendons, joints, cartilage, and spinal discs. In 2012, MSD cases accounted for 34 percent of all occupational injury and illnesses. The Bureau of Labor Statistics (BLS) reports that while the median number of days away from work involving lost time for all injuries was 8, the median number of days away from work increases to 12 when the source of the injury is a musculoskeletal disorder. In terms of costs to employers, it is estimated that \$1 of every \$3 of workers compensation costs are spent on MSD’s. Approximately 75% of these injuries are the result of overexertion that resulted in a sprain, strain or tear.

Implementing an ergonomics program can help to lessen muscle fatigue, resulting in increased productivity and a reduction in the number and severity of work-related MSDs. Implementing an ergonomic process has been shown to be effective in reducing the risk of developing MSDs in construction. Emphasis and constant reminders to roofing crews on proper manual lifting techniques contributes greatly to reducing these types of injuries. 

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- increased bonding requirement, and/or
- discipline against the contractor's other licenses.

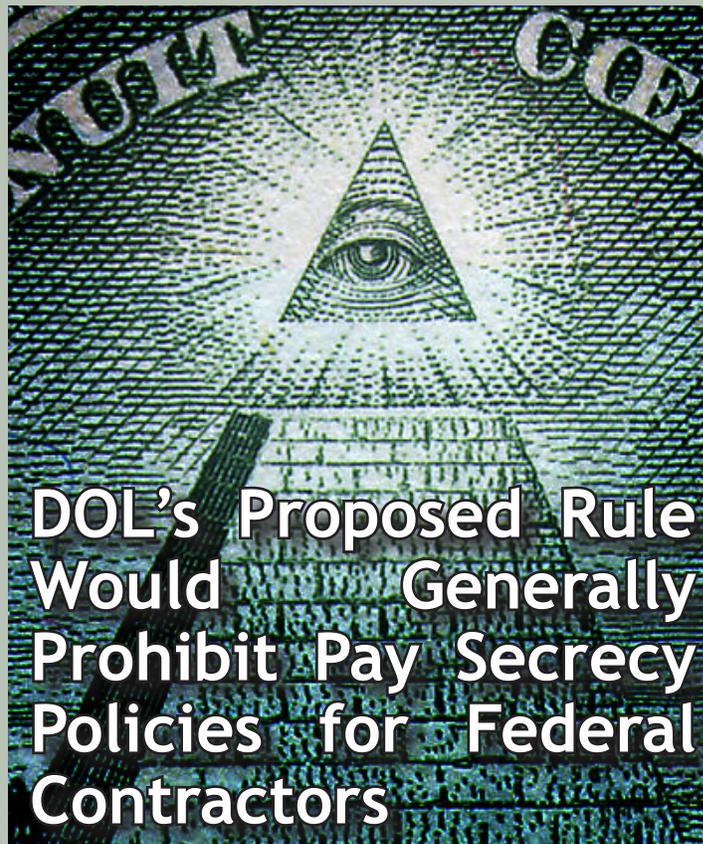
In addition, being perceived by the ROC as a "problem" contractor can make you a semi-permanent target on the ROC's radar screen and subject you to closer scrutiny.

#### Responding to an ROC Subpoena

If you receive a subpoena, do not ignore it. There are harsh penalties for failing to respond to a subpoena fully and in a timely manner.

In addition:

- Do not destroy the documents that the subpoena requires you to produce. Destroying documents almost always leads to harsher consequences than producing unfavorable documents.
- Before you respond to the subpoena, show it to your lawyer. Your lawyer might find grounds to object to the subpoena. The ROC must bring any dispute regarding the subpoena to Superior Court, where a judge can decide whether to uphold your objections.
- Do not delay in making your objections, being sure to submit all of your objections in writing to the ROC before the earlier of (a) 14 days from when the subpoena was issued or (b) the date stated on the subpoena to produce the documents.
- Ask your lawyer about other rights with respect to the subpoena. Subpoenas issued by the Superior Court in litigation must be issued on a form that lists your rights and obligations. The ROC does not use that form, so you should consult your lawyer about your rights.
- Make note of the deadline for producing documents and be sure to meet that deadline. If you need more time, you can make a written request to the ROC for an extension. The ROC may or may not grant that extension. You may also request extensions or other relief if the ROC files an action in Superior Court to enforce the subpoena. Your lawyer can help you here as well.
- Your lawyer can also help you avoid providing more documents than are required.
- Do not submit original documents unless ordered to do so by a Superior Court judge. Photo copies and scanned documents will generally be sufficient.
- If you do not have or cannot obtain a requested document, say so in your response.
- When you deliver the documents, include a Declaration of Service stating to whom you delivered them, what specific documents you delivered, and how and when they were delivered. 🏠



