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VOLUME 16, NUMBER 4 | FOURTH QUARTER, 2015

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ARIZONA ROOFING INDUSTRY FOUNDATION

NRCA

WSRCA

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GREETINGS FELLOW ARCA MEMBERS:

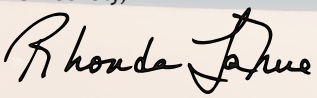
I would like to express my sincere gratitude to all for your support as I begin my term as your President. Through my involvement at numerous ARCA events and activities I have had the pleasure of meeting many of the members and forming personal relationships that extend beyond that of friendly competitors. I extend an offer to you to also join in, step up and become more active in our industry issues. The ARCA committee structure allows you to select issues or activities that you feel you can contribute to, from legislative or regulatory issues to the more fun activities of our charity bowling events or sporting endeavors. It's a rewarding experience and we welcome new blood, ideas and energy.

One of my primary concerns is the ongoing labor pool shortage. We must do something to address this structural deficit in manpower that is, and will continue to plague our industry. I have initiated discussions with both NRCA and State of Arizona job development experts to create a formal apprenticeship program geared to developing the next generation of professional roofers. This is a long term program that won't be developed overnight but we have started the ball moving in the right direction. I'm also concerned that as an association we keep relying on the same folks year after year to lead and participate in our events. I would really like to encourage more involvement from our "silent" members and will be making personal contacts requesting active participation to improve the health of our association and benefits to our members.

We have enjoyed a decent monsoon season statewide with just enough rain to let folks that have roof issues know they better take proactive steps to correct before the winter 'Godzilla El Nino' storms hit. From discussions with our contractor members I hear that most have a nice backlog of work to see them through the end of the year. Let's keep our fingers crossed for some serious El Nino activity that will help all of our bottom lines.

It seems hard to believe that it has only been two weeks since our return from the 46th Annual Convention in Prescott. The "Journey to the Top" had a healthy dose of something for everyone. Our steadfast golfers and clay shooters enjoyed two days with mild temperatures and great comradery (and a little wind), and the social events and seminars were all very well attended. I'm still chuckling at the heckling our past President, **John Yoder** of **Star Roofing**, received from his wife Peggy during the annual meeting—for those of us who are bit long in the tooth and remember the vaudville acts -- I thought we had a reincarnation of the George Burns and Gracie Allen in our midst - what a hoot! I want to extend a special thanks to the convention committee, co-chaired by **Kim Scholten** from **Western Colloid** and **Dave Metz** from **Elastek** and all our event sponsors. Planning and coordinating three days of activities for almost two hundred attendees is somewhat of a logistical nightmare but as usual they pulled it off successfully once again.

Sincerely,



Rhonda LaNue, President
Arizona Roofing Contractors Association

New OSHA Directive to Speed Up Resolution of Whistleblower Complaints

Written by Ballard Spahr's Labor and Employment Group

A directive to establish nationwide policies and procedures aimed at speeding up the resolution of "whistleblower" complaints handled by the Occupational Safety and Health Administration (OSHA) was issued on August 19, 2015.

OSHA enforces the anti-retaliation/whistleblower provisions of 22 federal statutes, including the Occupational Safety and Health Act, Dodd-Frank, the Affordable Care Act, various environmental and consumer product safety laws, and a host of others including those regulating the trucking, airline, nuclear power, rail, and maritime industries.

Reflecting the surge in retaliation claims across the country, the number of whistleblower complaints to OSHA has increased steadily in recent years. OSHA now receives more than 3,000 annually and many expect that number to continue to increase. In response, OSHA has looked for ways to resolve these cases more efficiently and expeditiously.

The directive outlines an "early resolution" process, to be used as part of its Alternative Dispute Resolution (ADR) program. OSHA piloted the process in two of its regional offices, and concluded that it assisted parties in reaching mutual and voluntary resolutions in many cases. That success prompted OSHA to expand the process to all regions.

The process is an alternative to the statutorily required investigation of each complaint, and is intended to provide parties with the opportunity to explore settlement with the assistance of a neutral, confidential OSHA representative having subject-matter expertise in whistleblower investigations. Although OSHA encourages use of the entirely voluntary process before it commences an investigation, parties may choose ADR at any time.

The process is entirely separate from the investigative procedure, and information disclosed during ADR will not be shared with the OSHA investigator if the matter is not resolved and returns to the investigative stage. The ADR coordinator will not offer judgment on the merits, but may give parties an "objective perspective" on strengths/weaknesses of their respective positions. OSHA may terminate the process under certain circumstances (e.g. if it believes a party is not acting in good faith), and is required to terminate the process upon the request of either party.

ADR case files are generally confidential and exempt from disclosure under the Freedom of Information Act (FOIA). Approved settlement agreements, however, are placed in the investigative case file, and, as a result, may be subject to disclosure in response to an FOIA request. Therefore, while the early resolution process may prove useful in resolving whistleblower complaints quickly and efficiently, employers should exercise caution and consult with counsel before participating in this process.

Ballard Spahr's Labor and Employment Group routinely assists employers in navigating the various stages of whistleblower complaints. For more information, please contact Denise M. Keyser at 856.761.3442 or keyserd@ballardspahr.com, Meredith C. Swartz at 215.864.8132 or swartzm@ballardspahr.com.

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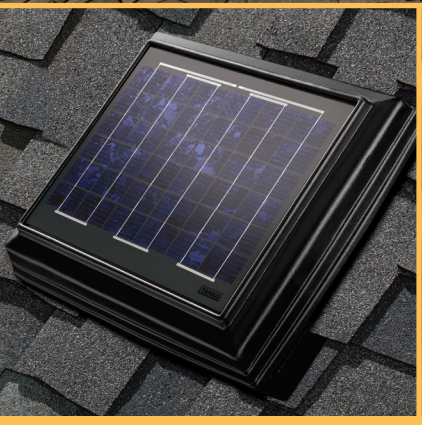
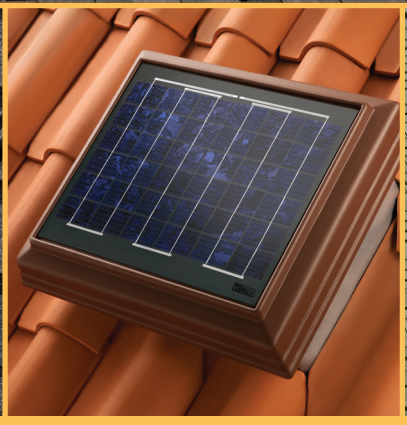
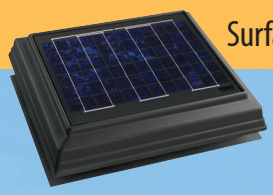
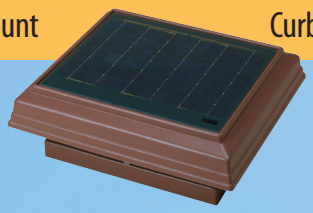




