



THE BASESHEET

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VOLUME 17, NUMBER 3 | THIRD QUARTER, 2016



GREETINGS FELLOW ARCA MEMBERS:

I know I am dating myself a bit but this time of year I always think of Gene Kelley and visualize him "Singing in the Rain". Boy, those were the days — I think we would all rather have our crews tarping versus singing this time of year but so far the Godzilla El Nino has been a bust and just numerous healthy monsoon downpours will work for me (a bit of hail would be icing on the cake!)

As if it isn't difficult enough to operate in our industry with a significant shortage of skilled labor the bureaucratic and regulatory environments continue to make running our businesses more challenging and costly. However, we need to be responsible business owners if not just for our families, employees and customers by complying even when it hurts. The risks are too high. Of primary concern for the roofing industry are the ongoing rash of injuries associated with falls / trips and slips. Just this week three ARCA members have been cited for not being tied off. ADOSH is out looking and attention to safety should be a skill set with all our workers not an afterthought.

There will be new Silica Regulations in place next year and ARCA is working on training protocols and job site processes and procedures that will allow all our crews to safely comply. There are still a lot of vagaries involved on the final regulations but we will have guidelines out to all our members well in advance of them 2017 implementation date. The cloudless sky is allowing us to work unabated but let's remember to sensitize the crews on the need to stay hydrated. There are articles included in this publication and ARCA has been sending out other data sheets on heat related illnesses.

I want to thank everyone for their support of the New Pathways and Youth on Their Own bowling tournaments. Both events were at capacity and our contributions support programs for the homeless youth in our communities.

I look forward to seeing you all at Casino Del Sol in Tucson this year—October 6-8. Don't miss it — we have great seminars planned, some great deals to be had at the Roofer Auction, and the usual networking and camaraderie at golf and sporting clays.

Sincerely,

*Rhonda LaNue, Lyons Roofing
President, Arizona Roofing Contractors Association*

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Legislative Update



STATE OF ARIZONA:

With the local, state, congressional and 2016 presidential elections looming on the horizon everybody is so busy trying to secure their next paycheck they are leaving us alone. The only significant interim measure being worked on affecting contractors involves the Department of Revenue internally testing / debugging the electronic portal that will allow filing a consolidated Transaction Privilege Tax (TPT) reports. It is years overdue and one of the key provisions necessary to achieve a simplified sales tax reporting system. We will keep you posted if it actually comes to fruition.

FEDERAL:

Workforce Development

The House reauthorizes the Perkins Career and Technical Education Act, which governs federal funding and policy with respect to programs operated at the state and local levels, and which has not been updated by Congress since 2006. NRCA and a coalition of business groups last year developed recommendations designed to make CTE programs more responsive to employers' workforce development needs. The bill will ensure CTE programs provide a greater role for work-based learning opportunities; new incentives to encourage the development of industry-recognized credentials; and other reforms to better align CTE programs with the roofing industry's workforce needs. The bill was approved with strong bipartisan support and thus has a chance of being enacted into law this year.

Tax Reform

House Republicans unveiled a tax reform blueprint that would fundamentally change the U.S. tax code by substantially lowering tax rates and promoting pro-growth policies. The proposal reduces the top corporate rate from 35 percent to 20 percent and the top individual rate from 39.6 percent to 33 percent. However, for pass-through businesses, all active business income would be taxed separately at 25 percent, down from the top rate of 39.6 percent. Other key provisions include full and immediate expensing of tangible property (such as equipment and buildings) and intangible assets (such as intellectual property); allowance of individuals to deduct 50 percent of dividends, capital gains and interest received from stocks and mutual funds (effectively a top rate of 16.5 percent); repeal of the estate and alternative minimum taxes; and elimination of all itemized deductions except the mortgage interest and charitable contribution deductions while expanding the standard deduction. We do not expect

to see legislative language this year, but this proposal lays the foundation for the start of tax reform negotiations in 2017.

Health Care Legislation

The House unanimously passed the Small Business Healthcare Relief Act (H.R. 5477) This legislation would reverse a regulation issued as a result of the Affordable Care Act (ACA) which prohibits employers from using Health Reimbursement Arrangements (HRAs) with their employees. Many small businesses that could not afford to provide health insurance to employees had used HRAs to enable their employees to pay for medical expenses. Under the ACA regulation, employers are now subject to a \$100 fine per day if they use an HRA. If enacted, the legislation will ensure small businesses and local municipalities with fewer than 50 employees are allowed to continue using pre-tax dollars to give employees a defined contribution for health care expenses. It also allows employees to use HRA funds to purchase health coverage on the individual market, as well as for qualified out-of-pocket medical expenses, if the employee has qualified health coverage.

Immigration

The Supreme Court deadlocked, in a 4-4 tie, on a legal challenge to President Obama's controversial executive action to prevent the deportation of more than 4 million individuals living in the U.S. without legal permission, thus leaving in place an injunction to block the program. Announced in November 2014, the program seeks to allow undocumented parents of children who are U.S. citizens to apply to avoid potential deportation and receive three-year work permits, provided they have not committed other crimes and have lived in the U.S. for at least five years. The lawsuit challenging the executive action was brought by a coalition of 26 states that argue they would bear much of the program's cost and that the administration failed to abide by federal regulatory requirements in issuing it. The decision to uphold a lower court injunction, putting the program on hold while the legal challenge is decided on its merits, is a huge setback to the president's immigration policy and means the program is unlikely to proceed before he leaves office in January 2017. It also leaves in limbo many individuals currently working in the U.S. and living here without legal permission who hoped the program would provide an opportunity for them to transition to legal status. It also may increase the chances that a new Congress and president will again attempt to address immigration policy through legislation in 2017.