## DOL's Proposed Rule Would Generally Prohibit Pay Secrecy Policies for Federal Contractors

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) issued a proposed rule this week that would prohibit federal contractors and subcontractors from discriminating against employees or applicants for inquiring about, discussing, or disclosing their compensation or the compensation of other employees. The rule amends a 1965 executive order that sets forth the basic equal employment opportunity requirements for federal contractors and subcontractors.

The OFCCP stated that the proposed rule was aimed at eliminating the pay gap between men and women and among racial groups by providing workers with a "tool" to fight pay discrimination. The OFCCP noted that workplace policies prohibiting employees from discussing compensation may prevent an employee from knowing that he or she is underpaid compared to his or her co-workers, fostering pay disparities. The proposed regulation requires federal contractors to incorporate the nondiscrimination provision into existing employee manuals and handbooks and disseminate the provision to job applicants.

Under the rule, an employer may take action against an employee who has access to employee pay information in the course of performing the essential functions of his or her job and discloses the information to others who do not have access to it. Further, the rule provides defenses for employers against allegations of discrimination, such as where an employer is enforcing a legitimate workplace rule.

The rule is intended to implement an executive order signed by President Obama on April 8, 2014. It was published on September 17, 2014, in the Federal Register and is open for comment until December 16, 2014. The rule adds to the protection provided by the National Labor Relations Act, which currently provides that most private sector employees have the right to discuss their pay. 🏠



# Leading Building Industry Groups Agree to Streamline Green Building Tool Coordination and Development

*By Jacob Kriss*

The International Code Council (ICC), ASHRAE, the American Institute of Architects (AIA), the Illuminating Engineering Society of North America (IES) and the U.S. Green Building Council (USGBC) announce the signing of a memorandum to collaborate on the development of Standard 189.1, the International Green Construction Code (IgCC) and the LEED green building program.

The unprecedented cooperation aims to create a comprehensive framework for jurisdictions looking to implement and adopt green building regulations and codes and/or provide incentives for voluntary leadership programs such as LEED.

The agreement outlines the development, maintenance and implementation of new versions of ANSI/ASHRAE/IES/USGBC Standard 189.1, Standard for the Design of High-Performance, Green Buildings Except Low-Rise Residential Buildings and the IgCC, which will be combined into one regulatory tool. This agreement also endeavors to align the LEED program with the new code to ensure a streamlined, effective set of regulatory and above-code options for jurisdictions across the country.

“Architects have become the leaders in employing green building techniques, and the IgCC, a valuable regulatory tool, provides support leading to the creation of a sustainable, resilient built environment,” said AIA CEO Robert Ivy, FAIA. “This agreement, which underscores the AIA’s dedication to sustainable design and construction, should lead to more rapid adoption of responsible approaches by designers, builders, developers and a host of other building industry groups.”

“ASHRAE see this as a move forward in green building, reducing fragmentation of compliance documents for users who are pressing toward a more sustainable environment,” ASHRAE President Tom Phoenix said.

“Working collaboratively with our industry partners is producing real results that will help improve building performance, streamline regulation, reduce cost and allow us to focus our resources on goals we have in common” said Dominic Sims, CBO, ICC CEO. “This agreement continues the partnership we began in 2012 and assures that our Members and partners have a meaningful role in shaping the future of the built environment.”

“The Illuminating Engineering Society of North America is pleased to partner with the other organizations in this important collaborative effort in the development of a new standard and green code for the design and construction industry,” said Rita Harrold, IES Director of Technology. “IES members will benefit from this alignment of both regulatory and voluntary tools, and we look forward to participating in delivering technical provisions for code intended adoption.”