Surface Mount

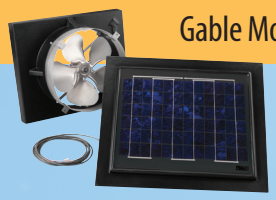


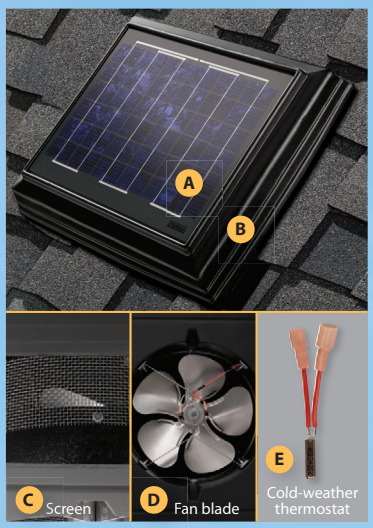
Curb Mount



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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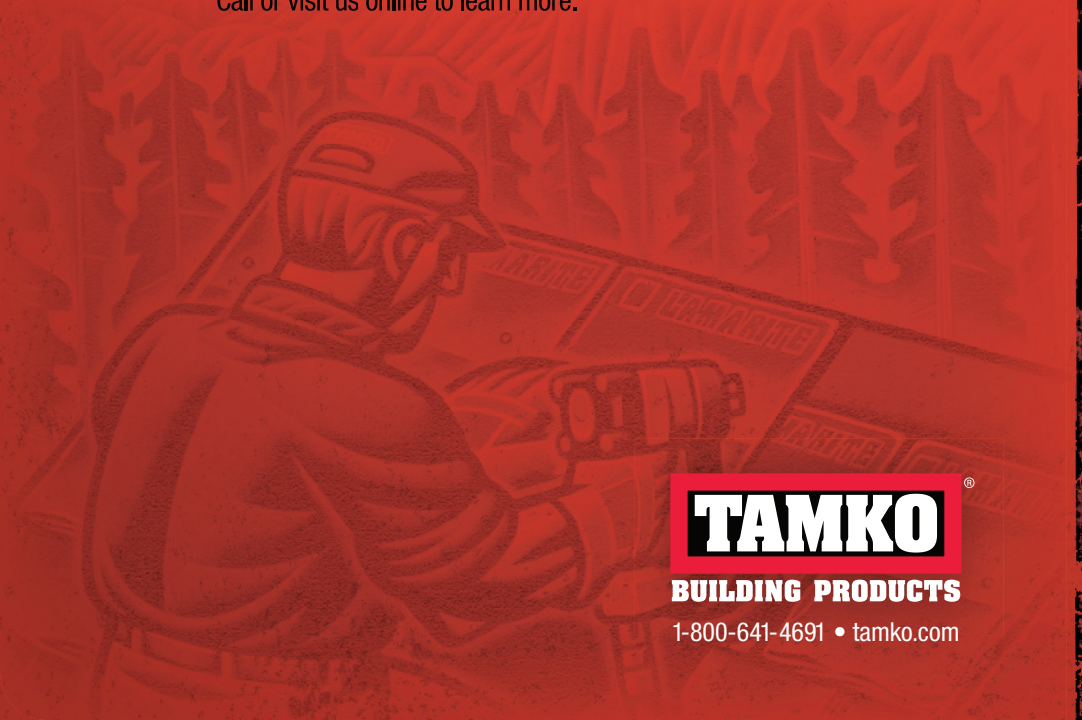

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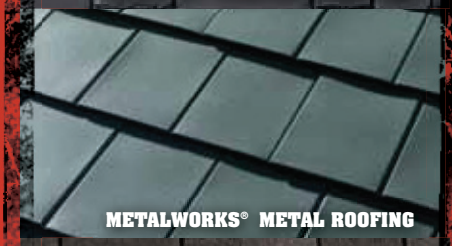
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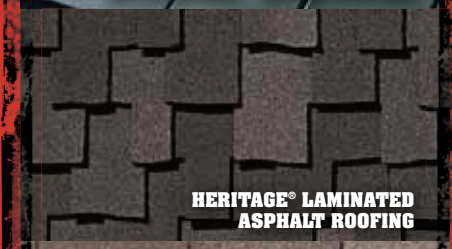
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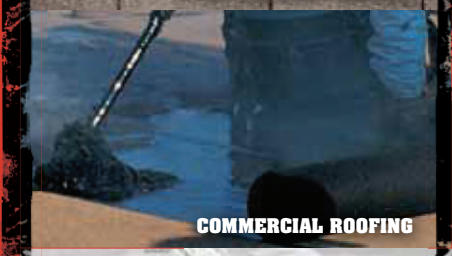
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Legislative Update

State of Arizona

All is quite on the western front---at least on the surface as legislators and other political players all await the start of the session in early January. ARCA is trying to assess what potential bills would impact the roofing industry and if we favor or oppose passage. Too many unknowns at this juncture but we will keep you apprised.

Federal

The House has been thrown into turmoil by the sudden resignation of Speaker John Boehner (R-Ohio) and the resulting leadership races.

Regulatory Reform Legislation

The Senate Committee on Homeland Security and Government Affairs approved four bipartisan regulatory reform bills supported by NRCA Oct. 7. These bills are a first step toward increasing accountability and improving the regulatory process to provide relief from burdensome regulations. They address gaps within federal agencies in economic cost-benefit and other analyses in the regulatory development process and include procedures to ensure regulations are reviewed for effectiveness. The following bills have been approved by the committee (all will require action by the full Senate):

- **Independent Agency Regulatory Analysis Act of 2015** (S. 1607) will bring independent agencies, such as the National Labor Relations Board, under the same regulatory analysis and review process that now governs other federal agencies.

- **Principled Rulemaking Act of 2015** (S. 1818) will tighten standards to ensure agencies promulgate rules based on necessity, using best available information, and provide opportunity for meaningful public input in the regulatory development process.

- **Early Participation in Regulations Act of 2015** (S. 1820) will require that, for regulation with major economic effects ($100 million or more in economic costs), agencies must employ procedures to engage stakeholders earlier in the process of developing the regulation to ensure opportunities for meaningful public input.

- **Smarter Regs Act of 2015** (S. 1817) provides for an automatic lookback requirement to periodically reassess a regulation's effectiveness for all major rules.

