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VOLUME 15, NUMBER 1 | FIRST QUARTER, 2014



WSRCA

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## GREETINGS FELLOW ARCA MEMBERS:

Welcome to 2014! -- a brand new year bringing with it brand new challenges for us all. Here is a brief update on a few issues ARCA is working on.

One of our priorities this year will support efforts that would allow Arizona residential fall protection rules to comply with Federal OSHA requirements. Over a year ago legislation was passed that essentially moved the height requirements for a fall plan from the standard 6' to 15'. This has created numerous problems and misunderstandings of what is required to be in compliance. Many employers use the same employees on both residential and commercial job sites and the commercial requirements did not change--confusion and non-compliance issues are rampant. The backlash of not complying with Federal standards has reached a breaking point and Federal OSHA has threatened to take over work-site inspections, investigations and compliance issues from ADOSH which would expand the Federal presence in our state and take away local control of workplace safety. ARCA and our partners at the Arizona State Contractors Coalition will be urging the legislature to rescind the previously passed bill and comply with the Federally recognized standard but allow continued administration by ADOSH.

Our Safety Committee is reviewing the boilerplate safety manuals provided to all members and we are incorporating recent changes in Hazardous Communication, material loading, etc. and in general just making sure the book contains information needed to maintain a safe working environment for all employees.

In an effort to reduce cost but still continue to provide FREE SAFETY TRAINING to all our members we have been augmenting the OSHA safety consultants used to provide training with "loaned" trainers provided by ARCA member companies. We would like to expand that cadre of instructors and we are seeking individuals willing to become OSHA certified trainers---certification requires about \$1,500 and two weeks of training---anyone interested should contact the ARCA office for more information

The legislature made numerous changes to the Transaction Privilege Tax (TPT) that will become effective in January 2015. There are many vagaries on how contractors can comply with the new requirements and ARCA representatives will be working with the Department of Revenue to obtain clarification on implementation and interpretation issues during the coming year.

The 2014 Convention Committee under the leadership of Kim Scholten and Dave Metz has started meeting and planning activities for the October 2-4 event at the Aquarius in Laughlin. Save the date -- plan on attending and enjoying the networking and camaraderie at the 45th Annual Convention and Trade Show.

ARCA has received and the Board authorized accepting an unsolicited offer to purchase the ARCA office building. We have been in our current location for six years now and despite a soft commercial market the offer will allow the Association a net profit of about a \$100,000 and provide a \$1 lease back of the facility for 18 months after close of escrow. The entire complex will then be razed and replaced with high-end condo's after all tenants vacate in late 2015. Escrow is scheduled to close by March 3rd and a future site selection committee will be formed.

Sponsor and member renewal invoices have been mailed and I thank all of those that made prepayments in November and December. If for some reason you have not received an invoice, contact the ARCA office and they will resolve the issue. We need your continued financial support to provide the programs and services offered by the Association.

Sincerely,

*John Yoder*  
John Yoder, President  
Arizona Roofing Contractors Association

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## **SCF Arizona assigned A- 'Excellent' by A.M. Best; begins name change**

PHOENIX - A.M. Best Company, a worldwide insurance-rating and information agency, has assigned an A- (Excellent) XII with a "stable outlook" rating to CopperPoint Mutual Insurance Company, formerly SCF Arizona, and its wholly-owned subsidiaries (CopperPoint American Insurance Company, CopperPoint Western Insurance Company, CopperPoint Indemnity Insurance Company, CopperPoint General Insurance Company, CopperPoint National Insurance Company, CopperPoint Premier Insurance Company and CopperPoint Casualty Insurance Co.)

The company's ratings are an indication of its "solid risk-adjusted capitalization, improving operating performance and prominence within the Arizona workers compensation marketplace," according to the A.M. Best news release.

SCF President & CEO Don Smith described the rating as "a milestone we've all been working towards for several years."

"All our efforts - from our employees to our executives - over the last several years have prepared us for this moment and this Excellent rating. We are now well-positioned for a bright future," Smith said.

The A.M. Best assignment was made in November, when the company was continuing to do business as SCF Arizona. Since then, a campaign has begun to rebrand the name to reflect CopperPoint's successful navigation from being Arizona's state workers compensation fund to becoming a private mutual insurance carrier. Pursuing and receiving an A.M. Best rating was an integral part of the company's strategy to be competitive.

The leading provider of workers compensation insurance in the state since 1925, CopperPoint provides coverage to more than 20,000 Arizona businesses and their employees. It has more than \$3.7 billion in assets and has no debt.

CopperPoint has earned recognitions as an Economic Engine and active corporate citizen. It partners with more than 30 business and industry associations statewide to provide safety training and support.





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## Fall Protection Retains Top Spot on List of OSHA's Most Frequent Citations

The list of the most frequently cited OSHA standards hasn't changed much in recent years. In fact, the top four standards on this year's list are the same ones that made up the top four in fiscal year 2012 - in the same order.

What's different this year is that an OSHA official was not on hand at the 2013 National Safety Congress and Expo for the unveiling of the top 10 list.

"I've had the privilege of hosting this presentation the last five years, and every year we've had an official from OSHA here to talk with you about these top 10 violations and how they relate to workplace hazards and what they mean to workplace safety," Kyle Morrison, senior associate editor for the National Safety Council's Safety and Health magazine, told a large crowd on the expo floor at the McCormick Place in Chicago.

"This year is different. Due to the recent government shutdown, an OSHA official will not be here today."

