



VOICE



A quarterly newsletter from the
INTERNATIONAL COUNCIL OF EMPLOYERS
of Bricklayers and Allied Craftworkers



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ICE Call for Action on Pension Reform and Silica Standard

Congressional representatives are in full campaign mode, which means they have left Washington and will be in their home districts until after the November 4 election day. It also means that their ears are more open than ever to the concerns of their constituents. That makes it an ideal time for supporters of the Solutions Not Bailouts proposal (see Solutions Not Bailouts below) to meet with members of Congress in their district

offices, and ICE is urging the signatory masonry contractor community to endeavor to have those meetings. ICE has various resource documents that can be used in support of the proposal.

These meetings will also serve as an opportunity for stakeholders to express their concerns about the proposed silica standard that OSHA is considering right now. The silica proposal is not a legislative matter, but

we can still urge our representatives to contact OSHA officials about the harm the proposed standard could do to their constituents' businesses. ICE can also provide resources documenting ICE's stance on the proposed standard.

Contact Matt Aquiline at 202-210-6069 or maquiline@icebac.org for more information or to request resource documents.

Solutions Not Bailouts

Multi-Employer Pension reform has been ICE's main issue for almost three years, but the next three months may be the most crucial period for that effort. ICE and over 40 other organizations representing both business and labor met for 18 months as part of the National Coordinating Committee for Multi-Employer Plans' Retirement Security Review Commission to develop a comprehensive

plan that safeguards retirement security for multiemployer plan participants, protects taxpayers and spurs economic growth. The resulting report, Solutions Not Bailouts, was released in early 2013 and can be found at www.solutionsnotbailouts.com.

The provisions included in Solutions Not Bailouts will strengthen many plans, address the

minority of multiemployer plans that are deeply troubled, and facilitate the development of new and innovative plan designs that will better enable the bargaining parties to adopt future plans tailored to their unique circumstances. Taken together, these solutions will improve retirement security and enhance the ability of plans to retain contributing employers by limiting financial volatility,

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Upcoming Dates

QCA National Issues Conference:

April 26-30, 2015

IMI Flynn Center Schedule:

http://imiweb.org/trainin g/training_center/

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and prevent the need for future taxpayer assistance by dramatically improving the financial outlook of the PBGC multiemployer insurance program.

ICE and its partners have been working since the release of Solutions Not Bailouts toward the goal of legislation making its recommendations law. NCCMP staff has been working with Capitol Hill staff to develop language that can pass both the House and Senate while all of the organizations involved have been meeting with legislators to ask them to support the proposal and legislation when it is developed. ICE and the other members of

Quality Construction Alliance have made the proposal the centerpiece of the past two National Issues Conferences and hosted "A Conversation on Pension Reform" at the conference in May, where supporters of the proposal and its detractors were invited to hold a comprehensive conversation where all views could be heard. Videos of the conversation can be viewed on the QCA website at www.qca2014.org.

The goal has always been getting legislation passed by the end of 2014 when the Pension Protection Act sunsets. Since lawmakers have all gone home to campaign until after the election, the organizations involved in the RSRC are urging members to meet with

legislators while they are home. They have been educated on the issues and proposal from national organizations in Washington, but it is important that they hear voices of support of Solutions Not Bailouts from their own constituents. The national organizations that support the proposal will continue to communicate with Washington staff during the campaign season and will be pushing the legislators hard when they return for a bill by the year-end deadline.

For more information on Solutions Not Bailouts, go to www.solutionsnotbailouts.com.

ICE Weighs in on Proposed Silica Standard

Silica has been on OSHA's regulatory agenda for more than a decade. The first order of business for the newly independent ICE in 2001 was to combat OSHA's last attempt to institute a silica standard that could hamper the competitiveness of ICE members. That silica standard never saw the light of day, but ICE and other stakeholder organizations have always expected it to resurface, and were prepared to take a proactive approach when it did last year.

The Construction Industry Safety Coalition (CISC), which was formed before the proposed standard was even released on September 12, 2013 and was one of the first groups to begin the process of addressing the proposal, has requested the Occupational Safety and Health Administration (OSHA) withdraw its proposed rule. CISC is comprised of 25 industry trade associations whose members represent hundreds of thousands of employers and millions of workers in all facets of construction—from

home building, to commercial and road construction, to heavy industrial production, to specialty trade contractors and material suppliers.

