



THE BASESHEET

OUR MISSION IS YOUR SUCCESS

VOLUME 16, NUMBER 3 | THIRD QUARTER, 2015



NRCA



WSRCA

GREETINGS FELLOW ARCA MEMBERS:

I can hardly believe it has been almost two years since I became the president of ARCA. Lots of things have taken place in that short span of time. Sadly, we said good by to some old friends. We sold our building, and moved to a new location, adopted a new updated logo, the State has a new Governor and head of the ROC, the TPT debacle has come and kind of gone (more to follow I am sure), we had a very successful convention in Laughlin, done tons of training for both OSHA 10 and 30 as well as CPR and first aid.

All of this was accomplished thanks to you our members. You provided financial support as well as support by participating in our events or joining a committee, or serving on the BOD, there are lots of ways to support your Association and I think our membership does a great job. I can't thank you enough for the honor of serving as your president and for the incredible support I and ARCA have received from you.

I hope you are all planning to attend the convention in October which is back in Prescott, a venue that has provided an outstanding convention facility in past years, and promises to be another great time this year. The convention committee has put together what promises to be a fun and educational event.

As we continue to grow the association and as the economy slowly improves I want to ask that you give renewed support to your incoming president and BOD, give some thought to serving on a committee if you don't already do so, participate in our industry advocacy at the legislature and lastly continue to represent the Association in the professional manner you have exhibited in the past.

My sincerest thanks to everyone for an enjoyable and productive two years!

Sincerely,

John Yoder

John Yoder, President
Arizona Roofing Contractors Association

Have you noticed our new look?

ARCA's Marketing Committee -- chaired by **Valorie Miller (Jim Brown & Sons Roofing)** and **Larry Miller (Gorman Roofing)** -- has been hard at work facilitating a long overdue make-over for ARCA's logo and visual identity. This new ARCA eye-candy (top left corner) is the fruit of their labor; keep a look out for it everywhere you're used to seeing the ARCA name.

How about our new location?

Did you know we moved? Just a hop and a skip from our old digs, you can now find your favorite Arizona trade association at **4745 North 7th Street, Suite 102, Phoenix, AZ 85014.**

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ASTM International Updated the Product Standard for Roofing Asphalt



ASTM recently updated its product standard for Asphalt used in roofing. Below is a brief description of the update along with a link to NRCA's tech bulletin on the topic.

Revisions and Additions contained in the update:

- A maximum asphalt kettle temperature of 550 F
- A change in asphalt's minimum flash point temperature to 575 F
- Establishment of ASTM D4402, "Standard Test Method for Viscosity Determination of Asphalt at Elevated Temperatures Using a Rotational Viscometer," as the basis for determining EVT
- Establishment of maximum EVT values for Type III asphalt of 430 F (mop application) and 470 F (mechanical spreader application) and Type IV asphalt of 455 F (mop application) and 485 F (mechanical spreader application)
- A requirement that asphalt suppliers provide lot-specific EVTs for mop and mechanical spreader application on asphalt package labeling or bills of lading for bulk shipments

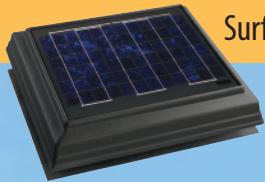
Distributors will need to deplete their current inventory of asphalt (pre ASTM D312-15) by the end of the year and manufacturers are required to publish the new standard label on their cartons by 6/1/2015.

In addition to the information listed above, NRCA is encouraging contractors to use asphalts that contain low-fuming additives.

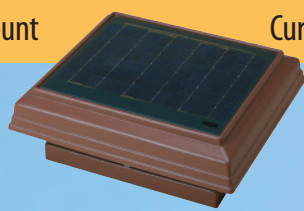
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Curb Mount



Remote Mount



Gable Mount



A 20-watt solar panel ventilates up to 1,600 sq. ft.,* operating from dawn to dusk without having to prop up the panel toward the sun. The unit is made with tough tempered glass.

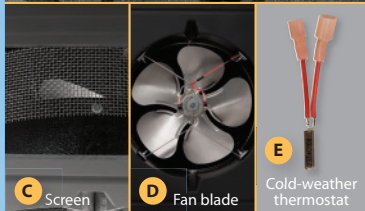
B High-performance housing molded with UV-stabilized ABS color-dyed plastic to prevent damage from sunlight and provide stability. May be painted to match roof color.

Heavy-duty motor whisper-quiet direct-current variable-voltage 1-36 VDC hardened stainless steel shaft and zinc-plated steel motor housing, dynamically balanced for excellent performance.

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

All has been quite due to the summer legislative hiatus. The good news is that they are not doing anything bad to us—flipping that same coin we would sure like to see some activity to reduce the beauracritic burden for small construction companies. While everything is just conjecture regarding the introduction of bills in January 2016 some of the issues being floated are; eliminating the ROC's ability to issue subpoenas, redefining what is a "handyman" for ROC exemption purposes, revision of lien laws and the elimination of commercial bonds.

Federal

Republicans in Congress are attempting to resurrect the process of funding the government for the coming fiscal year by passing appropriations bills—a process that has completely broken down in recent years—but face strong opposition from Democrats because of differences regarding spending priorities.

Fair Labor Standards Act Regulation

On July 6, the Obama administration published a new proposed regulation that, when finalized, will make dramatic changes in the rules governing which employees must be paid overtime under the Fair Labor Standards Act (FLSA). The rule would fulfill a memorandum issued last year by President Obama proposing revisions to existing federal regulations for the purpose of expanding overtime pay eligibility to a larger section of workers who currently are exempt from overtime pay rules. Under the FLSA, workers are not eligible for time-and-a-half pay when they work more than 40 hours if they are classified as "executive, administrative or professional" and are paid more than \$455 per week (\$23,660 annually). The proposed regulation raises the threshold to \$970 per week (\$50,440 annually) and provides that the threshold automatically be increased annually, either based on percentiles of earnings for full-time salaried workers or indexed for inflation. The proposed rule also changes the current FLSA rules for highly compensated employees and requests feedback regarding other aspects of current overtime regulations (and the final regulation may make additional changes based on feedback received during the comment period).

