

DUCT TALK

August 1, 2008

Volume 13, Issue 5

INSIDE THIS ISSUE

Page 2

Your Statutory Rights
Are Under Attack

SMACNA National
Convention
Reminder

Page 3

Special Session
Raises Questions
About State's Future

SMACNA Profiles

Page 4

Joint Apprenticeship
Training Center

August Birthdays

Calendar of Events



of Southern Nevada, Inc.

www.smacna.org

OSHA RULE SPELLS OUT EMPLOYER OBLIGATION TO PAY FOR PROTECTIVE EQUIPMENT

A new Occupational Safety and Health Administration (OSHA) final rule clarifies the requirement that employers must provide personal protective equipment (PPE) at no charge to employees. The standard, effective May 15, 2008, applies to general industry (shop) and construction settings.

While creating no new obligations for employers to provide PPE, the rule specifies when the employer must pay for PPE and lists the narrow exceptions. Under the new rule, employers are required to pay for the minimum PPE that meets applicable certifications and OSHA standards, and is appropriate to the hazards. The employer, however, does not have to pay for "upgraded" PPE requested by the employee, "everyday clothing" and weather-related gear not considered PPE.

For example, employers must pay for PPE typically used in the sheet metal industry including cut resistant gloves, hearing protection, and welding helmets. However, the employer is not required to pay for PPE that employees may take home or wear off the job site such as safety-toed footwear or prescription safety eyewear. In addition, employers do not have to pay for items employees already own. These include personal safety items such as personal welding helmets or boots with built-in metatarsal protection.

Furthermore, the rule states that the employer is not responsible to pay for replacement of any PPE that is lost or intentionally damaged.

EFFECTS ON COLLECTIVE BARGAINING AGREEMENTS

The rule may impose obligations upon employers that conflict with the provisions of a collective bargaining agreement concerning the furnishing of protective equipment. After reviewing the rule carefully, OSHA determined that workplaces with collective bargaining agreements should be treated no differently in the final rule than workplaces without collective bargaining agreements.

Consequently, employers must comply with the rule even if it imposes obligations that go beyond what has been collectively bargained. None of OSHA's past rules on PPE coverage have been overturned because they inappropriately interfered with collective bargaining.

For more information on the safety and health implications of the standard, contact Mike McCullion, safety and health director, at (703) 995-4027 or mmccullion@smacna.org. For information on collective bargaining agreements, contact Jason Watson, assistant director of labor relations, at (703) 803-2981, or jwatson@smacna.org.

SMAC
News

YOUR STATUTORY RIGHTS ARE UNDER ATTACK!

By Richard L. Peel, Esq.

Over the last twelve years, the Subcontractor Legislative Coalition, an alliance made up of both union and non-union subcontractor trade organizations, has worked very hard to champion the interests of subcontractors before Nevada's Legislature and Supreme Court. Whether by amending Nevada's Mechanic's Lien statute, or by drafting and enacting Nevada's Right to Stop Work statute (for private projects) and the Prompt Pay statute (for public works), the Coalition has enjoyed significant success in obtain the passage of laws that assist subcontractors to be paid for work performed.

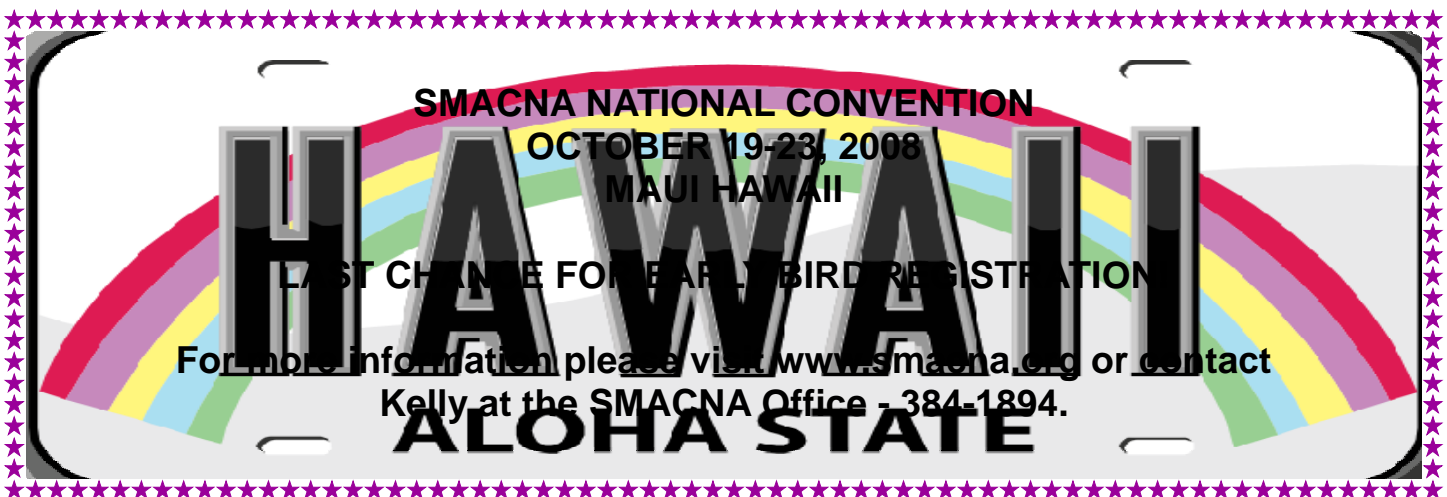
For example, the Right to Stop Work statute (passed in 2001 and amended in 2005) allows subcontractors to stop work on a given project if they are not timely paid or if they do not receive a timely response to a change order request. Not only does the statute minimize the financial impact to subcontractors by allowing them to stop work when they are not timely paid, it also shields subcontractors from liability to project owners and higher-tiered contractors as a result of having stopped work. The use of the statute encourages higher-tiered parties to timely pay for work furnished, or face the threat that work will be stopped.