Hearing on OSHA Policies

The House Workforce Protections Subcommittee held a hearing Oct. 7 to review current workplace safety and health policies. David Michaels, administrator of the Occupational Safety and Health Administration (OSHA), provided an update regarding the agency's enforcement and regulatory priorities. He also lamented that Congress has proposed to cut OSHA enforcement funding by $32 million for fiscal year 2016, a 14 percent cut from existing levels. NRCA sent a letter to Subcommittee Chairman Tim Walberg (R-Mich.) outlining roofing contractors' continued concerns with respect to the lack of flexibility in OSHA's fall-protection regulations. NRCA also expressed concerns with OSHA's efforts to force states such as Arizona and California to accept federal OSHA's fall-protection regulations instead of their own alternative state rules. NRCA noted these and other states with different rules appear to have fewer fatalities from falls in roofing than states under federal OSHA rules in recent years. At NRCA's urging, Walberg asked Michaels about this issue at the hearing, and Michaels said the agency is in the process of developing metrics to determine whether state rules that differ from federal OSHA rules are as effective as OHSA rules. NRCA will continue working with Congress and OSHA officials to improve fall protection and other safety and health regulations.

Expired Tax Provisions

The House Ways and Means Committee voted to permanently authorize several of the more than 50 tax provisions that expired at the end of 2014, including bonus depreciation used by many businesses to purchase equipment. This allows businesses to take an additional deduction of 50 percent of the cost of qualifying property in the year in which it is put into service. Committee Chairman Paul Ryan (R-Wis.) is working to make several expired tax provisions, including bonus depreciation and small-business expensing rules, a permanent part of the tax code so they would not be subject to expiration every one or two years, as has been the case during the past decade. This would give businesses greater certainty and could help pave the way for comprehensive tax reform in 2017. On the other side of Capitol Hill, the Senate Finance Committee voted this summer to extend all the expired tax provisions for two years, through 2015 and 2016, but not make any tax provisions permanent. It is unclear how the different approaches between House and Senate lawmakers regarding tax issues will be resolved, but a two-year extension of most provisions with a few made permanent is possible. Such tax legislation may be included in a major highway funding bill that must pass later this year.

46TH ANNUAL ARCA CONVENTION AND TRADE SHOW

This year the ARCA Convention and Trade Show returned once again to its roots in Prescott Arizona, and it was a warm and rejuvenating reunion for all who attended. The festivities opened up on Thursday with a morning golf championship and sporting clays tournament, leading into the evening's Get Acquainted Party which was held at the scenic Granite Creek Park. Friday morning held additional sporting and recreational activities, including the golf invitational, another sporting clays tournament, and, of course, the bingo social. Then it was time for ARCA's industry-leading Trade Show event, where vendors had an opportunity to showcase their products to current and potential customers. Saturday morning opened up with educational seminars presented by industry experts including ARCA's own **Jerry Brown (WRECORP), Dave Metz (E-las-tek), Dave and Mary Coultrap (Division Seven Systems)**, and **Craig Nelson (Mahoney Group)**. The evening and weekend concluded with the Annual Awards and Installation Banquet, where Annual Awards were presented and our 2015/16 ARCA Board of Directors was sworn in, followed by a rousing after-party in the Eagle's Nest featuring dueling pianos.

Many thanks to our dedicated convention committee, fearlessly and tirelessly led by **Kim Scholten (Western Colloid)** and **Dave Metz (E-las-tek)**, and to everyone who contributed to and participated in ARCA's *Journey to the Top*.

The Arizona Roofing Contractors Association (ARCA) held its 46th Annual Convention and Election of 2016 Board of Directors on October 3rd at the Prescott Resort. Special awards recognizing the Roofer of the Year and Associate Member of the Year were awarded as follows:

Roofer of the Year: Tecta America Arizona, Phoenix, AZ -- Award accepted by Chuck Chapman, President, for strict adherence to workmanship standards, exemplary ethics in all business dealings, corporate citizenship, and integrity and conduct that reflects positively on the roofing industry.

Associate Member of the Year: AAA Arizona, Phoenix, AZ -- Award accepted by Jan Simon, Business Solutions Insurance Specialist, for development and underwriting of worker safety training, corporate citizenship, and support of the associations missions and goals.

ARCA Annual Award Winners

Life Member Award
George Wadding

Volunteer of the Year
Claudia Brown, Jim Brown & Sons

Committee Chair of the Year
Valorie Miller, Jim Brown and Sons
Larry Miller, Gorman Roofing

Associate of the Year
AAA Arizona

Contractor of the Year
Tecta America Arizona

THE ARCA SCOREBOARD

Convention Tournament Results

Golf

THURSDAY GOLF CHAMPIONSHIP

Longest Drive: Scott Hailes

Closest to the Pin: Dave Spice & Scott Hailes

A Flight

First Place: Steve Ramirez

Second Place: Rudy Berumen

Third Place: Scott Hailes

B Flight

First Place: Chuck Chapman

Second Place: Nick Hadden

Third Place: Scott Ackley

FRIDAY GOLF INVITATIONAL

Longest Drive: George Keeley

Closest to the Pin: Monty Pierce & Jaimie Reading

Skins Game: Steven Ramirez & Steve Kramer

A Flight

First Place: Brad Quinet & Scott Hailes

Second Place: Steve Kramer & Steven Ramirez

Third Place: Tyson Smith & Russ Hyman

B Flight

First Place: Tom Shuey & David Hill

Second Place: Jeff LaScala & Ryan Leja

Third Place: Frank Richardson & Sean McConnell

Sporting Clays Tournament

THURSDAY TOURNAMENT

First Place: Lynn Harding

Second Place: Ron Brown

Third Place: Mike Wadding

FRIDAY TOURNAMENT

First Place: Ron Brown

Second Place: Lynn Harding

Third Place: Mike Wading

Horseshoe Tournament

First Place Team: Russ Hyman, Gryphon Roofing and Craig Nelson, Mahoney Group

Poker Tournament

John Nassivera, Coatings and Foam Solutions

While a good time was had by all at this year's convention, we did have a few unfortunate incidents. While these have been addressed, the Board would like to remind everyone that you are expected to adhere to our code of conduct, be responsible, and conduct yourselves in a manner that reflects positively on the roofing industry and our association.

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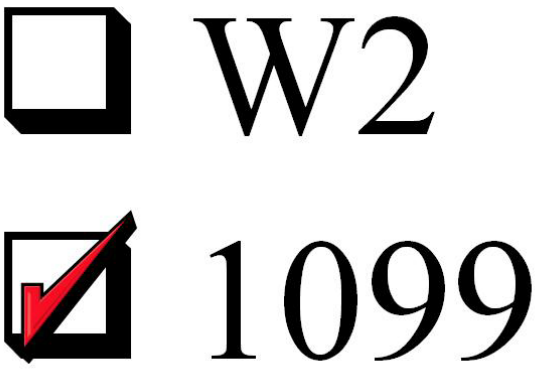

Independent Contractor Status Under Attack

By Stephen Tedesco, Shareholder, Littler Mendelson

Companies with independent contractor relationships should brace themselves for potential legal challenges from federal and state Governments. Because independent contractors are not employees, various workplace laws and rights, such as overtime, ACA medical benefits, workers compensation insurance and wage withholdings, do not apply to them. Companies use independent contractors because of the flexibility and cost savings. Given the fiscal challenges of many states and the federal government, the push for more tax revenues have aligned the interests of legislators and government agencies in a coordinated effort to discourage the use of independent contractors and to compel employers who use independent contractors to reclassify them as employees.