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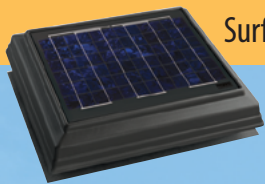
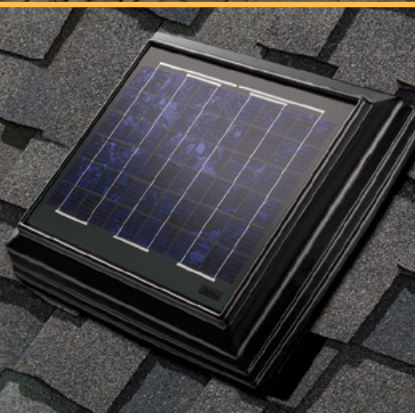
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Surface	Weathered Wood	31001288
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Curb	Brown	31001282
Remote	Black	31001284
Remote	Brown	31001285
Gable	Black	31001283
Thermostat	N/A	31001280

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

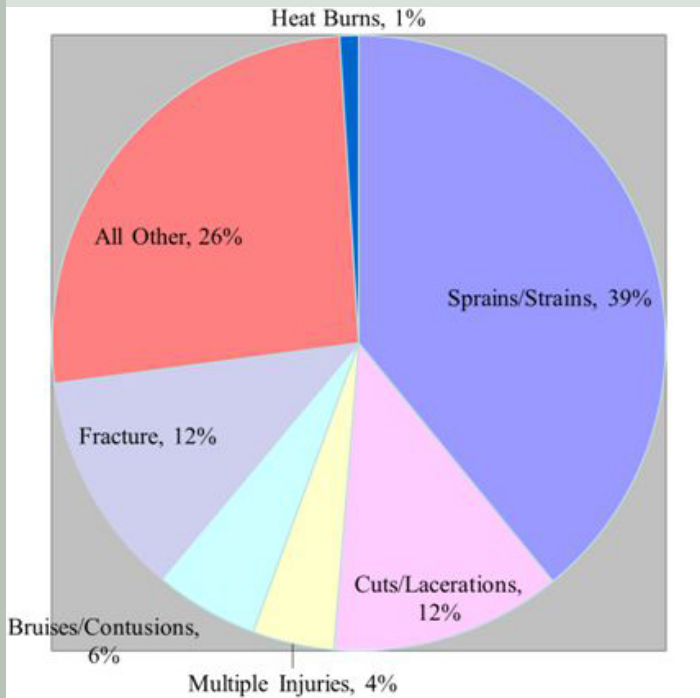
*1,600 sq. ft. based on 3/12 roof slope with open attic space. For larger areas, multiple ventilators will be necessary. The number of ventilators required will vary depending on roof slope, attic configuration and sq. ft. of open air inlets. For the ventilation requirements of your building, please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

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Sprains and Strains Fact Sheet



What are sprains and strains?

Sprains and strains are two types of musculoskeletal disorders (MSDs). In the work environment, strains and sprains are caused by excessive reaching, bending, lifting, gripping, squatting, or twisting of hands, shoulders or body. In general, any work performed with high force, with many repetitions, or in a position that feels awkward is risky. Even a motion that is harmless in and of itself, like stretching out the arm to grasp an object or squeezing a tool, may put the worker at risk of injury if it is repeated over and over.

How does a sprain differ from a strain?

A sprain is a stretch or tear of a ligament (a band of fibrous tissue that connects two or more bones at a joint). One or more ligaments may be injured at the same time. The severity of the injury will depend on the extent of the injury (whether the tear is partial or complete) and the number of ligaments involved. A strain is an injury to a muscle or tendon (a fibrous cord of tissue that connects a muscle to a bone). Depending

on the severity of the injury, a strain can be as simple as an over-stretching of a muscle or tendon, or it can be the result of a partial or complete tear.

What causes sprains and strains?

A sprain can result from a fall, a sudden twist or blow to the body that causes a joint to move out of its normal position and stretches or tears the ligaments supporting that joint. Common sites in the body where sprains occur are the ankle, knees and wrist.

A strain is caused by twisting or pulling a muscle or tendon. Strains can be either acute or chronic. An acute strain is associated with a recent injury or trauma. It can also occur following improperly lifting heavy objects or overstressing the muscles.

What factors in the workplace contribute to sprains and strains?

Aspects of work tasks that can lead to fatigue, musculoskeletal disorder (MSD) symptoms and injuries, or other types of problems may be present in one or more tasks that employees must perform to accomplish their jobs. The contributing factors that employers and employees should be aware of include:

- Awkward postures
- Pressure points
- Repetitive motions
- Vibration
- Forceful exertions

What guidance exists to aid employers in preventing sprains and strains?

NIOSH (National Institute for Occupational Safety and Health) has published guidelines specific to various occupational settings (e.g., farm work, construction and nursing homes) and age groups (adolescent workers) that, if followed, can help reduce the chance of job-related sprains and strains. 🏠

Higher Overtime Exemption Rules to Go into Effect December 1

By Lori Guner

The Labor Department's new rules double the minimum salary level for exempting an employee from overtime.

On May 18, the U.S. Department of Labor (DOL) announced changes to the Fair Labor Standards Act that will sharply increase the minimum salary requirement for overtime-exempt employees. The changes go into effect December 1.

Under the current rules, the minimum salary threshold to qualify for the overtime wage exemption is \$455 per week (\$23,660 per year). After the new regulations kick in, the minimum salary level for qualifying for the exemption will double, to \$913 per week or \$47,476 per year.

The minimum salary will be automatically updated every three years, beginning in 2020. An increase that doubles the current minimum salary test will have a significant impact on companies that have managers, professionals and administrators who are exempt under the current regulations but are making less than \$47,476 per year.

The new regulations will, for the first time, allow employers to use non-discretionary bonuses and incentive payments to satisfy up to ten percent of the salary level, so long as those payments are made on a quarterly or more frequent basis (but note that there are different requirements for "highly compensated employees," i.e., workers whose total annual compensation, under the changes that go into effect December 1, is at least \$134,004).