In a brief presentation, Morrison unveiled the preliminary figures for the top 10 most frequently cited OSHA standards in fiscal year 2013. They are:

1. Fall protection (1926.501) - 8,241 violations
2. Hazard communication (1910.1200) - 6,156
3. Scaffolding (1926.451) - 5,423
4. Respiratory protection (1910.134) - 3,879
5. Electrical, wiring methods (1910.305) - 3,452
6. Powered industrial trucks (1910.178) - 3,340
7. Ladders (1926.1053) - 3,311
8. Lockout/tagout (1910.147) - 3,254
9. Electrical, general requirements (1910.303) - 2,745
10. Machine guarding (1910.212) - 2,701 🏠

### 2014 ARCA / ARIF CHARITY BOWLING EVENTS

#### Phoenix Charity Bowling Tournament

*to benefit*

#### New Pathways for Youth

**WHEN** Saturday, June 21, 2014

**WHERE** AMF Christown Lanes

#### Tucson Charity Bowling Tournament

*to benefit*

#### Youth on Their Own

**WHEN** Saturday, July 12, 2014

**WHERE** Golden Pin Lanes



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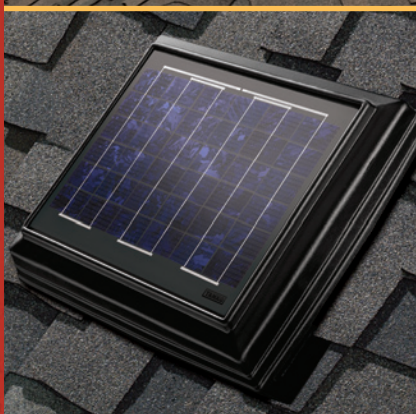
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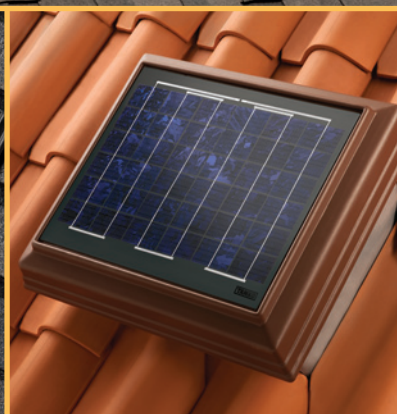
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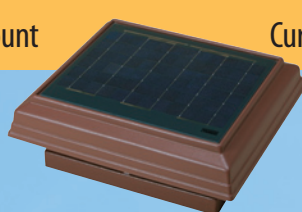
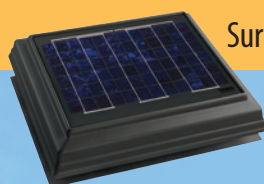
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**B** High-performance housing molded with UV-stabilized ABS color-dyed plastic to prevent damage from sunlight and provide stability. May be painted to match roof color.

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**C** Screen 1/8" heavy-gauge stainless steel screen provides protection from insects and animals without impeding airflow.

**D** Fan blade 12"-diameter one-piece aluminum 5-blade fan operates with no harmonic noise.

**E** Optional cold-weather thermostat automatically disengages the fan when the temperature falls below 50°F. This is particularly useful in regions that experience a significant amount of cold dry air.



Mount	Color	Model #
Surface	Black	31001286
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 Registrar of Contractors had included in their five year rule revision plan a very broad background investigation process for new construction license applicants. Basically it would have given them the right to search school transcripts, military records, personal and business tax returns and other personal information of any owner or qualifying party for a license. ARCA and other trade organizations were vocal in our objections to this broad investigative power and the ROC has agreed to limit the scope of background checks of prospective license applicants--the exact language is still in the process of being finalized but will be limited to criminal and credit history. ARCA further objected to their proposal to merge the residential and commercial licenses and to allow general contractors, who currently are limited to shakes and shingles installation and repair, the ability to install tile and sprayed and rolled applications. The ROC is still pursuing this issue and ARCA is preparing testimony of our objections for when a public hearing is scheduled on this subject.

The Department of Labor has indicated that they will be targeting the construction trades in Arizona for labor audits. Misclassification of employees, improper determination of full time employee versus subcontractor status, improper pay calculations, unpaid overtime for piece work, etc are their primary concerns. ARCA has scheduled dinner meetings in Tucson (Jan 21) and Phoenix (Jan 23) to inform members of the proper pay and employment practices necessary to pass an audit without incurring fines.

## Federal:

The second session of the 113th Congress convened this week, with the first order of business being to finally approve the federal government's operating budget for fiscal year 2014.

## 2014 Legislative Outlook

With 2014 being an election year, the prospect of meaningful legislation being enacted is slim, especially given the partisan gridlock that has plagued the divided government during the past three years. President Obama and Senate Democrats have announced their intention to focus on reducing income inequality by pushing agenda items such as an increase in the minimum wage and extending unemployment benefits for the long-term unemployed. House Republicans, in contrast, are expected to pursue legislative initiatives related to the Affordable Care Act and reform of the federal regulatory process. There is also the question of whether the House will take up immigration reform by considering a series of targeted reform bills, and if so, whether such an approach can be reconciled with the comprehensive bill passed by the Senate last year. Also looming over Capitol Hill are the need to again raise the statutory debt ceiling; to attempt to get back to the normal process of passing individual

appropriations bills that fund government agencies; and approve legislation to upgrade the nation's transportation infrastructure.


## National Labor Relations Board

The National Labor Relations Board's (NLRB) "poster regulation" now is officially dead and represents a notable victory for right to work interests. The regulation, originally proposed in 2010, would have required employers to post a notice of employee labor rights in the workplace. Opposition to the regulation focused on two primary reasons--the NLRB does not have the statutory authority to issue such a regulation, and the required posting was biased and incomplete. The U.S. Court of Appeals for the District of Columbia held that the regulation violated employers' free speech rights, blocking the NLRB from implementing it. In September 2013, the Court of Appeals dismissed a petition from the NLRB to review its previous decision overturning the regulation. The deadline for the NLRB to file a petition asking the U.S. Supreme Court to review the case was Jan. 2, but the board declined to file such a petition. This puts an end to the litigation over the regulation and, ultimately, the regulation itself.

## NLRB Union Elections Regulation

In December 2013, the U.S. Court of Appeals for the District of Columbia dismissed the National Labor Relations Board's (NLRB's) appeal of a district court decision, striking down the board's so-called "ambush" elections regulation, which seeks to greatly accelerate the time-frames in which union elections are held. Because of concerns that accelerated elections effectively would deprive employer and employees of a meaningful dialogue regarding the pros and cons of collective bargaining, the regulation was challenged in a lawsuit. The district court ruled the regulation to be invalid because the NLRB had failed to convene the necessary quorum when deciding the matter. The NLRB subsequently requested the Court of Appeals dismiss the case.