State Government agencies are taking steps to discourage the use of independent contractors in many industries, such as trucking and transportation. The California Division of Labor Standards Enforcement (DLSE), the agency charged with enforcing California's wage and hour laws, has aggressively started auditing companies. In connection with such these audits, the DLSE is sending "employee questionnaires" to independent contractors inquiring about the types and amounts of deductions taken from their pay, who tells them what jobs to pick up and at what time, and whether they are responsible for expenses. The front page stories about the disputes between Uber and many state and local governments is just one indication of this trend. That the benefits and costs of the "gig" economy are becoming an issue in the presidential campaign clearly show that this issue will not go away.

In a move that is expected to have far-reaching consequences for employers, the U.S. Department of Labor issued new guidance on the classification of independent contractors as employees under the Fair Labor Standards Act (FLSA). On July 15, 2015, the United States Department of Labor, through one of its "Administrators" issued an interpretation of the FLSA's definition of "employee" (as opposed to "independent contractor"). The interpretation is not binding on the courts, and it is not entitled to the same judicial deference as a formal Department of Labor regulation, but such interpretive letters are frequently taken into consideration by the courts in rendering their decisions. And they clearly signal the way the DOL will enforce the FLSA. Therefore, the interpretive letter is significant.

In a nutshell, the interpretation finds, "Most workers are employees under the FLSA's broad definition." To support that conclusion, the Administrator rejected the traditional "right-ofcontrol" test and used an "economic realities test" which focuses on "whether the worker is economically dependent on the employer." Under that test, an owner operator who owns a single power unit and hauls primarily from one trucking company will almost assuredly be found to be an employee rather than an independent contractor.

The interpretive letter recognizes 4 factors to be considered in determining employee status: (1) the extent to which the work performed is an integral part of the employer's business; (2) the worker's opportunity for profit or loss depending on his or her managerial skill (as opposed to the ability of the worker to increase his income by working harder or for more hours); (3) the extent of the relative investments of the employer and the worker (the Administrator found that a $40,000 investment in equipment was not significant compared to the employer's much larger investment in the company; and (4) the degree of control exercised or retained by the employer.

While the Interpretative letter is not the death knell for independent contractor status, it is a good indication that it will be even harder to convince the DOL and the courts that certain workers are independent contractors.

Two weeks after the U.S. Department of Labor issued an Administrator's Interpretation cautioning that "most workers are employees," a Senate bill was introduced a targeting worker misclassification. The Payroll Fraud Prevention Act of 2015 would make a number of amendments to the FLSA to require employers to delineate employees from non-employee contractors, impose additional employer reporting requirements, and establish new penalties for misclassification violations.

The measure defines who is considered a "non-employee," and requires employers to provide their workers with a written notice of their classification as an employee or non-employee. This notice would need to include the following statement:

Your rights to wage, hour, and other labor protections depend upon your proper classification as an employee or a non-employee. If you have any questions or concerns about how you have been classified or suspect that you may have been misclassified, contact the U.S. Department of Labor.

Failure to provide such notice to any covered worker would automatically render the individual an employee, an assumption that could be rebutted only "through the presentation of clear and convincing evidence that a covered individual … is not an employee." Given the divided Congress, this bill is not likely to pass this term. However, portions of the bill have emerged in the proposed rule seeking to implement the Fair Pay and Safe Workplaces Executive Order, otherwise known as the "blacklisting" rule, contains paycheck reporting requirements for federal contractor employers.

These developments can and should be viewed as a warning to employers that established practices that everyone assumed were allowed may soon be viewed as illegal. Virtually, every construction company either hires subcontractors or is hired as a subcontractor. While most relationships should withstand scrutiny, companies should be wary of one man or one woman shops. The recession created a vast array of "consultants" plying their trade, and companies may be unpleasantly surprised to find that these consultants will be reclassified as employees. The legal standards for an independent contractor are complex and general enough so that the facts may be used to reach any desired or undesired conclusion. In general, companies should look for the following red-flags: is the contractor a solo practitioner? Is the company its only client/customer? Is the contractor in the same profession as the company? Is the contractor working on a continual and/or indefinite basis? If the answers to these questions are yes, then the company may need to rethink some of its independent contractor relationships.

When Getting Paid is Not Getting Paid: Preferences in Bankruptcy

By Timothy D. Ducar

Your company subcontracted with a general contractor for roofing work. You get paid. Shortly thereafter, the general contractor files for Chapter 11 reorganization bankruptcy. You then receive a letter from the bankruptcy trustee advising you that the transfer was a preference and that your company needs to pay the money to him on behalf of the bankruptcy estate.

What the heck? How is that fair? What was Congress thinking?

Preferences are defined in the bankruptcy code as a transfer of an interest in the debtor (here, the general contractor) to a creditor (here, your company) or a lien on the creditor's property for a debt owed at the time the transfer was made while the debtor was insolvent, which was made within 90 days of the debtor filing bankruptcy or within one year of the debtor filing bankruptcy if the transfer was to an insider of the debtor that enables the creditor to receive more than it would have received if the debtor had filed for Chapter 7 bankruptcy. Exceptions include if the transfer was an exchange for new value, for a debt in the ordinary course of business of the debtor, or if that transfer creates a certain type of security interest.

Getting back to our example, if your company was paid within 90 days of filing for bankruptcy, you will want to argue that the payment was in the ordinary course of business for the debtor or that it was a transfer for new value. If the attorney for the bankruptcy trustee does not agree, that attorney may file an adversary Complaint against your company in the bankruptcy court alleging that the transfer was a preference. However, the attorney for the bankruptcy trustee will not always file such an adversary Complaint. For example, if the amount in controversy is relatively small, for example, less than $10,000, it is possible that the trustee's attorney will not bother with commencing an adversary action. Similarly, if the transfer of money was arguably for new value or in the ordinary course of the debtor's business, the attorney for the trustee may not bother filing a Complaint.

Two examples of a preference may arise when the facts do not appear to be a preference. First, if your company obtains a judgment against a debtor and then records the judgment within 90 days of the debtor filing for Chapter 11 bankruptcy, your company has created a judgment lien against real property owned by the debtor. That lien is considered a transfer and, therefore, a preference. Second, if your company obtains a judgment against the debtor and garnishes his bank account within 90 days of the debtor filing for Chapter 11 bankruptcy, any funds you received are considered a preference.

