ELECTRONIC REPORTING – FINAL RULE

Gary Auman addressed this ruling in his remarks at the annual Spring Convention of MICA on June 22, 2016. The ruling takes effect in August of 2016, and will impact all employers. Since Gary’s communication below, two events have occurred. First, OSHA just announced that the anti-retaliation provisions effective date is being delayed from August 10, 2016, to November 1, 2016. And in a further update, ABC has filed a motion for a temporary injunction to block the new effective date of the anti-retaliation provisions of the new electronic record keeping standard.

The following information is to provide an update on the requirements set forth in OSHA’s commentary on the new electronic reporting rule, otherwise known as, the Revised Recording and Reporting Occupational Injuries and Illnesses regulation.

Revised Regulation

In May 2016, OSHA issued a final rule which revises the Recording and Reporting of Occupational Injuries and Illnesses regulation. This final rule, which in general is effective on January 1, 2017, requires certain employers to electronically submit the injury and illness information they are already required to keep under existing OSHA regulations. It does not change, however, an employer’s obligation to complete and retain injury and illness records. The final rule also includes provisions that prohibit employers from retaliating against workers from making such reports. The anti-retaliation provisions become effective on August 10, 2016. There is some question as to the enforcement of these anti-retaliation provisions. Up until this new rule becomes effective, the only redress an employee had because he or she alleged that they were discriminated against by their employer because of engaging in protected activity was by filing a complaint alleging discrimination under Section 11(c) of the Occupational Safety and Health Act. Now there will be an argument that OSHA can cite an employer for violation of Title 29 Code of Federal Regulations Section 1904.35(b)(1)(iii) (B) and (iv). If OSHA is able to take advantage of this enforcement, an OSHA compliance officer will be able to cite the employer for violation of this section as a serious, other than serious or willful violation, which if not vacated, will obligate the employer to abate as well as pay a fine. Abatement may require rehiring the discharged employee with back pay.

OSHA’s Commentary Regarding Post-Accident Drug Testing

While the anti-retaliation provisions require educating employees on their rights to report on-the-job injuries and illnesses without fear of retaliation by the employer, the commentary that accompanied the final rule includes other cautions for employers. OSHA has raised a concern with mandatory or blanket post-accident drug testing.

OSHA explained that to obtain the appropriate balance, drug testing policies should limit post-accident testing to situations in which employee drug use is likely to have contributed to the accident, and for which the drug test can accurately identify impairment caused by drug use. Therefore, an employer is not required to suspect drug use before testing, but there should be a reasonable possibility that drug use by the reporting employee was a contributing factor to the reported injury or illness in order for an employer to require drug testing.

In taking this position, OSHA also addressed concerns that the final rule could potentially prevent an employer from complying with the requirements contained in work-
PRESIDENT’S MESSAGE
TO: THE MICA MEMBERSHIP

Hello from the flip-side of Independence Day!

Summer is definitely progressing, and we are halfway to the next milestones, Labor Day and Back to School! I hope you had as good of a time as we did in Wisconsin. The weather for the three-day weekend couldn’t have been better and much fun was had by the Shimada family; picnics, friends, fireworks, some yard work, finding the floor in my garage, etc. Ok, not all of it was fun, but we managed to balance work with play.

I also hope that July finds you and your business prospering. Based on most of your comments in Branson, everyone has work to keep busy during the summer season. Of course, if you are like me, we are always thinking about “the next job.”

Along those lines, your Board of Directors will be meeting in the middle of August to plan the October business meeting. We strive to bring the most applicable topics to you at the technical sessions which hopefully make all of us that much more successful. If anyone has a burning industry or related industry topic that would benefit all of us, please contact the MICA office or myself, and we will take your suggestion(s) to the board.

Our next project controls topic will discuss estimated, actual, and earned hours. Again, this topic may seem extremely basic, but it is a fundamental to the success of managing our projects. Associates, don’t think this doesn’t apply to you; it does! I know you must consider productivity of your line-personnel. Perhaps you haven’t thought about your assembly/production floor in quite this fashion, but please think about it and consider putting these thoughts into practice.