OSHA Silica Regulation

The Occupational Safety and Health Administration's (OSHA's) proposed silica regulation is expected to be finalized before the end of President Obama's term, absent intervention by Congress. OSHA's silica rule would require new engineering controls and other compliance

measures aimed at minimizing workplace exposure to silica dust. Many in the construction industry are concerned the new requirements are infeasible and will introduce new safety risks for roofing workers. An amendment has been introduced that would require OSHA to further analyze the effects of its regulation before issuing a final version, including soliciting feedback from small businesses regarding how the rule would affect them. The amendment also commissions an outside study, to be conducted by the National Academy of Sciences, to review the latest data associated with current silica exposure limits to determine whether the new limits are technologically feasible.

OSHA Poster

OSHA has published new version of its "Job Safety and Health---It's the Law¹" poster which informs workers of their right to request an OSHA inspection of their workplaces, receive information and training on job hazards, report a work-related injury or illness, and raise health and safety concerns with their employer or OSHA without fear of retaliation. The new poster can be downloaded from OSHA's website in English and Spanish. However, employers who have been displaying the old poster are not required to replace it with the new one.

Immigration Executive Actions

On July 10, the Obama administration again attempted to persuade a federal appeals court to lift an injunction currently blocking implementation of President Obama's executive actions to provide temporary legal status and work permits to an estimated 4 million illegal immigrants. The president's action originally was issued in November 2014 and was dealt a legal setback in February when a federal judge issued an injunction to block implementation in response to a lawsuit challenging the program by 26 states. An appeal of the February decision by the administration to the 5th Circuit Court of Appeals then was denied in May, keeping the program on hold until the courts rule on the merits of the lawsuit. If the administration again fails to persuade the court to lift the injunction, the program likely will remain on hold as the legal process plays out. Several legal experts have predicted the case ultimately will be appealed to the Supreme Court, and as a result, the issue may not be resolved until after President Obama leaves office in January 2017. However, if the courts lift the injunction allowing the program to proceed while it is under review by the courts, this could prompt Congress to step in with a legislative response. 🏠

ALOHA

ARIZONA ROOFING CONTRACTORS ASSOCIATION

Invites you to the...

ARCA Open House – Networking Event

Join us for an opportunity to check out the new ARCA office space and training facilities.

DATE: Wednesday, August 19

TIME: 4:00 P.M. – 6:00 P.M.

THEME: Luau & Back to School Drive

COST: Free

**REGISTRATION: Register online or email at
arca@azroofing.org | Deadline Aug. 12**

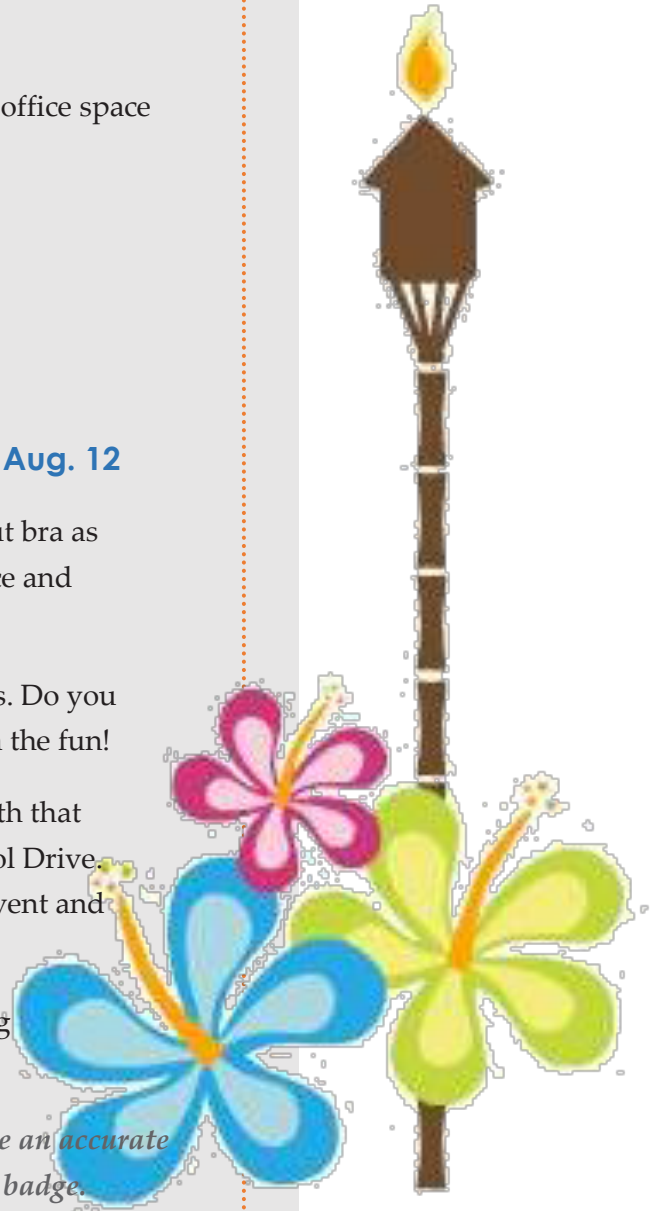
Grab your best Hawaiian shirt or hula skirt and coconut bra as we celebrate the end of summer at the new ARCA office and training facility.

Mingle with ARCA board members, staff and members. Do you know an ARCA non-member? Bring them along to join the fun!

One of ARCA's emphases is training and education with that said our Networking Event will feature a Back to School Drive. School supplies and materials will be accepted at the event and donated to local schools in need.

Brought to you by the ARCA Membership & Marketing Committee Members.

Advanced registration required by August 12 to provide an accurate count for refreshments/food & ensure you have a name badge.



Arizona Roofing Contractors Association

4745 N. 7th St., Ste. 102 & 103

Phoenix, AZ 85014

Phone 602.335.0133

www.azroofing.org

OSHA 510 Construction Industry Standards

Thinking of having your own in house safety trainer? For \$720, this four-day covers OSHA policies, procedures, and standards, as well as construction safety and health principles. Topics include scope and application of the OSHA construction standards. Special emphasis is placed on those areas that are the most hazardous, using OSHA standards as a guide.