Example: You have an office worker, "Bob," to whom you pay a \$500 weekly salary. In an average week, he works 50 hours and is exempt from overtime pay.

Under the new regulation, Bob's \$500 weekly salary will be \$413 below the \$913 per week minimum to qualify for the overtime exemption. If you pay him \$12.50 an hour (\$500 divided by 40) and he continues to work 50 hours a week, he will earn 10 hours of overtime pay at the rate of \$18.75 per hour. Bob's total pay would go from \$500 under the current rules to \$687.50 under the new rules.

What's Behind the New Rules

According to a July 7, 2015, National Law Review article ("Exempt Status in Jeopardy: FLSA Salary Require-

ments Skyrocket"), the Labor Department suspects that 85% of all white-collar workers who are classified as overtime-exempt pass the "salary test" but fail the "duties test" and should not be exempt. (In other words, their job duties do not meet the standards for "Executive, Administrative and Professional" positions for which the overtime exemption was originally intended.) Thus, the DOL decided to increase the objective salary requirements in an effort to more strictly apply overtime exemptions.

The article speculates that the DOL might also revise the duties tests associated with various exemptions and add job classes for potential exempt status. According to the frequently asked questions that the DOL published with the final rule, the standard duties test is unchanged.

What to Do

Various observers suggest that, while you are waiting for the new rules to go into effect, you take a few steps to cut your losses:

- Audit your exempt employees' workloads to determine your likely overtime exposure.
- Recognize which employees' work weeks can be capped at 40 hours.
- To avoid excessive overtime for reclassified positions, consider the cost of additional full-time or part-time employees.
- Consider whether current exempt positions are accurately classified.
- Review your exempt job descriptions to make sure they accurately describe the duties performed and discretion used.

The new regulations do not require that employees earning a salary of less than \$47,476 per year be paid on an hourly basis. Employees may continue to be paid a salary, but the employer will be required to pay overtime on the salary if the employee works over 40 hours per week. Companies should consult their employment attorney regarding overtime requirements and methods of calculating overtime for nonexempt salaried employees.

Another thing to keep in mind: Under the automatic increase to the minimum salary level that will occur every three years, employees who are near the minimum salary level will be required to be given a raise annually to keep up with the minimum salary increases that begin in 2020. Your business planning and budgeting should account for the automatic increases.

Questions? Contact Lang & Klain attorney Lori Guner by email (lguner@lang-klain.com) or at 480-947-1911. 

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HEAT EXHAUSTION

The heat is on – literally. In June, it is almost commonplace for Arizona to be placed under an excessive heat warning for several days at a time.

When a worker experiences an excessive loss of water and salt and is sweating profusely, heat exhaustion is most likely why. Among those most prone to heat exhaustion are employees who work in hot environments, who have high blood pressure or who are elderly.

Heat exhaustion symptoms include:


- Nausea
- Heavy sweating
- Muscle cramps
- Dizziness, confusion
- Clammy, moist skin
- Pale or flushed complexion
- Fast, shallow breathing
- Extreme weakness or fatigue

- Slightly elevated body temperature

The Arizona Department of Health Statistics reports it is not unusual during Arizona’s summer that individuals will die from excessive heat.

Employees working in hot environments should be trained in first-aid treatment on what to do should they spot a co-worker suffering the symptoms. These include:

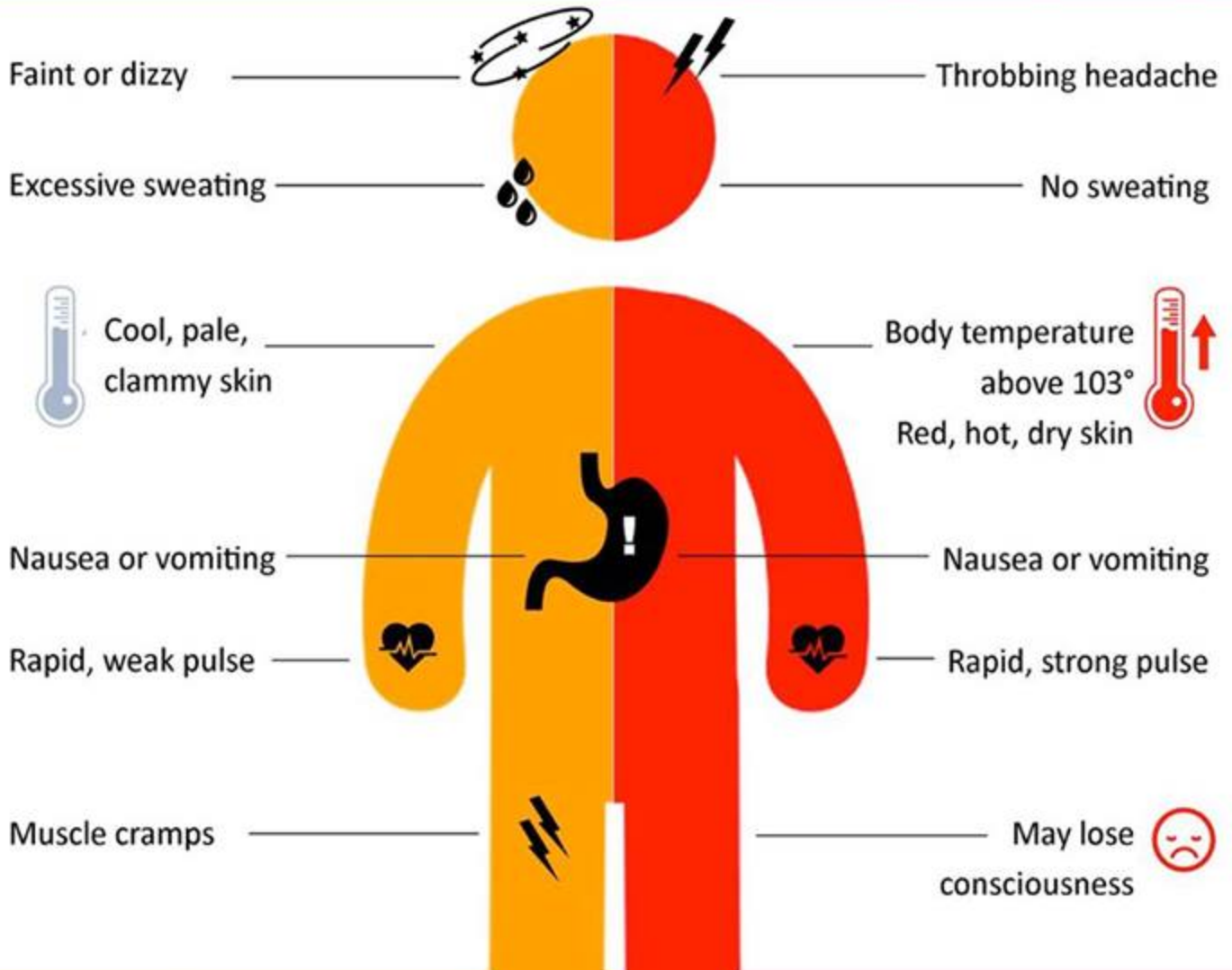
- Place them in a cool, shaded or air-conditioned area to rest.
- Help them drink plenty of water or other cool, non-alcoholic or non-caffeinated beverage.
- If possible, have them take a cool shower, bath or sponge bath.