“This landmark agreement will leverage the unique strengths of each of the five partner organizations to deliver a coordinated, integrated suite of green building tools. An ANSI standard as the basis of a regulatory code to push the market and a rating system to pull the market higher” said Brendan Owens, Vice President, LEED, and U.S. Green Building Council. “We are collectively dedicated to advancing green building practices and to advancing the broader industry’s understanding about the importance of green building goals and how to achieve them.” 



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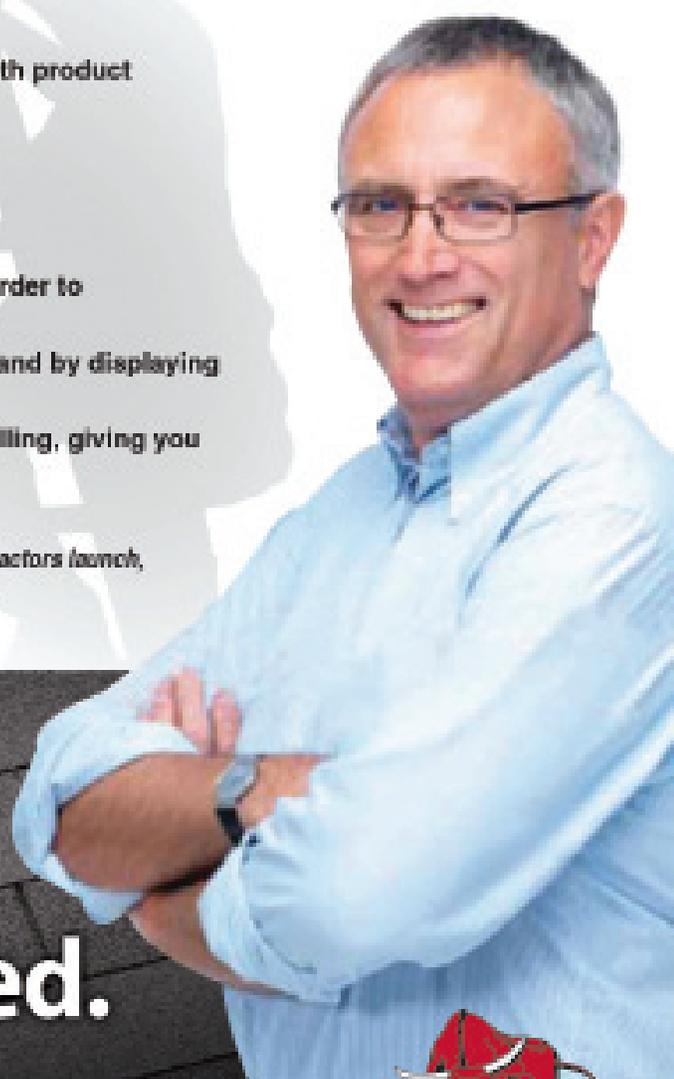
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 Tucson, AZ, 85713  
 Phone: 520.790.5750  
 Fax: 520.745.5183



# 45th Annual Convention and Trade Show...in Laughlin, Nevada

The convention committee co-chaired by **Kim Scholten (Western Colloid)** and **Dave Metz (Elastek Roof Coatings/ERSystems)** delivered an outstanding event in Laughlin, Nevada this year. This is the first time in the 45-year history of ARCA that the convention was hosted out-of-state and the logistics that were overcome were challenging. Congratulations to the entire committee for the great team effort.

Festivities were kicked off Thursday night at Harrah's on the beach with barbeque, horseshoes and camaraderie. After some good natured hazing, Dave Coultrap purchased the last raffle ticket for the Macayo's basket and, despite some aggressive turning of the raffle drum, he somehow still ended up the winner. The scenic banks of the Colorado River, along with music provided by Kirk Snow and a dedicated water taxi service, made it a memorable occasion.

Despite some gusting wind the golfers and shooters had enjoyable outings--good thing nobody told them it was going to be easy. Trade show had over 40 booths with many traditional vendors as well as a few new companies displaying their products. With five seminars offered on Saturday morning, there was a wealth of information provided, ensuring that everyone found a topic of interest. As usual, the silent and roofer auction provided a flurry of last minute bidding as the clock ticked down to closure on great items and roofing products. The annual meeting attendees were treated to a dueling pianos performance during and after the meal, and many stayed on requesting songs that somehow the skilled pianists always seemed to know.