This course is a prerequisite to the OSHA #500 Trainer Course. This course is also suitable for anyone that wants to gain knowledge regarding the content and scope of the 29CFR 1926 OSHA Construction Industry Regulations.

The registration fee for this course includes a printed copy of the 29CFR 1926 standard.

Instructor: Richard Standage

Prerequisites: None

Additional Information: [Course Information Page](#)

Location: ASU College Avenue Commons

More information and online registration at: [OSHA 510 - Construction Industry Standards Course](#)

OSHA 500 Construction Industry Standards

This course provides the attendee with the information and techniques needed to teach the OSHA Construction Industry 10 and 30 hour courses as an OSHA Authorized Trainer. Potential attendees must complete certain prerequisites prior to registration for this course. Please [click here](#) to go to the course information page for additional information and to download forms that must be submitted prior to registration.

Potential attendees must complete all prerequisites and submit the verification form to the Western OSHA Education Center. After review and approval of prerequisites we will issue a registration code that will allow you to proceed with registration for this course.

Instructor: Joe Lanute

Prerequisites: Yes - [Click for more information](#)

Location: ASU College Avenue Commons


Additional Information: [Go to course information page](#)

More information and online registration at: [OSHA 500 - Construction Industry Trainer Course](#)

Four AZ ROC Field Offices to Close in June

PHOENIX, Ariz., (May 28, 2015) - With increasing process efficiencies and technology capabilities it is no longer necessary for Arizona Registrar of Contractors (AZ ROC) to maintain “brick and mortar” presence in several out-lying areas.

AZ ROC will be closing four offices (Kingman, Show Low, Yuma and Prescott) by the end of June, eliminating three Customer Service Representative (CSR) positions. Restructuring of the Flagstaff and Tucson offices will result in the elimination of two additional CSRs (one in Tucson and one in Flagstaff).

Investigators in Maricopa and Pima Counties will use, as in the past, Phoenix and Tucson offices. Prescott and Flagstaff Investigators will have work stations in a Flagstaff location (Yavapai County Investigators will also maintain “virtual office” operations). All other Investigators will continue their “virtual office” operation. 

Healthcare Reimbursement Regulation

A new regulation that took effect July 1 has ended a low-cost healthcare option that many employers have used to help employees purchase health insurance or pay medical bills. Previously, business owners who did not offer group health insurance were able to reimburse their employees tax-free for individual health insurance policies or qualified medical expenses. Because of the new regulation issued by the Internal Revenue Service, which is not required by the Affordable Care Act but clearly has been issued as a way to support the ACA, **employers now will be penalized \$100 per day per employee if they continue this practice.** Under the new rule, contributions now must be subject to payroll taxes and individual income taxes, drastically reducing the value of the employer contribution. Legislation has been introduced in the House and Senate that would overturn the rule and reinstate the option

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Phoenix Charity Bowling Tournament

Led by Phoenix Charity Bowling Committee Chair **Bryan Hill (WRECORP)**, the 18th Annual Phoenix Charity Bowling Tournament to benefit New Pathways for Youth was a grand success. This year's costume theme was "Red-necks Run Amok", and participating ARCA attendees did not disappoint, especially mullet-sprouting, denim daisy-dukes-donning long-time event M.C. **Chuck Chapman (Tecta America AZ)**.

We would like to extend a heartfelt thank-you to everyone who participated in this event, from bowlers to committee members and beyond. It is because of you that ARCA is able to offer a helping hand to Phoenix New Pathways for Youth organization.



Tucson Charity Bowling Tournament

On July 11, Tucson ARCA members slipped into freshly deodorized bowling shoes and partook in a fun-filled afternoon at Golden Pin Lanes in the name of helping keep kids in school. Donna Maynard, chair of the Tucson Charity Bowling Committee, orchestrated another wonderfully successful event to raise funds for Youth On Their Own. The event's theme was "70's Bowl-a-Rama," and many spirited participants were on display in their best (meaning tackiest?) 70's attire.

ARCA would like to extend much gratitude to all who were involved every step of the way. Because of your help, we are able to help Tucson's Youth On Their Own keep kids in school.





The Heat is On

by CopperPoint AZ

It's time to treat the Arizona heat with the respect it commands.

Heat stress can happen when people working in hot environments experience an inability to maintain a safe internal body temperature, according to the U.S. Occupational Safety and Health Administration (OSHA). Although workers usually sweat to cool off, working in high temperatures or working near radiant heat sources may cause employees to lose this ability.

Symptoms of heat stress may reduce productivity and result in dangerous health effects - even death. So employers may want to reschedule the most taxing outdoor work in the cooler mornings or later evening hours and to offer more frequent breaks to allow workers time to cool down and to drink water.

If the body is unable to get rid of excess heat, it will store it. During heat stress, a person's core temperature rises and heart rate increases. As the body continues to store heat, a person begins to lose concentration and has difficulty focusing, may become irritable or sick and may lose the desire to drink.

CopperPoint Mutual offers free-to-order workplace safety posters and safety cards to educate employers and their employees on the dangers of heat illnesses.

Here are some other tips and resources for teaching employees about prevention of heat stress and related illnesses:

- Drink water every 15 minutes, even if you don't feel thirsty.
- Wear a brimmed hat and light-colored clothing.
- Rest in shade to cool down or retreat to an airconditioned area to recoup.
- Learn the signs of heat illness; know how to respond in an emergency.

Workers should beware of overexertion during strenuous activities in hot, humid environments. To prevent the risk of heat-related illnesses OSHA offers a free heat safety tool, a smart phone app featuring the heat index table, which calculates heat stress by combining the effects of heat and humidity. 🏠

Multi-Agency Investigation Successfully Targets Arizona and Utah Construction Companies' Misclassification of Employees

By Jennifer R. Phillips and William R. Hayden

Sixteen Arizona and Utah companies accused of misclassifying more than 1,000 construction workers agreed to pay \$700,000 in back wages and penalties after a multi-year, multi-agency investigation led to consent judgments, which were recently approved by the federal district courts of Arizona and Utah. This latest win by the U.S. Department of Labor (DOL) and other enforcement agencies underscores the need for companies to carefully evaluate the classification of their production workers, particularly if the workers are classified as "member/owners" of limited liability companies.