## OSHA Safety Reports Regulation

The Occupational Safety and Health Administration (OSHA) has proposed new requirements that are intended to improve tracking of workplace injuries and illnesses. If implemented, the new regulation would require businesses to electronically file all injury and illness reports with OSHA, adding a new reporting requirement for many employers. There is concern that the proposal does not contain safeguards to ensure workers' personal information in records posted online is secure as required under federal and state privacy laws, and also notes that OSHA provides no evidence of its ability to use the information to be reported in an effective manner to prevent injuries or illnesses. The benefits of the proposal are purely speculative and not supported by empirical data sufficient to justify the costs of implementation. A coalition of business associations has urged that OSHA withdraw the proposed regulation. 



## Let's Talk Insurance

*Michael Kosse is a Personal Insurance Agent with Liberty Mutual Insurance in Scottsdale, AZ. Mike specializes in auto, home, and life insurance to protect individuals and families from financial disaster. As a member of ARCA, you qualify for an exclusive discount on auto and home insurance through Liberty Mutual. Licensed insurance agents work with their clients to develop individualized insurance plans to protect assets from unexpected losses. Please submit your insurance related questions via email to Michael.kosse@libertymutual.com*

*Question: If everyone is required to purchase auto liability coverage, why should I purchase uninsured motorist coverage?*

Answer: Great question. In a perfect world, everyone would comply with the mandate and purchase liability insurance, but the reality is that not everyone does. Estimates as to the number of uninsured drivers vary, but most studies place Arizona right in line with the national average of 13.8% of all vehicles on the road. This means that roughly 1 in 7 drivers do not have insurance, and that puts you at risk financially as these drivers may not have the resources to pay for your injuries in the event of an accident.

*Question: My 16 year old son is about to obtain his driver's license. How do I minimize the cost of adding him to my auto policy?*

Answer: Teenagers have a significantly higher than average rate of accidents per miles driven than adult drivers. This can be attributed to youthful inexperience, but the bottom line is that it can be a very expensive proposition to add a teenager to your auto policy. Liberty Mutual offers numerous discounts to help lower the cost of insuring a teenager. Consider setting ground rules for you son in the form of a driving contract. This simple step can provide a discount. Demand good grades from him as well. If he maintains a B average or better, you will see another discount. He can also take additional drivers training courses for another discount.

*Question: I recently inherited a diamond necklace worth \$10,000. Does my homeowner's policy cover the necklace?*

Answer: A standard home insurance policy provides limited coverage far below \$10,000 for certain types of personal property including jewelry. To fully cover jewelry, and other valuable items such as furs, coins, firearms, and several other items you need to "schedule" this property. Scheduling, or adding a rider, comes with an additional cost but raises the limit of coverage to the necessary amount and provides broader coverage in the event that something happens to that piece of jewelry.



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# Paying Employees Different Hourly Rates for Different Types of Work; Is It Legal?

*By: Matthew A. Klopp, Shareholder*

In today's business and regulatory environment, employees are sometimes asked to perform different tasks and job functions, which would normally be compensated at different rates, during the same workweek. For instance, there are times when employees may perform non-production tasks (such as inventory, back office operations, or maintenance) that are typically classified as a different job and compensated differently than tasks performed in a front-line production capacity. Additionally, it is often necessary to send employees to mandatory training or to ask employees to travel, both of which affect the employees' profitability and production capability. Finally, what about employees who work undesirable hours or accept the risk of certain hazards when performing their jobs? When employees perform different tasks that are compensated at different rates, employers often ask - can I pay the same employee different hourly rates during the same pay period? The short answer is yes, but the employer must pay close attention to the specific situation of the particular employee to ensure compliance with applicable law and to avoid potential liability to the employee.

Other than certain limited exceptions (e.g., outside salespeople, some agricultural workers, etc.), federal law requires that employers pay all employees a minimum hourly wage (currently \$7.25). Each state is also free to impose its own minimum wage, and some cities and counties have passed "living wage" laws, which may set an even higher minimum wage. As an employer, you must pay your employees whichever amount is highest regardless of whether you pay a salary, commission, wages plus tips, or piece rate (although the method of calculation may differ based on payment methodology). Provided that all employees are paid at least minimum wage, an employer is free to pay different hourly rates for different work that may be performed in the same pay period. An employer must first confirm that the employee is truly performing tasks that are different than the employee's "normal" job classification. Assuming that the employee is truly performing different tasks, the employer is permitted to compensate the employee at different rates so long as the employee is paid at least minimum wage for all work.

The second issue that arises concerns how the employee's overtime pay is calculated where the employee has worked at different rates during the pay period. Federal law typically requires overtime pay based on 1.5 times the employee's "regular rate of pay." Where an employee is performing different tasks at different rates of pay, the employer must first determine if the employee must be paid overtime at all, which requires an analysis of the employee's primary job function (employees in an executive, administrative, or professional capacity may not require overtime pay). If the employee is covered by the federal overtime laws, then the employer must pay the employee at the overtime rate for any hours in excess of 40 hours worked per week (again, the employer must ensure that applicable state or local laws do not afford the employee with greater protections). While this is easy with a single rate of pay, the calculation can become more complicated if the employee has worked at more than one rate of pay.

Typically, under federal law (29 C.F.R. §778.115), the employee's "regular rate of pay" when he works two jobs is calculated as the weighted average of the different rates of pay. For example, the regular rate of an employee who works 35 hours per week at \$15 per hour as a drywall hanger (\$525) and 10 hours that same week at \$7 per hour mopping floors inside the warehouse (\$70) is the total wages (\$595) divided by total hours worked (45) is \$13.22 per hour. The overtime rate for the pay period is therefore \$19.83 (\$13.22 times 1.5) for each hour over 40 that is worked regardless of which job the employee performs during the extra hours. Alternatively, federal law allows the employer and employee to agree, before the work is performed, that the overtime rate will be based on the regular rate that applies to the type of work performed during the hours in excess of forty (see 29 C.F.R. §778.419(a)). If in the above example the parties agreed as to the rate and the drywall hanger spent all hours in excess of 40 hours mopping the warehouse floors, the overtime rate would be \$10.50 (\$7 times 1.5). If he spent all additional hours hanging drywall, the overtime rate would be \$22.50 (\$15 times 1.5).