Next year we return to our old stomping grounds in Prescott on October 1-3. Mark your calendars and we will look forward to seeing you all there.

## Annual ARCA Awards

### *Committee Chair of the Year*

Ron Brown

### *Volunteer of the Year*

Ann Pepper

### *Contractor of the Year*

Classic Roofing

### *Associate Member of the Year*

Eagle Roofing Products



# Sports Stats

## Thursday Golf Championship Scores

### **First Flight:**

1st Place - Scott Hailes, 77  
2nd Place - Stephen Ramirez, 82

### **Second Flight:**

1st Place - Virgil Benesh, 96  
2nd Place - Jim Wright, 96

## Friday Golf Invitational Scores

### **First Flight:**

1st Place - 58  
Brad quinet, Scott Hailes, Matt Pribyl, Russ Hyman

2nd Place - 60  
Stephen Ramirez, Andy Coventry, Mark Morrell

3rd Place - 63  
Brian Dembowski, Pat Corrie, Rowena Marrs, Greg Marrs

### **Second Flight:**

1st Place - 68  
Pete Schmatz, Michael Reeves, Jeff Klein, Mike Butler

2nd Place - 69  
Jim Wright, Jason Taylor, Gary Zimmerman, Dave Eyer

3rd Place - 69  
Tyson Smith, Jeff Elser, Dave Campbell, Jeff Deweese



## Sporting Clays Tournament

1st Place  
Alan Lundberg

2nd Place  
Zach Lundberg

3rd Place  
Mike Wadding

## Horseshoes Tournament

1st Place  
Scott and Candy Lander

2nd Place  
Russ Hyman and Craig Nelson



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# 2014 Arizona Construction Career Days

## *Building Tomorrow's Workforce Today*

Each year the ACCD (AZ Construction Career Days) holds an event for High School students' state wide. For those of you who don't know, the ACCD is a 501c3 Non-Profit Organization whose roots go back to 1999. Each year the event has grown and last year they hosted 54 exhibitors and over 1800 High Schools students from 11 out of the 15 counties in the state. The event exhibitors include contractors from many industries such as Sundt, Haydon Building, McCarthy, as well as unions, associations, many trade schools and ARCA.

The event is held at the Arizona Army National Guard, Papago Site at 5636 E. McDowell Rd. This year the event will be Thursday and Friday, November 6 & 7, from 8:00 AM to 12:00 PM each day. This is ARCA's 2nd consecutive year participating and we are a Bronze Sponsor of the event.

Some factson employment in construction are the average construction worker is 47 years old. It is projected that 58.4% of the workforce in 10 years will be in construction. Additionally, according to the AZ Department of Commerce Apprenticeship

Services Office, the number of apprentices has more than doubled in the last 5 years.

Last year **Star Roofing, Classic Roofing,** and **Lyons Roofing** provided most of the hands on workstations and volunteers along with Martin Headlee from Tucson. They are again supporting this event but WE NEED YOU.

## Help Wanted

We know everyone is busy with the rains that blessed us, however if you or someone from your company can volunteer for a full morning, or just a few hours, or if you have a mock-up demo you can provide please contact me.

Additionally, in the coming year the Training and Career Promotion Committee would like to begin developing an 'apprenticeship' program to train and educate a new generation of 'roofing professionals' which will help us secure a more viable labor force in the years to come. We need committee members to assist with this huge and important project. THIS ONE AREA WILL HAVE A HUGE IMPACT, not only on our industry, but on EACH AND EVERY roofing contractor who wants a skilled and professional workforce, which I will go out on a ledge and presume is EVERY ARCA MEMBER!

Please contact me, Rhonda LaNue, Chair of the Training and Career Promotion Committee at 602.276.5515 or rlanue@lyonsroofing.com.



## 3 Benefits to Help ARCA Members Save Money



ARCA is excited to announce three exclusive benefits that will help our Members (and their employees) save money. Read on below to find out how you can benefit from these new partnerships.