According to the enforcement agencies, the targeted construction companies required their employees to become "member/owners" of limited liability companies, stripping them of the federal and state protections that come with employee status. A misclassified employee - with independent contractor or other non-employee status - lacks minimum wage, overtime, workers compensation, workplace safety, unemployment insurance and other legal protections.

As stated in the DOL's news release, the workers in question were building houses as employees one day, and then the next day were performing the same work on the same job sites for the same companies but, because of their new LLC "member" status, they were doing so without the protections of federal and state wage and safety laws. The DOL emphasized that the targeted construction companies avoided paying hundreds of thousands of dollars in payroll taxes and other employee-related expenses, gaining an advantage over their competitors, especially when bidding for work.

The consent judgments are the culmination of a five-year investigation led by DOL, in conjunction with the U.S. Department of Justice, the State of Utah and the U.S. Attorney's Office for the District of Utah.[3]

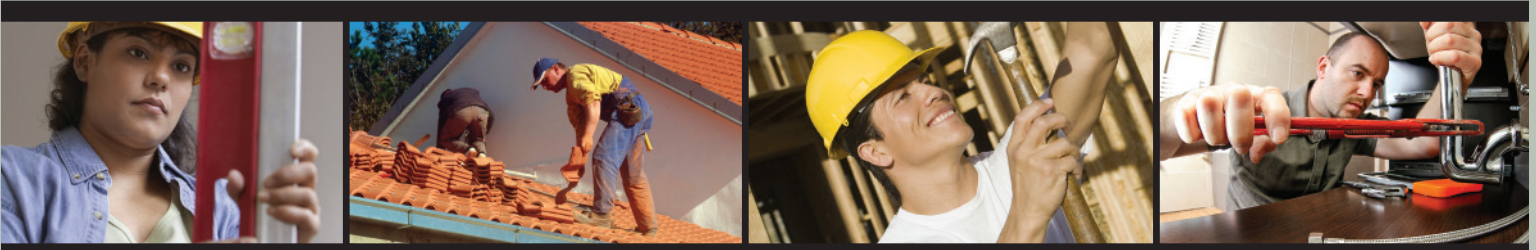
The DOL continues to focus its efforts on the construction industry, according to DOL Wage and Hour Division administrator David Weil. For example, in the fiscal year 2014, investigations nationwide resulted in the recovery of more than \$79 million in back wages for more than 109,000 workers. In Arizona, investigations resulted in more than \$3.4 million in back wages for more than 1,700 workers.[4]

Now more than ever, it is critical for employers, especially construction companies and related trades, to assess the classification of their workers - employee, independent contractor, LLC member/owner, etc. - and avoid being the target of agency action. 🏠



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2015 Spring Golf Tournament



On May 1st, just as the uncharacteristically temperate summer was toying with us about its imminent return, ARCA members enjoyed a tepid day on the greens at the Annual Spring Golf Tournament at Whirlwind Golf Club in Chandler. Many thanks to **Greg Marris (Roofing Supply Group)** and his hard-working committee for planning yet another well-attended and highly-regarded golf tournament for ARCA members.

FLIGHT #1

1ST PLACE	2ND PLACE	3RD PLACE
Greg Marris, Rudy Berumen Bill Helms, Jack Carothers	Stephen Ramirez, Scott Hailes Matt Pribyl, Ed Cunningham	Brett Gaboury, Jay Krigbaum Burton, Dan Naegele

FLIGHT #2

1ST PLACE	2ND PLACE	3RD PLACE
Steve Kramer, Steve Mulcock Michael Reeves, Jeff Klein	Craig Dunda, Bruce Bennett Andy Clarke, Brandon Richardson	Patrick McNamara, Russ Hyman Craig Oberg, Larry Miller

CLOSEST TO THE PIN	LONGEST DRIVE
Brian Torry	Colin Vogel



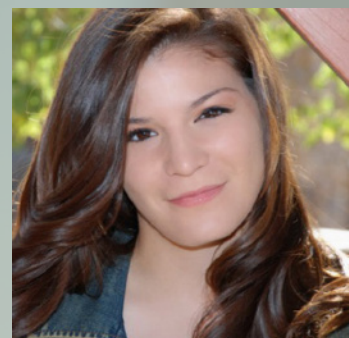
2015 ARIF Scholarship Award Winners



Virginia Martin has just enrolled at the University of Phoenix where she will be pursuing a degree Business Management with an emphasis on Human Resources. She has attended Glendale Community College and Grand Canyon university and despite being a mother, grandmother and full time employee has maintained a 3.89 GPA. Virginia has worked for **Tecta America Arizona** for over 17 years and currently is the office manager at the Glendale facility.



Giselle De La Torre will be a sophomore at Emory University in Atlanta majoring in Chemistry. She maintained a 3.4 GPA during her freshman studies. She is the daughter of **Victor De La Torre** from **Tecta America Arizona**.



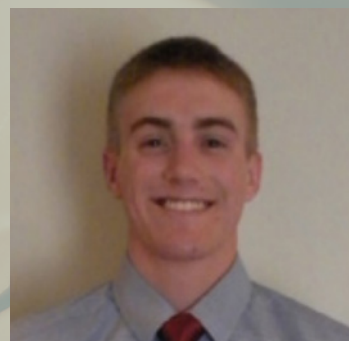
Kimberlee Myers will be a junior at Auburn University in Alabama. She is a repeat winner having previously been awarded the ARIF scholarship for both her freshman and sophomore years. Kim is a student athlete and due to injuries has been undergoing rehabilitation therapy versus playing for the Auburn Softball Team. She hopes to return to active participation this coming year. She is pursuing a degree in Pediatric Oncology Nursing. Kimberlee is the daughter of **Mary Ann Garcia-Myers** from **Roofing Specialist** in Casa Grande.