If you are contacted by a trustee's attorney demanding payment of an alleged preference, I suggest holding off. It may be a bluff; the attorney may never file an adversary Complaint. If the attorney does file an adversary Complaint, you can then take steps to resolve the matter, and you will not be exposed to paying the attorneys' fees of the attorney for the trustee.

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

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Do *You* Have the Knowledge We Need?

As a helpful service to the members of ARCA, the Technical Committee is in the process of gathering information from city municipalities for Commercial Reroofing Building Permits. Over the years, several cities in the Valley and throughout Arizona have changed their requirements for commercial reroofing building permits, which has made it very confusing as to when permits are required and when they are not required. In an effort to gather timely and accurate information, the Technical Committee is asking for the membership's assistance.

When your company applies for a commercial reroof permit in any city throughout Arizona, please spend a few minutes to gather the following information in person, over the phone, by email, or online.

- Name of City or Municipality
- Name of City Department (such as Planning & Development Services, Commercial Building Permits, etc)
- Department Phone Number
- Website Address
- Requirements for Permit (such as total tearoff, partial tear off, recover over existing roof, repairs, roof coating, plywood decking replacement, plumbing/electrical/HVAC requirements, etc)
- Fee Schedule (lump sum cost, square foot cost, cost based on contract amount, etc)
- Lead Time for Permit Application (how far in advance to the reroofing project does the permit need to be applied for)

The information gathered over the next couple of months will be compiled which will allow for additional research and to formulate a uniform spreadsheet detailing the requirements for Commercial Reroofing permits. No information is too small and will be greatly appreciated. Once the information is compiled and verified, the spreadsheet will be finalized and a copy will be sent to ARCA members.

Please forward the information and/or samples of the permit forms to Ashley Creighton at the ARCA Office (**acreighton@azroofing.org**) and **Ron Gibbons** at **Pioneer Roofing** (**Rgibbons@pioneer-az.com**). If you find that permits are not required, please pass that information on as well.

The following cities are requested at this time: Phoenix, Mesa, Tempe, Scottsdale, Glendale, Scottsdale, Surprise, Avondale, Goodyear, Litchfield Park, Casa Grande, Tucson, Prescott, Flagstaff, Lake Havasu City, Kingman, Payson, Show Low, Bullhead City, Globe, Winslow, Holbrook, Page.

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Get Some Sleep to Stay Safe on the Job

Sleep is a crucial part of health and well-being, but some workers may not be getting an adequate amount of sleep, which may affect their productivity. Sleep deprivation may have a detrimental impact on work performance leading to situations that could compromise safety in the workplace.

Three of every four workers in the United States acknowledge they were “tired” for most of the days of their work week, according to a survey by the Virgin Pulse Institute.

Sleep deprivation may cause difficulties concentrating on the job, increasing the chance of safety incidents and reducing their engagement and attention throughout the day, the survey’s results show.

"Showing up to work sleep deprived can be the equivalent of showing up to work intoxicated," said Dr. Jennifer Turgiss, director of the Virgin Pulse Institute and co-author of the study. "Employees who don't sleep well have poorer concentration, poorer decision-making abilities, are significantly less able to cope with stressful situations and are more likely to make unhealthy choices."

Employees in occupations where they work long hours may benefit from their employers addressing the risk factors of fatigue in the workplace, according to a study on fatigue risk management published in Journal of Occupational & Environmental Medicine (JOEM).

In jobs where safety is dependent on being alert, employers may want to find ways to reduce fatigue before it becomes a safety issue. Risk factors of fatigue may result in financial losses of more than $1,960 per employee annually in lost productivity, the article stated.

Here are three major risk factors connected to sleep deprivation, according to the Journal’s story:

- Motor vehicle crashes in the early morning. The article noted workers often are at risk for fatigue-related incidents in the early morning hours as this time period is when a person's circadian rhythm reaches a period of peak sleepiness. While some workers who work long hours or night shifts may not feel affected by sleep loss, employees may want to be cautious about the potential for motor vehicle crashes if staff members are behind the wheel after working an extended or late shift.
- Chance of errors increase after long shifts. In addition to motor vehicle crashes, the study suggests workers who work more than 24 hours have twice as many attention failures and a 36 percent higher chance of making significant errors. For instance, employees may have an increased risk of incurring an injury from handling sharp objects or running machinery.
- Chronic medical conditions linked to sleep loss. Employers may want to be aware of chronic medical conditions that are connected with lack of sleep. When workers do not get enough rest the night before, they have a higher chance of developing health problems, such as diabetes, cardiovascular disease and obesity-related health effects.

Employers may consider establishing workplace safety programs that concentrate on addressing employee fatigue, according to the Virgin Pulse Institute.

"Our study made one thing clear: lack of sleep is crippling America's workforce," Trugiss said. "Employers can't turn a blind eye. Whether they offer an online sleep program, encourage employees to use vacation days, or provide other tools, employers must address sleep issues in order to create a thriving workforce and business."

By participating in these programs, employees may become more rested and feel as though they are valued and supported by their employers. This is an important aspect in encouraging workers to increase their performance and engagement in and out of the workplace, according to Turgiss.

Voluntary Disclosure: An Alternative to Arizona's Upcoming Amnesty Program

By James G. Busby Jr.

As taxpayers, all of us should pay our fair share. However, for a variety of legitimate and illegitimate reasons, some- times taxpayers do not timely pay the right amount of tax. When that happens and Arizona taxing authorities discover it, they generally assess penalties that often amount to at least 25 percent of the tax liability, plus interest, which can really add up over time — especially if the taxpayer has lost the protection of Arizona's standard four-year statute of limitations by underreporting tax by 25 percent or more.

Accordingly, many Arizona taxpayers are planning to satisfy outstanding tax liabilities during the state's upcoming amnesty period scheduled for September 1 through October 31, 2015. However, some taxpayers would be better off pursuing a voluntary disclosure agreement (VDA).

How VDAs Generally Work in Arizona

As the name suggests, VDAs are agreements that the Arizona Department of Revenue enters into with taxpayers that voluntarily disclose unsatisfied tax liabilities. Because our tax system relies on voluntary compliance and the department is unable to catch every person and company that does not pay taxes or that did not pay as much tax as it should have, the department rewards taxpayers that voluntarily disclose unsatisfied tax liabilities.

The department's VDA program applies to transaction privilege (sales) tax, use tax, withholding tax, individual income tax, and corporate income tax obligations.

Taxpayers that enter into VDAs with the department generally get all of the penalties that otherwise would be assessed abated, and those that owe taxes for more than four years back often can get the department to agree to accept just four years of past taxes, plus interest. Taxpayers that approach the department with gray nexus or tax issues may be able to get the department to agree to abate all or some of the interest and past taxes as well.