### Staples Advantage

Staples Advantage® is the preferred office supplier of AZ Roofing Contractors Association. As a member, you're eligible to save on all your office supply purchases. This program allows members of AZ Roofing Contractors Association and its affiliates to maximize their buying power across the nation and receive low, contracted pricing on over 30,000 products.

You can count on us to provide you with:

- Easy online ordering through StaplesLink.com
- All the supplies you need, including office products, breakroom supplies, janitorial supplies, technology supplies, furniture, eco-friendly products and more
- FREE delivery on orders over \$50

To enroll, [click here](#).

For more information about your member benefit program, contact:

Russell Kipnis, Staples Advantage Account Manager  
714-868-4162  
Russell.Kipnis@staples.com

### Crown Dental Plan

SAVE up to 60% on dental procedures Crown Dental Plan. Crown Dental Plan is a dental benefit plan that is NOT INSURANCE...NO high monthly premiums, NO waiting periods, NO benefit limits, NO co-pay/deductibles. Crown Dental Plan is offering ARCA members 20% off the annual Crown Dental public membership rate. For as little as \$79.95/year you can now receive high quality dental care from more than 270 dentists and specialists Valley-wide. Enroll on-line by pasting the link below into your browser

to select your dentist and complete membership application. Contact Karla (480) 964-7449; [karla@crowndentalplan.com](mailto:karla@crowndentalplan.com) with questions.

Enrollment information.

Benefits include:

- Super savings on all dental procedures
- No deductibles or co-payments
- No annual maximum
- No waiting periods or pre-existing condition exclusions
- Broad choice of quality dentists and specialists
- Specialist rates reduced by 20%

Services include:

- Endodontics (extensive root canals)
- Orthodontics (braces)
- Oral Surgery (TMJ, major extractions)
- Prosthodontics (bridges and dentures)
- Periodontics (gum treatment)

[Click here](#) to enroll.

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COLOR: 5 GAL, 55 GAL, 275 GAL

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**POLYTEK PRO** – High-performance elastomeric *topcoat* formulated for use on new foam roofing and most other roof surfaces. Excellent resistance to UV degradation.

COMPLIANCE: ENERGY STAR, CRRC LISTED, ASTM E-108 CLASS A FIRE RATED, TITLE 24, UL 790 CLASS A FIRE RATED

COLOR: 5 GAL, 55 GAL, 275 GAL

109



**SOLAR MAGIC** – Excellent elastomeric *topcoat*. Provides good durability and strong adhesion.

COMPLIANCE: ENERGY STAR

COLOR: 5 GAL, 55 GAL, 275 GAL

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## OSHA Extends Deadline For Crane Operator Certification Requirements

The Occupational Safety and Health Administration (OSHA) has issued a final rule extending by three years the deadline for crane operator certification requirements in the Cranes and Derricks in Construction final rule, which was published Aug. 9, 2010; the new deadline is Nov. 10, 2017. The rule also extends by three years the employer's responsibility to ensure crane operators are competent to operate a crane safely. The final rule takes effect Nov. 9.

During the three-year period, OSHA will address operator qualification requirements for the cranes standards, including the role of operator certification. The final cranes and derricks rule required crane operators on construction sites to meet one of four qualification/certification options by Nov. 10, 2014. After publishing the final rule, a number of parties raised concerns about the standard's requirement to certify operators by type and capacity of crane and questioned whether crane operator certification was sufficient to determine whether an operator could operate his or her equipment safely on a construction site.

The agency published a Notice of Proposed Rulemaking (NPRM) Feb. 12, proposing to extend by three years the deadline for operator certification and the employer duty to ensure competent crane operation. OSHA already has begun to develop a standard to ensure crane operator qualifications. 

## Accident Investigation - The Six Key Questions

### Question 1: WHO

1. Who was injured? Who saw the accident?
2. Who was working with him/her?
3. Who had instructed/assigned him/her?
4. Who else was involved?
5. Who else can help prevent recurrence?