Riley Deheer will be a sophomore at Northern Arizona University where he is pursuing a degree in Mechanical Engineering. He has maintained a 4.0 GPA for his freshman year. He is the son of **Robert Deheer** from Jim Brown and **Sons Roofing in Glendale**.



Alex Ladwig will be a junior at Northern Arizona University majoring in Strategic Communications with an emphasis on public relations. Alex achieved a 3.8 GPA for her freshman year and was on the Dean's list. She is the daughter of **Matthew Ladwig** from **Roofing Supply Group** in Mesa.



Nathan Maynard will be carrying a 3.7 GPA into his junior year at the University of Arizona. He is pursuing double majors with degrees in both Business and MIS. He is the son of **Donna Maynard** from **Allied Building Products** in Tucson.

Dear Duane,

I am writing to express my joy and gratitude for all of the support that the ARIF scholarship committee has awarded me throughout my baccalaureate education at the University of Arizona. As of May 16, 2015, I have successfully completed a bachelor of science in Biomedical Engineering with honors, with a grade point average of 3.84. This accomplishment is in no small part attributed to the selfless donors and committee chair members who choose each year to support young adults such as myself.

I am excited to share with you my plans for the future. I have accepted an offer to work for Epic Systems, a leading electronic medical software company based out of Madison, Wisconsin. I will be working with hospitals and clinics improving anesthesiology software used by medical professionals in operating rooms across the country. I never expected such an amazing opportunity directly out of college. I am thankful for having the support to become the person I am today and being able to enter industry, humbled yet confident.

I cannot fully express how thankful I am for your generosity. I remember only four years ago I was expressing my excitement to you at becoming a student and reveling in prospective plans for the future. I will never stop coming up with big plans for the future, moving forward, and helping people both as an engineer and a lifelong scholar. Please pass this letter on to all scholarship committee board members and those who are responsible for creating and sustaining such an outstanding foundation to support young adults. Your contributions have enriched my life and many others like me.

Sincerely,

Jessica Mergener

Jessica Mergener





Workplace Safety Requires Communication

The exchange of information among people is the backbone of any business, but effective communication becomes even more important when it comes to employee safety.

If workers are unaware of proper fall protection, how to handle machinery or the correct use of personal protective equipment (PPE), they may be at risk of an injury or illness. For many employers, effective safety communication may be the difference between receiving a workers compensation claim and having a safe workforce.

Improving safety training and communication is part of the U.S. Occupational Safety and Health Administration (OSHA) mission through its Courses, Materials and Resources page.

Despite the importance of good communications, many employers struggle. These five tips may help:

1. Create clear expectations - One of the biggest challenges to communication is the lack of clarity. Workers may not understand what is expected of them and may believe certain tasks have higher priority than others. When employees lack knowledge, they are working blind. Supervisors may want to ensure they communicate what needs to be achieved; how to reach the goal; and who is involved in accomplishing the outcome.

2. Provide context - In safety training, workers may be presented with pie graphs and charts covered in statistics, measurements and data, but they may never receive information regarding the context, making the training ineffective.

While providing measurements or charts, make sure employees understand the context to avoid misinterpretation.

3. Use workplace culture - Communication may be a common element in the company culture, but the

workplace environment also may deter the spread of credible information. One approach is to learn and use how the workforce communicates naturally. Employers may want to create structures such as email or company meetings, to reinforce communication.

4. Make it personal - While it may be difficult to create a personal relationship with each worker, supervisors may want to reach out and try to establish a personal connection. Often workers may not feel supported by management, so by getting to know their employees, supervisors may discern what motivates them and what creates a more loyal workforce.

5. Get face to face - Sending information through email or posting it on a bulletin board may not be the best ways to communicate. Not all employees may have email or check their Inbox often, and many workers will walk past bulletin boards without reading what is posted. 🏠

CopperPoint AZ Dividend Announced

CopperPoint Mutual announced it will pay out safety dividends totaling \$3.5 million for 2014 to qualified policyholders. It is the 44th consecutive year the company's Board of Directors approved a dividend payment.

The amount paid to each qualified policyholder depends on the company's annual premium and record of workplace injury claims.

Policyholder participants in CopperPoint's Association Safety Program may earn a "bonus" dividend in addition to individual dividends, based on the safety success of the association.

CopperPoint Executive Vice President, COO & President of Subsidiaries Rick Jones noted policyholders in three of CopperPoint subsidiaries - CopperPoint Premier Insurance Co., CopperPoint American Insurance Co. and CopperPoint Western Insurance Co. - receive upfront savings on premiums rather than a dividend payment at the back end.

Dividends are never guaranteed. The Board of Directors based its decision on CopperPoint's financial performance for the past year as well as conditions in the marketplace. 🏠

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Little Miller Act: Registered or Certified Mail Required for 20-Day Notices

In *Cemex v. Falcone Bros.*, the Arizona Court of Appeals rules that first-class mail does not meet statutory requirements for public projects.

As a cost-saving measure, contractors have generally mailed preliminary 20-day notices, on both private and public projects, via first-class mail with a certificate of mailing. This is done on private projects because the section of Arizona's mechanic's lien statutes requiring 20-day notices (A.R.S. § 33-992.01) expressly provides that option.

A statewide ROC sting operation nets 30 unlicensed contractors | Details

Customarily, 20-day notices have also been mailed in the same fashion on public projects, because the Little Miller Act section requiring them (in certain instances) incorporates by reference a significant portion of A.R.S. § 33-992.01.

Unfortunately for many contractors, the Arizona Court of Appeals' recent decision in *Cemex v. Falcone Bros. & Assocs.* upends that longstanding practice. In *Cemex*, the Court ruled that preliminary 20-day notices being served under Arizona's Little Miller Act must be sent by certified or registered mail.

Little Miller Act Notice Requirements

Before addressing the *Cemex* holding in detail, a brief synopsis of the notice requirements under Arizona's Little Miller Act is warranted.