Employers who violate federal minimum wage and overtime laws may be liable for penalties up to triple the amount wrongfully withheld from the employee in addition to other potential liability, so a prudent employer will consult with an attorney or risk management professional to ensure compliance with all federal, state, and local laws. As discussed above, minimum wage and overtime laws may vary from state-to-state. Finally, notwithstanding the foregoing, care should be taken to ensure the employer complies with ERISA and other regulations governing pensions and benefits that may be affected by compensating an employee at different rates. 🏠



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# 2014 Standard Mileage Rates



The Internal Revenue Service issued the 2014 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.

Beginning on Jan. 1, 2014, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be:


- 56 cents per mile for business miles driven
- 23.5 cents per mile driven for medical or moving purposes
- 14 cents per mile driven in service of charitable organizations

The business, medical, and moving expense rates decrease one-half cent from the 2013 rates. The charitable rate is based on statute.

The standard mileage rate for business is based on an annual study of the fixed and variable costs of operating an automobile. The rate for medical and moving purposes is based on the variable costs.

Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates.

A taxpayer may not use the business standard mileage rate for a vehicle after using any depreciation method under the Modified Accelerated Cost Recovery System (MACRS) or after claiming a Section 179 deduction for that vehicle. In addition, the business standard mileage rate cannot be used for more than four vehicles used simultaneously.

These and other requirements for a taxpayer to use a standard mileage rate to calculate the amount of a deductible business, moving, medical, or charitable expense are in Rev. Proc. 2010-51. Notice 2013-80 contains the standard mileage rates, the amount a taxpayer must use in calculating reductions to basis for depreciation taken under the business standard mileage rate, and the maximum standard automobile cost that a taxpayer may use in computing the allowance under a fixed and variable rate plan. 





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# Worker Lawsuits a New Threat to Employers in Wage & Hour Claims

By Matt Saxe

If the prospect of a Department of Labor investigation does not motivate you to follow the overtime rules, maybe the threat of an employee lawsuit will.

The August 2012 Construction Advisor ("Piece Work and the Fair Labor Standards Act") discussed the financial risks of paying wage-earning employees on a "piece rate" basis (i.e., for measurable work completed). While this practice is not uncommon in the construction industry, as it can motivate employees to increase their productivity, it carries a high risk of claims for unpaid overtime and failure to pay minimum wage.

The problem, which carries grave consequences, stems from "misclassification" of employees - i.e., employers in the construction and other industries misclassifying their workers as "exempt" (i.e., paid a salary instead of an hourly wage, to avoid overtime) or as independent contractors (to avoid overtime and payroll taxes).

In an effort to force employers to comply with wage-and-hour requirements and to punish employers that do not, the U.S. Department of Labor's Wage & Hour Division has stepped up its enforcement activity regarding suspected minimum wage and overtime violations, publicly targeting certain sectors of the construction industry.

## New Threat: Employee Lawsuits

As though the consequences imposed by the government - including business and personal liability for unpaid wages and payroll taxes, tax liens and other non-dischargeable obligations - were not sufficiently severe, a new threat has recently emerged: private lawsuits. We are seeing advertisements by consumer law firms encouraging people to sue their current or former employers for alleged violations of the Fair Labor Standards Act (FLSA). The suits are generally filed in federal court, and they pose a serious threat to businesses and their owners and managers.

If an employee wins an FLSA-based lawsuit against your company, you and the company may be on the hook for:

- unpaid compensation;
- liquidated damages equal to the unpaid compensation (you read that correctly - if you owe a worker \$2,000 in unpaid compensation, you may owe him another \$2,000 in damages);
- attorneys' fees and other costs incurred in bringing the lawsuit; and
- pre- and post-judgment interest on damages, including potential statutory penalties.

Employer exposure is not limited to overtime and minimum wage deficiencies. Claims can also stem from alleged non-payment for work performed, a nebulous charge that employers bear the burden to refute. Common employer responses - "I didn't know they were working" or "they weren't given authorization to work" - while perhaps true, offer little protection (potential defenses are discussed at the end of this article).

On employers' obligations, the FLSA is clear:

- Employers must compensate employees for all work that employers permit employees to perform. (29 C.F.R. § 785.11)
- It is the responsibility of employers' management to ensure that work is not performed if not desired. (29 C.F.R. § 785.13)
- Employers cannot accept the benefits of employees performing work without compensating employees for their work. (29 C.F.R. § 785.13)

While not every employer is subject to the FLSA's requirements, the exceptions are few. You are governed by the FLSA if you are "engaged in commerce" (you can probably stop right there) "or in the production of goods for commerce" or are "engaged in related activities performed through unified operation or common control for a common business purpose."

You must record all of the time employees work, classify employees accurately as to whether they are "exempt," and pay hourly workers overtime wages for all hours worked in excess of 40 hours per week (except for certain conditions). If your records of employees, wages, hours and other conditions and practices of employment are not maintained per federal requirements, they not only provide little in the way of a defense; they may also provide the evidence that allows the employee to prevail in the lawsuit.

If employees are able to demonstrate a pattern of willful and intentional behavior on your part, and your lack of a good faith effort to comply with the FLSA, they have three years within which to sue you and your company. Also, if you discriminate against employees by, for example, threatening retaliation to force employees to work more than 40 hours per week without overtime pay, you expose yourself to a violation of Arizona's "Constructive Discharge Statute" (A.R.S. § 23-1502).

Your liability does not stop with acknowledged employees. If you paid workers as "independent contractors," they may claim that you should have paid them wages (with overtime) and withheld and paid over federal and state taxes. In that case, you are liable not just for overtime and the taxes associated with it, but also the unpaid taxes on the amounts that you did pay them.

Personal liability for unpaid wages and associated liabilities is not limited to the company's owners. Accountants and bookkeepers who process payroll and

*Continued after sponsor ad...*



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issue paychecks or have responsibility for depositing FICA and withholding taxes may be liable by virtue of aiding and abetting the employer's unlawful treatment of employees.