### Question 2: WHAT

1. What was the accident?
2. What was the injury?
3. What was he/she doing?
4. What had he/she been told to do?
5. What tools was he/she using?
6. What machine was involved?
7. What operations was he/she performing?
8. What instructions had he/she been given?
9. What specific precautions were necessary?
10. What specific precautions was he/she given? Did he/she use?
11. What protective equipment was he/she using?
12. What had other persons done that contributed to the accident?
13. What problem or question did he/she encounter?
14. What did he/she or witnesses do when accident occurred?
15. What extenuating circumstances were involved?
16. What did he/she or witnesses see?
17. What will be done to prevent recurrence?
18. What safety rules were violated?
19. What new rules are needed?

### Question 3: WHEN

1. When did the accident occur?
2. When did he/she start on that job?
3. When was he/she assigned to the job?
4. When were the hazards pointed out to him/her?
5. When had his/her supervisor last checked on job progress?
6. When did he/she first sense something was wrong?

### Question 4: WHY

1. Why was he/she injured?
2. Why did he/she do what he/she did?
3. Why did the other person do what he/she did?
4. Why wasn't protective equipment used?
5. Why weren't specific instructions given to him/her?
6. Why was he/she in the position he/she was?
7. Why was he/she using the tools or machine he/she used?
8. Why didn't he/she check with his/her supervisor when he/she noted things weren't as they should be?
9. Why did he/she continue working under the circumstances?
10. Why wasn't supervisor there at the time?

### Question 5: WHERE

1. Where did the accident occur?
2. Where was he/she at the time?
3. Where was the supervisor at the time?

4. Where were co-workers at the time?
5. Where were other people who were involved at the time?
6. Where were witnesses when accident occurred?

Question 6: HOW

1. How did he/she get hurt?
2. How could he/she have avoided it?
3. How could co-workers have avoided it?
4. Could supervisor have prevented it? How? 🏠

## Fraudulent Letter Warning

There has been another round of fraudulent letters issued to U.S. Department of Transportation (DOT) contractors and potential contractors purporting to be issued by DOT. These fraudulent letters request that current or potential contractors register by submitting their company's financial information on a release form entitled, "Authorization to release financial information". Please be aware that DOT does not require any financial information to be submitted in order to be eligible for procurement.

### What Should I Do?

Please DO NOT complete the release form which is attached to the letter and DO NOT release any information to the facsimile number cited in the letter. If you suspect you have received one of these letters, immediately contact Department of Transportation Office of the Inspector General Hotline at 1-800-424-9071.

Here is a sample of the latest letter currently being sent to DOT Customers:

*To Whom It May Concern:*

*Our records show that you are currently registered as a prospective contractor for procurements issued by the U.S. Department of Transportation. However, after reviewing your record, we have noticed that you have not submitted your financial information release form.*

*Your financial institution's privacy policy may not allow it to release your financial information even to government institutions without your consent; therefore, we must have such form on file before we can move on with any procurement decisions.*

*In December, the procurement plan for the first quarter of 2015 will be finalized. To be eligible for procurement with the U.S. Department of Transportation, you must submit the abovementioned form to us by fax at 443-681-7117.*

*Please make sure your fax is preceded by a cover page so we may correctly identify your company.*

*Sincerely yours,*

*John Doe, Senior Procurement Officer 🏠*

## Contractors Beware: Unlicensed Contractors Can Collect Via the ROC

*While they may be safe from unlicensed subcontractors' collection efforts in Arizona courts, licensed contractors remain vulnerable to the dictates of an ROC proceeding*

*By Kent Lang*

In 2003, a licensed Arizona contractor, Twin Peaks Construction Inc., contracted with the City of Bisbee to build improvements in a city park. As part of the project, Twin Peaks contracted with Weatherguard Metal Construction to provide a metal ramada.

The City paid Twin Peaks for its services, but Twin Peaks made only a partial payment to Weatherguard.

Weatherguard filed a complaint with the Arizona Registrar of Contractors (ROC), claiming that Twin Peaks' failure to pay violated A.R.S. § 32-1154(A)(11), which requires a contractor to pay a subcontractor "when due for materials or services rendered in connection with the licensee's operations as a contractor."

At the ensuing hearing, Twin Peaks asked the administrative law judge (ALJ) to dismiss Weatherguard's claim, arguing that Weatherguard was not properly licensed for the Bisbee project and, thus, per A.R.S. § 32-1153, was not entitled to bring an action to collect for its work. (That statute prohibits unlicensed or improperly licensed contractors from using Arizona courts to collect for work performed.)

