



Quality People. Quality Projects.

## GOVERNMENT AFFAIRS UPDATE

*Associated General Contractors of Ohio's Government Affairs Update provides information about government related matters of interest to the commercial building industry and AGC's advocacy efforts. It is e-mailed to AGC of Ohio members and available online at [www.agcoho.com/advocacy.html](http://www.agcoho.com/advocacy.html). Direct questions and comments to Andrea Ashley, Vice President of Government Relations: [andrea@agcoho.com](mailto:andrea@agcoho.com) or (614) 486-6446.*

August 3, 2015

### NEW BWC BILLING SYSTEM IN PLACE, FIRST INVOICE DUE AUG. 31 FOR PRIVATE EMPLOYERS

Article from [BWC eNews](#), July 2015

The way workers' compensation coverage is billed recently changed for private employers in Ohio as BWC transitions to prospective billing.

BWC previously billed private employers retroactively for coverage, but now requires paying in advance for premiums. A \$1.2 billion transition credit is being provided by BWC to avoid double-billing employers during the transition. The new billing system offers a number of benefits, including more flexible payment options and better customer service.

BWC mailed a notice of estimated annual premium (like [this one](#)) to private employers in late May; it includes information about how to request changes to estimated payroll, and how to file a true-up report at the end of the policy year. If your business has not received this notice, or if your estimated payroll is different than what appears on the notice, please call BWC at 1-800- 644-6292.

Don't forget to submit your payroll reports for Jan. 1 to June 30, 2015 by Aug. 31 to receive the transition credit equal to your premium for that time period. Additionally, employers should be receiving the first invoices under the new billing system this week. They are also due August 31.

More information about prospective billing, including videos and webinars, is available at [bwc.ohio.gov](http://bwc.ohio.gov).

### OHIO SALES TAX HOLIDAY

[S.B. 243](#), passed by the Ohio General Assembly last year, enacted a one-time sales tax holiday that starts on Friday, August 7, 2015 at 12:01 a.m. and ends on Sunday, August 9, 2015 at 11:59 p.m. During the holiday, the following items will be exempt from sales and use tax:

- Clothing priced at \$75 per item or less;
- School supplies priced at \$20 per item or less; and
- School instructional material priced at \$20 per item or less.

Items used in a trade or business are not exempt under the sales tax holiday. View the Sales Tax Holiday [Frequently Asked Questions](#). Direct questions to the Ohio Department of Taxation at 1-800-304-3211 or [e-mail](#).

## **TEMPORARY ENFORCEMENT POLICY FOR NEW CONFINED SPACES STANDARD; NEXT AGC SAFETY MEETING TO FEATURE A PROGRAM ABOUT IMPLEMENTING THE CONFINED SPACE STANDARD**

### **Temporary Enforcement Policy**

On July 8, 2015, the OSHA's director of construction services announced a [temporary enforcement policy](#) for the confined spaces in construction standard. This policy does not delay the effective date, but will postpone the standard's full enforcement for 60 days – from the effective date of August 3, 2015 to October 2, 2015.

The enforcement policy memo is in response to a letter submitted on June 4, 2015, by a dozen industry associations – including AGC – requesting a full 90 day extension. While the temporary enforcement policy falls short of the full extension requested, it does provide some relief to contractors who demonstrate a “good faith effort” in complying with the standard.

Employers will not be issued citations as long as the employer is in compliance with the training requirements of the new standard found at 29 CFR 1926.1207 or the former training requirements found at 29 CFR 1926.21(b)(6)(i). Employers who fail to train their employees as required by either provision would be properly cited for violation of 1926.1207(a). Additional factors that OSHA will consider when evaluating an employer's “good faith effort” to comply with the new standard include:

- If the employer has not trained its employees as required under the new standard, whether the employer has scheduled such training,
- If the employer does not have the equipment required for compliance with the new standard, including personal protective equipment (PPE), whether the employer has ordered or otherwise arranged to obtain such equipment required for compliance and is taking alternative measures to protect employees from confined space hazards, and
- Whether the employer has engaged in any additional efforts to educate workers about confined space hazards and protect workers from those hazards.