This exposure exists if the matter stays between you and the worker in federal court. If the Labor Department gets involved, you face penalties of \$1,000 or more for each willful and repeated violation of overtime pay requirements.

The State of Arizona has its own employee-protection laws (A.R.S. §§ 23-351 and -355) that largely mirror the federal requirements. Not surprisingly, Arizona's laws also provide a mechanism for the employee to collect unpaid wages, along with attorneys' fees and costs in bringing the lawsuit. Further, A.R.S. § 23-364(C) provides that, if the State gets involved in a minimum wage dispute, perhaps as part of an investigation that initially focused elsewhere, the State may review the internal records regarding all employees in order to protect the identity of any employee identified in the complaint.

## Defenses

Depending on the circumstances, you may have certain defenses, stemming from whether the employee had:

- supervisory or managerial duties,
- authority to hire or fire employees,
- employees reporting directly to him or her, or
- the ability to use discretion regarding major work-related decisions.


For every one of those circumstances that applies, the stronger your argument that the worker was exempt from overtime and properly treated as a salaried employee.

## What to Do

If you believe you are at risk of facing an FLSA-based employee lawsuit, you should:

- contact your insurance agent and/or broker to see what types of insurance coverage may exist for some of these violations;
- carefully review your record keeping and employment practices to ensure you comply with state and federal requirements; and
- consider engaging a human resources consultant with expertise in wage-and-hour record-keeping and compliance.

You should also call your lawyer. If your current law firm has specific experience in wage-and-hour violations, they can guide you through the coming steps. If they do not offer the expertise you need, we invite you to

contact us. We can help you evaluate your liability and represent you in defending against the employee's claim or, if the particulars of your case require it, refer you to an attorney who has the specific experience you need. 

## Changes at the ROC: Prosecuting Consumer Complaints

*By Kent Lang*

In September, ROC director Bill Mundell announced in a Director's Message that the ROC is changing the way in which consumer complaints against contractors are processed and resolved. The changes were expected to be completed "during the next few months."

According to the Director's Message, the ROC will focus its regulatory efforts on "problem contractors," i.e., roughly 6% of contractors that receive one or two complaints per year, and 1% that receive three or more per year. The ROC's predicted outcomes: (1) consumer complaints will be resolved more quickly; (2) meritless complaints will be dismissed more quickly; and (3) fewer citations will be issued.


While we have not seen an official announcement, you should take note of the proposed changes, at least one of which is a source of concern.

First, the ROC will now require that some complaints be resolved through arbitration, rather than a formal hearing. Arbitration will typically be used for small-dollar disputes where the contractor has few if any prior complaints. The ROC will allow a contractor to avoid a citation by resolving the complaint through arbitration.

Also, the ROC will impose progressive discipline, based on the severity and recurrence of violations, consisting of (1) letters of concern, (2) suspension (for a certain number of days), (3) suspension until compliance with an ROC order, and (4) license revocation.

Third, citations will not be issued only on the basis of a complaint; instead, the ROC will first decide whether the evidence provided by the complaining party and gathered by an ROC investigator supports the issuance of a citation.

That leads us to the final and somewhat worrisome change: The ROC plans to take an active role in prosecuting statutory violations. It appears that, if the ROC elects not to dismiss a complaint, the ROC will issue a citation on its own motion, pursuing either arbitration or proceeding to a hearing against the contractor.

The significance of this change is that private attorneys will no longer be representing the individual who filed the claim; rather, the ROC will be acting as counsel prosecuting the claim against the contractor. 





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**Pledges can also be faxed to 602 335-0118. Questions? Call 602 335-0133 or email [arca@azroofing.org](mailto:arca@azroofing.org).**

\* \$50 of each registration is tax deductible. Pursuant to Internal Revenue Code Section 170(f)(8), I certify that the Arizona Roofing Industry Foundation services in whole or partial consideration of the above contribution is a tax-exempt nonprofit corporation (ID 38-3799558) and is qualified to accept charitable contributions under IRS Code 501 (c)(3). Retain this letter as documentation for tax purposes.



## ROC Expands Application to Require Access to State Tax Records



By Kent Lang

*In addition to this summer's new requirement that applicants must agree to investigations of their criminal, financial and educational records, now applicants must make available to the ROC the state income, withholding, sales and other tax information for all parties named in the license application*

In the latest example of the Arizona Registrar of Contractors (ROC) making it more difficult for contractors to get licensed, in October 2013 the ROC began requiring each application to include a completed Arizona Department of Revenue Power of Attorney 285B.



The document authorizes the ROC to access the state tax information - income, sales, withholding and "other" - for every person and entity named in the application, for all years and tax periods.

### Background Checks

This latest imposition comes on the heels of a June 17 requirement that applicants undergo criminal, financial and educational background checks. As we reported in the June 2013 issue of "The Construction Advisor," applicants must authorize the ROC to examine "any record maintained by the United States Armed Forces, any governmental body, law enforcement agency, university, college or board of education of any state, or any bank or credit agency relating to [the applicant]."

Taken on its face, the rule means that any applicant information that is held by a law enforcement agency, taxing authority, lender or school, and that is available to the applicant, must also be made available to the ROC staff.

The number of persons who are required to submit to a background check depends on the number of names on the application. If the application names four or fewer individuals, each individual must submit to a criminal background check. If the application names five or more individuals, or if the applicant is a subsidiary of another business entity, the ROC requires criminal background checks from only certain individuals, presumably at the discretion of the ROC staff.

### Criminal Check

As part of the criminal background check, applicants must be fingerprinted. Fingerprints are sent to the Department of Public Safety or to a private investigation firm, which performs the criminal background check. If the ROC does not like the results of the background check, an applicant may be required to complete the ROC's criminal history disclosure packet, which is sent to the FBI. The FBI review is estimated to take six to eight weeks.

The ROC's memo on Licensing Background Checks lists some of the criminal offenses that may result in a denial of a new license or renewal. The weight given to any offense is at the discretion of the ROC staff and apparently varies from one application to the next.

Here is how the background check affects the contractor's license submission:

First, to initiate a background check, applicants must use an on-line form (ironically entitled, "Arizona Registrar of Contractors Welcomes You").