When an Arizona VDA May Be Preferable to Amnesty

While the Arizona Legislature periodically establishes amnesty programs that last for a couple of months at a time, the department always entertains offers from taxpayers to enter into VDAs. So, VDAs are a good option for taxpayers that miss out on a particular amnesty period.

For taxpayers that have the luxury of deciding between pursuing relief under amnesty and pursuing a VDA, a VDA may be a better option for taxpayers that: (1) have outstanding tax liabilities for more than four years that are not protected by Arizona's standard four-year statute of limitations; (2) would find it burdensome or expensive to complete the original or amended tax returns that must be completed in order to participate in Arizona's upcoming amnesty program; and (3) want to resolve city privilege (sales) tax liabilities at the same time they resolve state sales tax liabilities.

On the other hand, while Arizona's upcoming amnesty period requires taxpayers to file original or amended tax returns, does not limit the statute of limitations, and does not apply to the cities, it may be a better option for taxpayers that would owe a lot of interest under Arizona's VDA program because interest is generally not abated as part of a VDA.

How to Pursue a VDA in Arizona

Although taxpayers that decide to pursue VDAs in Arizona can attempt to negotiate agreements directly with the department, taxpayers that have representatives anonymously negotiate for them generally have more leverage than they would if they approached the department them- selves because, when working through representatives, tax- payers can walk away from negotiations and remain anonymous if they choose to do so.

VDAs may be negotiated either directly with the department or through the Multistate Tax Commission's multi- state VDA program. Taxpayers that need to resolve the same issues in multiple states may save time by negotiating through the MTC, which will coordinate with the appropriate states on taxpayers' behalf.

The department and the MTC have voluntary disclosure applications on their websites that require taxpayers to disclose information about their nexus with Arizona; the type and amount of their unsatisfied tax liability; the types of state taxes they have paid, if any; whether they collected sales taxes from their customers, if applicable; whether the taxpayers have been contacted by the department; and the VDA terms they propose.

Tax professionals who encounter taxpayers with unsatisfied Arizona tax liabilities should help them evaluate whether Arizona's VDA program is the best way for them to satisfy their outstanding tax liability.

ARCA's Open House / Hawaiian Luau / Back-to-School Drive

On August 19th, the new ARCA headquarters proudly opened up its doors and hosted one of the best-attended open house parties in its history. Roofing industry professionals poured in and happily became lei-men (get it? *lei? Hawaii?*), partaking in the comeraderie, merriment, finger-foods, and networking opportunities.

Besides being a Hawaiian Luau-themed Open House, this event was also a Back-to-School Drive, and over $2,000 in in school supplies were donated to needy/underprivileged children in our community.

Many thanks go out to **Valorie Miller (Jim Brown & Sons Roofing)** and **Larry Miller (Gorman Roofing)** of the ARCA marketing committee for helping to arrange this well-attended ARCA event.

President Obama Issues Labor Day Executive Order Requiring Federal Contractors to Provide Paid Sick Leave to Employees

President Obama has issued an executive order requiring federal contractors to provide up to seven days of paid sick leave per year to their employees. The White House anticipates that the requirement could benefit more than 300,000 workers who are not currently eligible for any paid sick leave.

The order, issued on Labor Day, affects certain procurement contracts or contract-like instruments where the solicitation has been issued on or after January 1, 2017. The Department of Labor is directed to develop regulations under the order.

Pursuant to the order, employees of covered contractors must accrue paid sick leave at a rate of one hour for every 30 hours worked. Contractors may not set a limit on the total accrual of paid sick leave per year, or at any point in time, at less than 56 hours. Additionally, contractors are free to offer more generous amounts of paid sick leave at their discretion. An employee's accrued paid sick leave must carry over from one year to the next. Although nothing in the order requires a covered contractor to make a financial payment to an employee upon a separation from employment for accrued sick leave that has not been used, accrued paid sick leave must be reinstated for employees rehired by a covered contractor within 12 months after job separation.

Contractors with existing paid leave policies made available to all covered employees will satisfy the requirements of the order if the amount of paid leave is sufficient to meet the mandated leave benefit and if the leave may be used for the same purposes and under the same conditions described in the order.

An employee may use accrued paid sick leave for:

- An employee's own physical or mental illness, injury, or medical condition;
- Obtaining diagnosis, care, or preventative care from a health care provider;
- Caring for a child, a parent, a spouse, a domestic partner, or any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship who has any of the conditions or needs for diagnosis, care, or preventive care described above or is otherwise in need of care; or
- Absence necessary due to domestic violence, sexual assault, or stalking, where the absence is due to the employee's own medical condition or the need to obtain counseling, to seek relocation, to seek assistance from a victim services organization, to take related legal action, or to assist an individual related to the employee as described above.

The order requires covered contractors to provide paid sick leave upon the oral or written request of an employee that includes the expected duration of the leave and is made at least seven calendar days in advance, where the need for the leave is foreseeable. In the event the need for the leave is not foreseeable, an employee should provide notice as soon as practicable. Under the order, covered contractors may only require certification issued by a health care provider—or documentation from an appropriate individual or organization in the event the leave is used for the purpose of domestic violence, sexual assault, or stalking—for employee absences of three or more consecutive workdays.

Pursuant to the order, a covered contractor may not interfere with or in any other manner discriminate against an employee for taking, or attempting to take, paid sick leave as provided for under the order or in any manner asserting, or assisting any other employee in asserting, any right or claim related to the order.

Covered employers in jurisdictions that already mandate some form of paid sick leave will face the daunting task of creating paid leave policies that meet potentially conflicting leave mandates and/or attempting to integrate the new leave mandates into existing policies. Ballard Spahr's Labor and Employment Group routinely helps employers update their policies and procedures to comply with new laws, regulations, and executive orders. If you have any questions about the new executive order, or would like our assistance in developing compliant policies, please contact Brian D. Pedrow at 215.864.8108 or pedrow@ballardspahr.com, Steven D. Millman at 856.761.3421 or millmans@ballardspahr.com, or the Ballard Spahr attorney with whom you work.