Talk to you all in August,

George Shimada
MICA President

Estimated, Actual, and Earned Hours

There are 3 important types of hours to know when dealing with our insulation projects, estimated hours, actual hours, and earned hours. Manufacturers and fabricators must also pay attention to these in order to know what is happening on the production floor.

Estimated hours are fairly obvious and are what we insulators spend so much of our time pouring over drawings and productivity tables trying to determine. These are the hours that we think a particular project is going to take to complete.

Actual hours are also fairly obvious and something that we all track. These are the hours that we are actually expending on a particular project, and we track this through our payroll. Our field personnel are paid hourly and therefore, in the very least, the payroll department is tracking these hours.

In theory, one would think, that if we have a project that we estimate to take 100 hours and we have paid our field staff for 50 hours, then we are 50% complete with the project, correct? The answer is, maybe. This is where earned hours come in to play and why they are so critical in answering the question, “Is my project on schedule?”

Earned hours are the number of hours a project “earns” of the estimated hours based on percentage complete of a project. The formula is simply:

\[
\text{Earned Hours} = \text{Estimated Hours} \times \text{percentage complete}
\]

We already know (we better!) the estimated hours when we are in the process of executing a project. To get the earned hours at a particular point in a project, we need to know what percent complete we think we are at that point in time. Calculating the correct percent complete is im-

(Continued on page 5)
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FUTURE MICA MEETING DATES

Fall 2016 Annual Fall Business Meeting — October 19 & 20, 2016, Embassy Suites Downtown, Omaha, NE.

Winter Board and Committee Meetings — Tentatively Set for January 20 — 22, 2017, New Orleans, LA.

60th Annual Spring Convention — June 19 — 22, 2017, Kona Kai Resort, San Diego, CA.

Fall 2017 Annual Fall Business Meeting — October 18 & 19, 2017, Omaha, NE.

61st Annual Spring Convention — June 18 — 21, 2018, In region. The Board of Directors is open to suggestions.

MICA MEMBER ADDRESS/INFO. UPDATES

Be sure to inform the MICA office of any changes or corrections to your listing for either the MICA Directory, e-mail correspondence or mailing address. Even if you update your company listing on the MICA website, please inform the MICA office of the changes. We try to be as current as possible with your help.

(Continued from page 2)

Necessary to an accurate earned hours calculation and that conversation is very important and very multi-faceted. We will BEGIN to cover percent complete in the next article.

In our example, say we decide we are 60% complete with a project. The earned hours equal the 100 estimated hours multiplied by 60%, or 60 earned hours. So we have “earned” 60 of the estimated hours. Now, we compare that to the number of actual hours we expended and we now know, truly, if we are ahead or behind schedule. We earned 60, but we only used 50, so we are 10 hours ahead of schedule; great job!

However, if we are only 40% done with the project, we only earn 40 hours while expending 50 actual hours. In this case, we are 10 hours behind schedule. We better figure a way to kick it in gear to get back on schedule or find out if there were reasons outside our control causing the loss of production and begin developing a claim extra.

It is important for our project staffs to make these calculations frequently in order to know the trend of your project. The more competitively bid we estimated a project, the more frequent we should do these calculations.

So far we have only been discussing hours, however, the conversation works with dollars as well. Everywhere we used hours, just substitute dollars. Now we are not just talking about earned hours, but earned value. We can track our ahead/behind schedule of things such as material costs, third party rentals, consumables, etc.

Next month, we will begin talking about calculating percentage complete.

June Convention Attendees: Monica Artelt with Winroc SPI, and Jubal Trujillo with Pittsburgh Corning.
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ers’ compensation laws. In response, OSHA explicitly stated that such concerns were unwarranted. It further stated that “if an employer conducts drug testing to comply with the requirements of a state or federal law or regulation, the employer’s motive would not be retaliatory and the final rule would not prohibit such testing.” This is especially true because 29 U.S.C. 653(b)(4) prohibits OSHA from superseding or affecting workers’ compensation laws. None of the commentary extends to whether requirements of a workers’ compensation insurance policy that creates a mandatory drug testing requirement would also be exempted from these concerns.