Second, a copy of the receipt after completing the background check must accompany the license application.

Finally, the license application and its receipt will not be accepted until four calendar days after the date of the receipt and no more than 60 days thereafter. In other words, you must complete the background check, receive your receipt, wait four days (but not 60) and then submit your license application with the receipt attached. 🏠



## URGENT NOTICE REGARDING THE 2012 IBC

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**The 2012 IBC is now available for checkout from the ARCA library**

Western States Roofing Contractors Association (WSRCA) would like to advise all roofing, waterproofing, and sheet metal contractors that the 2012 International Building Code (IBC) has been published and contains numerous changes that we believe you need to be aware of before this new code is adopted in your area.

WSRCA's Industry Issues Committee has recently reviewed roofing-related portions of the 2012 IBC and has determined that many of the changes to this new code will significantly impact the roofing, waterproofing, and sheet metal sectors of our industry. As such, the Industry Issues Committee, working on your behalf, urges you to purchase a copy of the new (2012) International Building Code and, if you work in residential construction, purchase a copy of the new 2012 Residential Building Code, so you can become familiar with these revisions to the Code.

WSRCA also recommends that all roofing, waterproofing, and sheet metal contractors contact their local Building Official and the Building Official(s) in the other areas in which you may work, to determine which version and/or edition of the Code is currently in effect. Also, we suggest you inquire as to when those Official(s) may be adopting the 2012 Edition.

As an example of these recent changes, WSRCA's Industry Issues Committee would like to provide the following examples:

Sections 1503.4 Roof Drainage, 1504.5 Securement of Low-Slope Roofs, 1504.6 Physical Properties, 1504.8 Aggregate, 1505.8 Photovoltaic Systems, 1506.2 Compatibility of Materials, 1507.14 Sprayed Polyurethane Foam Roofing, 1507.15 Liquid Applied Coatings, 1507.17 Photovoltaic Modules/Shingles, 1507.2 Asphalt Shingles, 1507.2.9.3 Drip Edge, 1507.2.8.1 High Wind Attachment, 1507.4 Metal Roof Panels, 1510.1 General, 1507.16 Roof Gardens and Landscaped Roofs.

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**(P) 1503.4 Roof Drainage.** Design and installation of roof drainage systems shall comply with Section 1503 of this code and Sections 1106 and 1108, as applicable, of and the International Plumbing Code.

**(P) 1503.4.1 Secondary (emergency overflow) drains and scuppers.** Where roof drains are required, secondary (emergency overflow) roof drains or scuppers shall be provided where the roof perimeter construction extends above the roof in such a manner that water will be entrapped if the primary drains allow buildup for any reason. The installation and sizing of secondary emergency overflow drains, leaders and conductors shall comply with Sections 1106 and 1108, as applicable, of the International Plumbing Code.

**1503.4.2 Scuppers.** When scuppers are used for secondary (emergency overflow) roof drainage, the quantity, size, location and inlet elevation of the scuppers shall be sized to prevent the depth of ponding water from exceeding that for which the roof was designed as determined by Section 1611.1. Scuppers shall not have an opening dimension of less than 4 inches (102 mm). The flow through the primary system shall not be considered when locating and sizing scuppers.

**1504.5 Edge securement for low-slope roofs.** Low-slope built-up, modified bitumen and single-ply roof system metal edge securement, except gutters, shall be designed and installed for wind loads in accordance with Chapter 16 and tested for resistance in accordance with Test Methods RE-1, RE-2, and RE-3 of ANSI/SPRI ES-1, except VALT wind speed shall be determined from Figure 1609A, 1609B, or 1609C as applicable.

**1504.6 Physical properties.** Roof coverings installed on low-slope roofs (roof slope < 2:12) in accordance with Section 1507 shall demonstrate physical integrity over the working life of the roof based upon 2,000 hours of exposure to accelerated weathering tests conducted in accordance with...

*Continued...*



Table 1504.8

**Maximum Allowable Mean Roof Height Permitted For Buildings with Aggregate on the Roofs in Areas Outside A Hurricane-Prone Region**

NOMINAL DESIGN WIND SPEED, VASD (MPH) <sup>b, d</sup>	MAXIMUM MEAN ROOF HEIGHT (ft) <sup>a, c</sup>		
	Exposure category		
	B	C	D
80	170	60	30
90	110	35	15
95	75	20	NP
100	55	15	NP
105	40	NP	NP
110	30	NP	NP
115	20	NP	NP
120	15	NP	NP
Greater than 120	NP	NP	NP

For SI: 1 foot = 304.8 mm; 1 mile per hour = 0.447 m/s

a. Mean roof height as defined in ASCE 7

b. For intermediate values of VASD, the height associated with the next higher value of VASD shall be used, or direct interpolation is permitted.

c. NP = gravel and stone not permitted for any roof height.

d. VASD shall be determined in accordance with Section 1609.3.1

**1506.2 Compatibility of materials.** Roofs and roof coverings shall be of materials that are compatible with each other and with the building or structure to which the materials are applied.

**1505.8 Photovoltaic systems.** Rooftop installed photovoltaic systems that are adhered or attached to the roof covering or photovoltaic modules/shingles installed as roof coverings shall be labeled to identify their fire classification in accordance with the testing required in Section 1505.1.

**1057.2.8.1 High wind attachment.** Underlayment applied in areas subject to high winds [VASD greater than 110mph (49/m/s) as determined in accordance with Section 1609.3.1] shall be applied with corrosion-resistant fasteners in accordance with the manufacturer's instructions. Fasteners are to be applied along the over-lap at a maximum spacing of 36 inches (914 mm) on center.

Underlayment installed where VASD, in accordance with Section 1609.3.1, equals or exceeds 120 mph (54 m/s) shall comply with ASTM D 226 Type II, ASTM D 4869 Type IV, or ASTM D 6757. The underlayment shall be attached in a grid pattern of 12 inches (305 mm) between side laps with a 6-inch (152 mm) spacing at the side laps. Underlayment shall be applied in accordance with Section 1057.2.8 except all laps shall be a minimal of 4 inches (102 mm). Underlayment shall be attached using metal or plastic cap nails with a head diameter of not less than 1 inch (25 mm) with a thickness of at least 32-gauge [0.0134 inch (0.34 mm)] sheet metal. The cap nail shank shall be a minimum of 12 gauge [0.105 inch (2.67 mm)] with a length to penetrate through the roof sheathing or a minimum of 3/4 inch (19.1 mm) into the roof sheathing.