The silica rule is potentially the most far-reaching regulatory initiative proposed by OSHA for the construction industry. It

would drastically lower the permissible exposure limit (PEL) of crystalline silica for the construction industry from the current requirement of 250 micrograms per cubic meter to 50, with an "action level" (where constant monitoring must begin) of 25 micrograms per cubic meter. The proposed rule also includes a number of ancillary provisions that cause concern for CISC members, including the exposure monitoring; regulated areas; written access control plans;

prohibition on work practices on construction sites such as compressed air, dry sweeping and dry brushing; medical surveillance; respiratory protection; training and hazard communication; and recordkeeping.

CISC has been actively involved in the public comment and hearing process, expressing the belief that OSHA has not met its

burden of demonstrating that the proposal is technologically and economically feasible, providing evidence and testimony that OSHA's proposed rule is simply unworkable for the construction industry and that OSHA has underestimated the cost of the proposed rule. The CISC estimates that compliance with OSHA's proposed standard would cost the construction industry nearly \$3.9 billion per year, an amount nearly

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eight times larger than OSHA's estimate. The CISC has requested the opportunity to sit down with OSHA to discuss the appropriate approach in dealing with the hazards of crystalline silica on construction worksites.

"ICE is committed to protecting workers and encourages science based, practical approaches to worker safety, including efforts to reduce silica exposure that consider cost, the existing standard and the impact on the employers we

represent. We have worked for years to develop work practices, safety interventions and solutions that do just that, and we and our coalition partners welcome the opportunity to share our knowledge and experience with OSHA in a discussion of the appropriate approach in dealing with the hazards of crystalline silica on our worksites," said ICE President, Fred Kinatader. "In the meantime, we believe OSHA should withdraw its proposed rule until those discussions occur and a proposal can be developed that addresses

the concerns identified in CISC's comments."

The comment period has concluded, but the CISC continues to educate OSHA on our concerns and while it is not a legislative matter, ICE members are asking their representatives to weigh in with OSHA on the potentially damaging effects of the proposed rules on their businesses.

For more information, please contact Matt Aquiline at 202-210-6069 or maquiline@icebac.org.

New Feature Added to Work Safely with Silica Website

While ICE and its partners are working to prevent the harmful aspects of OSHA's proposed silica standard, it continues to be in every employer's and worker's interest to understand the hazard and the steps to control exposures. **Work Safely with Silica** (www.silica-safe.org), which was designed as a one-stop resource on silica, features information and tools to help identify silica hazards and easily find equipment and methods to control the dust.

A central feature of the site is the **Create-A-Plan** tool. This e-tool allows you to develop a job-specific plan for controlling silica exposures in just three easy steps, and includes options for identifying a material's silica content, determining the level of exposure, and finding available controls. As you make selections and enter information, a plan tailored for your jobsite is automatically generated that you can save, print, email, and -- as an added benefit -- use as a toolbox talk on the job. While you do not need to register with the site

to use the planning tool and create a plan, a feature added at the urging of contractors allows you to register to confidentially save and

access to silica-specific materials in a variety of formats including toolbox talks, presentations, videos, hand-outs, and training guides.

Examples of actions that contractors, manufacturers, workers, and researchers are already taking to address the hazard and control the dust can be found in the **What's Working** section, along with a way to share your successes and challenges. This website also includes research findings, the latest silica news, and updates on current regulations.

retrieve your plans in a password protected file for future use, modify it for a new job, and save it under a new file name.

The **Training & Other Resources** section provides ready

The information in the planning tool, as well as the other sections of the site are continuously being updated as new information becomes available. Stay informed by visiting the site at www.silica-safe.org.

Safety Intervention Sheets: Reducing Back Injuries

Through ICE's involvement in the Masonry r2p Partnership, Safety Intervention Sheets will be featured on the ICE website. Each topic touches on new requirements, equipment, work practices, and/or resources to help achieve our common goal of safe jobs.

The current Safety Intervention Sheet (<http://icebac.org/masonry-intervention-sheet.pdf>) describes work practices, materials and equipment that have been found, based on industry research, to reduce workers' risk for **back and**

shoulder injuries, while at the same time creating opportunities to improve productivity. For those who want to learn more about a specific intervention, there are additional resources listed, including an online mast climber resource developed by the Partnership for your use.

We would like your thoughts on this Intervention Sheet and/or other topics of concern to you and your workforce. Please contact Matt Aquiline at 202-210-6069 or maquiline@icebac.org.