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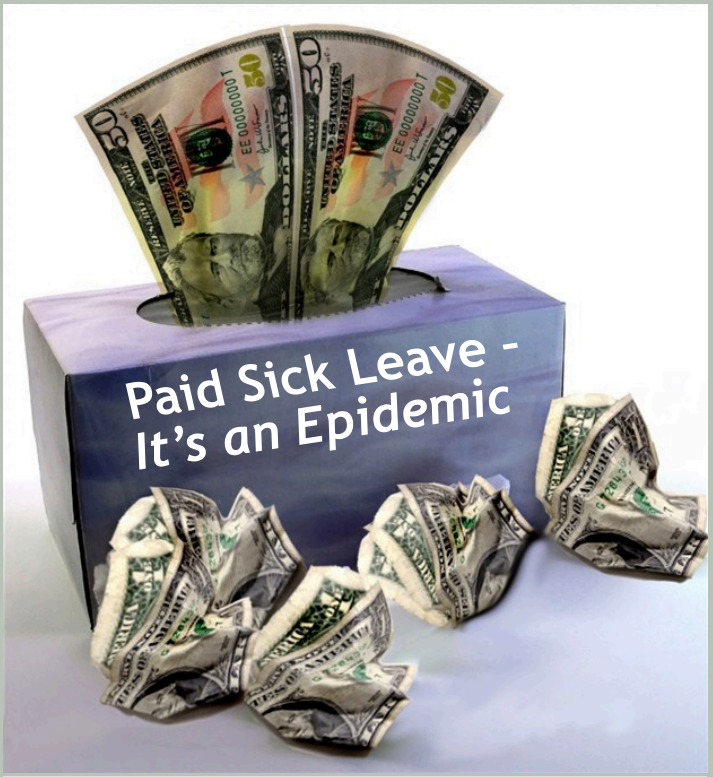

by Tiffanny Brosnan

From California to Connecticut, and places in between, the reach of paid sick leave laws is spreading rapidly. Currently, California, Connecticut, Massachusetts, Oregon and Washington D.C. have state- (or district-) wide laws requiring employers to provide paid sick time for their employees. President Obama recently signed an executive order requiring federal contractors and subcontractors to provide paid sick leave on a national level. Counties and cities are also taking the movement down to a more local level. San Francisco, Oakland and Emeryville, California have their own paid sick leave laws, as well as Seattle, Washington; New York City, New York; Philadelphia, Pennsylvania and nine cities in New Jersey.

If approved, the Healthy Families Act would require private employers with 15 or more employees to provide seven days of paid sick leave.

Next year, voters in Michigan and San Diego may vote on paid sick leave laws.

Early "symptoms" of paid sick leave laws are showing up in state and local legislatures all over the country. In the last year, in all of the following 22 states, the legislature considered - or is still considering - bills requiring paid sick leave: Alaska, Arizona, Florida, Hawaii, Illinois, Louisiana, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, South Dakota, Vermont, Virginia, Washington and West Virginia.

If approved, the Healthy Families Act, a federal bill introduced in the Senate and House of Representatives earlier this year, would require private employers with 15 or more employees to provide seven days of paid sick leave.

In many instances, there is no threshold number of employees required for a particular paid sick leave law to apply. And an employee might not even have to work fulltime in a jurisdiction for the paid sick leave law to apply. For example, regardless of the total number of employees, an employer who has one employee who works 30 or more days in California must comply with California's paid sick leave law for that individual employee – even if the employee's primary worksite is outside of California.

What makes this even more challenging for employers is that just like a flu shot doesn't cover all of the possible flu strains in a particular year, a "one size fits all" paid sick leave policy does not necessarily cover all of the permutations of the paid sick leave laws. Consider the following differences:

Accrual rate: Connecticut requires paid sick leave to accrue at a rate of 1 hour for every 40 hours worked, while California requires 1 hour for every 30 hours worked. In Washington D.C. the accrual rate fluctuates depending on the number of employees.

Caps on accrual: Federal contractors (regardless of location) can cap the accrual at 56 hours, while Oregon has a cap of 40 hours.

Use: In addition to taking sick leave for the employee's own care, under most of the paid sick leave laws employees can take time off to care for a loved one. However, who is included in that list varies. In Connecticut it is limited to children and spouses. In Massachusetts it extends to children, spouses, parents and parents of a spouse. In California, siblings and grandparents are added to the list. In Oakland, California, an employee without a spouse or registered domestic partner can designate anyone. And in Emeryville, California paid sick leave is even available to care for a non-human – a service dog.

This list is by no means exhaustive.

As with medicine, prevention is often the best cure. In order to prevent future problems with paid sick leave, employers may wish to look into the individual requirements in any state, county or city where their employees perform work. Both advocacy organizations and government websites may provide additional information on paid sick leave laws.

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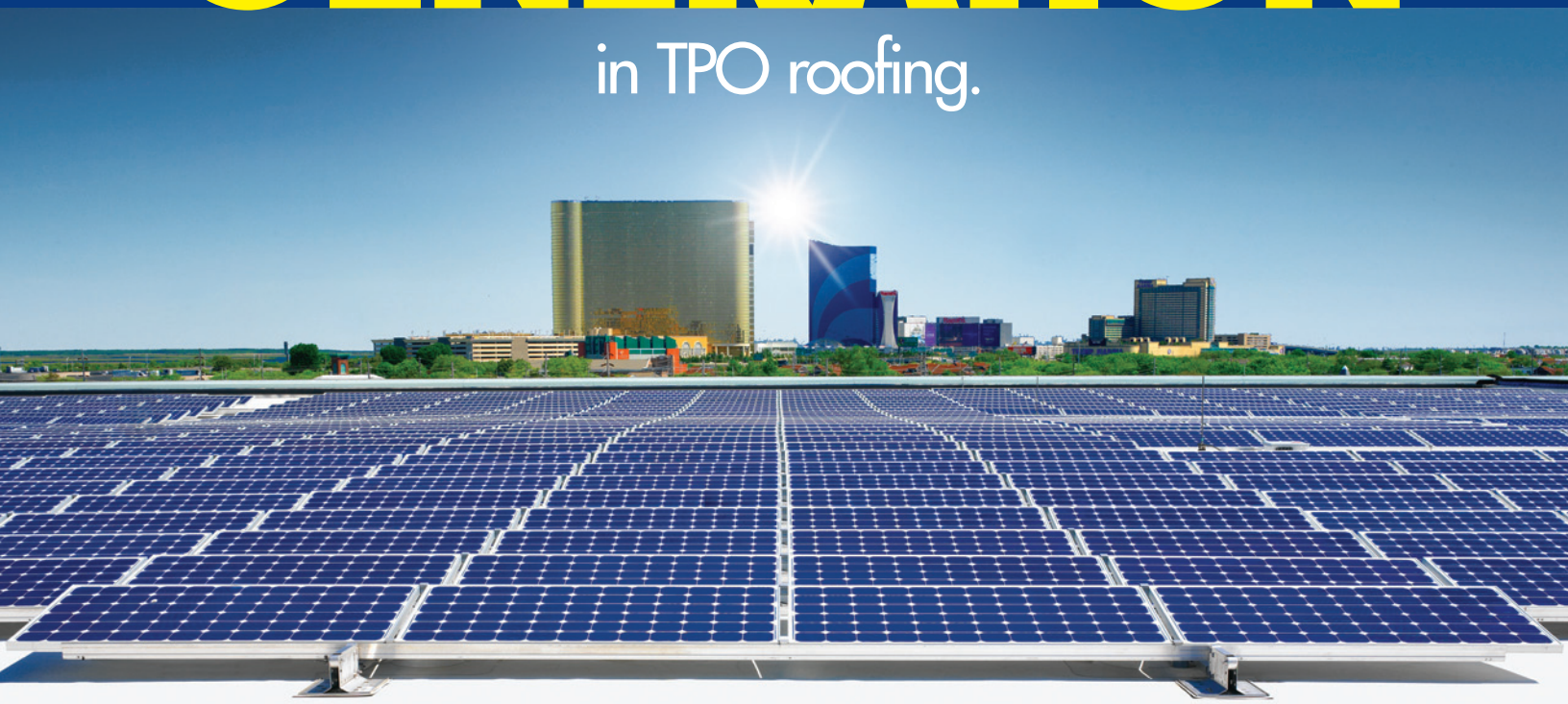