Not all Little Miller Act claimants are required to provide notice; claimants having a direct contractual relationship with the contractor furnishing the payment bond need not provide any notice. But A.R.S. § 34-223(A) states that claimants having a direct relationship with a subcontractor of the contractor furnishing the bond have a right of action against the bond, only upon giving the following two types of notice to the contractor:

1. "[A] written preliminary twenty day notice, as provided in A.R.S. § 33-992.01, subsection C, paragraphs 1, 2, 3 and 4 and subsections E and H," and
2. "[W]ritten notice ... within ninety days from the date on which such claimant performed the last or the labor or furnished or supplied the last of the material for which such claim is made."

That section of the statutes concludes by stating:

"[s]uch notice shall be served by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business, or at the contractor's residence."

Background

In *Cemex*, a material supplier furnished construction material to a subcontractor on a City of Tucson public works project. The supplier alleged that it had not been paid for the furnished materials and sued the general contractor and its surety to recover against the posted Little Miller Act payment bond.

In connection with its claim, the supplier asserted that it had served four preliminary 20-day notices upon the general contractor pursuant to A.R.S. § 34-223(A), by mailing each notice via first-class mail, postage prepaid, with a certificate of mailing. The general contractor, however, claimed that it did not receive any of the four alleged 20-day notices.

The general contractor moved for summary judgment, claiming that the supplier's bond claim was barred because (a) the general contractor did not receive the 20-day notices and (b) even if it had, the notices were statutorily deficient insofar as they were sent by first-class mail, rather than by registered or certified mail as provided for in last sentence of § 34-223(A).

The supplier maintained that the four notices it sent via first-class mail satisfied its statutory requirements. The trial court ultimately agreed with the supplier and entered judgment in the supplier's favor for damages, pre-judgment interest, costs and attorneys' fees. The general contractor appealed.

Appeal

On appeal, the general contractor argued that the subject preliminary 20-day notices were inoperative because A.R.S. § 34-223(A) requires both Little Miller Act 20-day notices and 90-day notices be served only by registered or certified mail. The supplier argued that - consistent with industry practice - the mailing provisions in A.R.S. § 34-223(A) apply only to 90-day notices. The supplier also argued that the mailing provisions in the mechanic's lien statute - A.R.S. § 33-992.01(F) - are implicitly incorporated into A.R.S. § 34-223(A), such that 20-day notices served by first-class mail with a certificate of mailing are proper.

The Court of Appeals rejected the supplier's argument. Specifically, the Court found that pursuant to the "plain language of § 34-223(A), it is clear that

the legislature did not intend the mailing provisions of § 33-992.01(F) to apply to the notices required by § 34-223(A).”

In reaching this decision, the Court noted that, while A.R.S. § 34-223(A) incorporates many of the subsections of A.R.S. § 33-992.01, subsection (F) is excluded. As a result, the Court held that the mailing provisions in A.R.S. § 34-223(A) apply to both 20-day and 90-day notices and that Little Miller Act preliminary 20-day notices must be served by certified or registered mail.

The Court did, however, mitigate the severity of its holding. It noted that both

“Arizona and federal courts have, to an extent, mitigated the stringency of the notice requirements by determining the requirements are satisfied when the contractor receives actual notice of a material man’s claim” [and] “if a notice sent pursuant to the [Little Miller Act] is actually received by a contractor, the fact that it was sent by a method other than registered or certified mail will not preclude a material-man’s action on the bond.”

Conclusion

Given the holding in Cemex, contractors and suppliers involved in public works projects should immediately take steps to ensure that their preliminary 20-day notices are being sent via registered or certified mail. 🏠

Late but Not Forgotten: The DOL’s White-Collar Proposal

On May 5, 2015, the U.S. Department of Labor (DOL) finally sent its proposed overtime rule to the White House Office of Management and Budget (OMB) for review, which comes nearly six months later than initially expected. Although late, Secretary Perez stated the rules are necessary to “help make sure that millions of workers are paid fairly for a long, hard day’s work.” The next step in this rule-making process is for the OMB to complete its review and the DOL to publish its proposal to give the public an opportunity to comment.

The origins of this proposed overtime rule come from President Obama’s March 13, 2014 memorandum requesting that the DOL “propose revisions to modernize and streamline the existing overtime regulations.” President Obama deemed this directive necessary because of his belief the Fair Labor Standards Act (FLSA)

and related regulations “have not kept up with [the] modern economy.” There is some merit to this argument considering technology has effectively dimmed the bright line between work and off hours. Some employees have found themselves working around the clock while receiving no additional pay because their employer has classified them as exempt. Indeed, courts across the country have experienced a spike in FLSA claims because of this very issue.

Most employers know the FLSA requires employees to receive at least the federal minimum wage (state or local laws may have a higher rate that applies) for all hours worked along with overtime pay at time and one-half the regular rate of pay for all hours worked in excess of 40 hours in a workweek. The FLSA, however, does contain several exemptions from certain basic requirements such as minimum wage, overtime, record-keeping and child labor restrictions. Those exemptions relevant to this discussion can be found in 29 U.S.C. § 213(a) and (b), or otherwise known as Section 13(a) and 13(b), respectively. The former section exempts employees from the minimum wage and overtime provisions of the FLSA while the latter exempts employees only from the overtime provisions of the FLSA. Many employers classify employees under the “white collar” exemptions of Section 13(a), which include bona fide executive, administrative and professional employees.

According to President Obama’s memorandum, these exemptions should be more difficult to obtain so that more employees are paid by the hour and entitled to overtime pay. Alternatively or additionally, President Obama may be attempting to reaffirm the initial purpose of the overtime provisions, which was to discourage employers from overworking employees and instead encourage them to hire more individuals. Whatever the goal, employers should expect these changes to impact their business.

Although the details of the rule will not be known until their publication sometime in June (according to the DOL’s spring 2015 semiannual regulatory agenda released May 20, 2015), some changes to existing regulation are anticipated based on statements from President Obama and members of Congress. It is expected the proposed rules will raise the threshold salary requirement necessary for employers to claim the exemption. It is also expected that the duties for the various “white collar exemptions” will be modified to make them more difficult to obtain.