Summary

You need to be aware that the commentary addressing mandatory drug testing is just that – a commentary. Essentially OSHA is stating that it will look with suspicion at any mandatory post-accident drug testing program as a potential violation of Section 11(c) of the Act. At this time, whether you review and/or revise your current post-accident drug testing program is a business decision not a compliance decision. But, you need to be aware that this commentary when coupled with an official OSHA memorandum on March 12, 2012 demonstrates that OSHA is concerned about any actions employers may take that in any way, directly or indirectly, may cause employees to hesitate or refuse to report on the job injuries or illnesses because of fear of retaliation by the employer.

OSHA DELAYS EFFECTIVE DATE FOR ENFORCING EMPLOYEES’ RIGHTS TO REPORT WORKPLACE INJURIES, ILLNESSES

WASHINGTON - The Occupational Safety and Health Administration is delaying enforcement of the anti-retaliation provisions in its new injury and illness tracking rule to conduct additional outreach and provide educational materials and guidance for employers. Originally scheduled to begin Aug. 10, 2016, enforcement will now begin Nov. 1, 2016.

Under the rule, employers are required to inform workers of their right to report work-related injuries and illnesses without fear of retaliation; implement procedures for reporting injuries and illnesses that are reasonable and do not deter workers from reporting; and incorporate the existing statutory prohibition on retaliating against workers for reporting injuries and illnesses.

DODGE MOMENTUM INDEX JUMPS IN JUNE

<table>
<thead>
<tr>
<th>Year 2000=100</th>
<th>Jun-16</th>
<th>May-16</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dodge Momentum Index</td>
<td>134.4</td>
<td>120.8</td>
<td>11.2%</td>
</tr>
<tr>
<td>Commercial Building</td>
<td>143.6</td>
<td>133.4</td>
<td>7.7%</td>
</tr>
<tr>
<td>Institutional Building</td>
<td>122.9</td>
<td>107.3</td>
<td>14.6%</td>
</tr>
</tbody>
</table>

Source: Dodge Data & Analytics

The Dodge Momentum Index rose a sharp 11.2% in June to 134.4 from its revised May reading of 120.8 (2000=100). The Momentum Index is a monthly measure of the first (or initial) report for nonresidential building projects in planning, which have been shown to lead construction spending for nonresidential buildings by a full year. The Index rose in June as the result of a 14.6% increase in the institutional component and a 7.7% increase in the commercial component. The gain in commercial planning reports is a positive development since that component of the Index had been moving in a fairly horizontal fashion since late-2014. The increase in the institutional component returns it to levels seen earlier this year. The overall Index is now at its highest level since early-2009; however, it has proven to be volatile on a month-to-month basis over the last two years. This unpredictability may continue through the remainder of the year, given the uncertainty related to the health of the U.S. economy and the upcoming November elections.

In June, 14 projects entered planning with a value that exceeded $100 million. For the commercial building sector, the leading projects were a $450 million hotel and convention center in Elk Grove, CA and a $400 million hotel in South Bend, IN. The leading institutional projects were a $230 million hospital in Santa Monica, CA and a $158 million hospital in Columbus, OH.
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This past July 7th, the MICA office was notified of the death of Jay Golinkin. Jay had a fall several weeks earlier that required surgery on a broken leg and, while he was healing, at his age, it didn’t go well. The family will have a memorial service on Saturday, August 20, 2016, at 2:00 p.m. Arrangements are under the direction of Malec & Sons Funeral Home, Chicago, IL.

For those of you who are relatively new to MICA and the industry, Jay has been involved with the insulation industry, IRIC, and MICA for over 70 years. He served on the editorial board of the first 4 editions of the MICA manual. I will always remember Jay for his passion for the insulation industry and his desire to develop an all inclusive set of installation standards. One of my fondest memories of Jay was his, at times “heated”, discussions with Bud Price over some minute word or phrase that was in one of the manual plates. These discussions could continue for what seemed like hours, but he and Bud would leave the meetings the best of friends. His involvement with the Chicago regional association (IRIC) was extensive. He was chair of the first apprentice committee with Local 17, was a member of the Board of Directors of IRIC for many years, and most recently served as the chair of the IRIC Standards Committee. We have lost a true friend of our industry.