The ALJ refused to dismiss Weatherguard's claim, ruling that § 32-1153 "pertains to actions in civil court, not administrative proceedings" such as an ROC complaint. The ALJ ordered Twin Peaks to pay Weatherguard or risk revocation of its license, and the ROC adopted the ALJ's order.

Twin Peaks asked for a judicial review in Superior Court, where the order was upheld. Twin Peaks then appealed to the Arizona Court of Appeals, which affirmed the lower court's ruling and, by extension, the ROC order for Twin Peaks to pay the remaining amount owed to Weatherguard.

(In its ruling, the Arizona Court of Appeals noted that Weatherguard was, in fact, properly licensed at all required times. Nevertheless, the Court took the opportunity to affirm that an unlicensed contractor may utilize the ROC administrative process to enforce collection against a licensed contractor.) 🏠



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# ARIZONA ROOFING CONTRACTORS ASSOCIATION MEMBER CONTACT FORM

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Name: \_\_\_\_\_ Company: \_\_\_\_\_ Date: \_\_\_\_\_

How would you prefer to receive ARCA correspondence?

- By email     By fax

Please provide current contact information below:

PRIMARY CONTACT: \_\_\_\_\_

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EMAIL: \_\_\_\_\_

If email is your preferred method of receiving event notices, legislative updates, and other ARCA news, is there anybody else in your company who should receive this information as well?

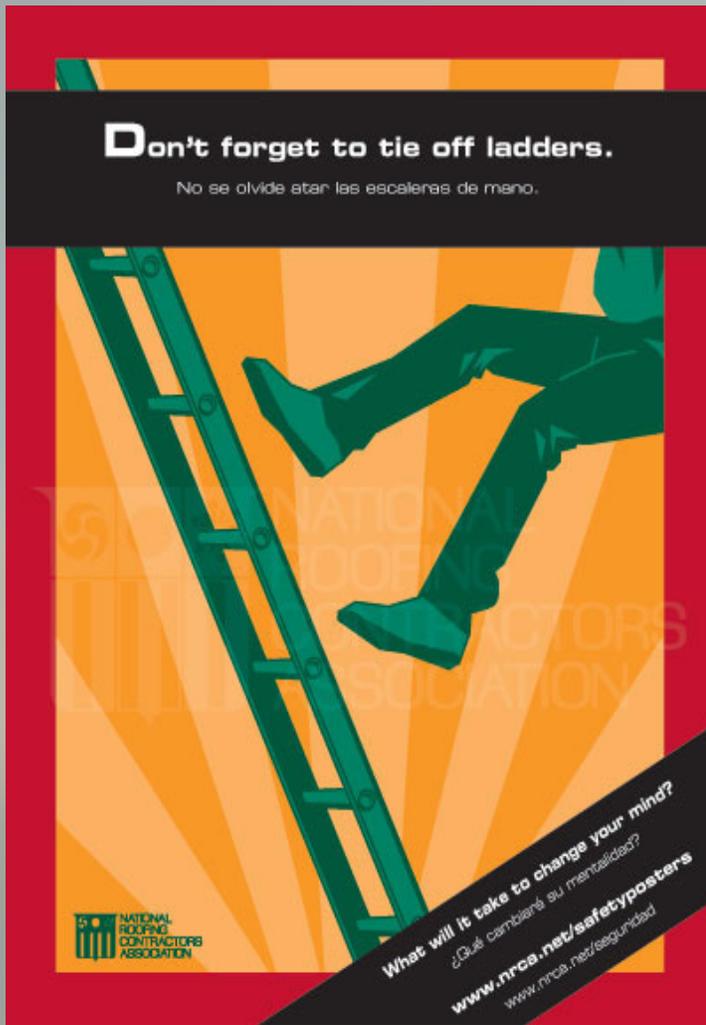
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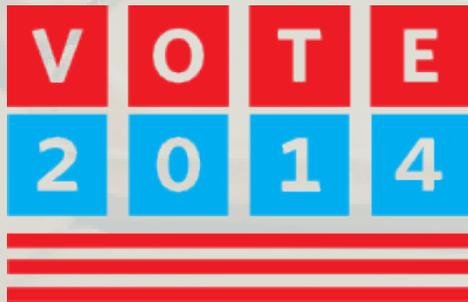
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PHOENIX, ARIZONA, 85014



### Are You Claiming Your Share?

ARCA Association Safety Plan participants received over **\$360,000 in dividends** this year from CopperPoint Mutual Insurance Company. If you are not a participant in ARCA's worker compensation plan contact the ARCA office at 602-335-0133 for more details.