OSHA issued the Confined Spaces in Construction final rule on May 4, 2015.

### **AGC Safety Meeting to Feature Program about Implementing the Confined Space Standard**

The next AGC of Ohio Safety Meeting is scheduled for Friday, September 25, and will include a program about implementing OSHA's confined space program. Other regular agenda items include an update on OSHA enforcement and regulatory activities and a roundtable discussion on safety matters of concern for participants. The meeting will begin at 9:30 a.m. and will include a working lunch. It should conclude by 1:30 p.m.

For more information or to attend, contact Andrea Ashley at [andrea@agcohio.com](mailto:andrea@agcohio.com) or (614) 486-6446.

### **OHIO EPA'S ENCOURAGING ENVIRONMENTAL EXCELLENCE (E3) PROGRAM**

Ohio EPA has revised its Encouraging Environmental Excellence (E3) Program to encourage more applicants, clarify and simplify the application instructions, and expand the eligible applicants. The E3 program recognizes organizations committed to environmental excellence at all levels. The program targets those who reduce waste, improve efficiency and work to continuously improve as an environmental steward. It is open to any business, industry, trade association, professional organization or local government of Ohio.

Awards will be provided for Achievement, Silver and Gold Levels. For more information and application instructions, go to <http://epa.ohio.gov/ocapp/ohioe3.aspx>.



---

## ON THE ON THE NATIONAL FRONT... *Information courtesy of AGC of America*

### **PROPOSED OVERTIME RULE PROMPTS CONGRESSIONAL HEARING, AGC CONTINUES TO TAKE ACTION; YOUR INPUT NEEDED – TAKE THE AGC [SURVEY](#) ON THE PROPOSAL BY AUG 7**

Only July 23, the U.S. House Education and Workforce Committee hosted a hearing to review the impact of the U.S. Department of Labor’s Wage and Hour Division’s proposed rule to change the overtime regulations of the Fair Labor Standards Act. AGC partnered with a joint employer coalition group dedicated to advocating the interests of employers with regard to the proposed changes, which submitted a letter to the House Committee highlighting the impact of the proposed changes on employers.

The proposed rule, if implemented, would raise the salary threshold for the executive, administrative and professional exemptions from \$23,660 to a 2016 level of \$50,440 annually, and index for inflation thereafter. The rule did not recommend any specific changes to the duties test; however, it remains unknown how or if the administration will address it in a final rule.

The deadline for public comment is Sept. 4, but AGC recently submitted a request for 60-day extension. The extension would allow AGC to fully review the proposed rule’s impact on the construction industry and offer additional time for AGC’s members to investigate and evaluate the number of employees that would be impacted by the rule within their individual businesses. Examples of how the proposed rule would impact construction businesses will be critical in getting the Wage and Hour Division to understand the impact of this rule on the industry.

Additional information on the proposed rule can be found on the [Labor department’s website](#). For more information on the act, click [here](#) or visit [AGC’s Labor & HR Topical Resources webpage](#). The primary category is “Wages and Benefits” and the secondary category is “Fair Labor Standards Act.”

**YOUR INPUT IS NEEDED** as AGC of America prepares to draft its response to the proposed rule on behalf of the non-residential construction industry. To ensure that AGC is accurately depicting the impact this rule will have on your company, please take a few moments to complete this survey. **Click [here](#) to complete the survey by August 7th.**

### **WAGE & HOUR RELEASES GUIDANCE ON INDEPENDENT CONTRACTORS**

The U.S. Department of Labor (DOL) Wage and Hour Division released on July 15 new guidance to help determine whether a worker should be considered an employee or independent contractor.