For more information, order our “Sun Protection” injury prevention card (LC-9120) or the “Heat Exhaustion” card (LC-1009) from our website, Copperpoint.com. Registered policyholders also have access to our safety video on heat safety. 

HEAT EXHAUSTION

OR

HEAT STROKE



- Get to a cooler, air conditioned place
- Drink water if fully conscious
- Take a cool shower or use cold compresses

CALL 9-1-1

- Take immediate action to cool the person until help arrives



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DOL Announces New Rules to Adjust Civil Penalty Amounts

In 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act to advance the effectiveness of civil monetary penalties and to maintain their deterrent effect. The new law directs agencies to adjust their penalties for inflation each year using a much more straightforward method than previously available, and requires agencies to publish “catch up” rules this summer to make up for lost time since the last adjustments.

As a result, the U.S. Department of Labor announced today two interim final rules to adjust its penalties for inflation based on the last time each penalty was increased. “Civil penalties should be a credible deterrent that influences behavior far and wide,” said U.S. Secretary of Labor Thomas E. Perez. “Adjusting our penalties to keep pace with the cost of living can lead to significant benefits for workers and can level the playing field responsible employers who should not have to compete with those who don’t follow the law.”

The first rule will cover the vast majority of penalties assessed by the department’s Employee Benefits Security Administration, Mine Safety and Health Administration, Occupational Safety and Health Administration, Office of Workers’ Compensation Programs, and Wage and Hour Division. The second rule will be issued jointly with the Department of Homeland Security to adjust penalties associated with the H-2B temporary guest worker program.


Under the 2015 law, agencies are directed to publish interim final rules by July 1, 2016. The department will accept public comments for 45 days to inform the publication of any final rule.

The new method will adjust penalties for inflation, though the amount of the increase is capped at 150 percent of the existing penalty amount. The baseline is the last increase other than for inflation. The new civil penalty amounts are applicable only to civil penalties assessed after Aug. 1, 2016, whose associated violations occurred after Nov. 2, 2015.

The rules published under the 2015 law will modernize some penalties that have long lost ground to inflation:

- OSHA’s maximum penalties, which have not been raised since 1990, will increase by 78 percent. The top penalty for serious violations will rise from \$7,000 to \$12,471. The maximum penalty

for willful or repeated violations will increase from \$70,000 to \$124,709.

- OWCP’s penalty for failure to report termination of payments made under the Longshore and Harbor Workers’ Compensation Act, has only increased \$10 since 1927, and will rise from \$110 to \$275.
- WHD’s penalty for willful violations of the minimum wage and overtime provisions of the Fair Labor Standards Act will increase from \$1,100 to \$1,894. 

New Law Allows for Little Miller Act 20-Day Notices to Be Sent via First-Class Mail


Legislative action overrules 2015 Cemex decision that required notices to be sent by registered or certified mail.

On May 12, Governor Ducey signed into law HB 2268, which legislatively overrules the Arizona Court of Appeals’ decision in *Cemex v. Falcone Bros.* In that case, the Court held that the 20-day preliminary notice required under Arizona’s Little Miller Act had to be sent by registered or certified mail.

The new law corrects this problem by amending the Little Miller Act bond statute (A.R.S. § 33-992.01), which now allows for sending a 20-day notice by first-class mail with a certificate of mailing, the standard practice for sending 20-day notices under Arizona’s lien statutes.

90-Day Notices. Under the old version of the Little Miller Act, 90-day notices had to be “served by registered or certified mail, postage prepaid.” The new law allows 90-day notices to be sent by any method that provides written third-party verification of delivery.

Effective Date of Legislation. At the very latest, the new law will take effect on August 6, 2016 (90 days after the end of the legislative session).

One could make the argument that the portion of HB 2268 that legislatively overrules *Cemex* is retroactive, as the Legislature made clear that *Cemex* incorrectly interpreted the statute. However, the safe move is, until August 6, to continue sending 20-day notices on Arizona public works jobs by certified or registered mail. 



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CopperPoint Board Approves \$2.8 Million Dividend

CopperPoint Mutual Insurance Company announced it will pay out safety dividends totaling \$2.8 million for 2015 to qualified policyholders. It is the 46th consecutive year the company's Board of Directors approved a dividend payment.