**NOVEMBER 4**

### Welcome New ARCA Members

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

- ★ AAA  
Samantha Bauer
- ★ Beachfleischman, PC  
Dave Burger, 602-265-7011
- ★ HR Roofing Solutions  
Josh Reeves, 480-840-1588
- ★ Rain Man Roofing & Waterproofing Services, Inc.  
Mark Hughes, 623-670-2835
- ★ Roofstar Arizona  
Jeff Knudson, 480-776-3382

### Upcoming Events

#### october

**OSHA 30-Hour Training in English** Oct. 10, 17, 24, 31  
TBD 8:00am - 4:00pm

**OSHA 10-Hour Training in English** Oct. 23-24  
Mahoney Group, 5330 N LaCholla Blvd, Tucson 7:00am-12:00pm

**OSHA 10-Hour Training in Spanish** Oct. 24-25  
Mahoney Group, 5330 N LaCholla Blvd, Tucson 7:00am-12:00pm

#### november

**AZ Construction Career Days** Nov. 6-7  
Arizona Army National Guard, Papago Site 8:00am-12:00pm  
5636 East McDowell Road, Phoenix, AZ

**OSHA 10-Hour Training in Spanish** Nov. 13-14  
ARCA office, 5050 N 8th Pl, Ste 6, Phoenix, AZ 7:00am-12:00pm

**TRI Installer Certification Class** Nov. 21  
ARCA office, 5050 N 8th Pl, Ste 6, Phoenix, AZ 8:00am-4:00pm

#### december

**OSHA 10-Hour Training in English** Dec. 4-5  
ARCA office, 5050 N 8th Pl, Ste 6, Phoenix, AZ 7:00am-12:00pm

**OSHA 30-Hour Training in English** Apr. 10, 17, 24,  
TBD May 1  
8:00am - 4:00pm

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**ARIZONA ROOFING  
CONTRACTORS ASSOCIATION**

**2014 / 2015  
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**Meetings & Seminars Committee**

OPEN

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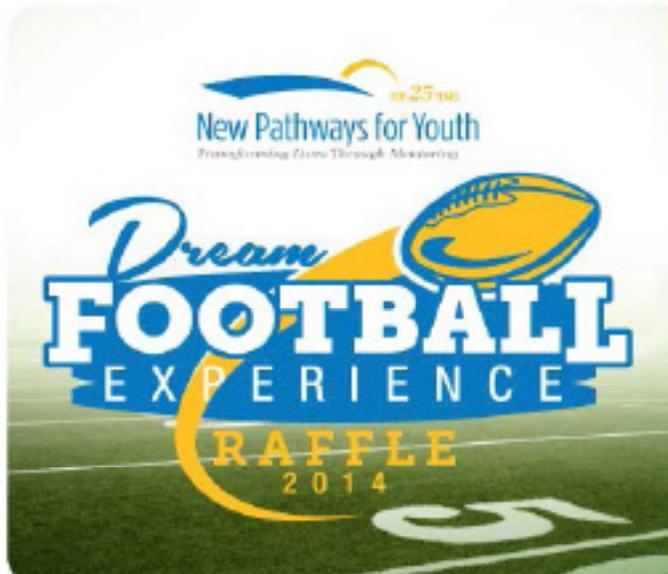
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Please don't hesitate to contact Chris LeBlanc at [CLeBlanc@NPFY.org](mailto:CLeBlanc@NPFY.org) or call (602) 258-1012x315 if you have any questions.

On behalf of our youth who will benefit from the sales of the raffle, THANK YOU for making a difference for those we serve!

Good Luck,

Christy McClendon  
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