While employers are not required to take immediate action to address the proposed rules, employers should begin examining how they have classified employees for overtime purposes. Accordingly, at the very least, employers should:

- Revisit Existing Classifications: Take a hard look at



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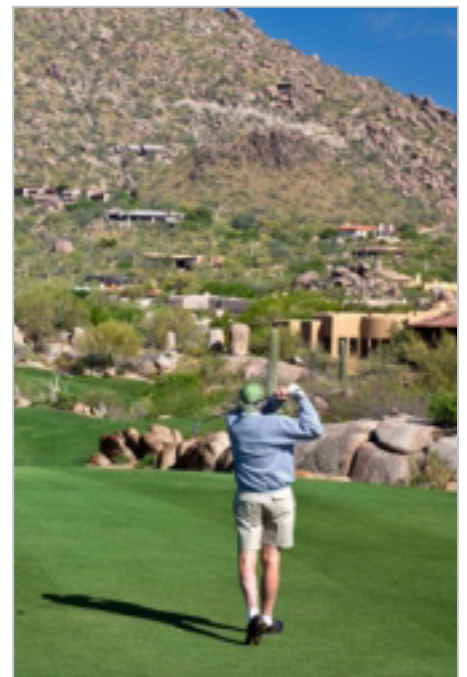
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the duties performed by those who are currently classified as exempt under one of the “white collar” categories. Employers should feel fairly confident that the primary duties performed by such exempt employee fall squarely within the duties articulated by applicable regulation. Close calls will most likely end up falling outside the exemption requirements considering the proposed rules will only make exemptions more difficult to apply, not easier.

- **Update Documentation:** Make sure employees have written job descriptions that accurately reflect the actual duties performed by the employee and that policies and procedures are up to date.
- **More Pay:** Consider the feasibility of raising the pay for those “white collar” exempt employees earning near the threshold salary requirement of \$23,660 per year. President Obama and the DOL have been urged to raise that minimum annual salary up to at least \$50,000 and as high as \$56,680. The exact number will be known once the rules are published.
- **Business Analysis:** Assess the financial costs and operational impact associated with potentially losing the application of an existing exemption due to the proposed rules and having to reclassify employees as non-exempt. These changes to the rules will inevitably cost employers money.
- **General Compliance:** Evaluate compliance with record keeping and retention requirements under the FLSA.

Much of this analysis is fact specific and can be complicated. It is important, however, that all employers who have employees classified as exempt under one of the “white collar” categories think about the impact of these changes now. Snell & Wilmer will provide another notification detailing the actual changes once the DOL publishes the rule. 🏠

Contractors and the ROC: Better Days Ahead?

In contrast to the recent toxic relationship between the Registrar of Contractors and Arizona's construction industry, the ROC's new leadership is sending encouraging signals about how the agency plans to go about its business.

Written by Mike Thal

At this month's meeting of the State Bar of Arizona's Construction Law Section, presentations by members of the Registrar of Contractors' leadership team strongly suggested that the ROC, while remaining true

to its regulatory function, will be more focused on balancing the interests of homeowners and contractors.

In his remarks, new ROC director Jeff Fleetham - the former owner of an ROC-licensed company - stated that, while the ROC exists to serve the public, contractors are members of that public, not a separate and distinct class, and are among the people that the ROC serves and protects.

Echoing Governor Ducey's pro-business philosophy, Fleetham noted that small business is the backbone of Arizona's economy and that big business will not come to Arizona unless small business - of which construction is a major part - is thriving. He stated that the ROC will seek to foster growth and remove obstacles to small business success.

Two of Fleetham's senior staff, Chief Legal Counsel James Hanson and Chief of Inspections Jeff Wills, also delivered remarks that were warmly received by the construction lawyers in attendance.

James Hanson, who before joining the ROC last month was our colleague at Lang & Klain, stressed that the ROC needs to rejoin the contracting community and to listen to contractors and their lawyers about what is really happening on the ground.

With his experience in representing both contractors and owners still fresh in his memory, Hanson stated that the ROC will try to be clearer about what it wants to see from contractors and more consistent in its enforcement priorities and policies. This is welcome news, as attorneys who deal with the ROC can more effectively advise their clients if the attorneys can anticipate how the ROC is likely to respond in various scenarios.

Jeff Wills comes from a customer service background in the homebuilding industry. Among the new investigations chief's priorities is making investigators more accessible to customers, a group in which he believes homeowners and contractors are equal members. Wills said that investigators will be given more freedom to dismiss clearly meritless cases. Also, they will be encouraged to act as mediators during the early stages of a complaint, with the goal of resolving disputes before they needlessly escalate.

Time will tell whether the ROC's new, more pro-business philosophies survive unforeseen political and other influences, but for now, the public remarks of the agency's leaders give fresh hope to contractors seeking fairer treatment and more respect from Arizona's construction regulators. 🏠

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Department Of Labor (Dol) Publishes New Interpretation Regarding Definition Of Independent Contractors

By Julie A. Pace and David A. Selden 602.322.4046 and 602.322.4009

DOL's Administrator's New Interpretation Redefines Employees and Independent Contractors.

On Wednesday, July 15, 2015, the Department of Labor ("DOL") expanded the workers who will be considered employees rather than independent contractors. The Administrator of DOL's Wage & Hour Division published "Administrator's Interpretation No. 2015-1" that broadens coverage of the overtime and minimum wage provisions of the Fair Labor Standards Act ("FLSA").

The new interpretation will have the effect of causing more workers to be treated as independent contractors not just for the FLSA, but for other employment laws as well.

The new standards move away from focusing on the amount of control exercised by the employer over the manner in which the work is performed as a key factor in determining employment status. Instead, the most important factor will be the so-called "economic realities" test.

II. Under the "Economic Realities" Test, Workers Likely Will Be Considered Employees If They Are Economically Dependent on the Employer.