**1507.2.9.3 Drip Edge.** Provide drip edge at eaves and gables of shingle roofs. Overlap to be a minimum of 2 inches (51 mm). Eave drip edges shall extend 1/4 inch (6.4 mm) below sheathing and extend back on the roof a minimum of 2 inches (51 mm). Drip edge shall be mechanically fastened a maximum of 12 inches (305 mm) o.c.





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**1507.4.5 Underlayment and high wind.** Underlayment applied in areas subject to high winds [VASD greater than 110 mph (49 m/s) as determined in accordance with Section 1609.3.1] shall be applied with corrosion-resistant fasteners in accordance with the manufacturer's installation instructions. Fasteners are to be applied along the overlap not farther apart than 36 inches (914 mm) on center.

Underlayment installed where VASD in accordance with Section 1609.3.1, equals or exceeds 120 mph (54 m/s) shall comply with ASTM D 226 Type II, ASTM D 4869 Type IV, or ASTM D 1970. The underlayment shall be attached in a grid pattern of 12 inches (305 mm) between side laps with a 6-inch (152 mm) spacing at the side laps. Underlayment shall be applied in accordance with the manufacturer's installation instructions except all laps shall be a minimum of 4 inches (102 mm). Underlayment shall be attached using metal or plastic cap nails with a head diameter of not less than 1 inch (25 mm) with a thickness of at least 32-gauge [0.0134 inch (0.34mm)] sheet metal. The cap nail shank shall be a minimum of 12 gauge [0.105 inch (2.67 mm)] with a length to penetrate through the roof sheathing or a minimum of 3/4 inch (19.1 mm) into the roof sheathing.

**Table 1507.14.3**  
**Protective Coating Material Standards**

MATERIAL	STANDARD
Acrylic Coating	ASTM D 6083
Silicone Coating	ASTM D 6694
Moisture-cured polyurethane coating	ASTM D 6947

**1507.15.1 Slope.** Liquid-applied roofing shall have a design slope of a minimum of one-fourth unit vertical in 12 units horizontal (2-percent slope).

**1507.17 Photovoltaic modules/shingles.** The installation of photovoltaic modules/shingles shall comply with the provisions of this section.

**1507.17.1 Material standards.** Photovoltaic modules/shingles shall be listed and labeled in accordance with UL 1703.

**1507.17.2 Attachment.** Photovoltaic modules/shingles shall be attached in accordance with the manufacturer's installation instructions.


**1507.17.3 Wind resistance.** Photovoltaic modules/shingles shall be tested in accordance with procedures and acceptance criteria in ASTM D 3161. Photovoltaic modules/shingles shall comply with the classification requirements of Table 1507.2.7.1(2) for the appropriate maximum nominal design wind speed. Photovoltaic modules/shingle packaging shall bear a label to indicate compliance with the procedures in ASTM D 3161 and the required classification from Table 1507.2.7.1(2).

**1510.1 General.** Materials and methods of application used for recovering or replacing an existing roof covering shall comply with the requirements of Chapter 15.

4. Where the existing roof assembly includes an ice barrier membrane that is adhered to the roof deck, the existing ice barrier membrane shall be permitted to remain in place and covered with an additional layer of ice barrier membrane in accordance with Section 1507.

We believe once you take the time to understand these revisions, you will realize the potential impact these recent Code changes may have on your business.

WSRCA trusts this information is of assistance to our member contractors. Should you have questions, wish to voice concerns, or need further assistance, please do not hesitate to contact your local Building Official.

*Note: For your information, WSRCA recommends that you purchase a copy of the 2012 International Building Code, the Residential Code, and the International Plumbing Code by contacting the ICC at: <http://www.iccsafe.org/Store/Pages/default.aspx> *





## ARCA's First Annual Ugly Christmas Sweater Party

ARCA hosted its very first annual Ugly Christmas Sweater Party on January 9 at which ARCA members showed off their ugliest Christmas sweaters (several purchased at the nearest Goodwill store mere hours prior to the event) over some drinks and finger foods. Many thanks go out to the Marketing and Public Relations committee, especially co-chairs **Ann Pepper (Lyons Roofing)** and **Andy Clarke (Classic Roofing)** for conceptualizing and successfully executing this festive and well-enjoyed event. 🏠

## Office for Lease

6623 N. 67th Ave., Glendale, AZ. 85301, Zoned M-1

Yard is 2.12 Acres, office is 1385 sq ft. and can hold up to 13 desks; great for a mid size company looking to grow.

Sheds and steel containers for secure lock up. Wired for alarm and has security cameras.

If interested call:

Ron Brown, President of Jim Brown and Sons Roofing Co;  
Office - 623-247-9252

## Welcome New ARCA Members

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

- ★ Artistic Roofing Systems  
Kathleen Aldrich, 520-458-6781
- ★ Customer First Roofing  
Sonja Lundahl, 602-670-4098
- ★ Invierno Design  
Seth Winters, 520-222-7314
- ★ Prime Source Building Products  
Bill Rovenstine, 623-245-4141
- ★ Whaleys Roofing  
John Whaley, 928-978-8024



We are pleased to announce that on January 1, 2014, Stewart Building and Roofing Supply, in Glendale and Tucson will be formally changing their name to

**ROOFLINE SUPPLY & DELIVERY.**

Please note this is a **name change** only as we are simply aligning with our other branches in this region under RoofLine. Our management teams, staff, location and contact information will remain the same.

We appreciate your business and look forward to continuing to serve your roofing supply needs.