If you would like to express your sympathies to Jay’s wife, Conny and the family, her home address is as follows:

Conny Golinkin  
308 Happ Road  
Apt. 209  
Northfield, IL 60093

Below are excerpts from his obituary. The complete obituary may be found at www.legacy.com/obituaries:

Jay C. Golinkin (November 20, 1923 – July 7, 2016) Loving husband, father, beloved grandfather, cherished great-grandfather, brother, uncle and friend to many. Survived by wife Conny, children Roger, Scott, (the late) Laurel (Tom) Brown, and Lesley Golinkin; Gary (Patricia), (the late) Ron, David (Karen), Rory, Scott and Jeffery (Catherine) Bryant.

Jay was a proud Northwestern graduate, WW II veteran, business owner, avid golf, football and bowling fan, and Bears season ticket holder for 65 years. He defined himself by his three loves: family, sports and work. He had a strong sense of justice; he was a leader in integrating the union which served his industry, and in recent years, initiated a letter writing campaign to major Jewish organizations in an effort to stem the escalation of anti-Semitism.

Jay was passionate about the issue of hunger. Donations may be made to the food depository of your choice.
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(Continued on page 20)

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Most articles will be written by Armacell’s own in-house experts, but other industry specific experts will guest blog from time to time.

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Armacell’s new blog launched June 21, 2016 and can be found at www.armacell.us/blog.

**U.S. DEPARTMENT OF LABOR ANOUNCES NEW RULES TO ADJUST CIVIL PENALTY AMOUNTS**

WASHINGTON - 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 this month 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.

A Fact Sheet on the Labor Department’s interim rule and a list of each agency’s individual penalty adjustments are available on the DOL website.

**STATEMENT OF U.S. LABOR SECRETARY THOMAS E. PEREZ ON U.S. HOUSE BILL TO DELAY MUCH NEEDED OVERTIME PROTECTIONS**

WASHINGTON – U.S. Secretary of Labor Thomas E. Perez issued the following statement in response to the introduction of the Overtime Reform and Enhancement Act. The proposed legislation would delay implementation of the department’s final rule updating overtime protections for millions of U.S. workers:

(Continued on page 23)
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“Millions of workers have been waiting years for the overtime rules to catch up to reality and ensure that working people get the pay or time with their families that they deserve. This legislation would ask them to wait even longer. The President and I think that American workers have waited long enough for a fair day’s pay for a long day’s work. That’s our vision of an economy that works for everyone. By delaying implementation and removing the automatic updating of the salary threshold, the proposed legislation stands in stark contrast to that vision.”

SURVEY SHOWS MANUFACTURERS USED OVER 2.8 BILLION POUNDS OF RECYCLED MATERIALS IN THE PRODUCTION OF FIBER GLASS AND SLAG WOOL INSULATION

Alexandria, VA (July 21, 2016) — The North American Insulation Manufacturers Association (NAIMA) has announced the results of a recent survey of its members’ use of pre- and post-consumer recycled materials in insulation and acoustical products in 2015. The survey includes data from both U.S. and Canadian manufacturing facilities.

According to the survey, U.S. manufacturers used more than 1.7 billion pounds of recycled glass in the production of residential, commercial, and industrial thermal and acoustical insulation – roughly equivalent to the amount of Municipal Solid Waste generated by 1 million people in the U.S. in a year.

NAIMA Canada members together used 373 million pounds of recycled glass in the production of residential, commercial, industrial, and air handling thermal and acoustical insulation.

U.S. and Canadian facilities used more than 666 million pounds of recycled blast furnace slag in the production of thermal and acoustical insulation. Since the industry’s recycling program began in 1992, NAIMA members’ plants have diverted more than 52 billion pounds of recycled materials from the waste stream.

“NAIMA members are committed to promoting sustainability by using recycled materials to produce energy-saving insulation products that improve a building’s energy efficiency and reduce environmental impact,” said Curt Rich, President and CEO of NAIMA.

“Fiber glass, rock wool and slag wool insulation are some of the best choices available for insulating residential and commercial buildings as well as mechanical and industrial process systems.”

While recycled content is just one indicator of a product’s environmental impact, the survey results illustrate the significant impact that an industry can have through the conscientious use of materials.