DOL will now evaluate whether workers are employees covered by the FLSA by examining whether the workers are economically independent and in business for themselves, or whether the works depend upon the employer's business for their livelihood. When making this determination, DOL concedes that the facts of each individual situation must be considered, including factors such as the following:

1. Is the work an integral part of the employer's business. If it is, it is more likely to be employment?
2. Does the worker's managerial skill affect the worker's opportunity to earn a profit or suffer a loss? Managerial skills that DOL will expect independent contractors to exercise include hiring subordinates, investing in equipment or materials, marketing, and making decisions that affect profit or loss beyond working on the particular job being performed at the time.
3. How does the worker's investment compare with the Employer's investment? DOL will expect independent contractors to have made investments in their own business.
4. Does the work require special skill? If so, DOL will be more likely to regard the situation as an independent contractor.
5. Is the relationship long-term or indefinite? Typical at-will status will weigh in favor of finding that the workers are employees.
6. What is the nature and extent of the employer's control, and does it make the worker economically dependent on the employer? Independent contractors make decisions about meaningful aspects of the work.

What the employer and worker call the relationship, i.e. contractor rather than employee, is NOT a factor.

III. DOL Based Its Interpretation on a Liberal, Expansive View of the FLSA.

DOL justified its new interpretation by contending that it was simply following long-established legal principles and court decisions applying the FLSA. DOL recited that the definition of employment under the FLSA has embodied the concept of whether an employer has "suffered or permitted" a worker to perform services for the business. DOL traced the roots

of that definition to child labor laws in the early years of the 20th Century. DOL noted that the concept of who is an employee under those laws is as broad as Congress could define employment.

IV. Consequences to Employers Based on New Interpretation.

More workers will be classified as employees under the FLSA. This could also affect the

classification of workers under common law and under other employment laws.

DOL's interpretation acknowledged that its position regarding which workers are employees under the FLSA is broader than the traditional common law concept of who is an employee. This means that there could be some workers who could be properly regarded as independent contractors under the traditional common law standards, but who DOL now considers to be employees under the FLSA.

As a practical matter, DOL's expansion of criteria for determining employment under the FLSA will lead to the employment treatment of workers for purposes of other statutes or common law. It would be administratively burdensome and virtually impossible to treat a worker as an employee under the FLSA, as DOL would require, while the same worker remains an independent contractor under the common law test or for purposes of other laws, such as workers compensation, unemployment compensation, civil rights laws, I-9s and immigration compliance, employee benefits, IRS, SSA and other applicable tax laws. Workers who are paid overtime or minimum wage as employees under the FLSA will likely be treated as employees for all purposes.

DOL's interpretation pertains to the FLSA, which of course requires minimum wage and overtime compensation for non-exempt employees. There is a greater risk to employers for misclassifying workers who would be non-exempt employees, as reclassifying them will trigger overtime and minimum wage liability. Misclassifying exempt employees should not trigger overtime or minimum wage liability under most circumstances because those workers would not be entitled to overtime or minimum wage payments.

V. DOL's New Interpretation Is Not the Last Word on the Subject.

As merely an agency interpretation, the new standards were not published for comment and did not go through the rule-making process. DOL's interpretations do not have the force and effect of law, but many judges will give deference to the agency's views

when deciding cases.

DOL's interpretation of the 1930's FLSA is not binding on the Courts. DOL's position can be persuasive to the courts, however. Furthermore, no employer would want to be the test case to litigate whether their workers should be reclassified from independent contractors to employees, but many will be as the cases will work their way through the courts.

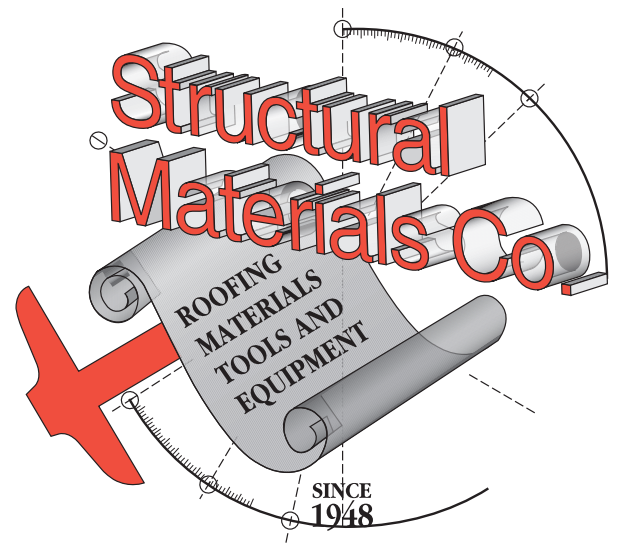
One potential remedy would for employers, trade associations, and others to seek Congressional action to clarify the intent of Congress and provide certainty regarding classifications of workers as employee or independent contractors.

VI. What Can Employers Do To Ensure Compliance and Minimize Risk.

DOL's Arizona Office just announced that it has hired many new DOL investigators and will start auditing companies for compliance with proper and accurate time keeping requirements; ensuring employees have recorded actual start and stop times for work and/or lunch; verifying proper classifications of workers as independent contractors; verifying proper classifications of employees as salaried exempt; salaried non-exempt or hourly; ensuring that employees working piece rate have time cards and are being paid overtime each week in which they work 40 hours or more; that companies are not automatically deducting for lunch, and more. These are some of the items to consider when completing an internal DOL audit.

DOL also is seeking more liquidated damages of double back pay when errors are made and assessing civil monetary penalties when mistakes by companies are discovered. **CONDUCT INTERNAL DOL AUDITS TODAY TO PROTECT YOUR COMPANY!**

All employers should conduct a self-audit and consult with experienced employment lawyers to conduct and provide advice about the self audit regarding the classification of their workers to ensure that those treated as independent contractors will pass muster under DOL's new interpretation. If there are borderline cases, employers should consider steps to enhance the independent contractor relationship. The most effective and beneficial steps would be to ensure that the workers are truly in business for themselves and are not exclusively engaged in services for the employer and are not economically dependent upon the one employer. Internal DOL audits are necessary to ensure compliance.



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August 19
8:00am

Fall Protection training in English

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August 21
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Fall Protection training in English

3880 E. Broadway Phoenix, AZ 85040

August 28
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Sept 11
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ARCA office (4745 N. 7th St., Ste. 103 Phoenix)

Sept 17-18
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Fall Protection training in English

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OPEN

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SECTION 7 MARKETING

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