The leading provider of workers compensation insurance began its safety dividends program in 1969, and since that time has returned more than \$1.5 billion to qualified policyholders who maintain safe workplaces.

"CopperPoint is pleased we can once again pay a dividend to qualified policyholders, who are our partners in keeping workers safe statewide," said CopperPoint Board Chair Ken Kirk.

The amount paid to each qualified policyholder depends on their annual premium and record of workplace injury claims.

CopperPoint President & CEO Mark Schmittlein added, "In approving this dividend payout, the Board's action reflects CopperPoint's commitment to support local businesses and allows us to reward our safest customers. We could not provide this dividend without the efforts of our employees, our Board and most of all our qualified customers who have earned safety dividends by their efforts to keep their employees safe." 🏠



OSHA's New Accident Reporting Requirements

Effective August 10th, 2016, OSHA's new electronic accident reporting rule will come into play. Employers who implement post-accident drug and alcohol testing policies will need to review them carefully and compare with your current policy to ensure you stay compliant. The OSHA rule requires employers establish a "reasonable procedure" for employees to report work-related injuries and illnesses promptly and accurately.

The rule prohibits this procedure from deterring or discouraging a reasonable employee from reporting a workplace injury or illness. The rule also prohibits any retaliation from this reporting.

Under this new standard of reporting, employer policies that request or require post-accident drug or alcohol testing will now face scrutiny by OSHA because, the agency claims, post-accident testing deters injury reporting.

The below link provides additional information surrounding the new standards.

<http://www.jdsupra.com/legalnews/osha-s-new-electronic-accident-32850/>

Again, we suggest you review your internal policies to assure compliance with the new regulations before they go into effect on August 10th, 2016. 🏠

Gone Fishin'...



▲ **Jerry Brown** of **WRECORP** on vacation at Lake Powell where he and brother **Ron Brown** (not pictured) of **Jim Brown and Sons Roofing** caught a measly 354 fish in five days. !! Well done, gentlemen.

OSHA Adds Public Disclosure to Injury/Illness Data Collection Requirements


The Occupational Safety and Health Administration today published a final rule that requires employers in high-hazard industries, including the construction industry, to send injury and illness data to OSHA for posting on the agency's public Web site. Although the new requirements do not add or change an employer's obligation to complete and retain injury and illness records under the Recording and Reporting Occupational and Injury and Illnesses regulation, ASA strongly opposed OSHA making public employer-specific information when the agency published the rule in 2013. ASA stated that it is opposed to "OSHA requiring employers to make such individual employer-related data available to the general public, particularly since there appears to be little, if any data demonstrating that such public disclosure furthers OSHA's mission."

Under the new rule, construction employers with 20-249 employees must electronically submit information from OSHA's Form 300A. Construction employers with 250 or more employees must electronically submit to OSHA injury and illness information from OSHA Forms 300, 300A and 301. According to OSHA, the availability of this data will enable prospective employees to identify workplaces where their risk of injury is lowest; thus, employers competing to hire the best workers will make injury prevention a higher priority. In addition, OSHA suggests that public access to this data also will enable employers to benchmark their safety and health performance against industry leaders, to improve their own safety programs and customers to evaluate the management of their vendors.

ASA Chief Advocacy Officer E. Colette Nelson expressed concern that "information provided by an individual firm, without context of explanation, could lead to faulty interpretation and misuse of the data. This is particularly critical in construction where owners and prime contractors routinely prequalify, including the evaluation of employee safety and health experience, the firms under consideration for work on construction projects."

The new rule also amends OSHA's recordkeeping regulation on how employers inform employees to report

work-related injuries and illnesses to their employer. The final rule requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation; clarifies the existing implicit requirement that an employer's procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and incorporates the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses. This aspect of the rule also targets employer programs and policies that, while intended to promote safety, may have the effect of discouraging workers from reporting injuries and, in turn leading to incomplete or inaccurate records of workplace hazards. Nelson said ASA intends to call on OSHA to issue further guidance on the allowable parameters of safety incentive programs.

According to Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels, "Access to injury data will also help OSHA better target our compliance assistance and enforcement resources at establishments where workers are at greater risk, and enable 'big data' researchers to apply their skills to making workplaces safer." The employee disclosure requirements and the prohibition on discrimination for reporting injuries and illnesses take effect on Aug. 10, 2016. The reporting requirements take effect on Jan. 1, 2017. 

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Arizona Mechanic's Liens

and the Prejudgment Interest Rule

By Guy W. Bluff

Two simple questions:

1. *What is the correct interest rate for calculating the final judgment amount in an action to foreclose upon a mechanic's and materialman's lien?*
2. *From what date does prejudgment interest begin to accrue?*

There are several possible answers, each of which has a solid basis in the law, but only one of which should apply. To start, let's review the applicable statutes. A.R.S. § 33-991 provides that a general contractor lien claimant is entitled to record a mechanic's and materialman's lien for the unpaid "contract price" and that a subcontractor or supplier lien claimant is entitled to record a mechanic's and materialman's lien for the "reasonable value" of the labor, materials, equipment or other services incorporated into the project or work. *Lenslite Co. v. Zocher*, 95 Ariz. 208, 388 P.2d 421 (1964). See also, *Cashway Concrete & Materials v. Sanner Contracting Company*, 158 Ariz. 81, 82, 761 P.2d 155, 156 (App.1988).

A.R.S. § 33-993 provides that the lien has to be timely recorded within 120 days of "completion" as that term is defined by the statute, and A.R.S. § 33-998, provides that a civil suit to foreclose the lien must be filed in the superior court within six months of recording the lien. Depending on the county, the time period from timely recording the lien to final judgment can easily extend to three or more years. The author recently completed a mechanic's and materialman's lien foreclosure action, where the owner suspended the work in November 2010, non-payment occurred in January 2011, the lien was recorded in July 2011 and final judgment was not entered until May 2016 — 5½ years later.