OSHA Makes Significant Revisions to Injury and Illness Reporting Requirements

The Occupational Safety and Health Administration (OSHA) released its final rule for Occupational Injury and Illness Recording and Reporting Requirements, revising the requirements for reporting work-related hospitalizations and requiring the reporting of all amputations and eye losses. Assistant Secretary of Labor for the Occupational Safety and Health Administration Dr. David Michaels cited the most recent Bureau of Labor Statistics (BLS) report that 4,405 workers were killed on the job in 2013 to emphasize the importance of this new rule.

The rule will become effective on January 1, 2015, for Federal Plan States. State Plan States will announce their dates independently, but are encouraged to meet the same deadline.

Establishments in certain low-hazard industries are partially exempt from routinely keeping OSHA injury and illness records. Under the new rule, there will be a shift in the number of industries

which are partially exempt. Previous regulations used the Standard Industrial Classification (SIC) system to categorize industries; the new rule relies on the North American Industry Classification Systems (NAICS), along with injury and illness data from BLS from 2007 through 2009 to categorize an industry as low-hazard and exempt employers from OSHA recordkeeping requirements. As a result, employers in certain industries are newly required to keep OSHA injury and illness records. (A list of these new industries can be found at https://www.osha.gov/recordkeeping2014/reporting_industries.html.) The new rule maintains the exemption for any employer with 10 or fewer employees from the requirement to routinely keep records of worker injuries and illnesses.

The new rule expands the list of severe injuries that all OSHA-covered industries, regardless of size or partial exemption status, *must* report to OSHA. The

current regulations require that when there is a fatality or three or more hospitalizations, the employer must inform OSHA within eight hours of the occurrence. Under the new rule, a fatality (within 30 days of the work-related incident) must be reported within eight hours of the death. However, employers now will have a 24-hour window in which to report to OSHA all work-related inpatient hospitalizations that require care and treatment of a single employee, all amputations, and all losses of an eye that occur within 24 hours of the incident.

The methods of reporting available to the employer also have been expanded. In addition to calling OSHA's confidential number (1-800-321-OSHA) or contacting the local OSHA Area Office, employers will be able to go OSHA's (not-yet-available) web portal and make a report electronically.

OSHA has stated that not all reported incidents will lead to an inspection. The agency noted,

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however, that hospitalization and partial body loss are significant events that indicate serious hazards are likely to be present at a workplace and that an intervention is likely warranted to protect the other workers at the establishment. OSHA also said it sees a report as opening a dialog with the employer about the incident and that whether an investigation will be opened will be case-specific. OSHA is most interested in knowing what caused the injury, what the employer intends to do as a result of the

incident, and putting the employer on notice of any hazards — all of which it expects will make an employer more likely to take the necessary steps to rectify the situation. Based on OSHA's conversation(s) with an employer, the agency indicated that it may decide to take no further action, put the employer straight into a consultation program, or conduct an inspection.

Most significant and troubling is that OSHA will make an employer's report of all fatalities, hospitalizations, amputations, or

eye losses publicly available on the agency's website. OSHA stated that it believes that public disclosure will incentivize employers to ensure a safe workplace for their employees.

Jackson Lewis attorneys are available to assist employers in their compliance efforts. Please contact Tressi Cordaro, at tressi.cordaro@jacksonlewis.com, Nickole Winnett, at nickole.winnett@jacksonlewis.com, or the Jackson Lewis attorney with whom you regularly work if you have any questions.

Union-Backed Study Documents Impacts of Misclassified Workers in California

California lost more than \$774.9 million in state taxes, benefits and fees in 2011 due to construction worker misclassifications and undocumented activity, says a new study by a Los Angeles nonprofit research group that was underwritten by the carpenters' union.

The report contends that 16% of California construction jobs—in a \$152-billion industry that employed 895,000 people in 2012—was work done off-the-books in 2011, and it points to similar problems nationwide.

The study by the Los Angeles-based Economic Roundtable states that over 39,800 California construction workers were misclassified as independent contractors in 2011.

Resulting low wages make recruiting new industry craftsmen more difficult. California's total wage gap for nearly 143,900 "informal" construction workers, who currently earn about half what their legal peers do, totaled \$1.2 billion. The



state's unreported and misclassified construction work increased by 400% from 1972 to 2012, primarily in the specialty building trades, including painters, laborers, carpet installers and roofers. The recession fueled a spike in misclassified or unreported construction work.

"We see this sort of thing happening in the field every day, and we thought it needed to be quantified," says carpenters' union spokesman Matt Capece. "The industry complains about the need to recruit and retain skilled craftspeople, but payroll fraud contributes to the problem."