According to a DOL blog, the [administrator’s interpretation](#) “analyzes how the Fair Labor Standards Act’s definition of ‘employ’ guides the determination of whether workers are employees or independent contractors under the law. It discusses the breadth of the FLSA’s definition of ‘employ,’ and provides guidance on the ‘economic realities’ factors applied by courts in determining if a worker is indeed an employee.” [Learn more.](#)

### **CONSTRUCTION EMPLOYMENT DECLINES IN 127 OUT OF 358 METRO AREAS BETWEEN JUNE 2014 & 2015**

Construction employment declined in 127 metro areas, was stagnant in 51 and increased in 180 between June 2014 and June 2015, according to a new analysis of federal employment data released by the AGC of America on July 29. AGC officials noted uncertainty in transportation funding as a major cause of the decline.

Ohio overall saw a four percent decline. Five metro areas lost jobs (Akron, Canton-Massillon, Dayton, Mansfield, Springfield), one saw no change (Lima), and six an increase in employment (Cincinnati, Cleveland, Columbus, Toledo, Weirton-Steubenville, Youngstown-Warren-Boardman). View the state employment data by [rank](#) and [state](#). View state employment [map](#). Click [here](#) for full press release.

**MEMO REVEALS FLAWS WITH WATERS OF THE U.S. FINAL RULE; OHIO, OTHER STATES FILE LAWSUITS**  
*Significant Disagreements among Corps & EPA. The rule will have implications for all Clean Water Act (CWA) programs, which makes it extremely important to the business of construction. If you didn't catch AGC's analysis of the rule, read it [here](#).*

U.S. Army Corps of Engineers (USACE) Deputy Commanding General for Civil and Emergency Operations, Major General John Peabody, cited significant issues in the [Waters of the United States final rule](#) prior to its release in a May 15 memorandum to Assistant U.S. Secretary for the Army for civil works, Jo-Ellen Darcy. The final rule redefines 'Waters of the U.S.' and expands the waters over which the U.S. EPA and the U.S. Army Corps of Engineers claim jurisdiction. The two agencies jointly issued the final rule on June 27, and it takes effect on August 28.

In the memo, General Peabody notes that the final rule contains “numerous inappropriate assumptions, with no connection to the data provided, misapplied data, analytical deficiencies, and logistical inconsistencies.” USACE’s economist Paul Scodari also notes that “[t]he corps had no role in selecting or analyzing the data that the EPA used in drafting” the rulemaking’s [economic analysis](#) or [technical support document](#). “As a result,” Scodari states, “the documents can only be characterized as having been developed by the EPA and should not identify the corps [sic] as an author, co-author or substantive contributor.”

The Senate Environment and Public Works Committee recently [sent a letter](#) questioning Assistant Secretary Darcy on statements in the memo and the final rule.

At least 30 [states have filed suit](#)—including Ohio—and a request for injunction against the rule has been filed as well. Legislative efforts to reverse and repeal the rule have been gaining support, and provisions in pending appropriations bills would block the administration from implementing the rule during fiscal year 2016. AGC will continue to work with its Congressional allies to require the agencies to revisit their rulemaking process and also intends to [meet with officials](#) from the agencies to discuss the rule’s implementation.

**OSHA PROPOSED RULEMAKING TO CLARIFY THE ONGOING OBLIGATION TO MAKE AND MAINTAIN ACCURATE RECORDS OF WORK-RELATED INJURIES AND ILLNESSES**

OSHA today issued a [Notice of Proposed Rulemaking](#) that clarifies an employer’s continuing obligation to make and maintain an accurate record of each recordable injury and illness throughout the five-year period during which the employer is required to keep the records.

OSHA is issuing this proposed rule in light of the decision of the U.S. Court of Appeals for the D.C. Circuit in [AKM LLC v. Secretary of Labor \(Volks\)](#) to clarify its long-standing position that the duty to record an injury or illness continues for as long as the employer must keep records of the recordable injury or illness. The proposed amendments add no new compliance obligations; the proposal would not require employers to make records of any injuries or illnesses for which records are not already required.

The proposed rule will be published in the July 29, 2015, issue of the Federal Register. Members of the public can submit written comments on the proposed rule at <http://www.regulations.gov>, the Federal e-Rulemaking Portal. See the Federal Register [notice](#) for submission details. Comments must be submitted by Sept. 28, 2015.