As one can readily see, the time period from starting the process until final judgment can be significant. The accrual of prejudgment interest, whether it be at the minimum statutory rate of 4.50% per year, at the Ari-

zona Prompt Pay Act rate of 1½% per month (18% per year), or the typical contract rate of 2.0% per month (24% per year) therefore can make a significant difference in the final judgment amount.

Assume the following factual scenario. Lien claimant general contractor submits a final pay application for \$100,000 on the date of certificate of occupancy — December 1, 2011. The invoice terms are net 30 (Dec/31) with 2%/month interest on late payment. According to the Arizona Prompt Pay Act, A.R.S. § 32-1129.01, the invoice becomes due and payable 21 days after submission (Dec/22). Following non-payment, the general contractor timely records a mechanic's and materialman's lien on the last day available — April 29, 2012. Following an unsuccessful mediation, the general contractor files suit to foreclose the lien, again on the last possible date — November 28, 2012. The general contractor pursues the litigation for the next three years and on March 1, 2016 a jury issues a final verdict of \$99,500 (deducting a small amount for minor punch list items never completed). Following post-trial motions, the court finally enters judgment in favor of the lien claimant on May 1, 2016.

In this instance, the general contractor would surely argue that it is entitled to prejudgment interest at either the contract rate (2.0% per month) from the date the pay application became due (Dec/31) or at a minimum the prompt pay act rate (1.5% per month) from the date the amount became certified and due (Dec/22), through the actual date of entry of judgment — May 1, 2016. The interest amount is significant and worth arguing about.

Contract Rate from Due Date to Judgment. Dec/31/2011 to May/01/2016 = 52.044 months. Prejudgment Interest = \$99,500 X 52.044 Mo X 2.0%/Mo = **\$103,567.56**

Prompt Pay Act Rate from Due Date to Judgment. Dec/22/2011 to May/01/2016 = 53 months. Prejudgment Interest = \$99,500 X 53 Mo X 1.5%/Mo = **\$79,102.50**

The project owner, however, sees this situation from an entirely different viewpoint. According to A.R.S. § 44-1201(B), the interest rate should be the current statutory rate of 4.50%/annum (as of May 2016) and because the amount due was not determined until the jury actually rendered its verdict, interest would only accrue from that date and not before (March 1, 2016).

Judgment Rate of Interest from Verdict Date to Judgment. Mar/01/2016 to May/01/2016 = 0.1667 years. Prejudgment Interest = \$99,500 X 0.1667 years X 4.50%/Yr = **\$746.26**

For both sides, the amount of prejudgment interest is clearly worth arguing about. Which formula, however, is correct? The lien claimant will surely argue that the higher contract rate of interest calculated from the date due is applicable, while the owner will argue that the “judgment” rate of interest from the jury verdict is correct — a difference of \$102,820!

In Arizona, the award of prejudgment interest on a liquidated sum is mandatory. *Metzler v. BCI Coca-Cola Bottling Company of Los Angeles, Inc.*, 235 Ariz. 141, 144, ¶ 11, 329 P.3d 1043, 1046 (2014); *Arizona Title Insurance Company v. O’Malley Lumber Company*, 14 Ariz.App. 486, 496, 484 P.2d 639, 649 (App. 1971). A sum is liquidated if “the evidence furnishes data which, if believed, makes it possible to compute the amount with exactness, without reliance upon opinion or discretion.” *Arizona Title*, 14 Ariz.App at 496, 484 P.2d at 649. Prejudgment interest is a matter of right and not discretionary, regardless of whether the claim sounds in contract or in tort and even if interest is not specifically requested in the complaint. *Fleming v. Pima County*, 141 Ariz. 149, 155, 685 P.2d 1301, 1307 (1984).

In Arizona, a lien claimant is also entitled to prejudgment interest. *CS&W Contractors, Inc. v. Southwest Savings & Loan Association*, 175 Ariz. 55, 62, 852 P.2d 1239, 1246 (App. 1992) (vacated in part by *CS&W Contractors, Inc. v. Southwest Savings & Loan Association*, 180 Ariz. 167, 883 P.2d 404 (1994)). *CS&W Contractors*, however, provides no guidance as to either the applicable interest rate or the date from which prejudgment interest begins to accrue.

The general contractor will argue that the amount became liquidated on the date of the invoicing (Dec/1/2011) and the owner will argue that the amount could not be determined with exactness until the jury rendered its verdict in part because the “reasonable value” of the lien presumes that there is reliance on opinion or discretion thus the amount awarded never becomes “liquidated” until that verdict.

The case of *Catalina Foothills United School District No. 16 v. La Paloma Property Owners Association*, 238 Ariz. 510, 518, ¶ 35, 363 P.3d 127, 135 (App. 2015) offers some guidance at least as to the date when interest begins to accrue. “interest to be awarded is calculated on the amount of the jury’s determination of just compensation, which could not be known until the verdict.” “What would otherwise be an unliquidated claim on which no prejudgment interest is owed becomes liquidated, memorialized, and enforceable only when judgment is entered, even though the time frame for which prejudgment interest is owed obviously predates the judgment.” See also, *Cashway Concrete*. In this instance, the lien claimant prevails — interest starts well prior to the jury verdict.

Moving onto the next question — from what date does prejudgment interest accrue? Here, the property owner partially prevails. A mechanic’s and materialman’s lien is a creature of statute and as such, the date of accrual begins, not with the invoice date, due date, or prompt pay act payment date, but instead, from the date of recording of the lien. See, generally, *Markham Contracting Co., Inc. v. First American Title Ins.*, 2013 WL 3828690. (Note — *Markham* is not a published decision and should not be cited in any legal memorandum to the court pursuant to Rule 111).