## Upcoming Events

### january

**Dinner Meeting: Dept. of Labor Audits** Jan 21  
Tucson - Old Pueblo Grille (60 N. Alvernon Way) 4:00pm

**Dinner Meeting: Dept. of Labor Audits** Jan 23  
Phoenix - Doubletree Inn (320 N. 44th St.) 4:00pm

**OSHA 10-Hour Training in English** Jan 31-Feb 1  
Kingman - Hampton Inn (1791 Sycamore Ave) 7:00am - 12:00pm

**OSHA 10-Hour Training in English** Jan 31-Feb 1  
Kingman - Hampton Inn (1791 Sycamore Ave) 12:00pm - 5:00pm

### march

**OSHA 30-Hour in English** Mar 7, 14, 21, 28  
Phoenix - ARCA office (5050 N. 8th Pl.) 7:00am - 2:30pm

### april

**Spring Sporting Clays Tournament** Apr 11  
Ben Avery (4044 W. Black Canyon Blvd) 8:00am

### june

**Phoenix Charity Bowling Tournament** Jun 21  
AMF Christown Lanes (1919 W. Bethany Home Rd) 11:00am

### july

**Tucson Charity Bowling Tournament** Jul 12  
Golden Pin Lanes (1010 W. Miracle Mile) 7:00am - 12:00pm

### october

**ARCA Convention & Trade Show** Oct 2-4  
Laughlin - Aquarius Casino and Resort





# ARIZONA ROOFING CONTRACTORS ASSOCIATION MEMBER CONTACT FORM

If you need to update your email address or fax number, or if you'd like to sign up additional employees to receive this newsletter and other ARCA notices, please fill out and return this form.

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

How would you prefer to receive ARCA correspondence?

☐ By email    ☐ By fax

Please provide current contact information below:

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

FAX: \_\_\_\_\_

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?

- ☐ No, please send ARCA news only to me.
- ☐ Yes, please also send ARCA news to the following contacts:

NAME	EMAIL ADDRESS
NAME	EMAIL ADDRESS
NAME	EMAIL ADDRESS
NAME	EMAIL ADDRESS
NAME	EMAIL ADDRESS

## PLEASE RETURN THIS FORM TO ARCA

FAX: 602 335-0118

EMAIL: [acreighton@azroofing.org](mailto:acreighton@azroofing.org)

MAIL:

5050 NORTH 8TH PLACE, SUITE 6  
PHOENIX, ARIZONA, 85014





## ARIZONA ROOFING CONTRACTORS ASSOCIATION 2013 / 2014 BOARD OF DIRECTORS

### **PRESIDENT - JOHN YODER STAR ROOFING**

9201 North 9th Avenue  
Phoenix, Arizona 85021  
Phone 602-944-3323 Fax 602-944-4749  
Email jyoder@starroofingaz.com

### **1ST VICE PRESIDENT - RHONDA LANUE LYONS ROOFING**

878 West Illini Street  
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### **2ND VICE PRESIDENT - RUSSEL HYMAN GRYPHON ROOFING**

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### **DIRECTOR - JERRY BROWN WRECORP**

6829 West Corrine Drive  
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### **DIRECTOR - RON BROWN JIM BROWN & SONS ROOFING CO., INC.**

5537 North 59th Avenue  
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Phone 623 247-9252 Fax 623 435-8577  
Email rb@jimbrownsandsonsroofing.com

### **DIRECTOR - ANDY CLARKE CLASSIC ROOFING**

2744 West Virginia  
Phoenix, Arizona 85009  
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Email aclarke@classicaz.com

### **DIRECTOR - DAVE COULTRAP DIVISION SEVEN SYSTEMS, INC.**

2634 East Country Shadows Court  
Gilbert, Arizona 85298  
Phone 480 917-8383 Fax 480 726-3744  
Email daveofdiv7@aol.com

### **DIRECTOR - RON GIBBONS PIONEER ROOFING**

9221 North 15th Avenue  
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Phone 602 944-2696 Fax 602 997-0623  
Email rgibbons@pioneer-az.com

### **DIRECTOR - DAN GRIFFORD DISTINCTIVE ROOFING, LLC**

7642 West Vogel Avenue, #1  
Peoria, Arizona 85345  
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Email d3@getdistinctive.com

### **DIRECTOR - MARTIN HEADLEE HEADLEE ROOFING**

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### **DIRECTOR - OBBY HOPPER KY-KO ROOFING SYSTEMS**

1912 West Parkside Lane  
Phoenix, Arizona 85027  
Phone 602 944-4600 Fax 602 944-5931  
Email obby@kykoroofing.com

### **DIRECTOR - ZACH LUNDBERG ALAN BRADLEY ROOFING**

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### **DIRECTOR - ANDY PEARMAN ABC SUPPLY**

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### **DIRECTOR - SCOTT MORGAN TAMKO BUILDING PRODUCTS**

5045 West Colter Street  
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### **DIRECTOR - MIKE WADDING HENRY COMPANY**

13447 North 37th Drive  
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### **DIRECTOR - ARON WINTER PRO-TECH PRODUCTS**

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### **EXECUTIVE DIRECTOR - DUANE YOURKO AZ ROOFING CONTRACTORS ASSOC.**

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## **ARIZONA ROOFING CONTRACTORS ASSOCIATION**

# **2013 / 2014 COMMITTEE CONTACTS**

### **Awards Committee**

John Yoder - Star Roofing  
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### **Budget & Finance Committee**

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### **Convention Comm-ittee**

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Dave Metz - E-las-tek Roof Coatings  
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### **Education & Safety Committee**

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### **Executive Committee**

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### **Golf Committee (Spring)**

Aron Winter - Pro-Tech Products  
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### **Golf Committee (Convention)**

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### **Green Buildings/LEED Committee**

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### **Insurance Committee**

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### **Meetings & Seminars Committee**

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### **Membership/Marketing Committee**

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### **Membership/Marketing Committee**

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### **Nominations & Elections Committee**

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### **Sponsorship Committee**

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John Plescia - Star Roofing  
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### **Technical Committee**

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Dave Coultrap - Division Seven Systems  
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Email: daveofdiv7@aol.com

### **Training & Career Promotion Committee** OPEN

## **ARCA/ARIF COMMITTEES**

### **Charity Bowling Phoenix Committee**

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### **Sporting Clays Committee**

Ron Brown - Jim Brown & Sons Roofing  
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