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AZ ROC by the Numbers

- **36,857 Active Licenses**
- **Less than 30 Days to Issue a New License, on Average**
- **1,060 Unlicensed Entity Complaints Filed, YTD**
    - **1,071 Unlicensed Entity Complaints Closed, YTD** (includes cases filed from the prior year, so may be higher than number filed YTD)
- **4,182 Complaints Closed with 3,722 Complaints Filed, YTD** (includes both licensed and unlicensed complaints; Closed Complaints includes cases filed from the prior year, so may be higher than number filed YTD)
- **233 Investigations Submitted for Prosecution, YTD**
- **210 Number of Claims filed with AZ ROC Residential Recovery Fund, YTD**
    - **90 Open Recovery Fund Claims, Current**

	Unlicensed Complaints	Licensed Complaints
Cochise	10	26
Coconino	11	23
Gila	8	14
Graham	1	3
La Paz	3	2
Maricopa	653	1981
Mohave	24	81
Navajo	6	22
Pima	104	237
Pinal	16	63
Santa Cruz	3	2
Yavapai	38	108
Yuma	32	42

Licensed Contractor, Unlicensed Work

Written by Kent Lang, Lang & Klain

On a construction job, it is not unusual for a licensed subcontractor to perform additional services that fall outside the scope of its license. In many instances, the unlicensed work is incidental to the main focus of the services for which the sub is licensed and is requested by the general contractor as a matter of convenience.

However, a recent case involving a general contractor that used the performance of unlicensed services as an excuse not to pay a subcontractor for even his licensed work illustrates the risks of venturing beyond the license's scope.

Dispute

A general contractor, Armor Designs, hired a licensed electrical subcontractor, Antonio Chavira, to disassemble equipment at Armor's plant in Phoenix. The work was completed, and Armor paid Chavira in full.

Armor then hired Chavira to reinstall the same equipment at Armor's new plant. After Chavira completed the installation work – some electrical, some not – Armor refused to pay him, claiming that 18 of the 77 invoiced tasks for which he sought payment were outside of his license.

Chavira sued Armor for breach of contract. In Superior Court, Armor argued that A.R.S. § 32-1153 barred Chavira from using the courts to collect because he had performed significant work for which he had no license.

A.R.S. § 32-1153 states:

No contractor [shall] maintain any action in any court of the state for collection of compensation for the performance of any act for which a license is required … without … proving that the contracting party … was a duly licensed contractor when the contract sued upon was entered into and when the alleged cause of action arose.

The trial court dismissed Chavira's lawsuit, and he appealed.

Appeal

The sole issue in Chavira's appeal was whether A.R.S. § 32-1153 did indeed bar him from suing to recover any payment for work he performed if some of the work was not covered by his license.

Chavira argued that, because he was a licensed electrical contractor when he entered into the contract with Armor and during the time he did the work, he should be allowed to recover payment for, at least, his electrical work.

Armor countered that, because Chavira was not licensed to perform all of the work he performed, the statute barred him from recovering for any of his work.

The Court did not buy Armor's argument. While acknowledging that the "plain language of § 32-1153 prohibits an unlicensed contractor from bringing an action to recover payment for unlicensed acts," the Court of Appeals also cited prior cases in which it found that "the plain language of the statute allows a licensed contractor, or one who has substantially complied with the licensing requirements … to sue for payment for work performed under the license."

The Court sent the case back to Superior Court, where Chavira could "pursue his breach of contract claim against Armor for the value of the work that was completed under his license."

Lesson for Contractors: While the Court's ruling was a partial victory for Chavira, it sends a clear message to contractors that working outside the confines of your license is risky business.

You can sue a non-payer in an attempt to get your money, but your recovery will not include work for which you are not properly licensed.

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★ Bill Chambers Roofing
Bill Chambers, 928-453-5319

★ D&M Roofing
David Garcia, 480-745-4597

★ Dry Plus Roofing
Kevin Keith, 602-493-2282

★ Elite Roofing Supply
Brian Torry, 602-396-2261

★ Littleton Roofing Services
Nathan Boyer, 602-376-7676

★ Mohave Roofing
Brian Bradner, 928-680-6353

★ Prime Roofing, Inc.
Steve Bond, 480-756-9527

★ Rooflogic
Frances Nichols, 866-222-1999 ext 102

★ Schmitt Roofing
Drew Schmitt, 480-789-3103

★ Stapleton Roofing
Drew Schmitt, 480-789-3103

Upcoming Events

october

Tile Roofing Installer Certification (Phoenix)
ARCA office (4745 N. 7th St., Ste. 103, Phoenix)
Oct 29
8:00am-4:00pm

OSHA 30-Hour Training in Phoenix (English)
ARCA office (4745 N. 7th St., Ste. 103, Phoenix)
Oct 30 and Nov 6, 13 and 20
8:00am-3:30pm

november

OSHA 10-Hour Training in Phoenix (English)
ARCA office (4745 N. 7th St., Ste. 103, Phoenix)
Nov 4-5
7:00am-12:00pm

Construction Career Days
5636 East McDowell Rd Phoenix, AZ, 85008
Nov 5-6
8:00am-2:00pm

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

december

OSHA Recordkeeping (English)
ARCA office (4745 N. 7th St., Ste. 103, Phoenix)
Dec 2
11:30am-1:00pm

3rd Annual Holiday Hangover Party
National Bank of Arizona Conference Center (6001 N. 24th St., Phoenix)
Dec 9
4:00pm - 6:00pm

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

OSHA 10-Hour Training in Phoenix (Spanish)
ARCA office (4745 N. 7th St., Ste. 103, Phoenix)
Dec 17-18
7:00am-12:00pm

Are You Claiming Your Share?

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

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