The final question is at what rate of interest does the lien claimant recover prejudgment interest? A.R.S. § 44-1201(B) provides the answer: “Unless specifically provided for in statute or a different rate is contracted for in writing ...” Here, the contract rate of interest was 2.0% per month. Prejudgment interest accrues at that rate.

In conclusion, the general contractor is entitled to (1) prejudgment interest on the jury verdict award even though the amount awarded was less than the amount invoiced or the lien amount — \$99,500; (2) interest on the mechanic’s and materialman’s lien accrues from the date of recording the lien — Apr/29/2012; and (3) the interest rate recoverable is the contract rate of interest — 2.0% per month.

Contract Rate of Interest from Lien Recording Date to Entry of Judgment. Apr/29/2012 to May/01/2016 = 48.099 months. Prejudgment Interest = \$99,500 X 48.099 Mo X 2.0%/Mo = \$95,717.01. 🏠

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Nathan Maynard will be carrying a 3.663 GPA into his junior year at the University of Arizona. Currently pursuing double majors with degrees in both Business and MIS, Nathan is a three-time recipient of the scholarship and will graduate in May 2017. He has been on the Deans' List all three years. He is the son of **Donna Maynard** from **Allied Building Products** in Tucson.



Stephanie Miller is a graduate of **Verrado High School** where she excelled at both soccer and academics maintaining a 3.9 GPA. She will be attending Grand Canyon University where she plans to study Biology with a Pre-Med emphasis. She is the daughter of **Valorie Miller** from **Jim Brown & Sons** and **Larry Miller** from **Gorman Roofing Services**.



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. She has been on the Deans' list all three years and will graduate in May 2017. She is the daughter of **Matthew Ladwig** from **Roofing Supply Group** in Mesa.



Jonathan Jablonski will be a junior at Arizona State University where he has maintained a 4.0 GPA. He is in the Barrett Honors College / W.P. Carrey School of Business where he is pursuing degrees in Finance & Accountancy. He is the son of **Joe Jablonski** at **Verde Industries**.



Olivia Raisanen will be a senior at Arizona State University where she has maintained a 3.8 GPA. She is pursuing degrees in Architecture and Spanish Literature. She is the daughter of **Warren Raisanen** from **Trades Unlimited**.



McKelle Carr is a graduate of Centennial High School in Las Vegas where she maintained a 3.9 GPA. She will be attending Brigham Young University in Provo, UT where she will pursue a degree in Nursing. She is the daughter of **Bradley Carr** from **Banker Insulation** in Phoenix.



Julianna Starkweather is a graduate of Notre Dame Preparatory where she was a student/athlete and carried a 3.4 GPA. She will be attending the University of Arizona where she plans on pursuing a degree in Pre-Med and Business. She is the daughter of **Jeff Starkweather** from **Starkweather Roofing**.



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 3.62 GPA. Virginia has worked for **Tecta America Arizona** for over 18 years and currently is the office manager at the Glendale facility.



Kyra Barstad is a graduate of Prescott High School where she was very active in extra-curricular activities while maintaining a 3.9 GPA. She will be attending the University of Arizona where she plans on getting a degree in Nursing. She is the daughter of **Greg Barstad** from **Granite Basin Roofing** in Prescott.



OSHA Fines to **INCREASE**

For the first time in 25 years, the Occupational Safety & Health Administration (OSHA) will be able to increase fines for workplace safety violations. As a result of Congressional legislation, fines could increase as much as 80%.


OSHA will determine the new fine structure by the time its new budget is in place, July 1. Estimates for increased fines include \$12,600 for serious violations and up to \$126,000 for repeat violations. The new penalties will become effective on August 1.

Because of the increases, workplace safety and safety training is more important than ever. Employees at all levels of an organization are encouraged to complete a comprehensive safety training course to protect themselves and co-workers from workplace safety dangers.

Businesses may want to establish written safety protocols that outline how to identify, prevent and report workplace safety hazards. Employers with existing safety protocols may want to review and to revise them to ensure they meet the latest OSHA standards.

CopperPoint's Association Safety Program is designed to work with you and your members to provide workplace safety training. Your Association Coordinator, Tod Dennis, is your resource to your members who are CopperPoint policyholders. He can help them learn ways to:

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Upcoming Events

August

Tile Roofing Installer Certification (Tucson) Aug 4
8:00am-4:00pm
La Quinta Inn (7001 South Tucson Blvd Tucson)

Tile Roofing Installer Certification (Phoenix) Aug 10
8:00am-4:00pm
ARCA office (4745 N. 7th St., Ste. 103, Phoenix)

OSHA 10-Hour Training in Phoenix (English) Aug 11-12
7:00am-12:00pm
ARCA office (4745 N. 7th St., Ste. 103, Phoenix)

ARCA Open House Supporting Education Aug 11
4:00pm-6:00pm
ARCA office (4745 N. 7th St., Ste. 103, Phoenix)

OSHA 10-Hour Training in Phoenix (Spanish) Aug 25-26
7:00am-12:00pm
ARCA office (4745 N. 7th St., Ste. 103, Phoenix)

Fall Protection Training in Phoenix (English) Aug 26
7:00am-8:00am
Border Construction Specialties (3880 E. Broadway)

Fall Protection Training in Tucson (English) Aug 30
8:00am-9:00am
3143 N. Freeway Industrial Loop Tucson

October

Ladder Safety, PPE & Fire Extinguisher Tucson (English) Aug 30
9:30am-11:00am
Border Construction Specialties (3880 E. Broadway)

Ladder Safety, PPE & Fire Extinguisher Phoenix (English) Aug 30
9:30am-11:00am
ARCA office (4745 N. 7th St., Ste. 103, Phoenix)

ARCA 2016 Convention and Trade Show Oct 6-8
Casino del Sol (5655 W Valencia Rd Tucson)



Star Roofing's Safety Stand-Down

The 58 field employees of **Star Roofing** participated in a special Fall Protection Stand-Down in May. Employees responded to questions regarding fall protection and ladder safety. In addition, all personal fall protection harnesses were checked and tagged. Special shirts were provided to keep safety awareness on the forefront.