The Coalition's efforts have not been limited to the Legislature. As a result of strong advocacy in the Venetian and Aladdin cases, the Nevada Supreme Court recently struck down the enforceability of pay-if-paid provisions in subcontracts entered into between contractors and subcontractors. In *Lehrer McGovern Bovis, Inc. v. Bullock Insulation, Inc., et al.*, 124 Nev. Adv.Op. 39 (June 2008), the Nevada Supreme Court found that pay-if-paid clauses are "unenforceable as a matter of public policy because [they] deprive people who work on construction projects of a statutory right to a mechanics lien." This decision will significantly help subcontractors get paid for work performed.

The Coalition has recently become aware that certain owner/developer and general contractor trade organizations intend to attack these statutes and the *Bullock* decision when the Legislature convenes in 2009. In fact, these groups have already prepared and are currently circulating proposed legislation that would eliminate the very rights provided to subcontractors under the Mechanic's Lien and the Right to Stop Work statutes, as well as the *Bullock* decision. While the total elimination of the statutory protections enjoyed by subcontractors is unlikely, these protections and rights will certainly be weakened—forcing subcontractors to spend substantial resources in time and money to obtain payment for work performed - if these owner/developer and general contractor groups are successful in 2009. The stakes are high!

Over the next several months, representatives of the Coalition will be approaching your respective companies to seek your help and support. Please open your wallets and donate your time to this extremely important issue.

Subcontractor Legislative Coalition



SPECIAL SESSION RAISES QUESTIONS ABOUT STATE'S FUTURE

Governor Gibbons' on-again, off-again special session – held on June 27 – went without a hitch. Lawmakers were in and out within a day. The Carson Plaza hotel was filled to capacity with legislators and lobbyists.

Lawmakers on both sides of the aisle lamented the depth of the cuts to the State's budget, which reached into the school districts along with state mental health services. And while the governor is sticking by his no-new-tax guns, there are concerns over whether he maintains the political strength to have a veto sustained.

Speaker Buckley in the Assembly has made clear that the 2009 legislative session will review all possible solutions to the state's budget concerns. We don't know what this means – and the legislative session remains months away. You can expect, however, a number of tax proposals.

Meanwhile, the Supreme Court is reviewing term limits challenges that could potentially boot more than half a dozen veteran lawmakers out of office. Should this happen, these myriad crises would be handled by a bunch of virtually brand-new lawmakers. All this before we've even accounted for the changes to the various other legal and regulatory issues that must be dealt with over the coming years.

Stay tuned.

i3 Public Affairs, LLC

SMACNA NATIONAL PROFILES

- Average SMACNA member firm = 20 man shop.
- 32% of SMACNA membership = 5 man shop or smaller.
- 32% of SMACNA members (576 firms) pay \$750 or less in annual dues/IFUS contributions.
- 26% of total membership produce 71% of total man-hours.
- Conversely, 74% of membership produce 29% of total man-hours.
- 50 largest chapters account for 84% of total man-hours and 78% of total membership.
- Conversely, the remaining 44 chapters account for 16% of total man-hours and 22% of total membership.
- The 20 largest chapters account for 54% of total man-hours and 50% of total membership.
- 44% of all SMACNA reported man-hours are classified by members as HVAC. Considering that most industrial (11%), residential (7%) and service (5%) man-hours are also HVAC, approximately 67% of total SMACNA man-hours are HVAC related.

JOINT APPRENTICESHIP TRAINING CENTER

CPR CLASSES

Monday, August 4, 2008 & Tuesday, August 5, 2008 - 8 hour CPR training.

Wednesday, August 6, 2008 - 4 hour CPR training.

Thursday, August 7, 2008- 4 hour CPR training.

All classes start at 4:30pm and will go no later than 8:30pm.
Call Julie for more information 632-3014.



BIRTHDAYS IN AUGUST

DAN ROSE

JOINT APPRENTICESHIP TRAINING CENTER

SMACNA Duct Talk

Duct Talk is issued twelve times a year. If you have an idea for an article, please call the SMACNA of Southern Nevada office at (702) 384-1894. We want to hear from you! Deadline for submitting articles is the 25th of each month.

Executive Committee

President - **Angelo Iannucci**
Vice President - **Steve Kimmel**
Secretary/ Treasurer - **Frank Vuckovic**

SMACNA Staff

Chapter Executive - **Ken Schultz**
Asst. Chapter Executive - **Kelly Kealey**

1550 Western Ave.
Las Vegas, NV 89102
Phone: (702) 384-1894 Fax: (702) 384-2631

CALENDAR OF EVENTS

Wed. - August 20, 2008

*Industry Fund
Committee Meeting*

10:30am

SMACNA Board Room



Wed. - August 20, 2008

*Budget & Finance
Committee Meeting*

10:45am

SMACNA Board Room



**SUMMER RECESS
NO BOARD MEETING
IN AUGUST**