According to the report, some employers seek "a fig leaf of legal compliance" while avoiding paying taxes and benefits by misclassifying hourly workers as independent contractors, reducing payroll costs by up to 30%.

California has over 20% of the U.S. undocumented population, accounting for 1 in 10 workers,

which enables exploitative labor practices and tax evasion, the study says. Paying fair wages to informal construction workers would inject \$1.5 billion into California's economy and generate 7.9 new jobs for every \$1 million spent, say researchers.

"While the report does present new information and statistics, it falls short in identifying everything currently being done by state agencies," says Contractors State Licensing Board registrar Steve Sands, who reviewed the study.

He says the agency was never contacted for study input, despite being named in its conclusions. Sands says the board "goes after those who break the law and hurt consumers, workers and California's economy."

According to the report, about 16.8% of the construction workforce in Indiana also was misclassified based on 2010 statistics, and 38% in Austin, Texas, based on 2009 data.

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"Employee classification policy is a crazy quilt of state policies that are totally disparate from one another," says Robert Herrick, senior lecturer on industrial hygiene at Harvard University, who co-authored a 2005 report on "social and economic

costs" of misclassification in Maine's construction industry. The state enacted a standard definition for independent contractors in all sectors in 2012.

Employee misclassification across all industries is a growing problem,

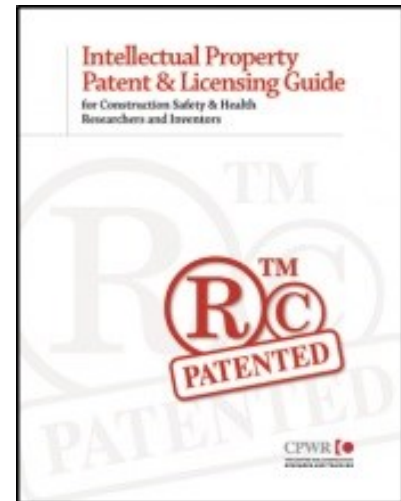
especially in construction, where there is a downward pressure for contractors looking to come in with the lowest bid," says Alison D. Quesada, a labor education specialist at the University of Illinois, Urbana-Champaign.

Intellectual Property Patent and Licensing Guide

A new publication "Intellectual Property Patent & Licensing Guide for Construction Safety and Health Researchers and Inventors" helps researchers understand the key steps and questions they should consider and the implications of protecting, or not protecting, any intellectual property that they develop while conducting research and developing products and materials to advance safety and health in the construction industry. This guide was developed by CPWR-The Center for

Construction Research and Training to help safety and health researchers and inventors understand the key steps and questions to consider while conducting research and developing products and materials to advance safety and health in the construction industry.

To obtain a free copy, go to <http://www.cpwr.com/whats-new/intellectual-property-patent-licensing-guide-construction-safety-health-researchers>.



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INTERNATIONAL COUNCIL OF EMPLOYERS
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Your voice. Your advocate.

We're on the web at
www.icebac.org

CLRC Reports are available on the *Members Only* section of the ICE website (www.icebac.org). They include:

- 5-Year City Average Increases in \$ - 1
- 5-Year City Average Increases in \$ - 2
- 5-Year City Average Increases in % - 1
- 5-Year City Average Increases in % - 2
- 5-Year Region Average Increases in \$ - 1
- 5-Year Region Average Increases in \$ - 2
- 5-Year Region Average Increases in % - 1
- 5-Year Region Average Increases in % - 2
- 2014 Union Construction Labor Cost Trends and Outlook
- June 2014 Settlements Report
- 2014 ICE Collective Bargaining Report

Interested in becoming an **ICE Affiliate**? Contact Matt Aquiline at 202-210-6069 or maquiline@icebac.org or go to www.icebac.org for additional information.

The **ICE Collective Bargaining Survey** is ongoing. Your information can help strengthen ICE's collective bargaining reports. Go to www.icebac.org to access the survey.

ICE is the only wholly union international masonry contractors' association, representing approximately 10,000 signatory contractors who perform, brick, block, stone, tile, marble, terrazzo, cement masonry, plastering and restoration work. Its members employ the highest skilled and best trained workers in the masonry industry. ICE works with the Bricklayers International Union to provide those workers with the best training available, safe jobsites, pensions and healthcare. It works with its affiliates and other signatory contractors' associations to provide signatory masonry contractors with labor relations, education, staffing services and political advocacy specifically needed by the signatory contractor.