The purpose of National Fall Protection Stand-Down is to raise awareness of preventing fall hazards in construction. Fatalities caused by falls from elevation continue to be a leading cause of death for construction workers, accounting for 337 of the 874 construction fatalities recorded in 2014, according to Bureau of Labor Statistics preliminary data. Those deaths were preventable. Fall prevention safety standards were among the top ten most frequently cited OSHA standards during fiscal year 2014.

Last year's Stand-Down was a tremendous success, reaching more than 2.5 million workers. This year, OSHA's goal is to reach five million workers. If Star Roofing meets this goal, it will have touched more than half of the construction workers in the country.

Companies can conduct a Safety Stand-Down by taking a break to have a toolbox talk or engaging in another safety activity such as safety equipment inspections, developing rescue plans, or discussing job-specific hazards. Managers are encouraged to plan a stand-down that works best for their workplace. OSHA hosts an "events" page with events that are free and open to the public to help employers and workers find events in their area. [🏠](#)

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2016 Tucson Charity Bowling Tournament

The Arizona Roofing Industry Foundation (ARIF) and ARCA hosted the 13th annual Youth on Their Own bowling tournament on July 16th at our tried and true Golden Pin Lanes in Tucson. There were over 30 teams from the Old Pueblo vying for cash, fantastic raffle prizes and silent auction items. Committee-chair **Donna Maynard (Allied Building Products)** led a dedicated team that started meeting in January to bring all the pieces together for another hugely successful event. **Dave Metz (ERSystems)** was the Master of Ceremonies and kept the crowd of 250 on pace and informed all day and everything worked well from start to finish. The Youth on Their Own organization will receive over **\$25,000** from ARIF for their education and other programs that help runaway and homeless youth.

A giant **THANK YOU** goes out to our loyal and committed committee, its fearless and dedicated leader Donna Maynard, and everyone who made this endeavor possible through their generous donations and participation.



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2016 Phoenix Charity Bowling Tournament

For this year's Phoenix Charity Bowling Tournament, on June 4th, ARCA Members made their way to the endearingly quaint town of Sunnyslope — which boasts its very own retro bowling outfit, Let it Roll — to raise a ball and some serious funds for **New Pathways for Youth**. This was our first experience at the new venue and they were very hospitable to us.

The costume challenge was to dress up as your favorite sci-fi character and we saw a wide variety of our favorite movies represented, including Star Wars and Back to the Future (pictured). However, due to a painful and untimely injury, we were all robbed the thrill of witnessing longtime M.C. **Chuck Chapman's (of Tecta America Arizona)** costume genius. (Next year... next year...)

Many thanks to all the sponsors, lane purchasers, and contributors of prizes and silent auction items. The New Pathways organization will receive over \$17,000 from ARIF this year. Event committee chair **Bryan Hill (WRECORP)** — pictured here as Hans Solo — and the whole Phoenix Charity Bowling Committee are to be commended on another successful event and a job well done.



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Charter Platinum Sponsor

A P O C

15th Year Platinum Sponsor

ROOFING SUPPLY GROUP

15th Year Platinum Sponsor

A B C SUPPLY COMPANY

12th Year Platinum Sponsor

KM COATINGS MFG., INC.

6th Year Platinum Sponsor

GAF MATERIALS

5th Year Platinum Sponsor

STAR ROOFING

3rd Year Platinum Sponsor

ELITE ROOFING SUPPLY

1st Year Platinum Sponsor

GOLD SPONSORS

CLASSIC ROOFING

GORMAN SERVICES

LYONS ROOFING

TECTA AMERICA ARIZONA, LLC

MALARKEY ROOFING PRODUCTS

SILVER SPONSORS

AAA BUSINESS SOLUTIONS

ALLIED BUILDING PRODUCTS

ATLAS ROOFING CORP.

BEST MATERIALS

COATING & FOAM SOLUTIONS, LLC

E-LAS-TEK/ERSYSTEMS

FREELITE

INCA ROOFING

JIM BROWN & SONS ROOFING

JOHNS MANVILLE

OMG, INC.

OWENS CORNING

PERFORMANCE ROOF SYSTEMS

PIONEER ROOFING

POLYGLASS

QUEST CONSTRUCTION PRODUCTS

ROOFING CONSULTANTS OF AZ

ROOFLINE SUPPLY & DELIVERY

RWC BUILDING PRODUCTS

SOPREMA

STARKWEATHER ROOFING, INC.

THE MAHONEY GROUP

WESTERN COLLOID

BRONZE SPONSORS

A-2-Z ROOFING & SUPPLY CO., INC.

ALAN BRADLEY ROOFING

ARTISTIC ROOFING SYSTEMS, LLC

ATAS INTERNATIONAL

BITEC

BORAL ROOFING

CANYON STATE ROOFING & CONSULTING

CARLISLE SYNTEC

CLEASBY MFG

DAS PRODUCTS

DIVISION SEVEN SYSTEMS, INC.

FIRESTONE BUILDING PRODUCTS

HEADLEE ROOFING COMPANY

HEALTHY STRUCTURES

HUNTER PANELS

IMAGE ROOFING

JEV ROOFING & CO.

KYKO ROOFING

LAW OFFICES OF TIMOTHY DUCAR, PLC

MAC ARUTHUR CO.

METAL WORKS INC.

NEW LIFE ROOFING

O'HAGIN MFG., LLC

PACIFIC COAST SUPPLY, INC.

PRO-TECH PRODUCTS, INC.

QUAIL RUN BUILDING MATERIALS, INC.

ROCK ROFFING

ROOFING SOUTHWEST

SCOTT ROOFING

SECTION 7 MARKETING

VERDE INDUSTRIES