For more information about the environmental benefits of fiber glass, rock wool and slag wool, visit www.insulationinstitute.org.
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NAD RECOMMENDS APPLAGETE DISCONTINUE CERTAIN CLAIMS FOR CELLULOSE INSULATION; FINDS COMPANY CAN SUPPORT CERTAIN CLAIMS

The National Advertising Division has recommended that Applagate Insulation discontinue certain claims for the company’s cellulose insulation products, but found the company could support its “R-value per inch” claims.

NAD is an investigative unit of the advertising industry’s system of self-regulation. It is administered by the Council of Better Business Bureaus.

The claims at issue in this case were challenged by the North American Insulation Manufacturers Association (NAIMA.) NAIMA objected to comparative performance claims, made throughout Applegate’s advertising, that cellulose insulation provides superior energy savings over fiberglass insulation, resulting in consumers having significantly reduced heating and cooling bills. Applegate maintained that it has a reasonable basis for its energy savings claims based on the findings of three studies – the Colorado Study, the Leominster, Massachusetts Study, and the Oak Ridge Study.

Following its review of the advertising and advertiser’s evidence, NAD determined that one of the reasonable messages conveyed by comparative performance claims which specifically reference “studies” is that consumers will actually experience the same energy savings as reported in these studies. In this case, NAD found the advertiser’s evidence insufficient to support the challenged comparative performance claims and recommended the advertiser discontinue the following claims:

- “[If] one type of insulation is more effective than another, it can help save even more money (and energy). Studies at universities, national laboratories, private research facilities and hundreds of homes and buildings have shown that cellulose is from 20% to 50% more effective than fiberglass.”
- “A study by the Leominster Housing Authority demonstrates how using Applegate can reduce the load on your heating bills by as much as 32%! We’re so confident that you’ll save money using Applegate insulation that we’re even willing to guarantee it.”
- A set of two side-by-side charts appearing under the heading “Applegate Cellulose helps keep your home warmer in the winter, cooler in the summer, blocks air infiltration, and saves you money!”
- “Extensive and expensive air sealing measures must be used for fiber glass buildings to approach the tightness of buildings insulated with cellulose. The extra expense may yield few benefits. In a Massachusetts survey the cellulose insulated building still consumed 32% less energy for heating than buildings insulated with fiberglass, even after extensive air sealing of all the buildings was done.”
- “Applegate Cellulose insulation can reduce your utility bill by up to 40%.”
- Applegate Cellulose “is more effective at reducing energy costs than [fiber] glass.”
- “Pound for Pound Applegate Cellulose Insulation is more effective at reducing energy costs then glass . . . .”

NAD recommended that Applegate discontinue the unsupported claims that “Some studies have shown boron might lower the risk of some cancers and is a chemical commonly found in vegetables such as almonds, apples … and pears, according to BoraxPioneer,” and the claim that “The fire retardant additives used to manufacture Applegate are non-toxic. One of the additives, boric acid, is six times less toxic to humans than table salt!” NAD noted, however, that nothing in its decision precludes Applegate from making an appropriately qualified truthful claim about the safety of its product, provided that it refrains from making categorical “non-toxic” claims.

NAD recommended that Applegate discontinue the unsupported claim that “Applegate Insulation quiets a home better than fiberglass by reducing air infiltration through wall cavities. Applegate Cellulose completely fills the intended space making it difficult for sound to pass,” and a graph depicting the superior acoustic performance of cellulose over fiberglass batts. NAD also recommended the advertiser discontinue a challenged “sound bucket” demonstration.

NAD determined Applegate provided a reasonable basis for its “R-value per inch claims,” noting that the evidence in the record supports a finding that Applegate’s cellulose insulation meets the exception to the FTC’s R-value rule and therefore, Applegate is not prohibited by that rule from making “R-value per inch” claims.

Applegate, in its advertiser’s statement, said the company “will take NAD’s recommendations into account for current and future advertising materials.”

Note: A recommendation by NAD to modify or discontinue a claim is not a finding of wrongdoing and an advertiser’s voluntary discontinuance or modification of claims should not be construed as an admission of impropriety. It is the policy of NAD not to endorse any company, product, or service. Decisions finding that advertising claims have been substantiated should not be construed as endorsements.
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