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Summer Meeting is Rapidly Approaching

The deadline has passed, but there is still time to register for the annual Summer Meeting of the Wisconsin Chapter NECA. The dates are July 27th through 29th at the House on the Rock Resort, near Spring Green, WI. Rooms at the resort have been sold out, however, there are still rooms available at the House on the Rock Inn, which is located nearby. If you have not yet registered but would still like to attend, contact Jennifer at the Chapter Office (608) 221-4650.



Labor Relations Task Force Set to Meet IBEW

NECA's Labor Relations Task Force met on April 13, 2006 to review proposals for changes to Category I and other agreement language received from NECA Districts and Chapters intended to improve the competitive position of organized electrical contractors. The proposals were received from all 10 NECA District Councils and included dozens of proposals, however, many of them were addressing the same specific areas. The specific Category I language areas to be addressed first are:

Portability – it was generally agreed that portability should be open and unrestrained

Referral – incorporate referral language already negotiated locally in many areas that allows a “call one/take one” provision

Shift Language – incorporate language to improve flexibility in scheduling shifts, reduced shift premiums and providing for 8 hours work for 8 hours pay

Apprenticeship – request removal of the manhour cap on unindentured employees

Subcontracting – allow subcontracting of work to non-IBEW employers when no viable IBEW subcontractor is available

The Task Force plans to schedule a meeting with the IBEW as soon as possible to discuss these proposed changes and also request their support to expand the utilization of “small works” agreements like the “Florida Initiative”. The overall goal is to work with the IBEW to create agreements with fewer overall restrictions and greater flexibility to make our electrical contractors more competitive in our rapidly changing market.

We will keep you informed on the progress of the NECA Labor Relations Task Force.

NECA and the IBEW have launched a new website to promote electrical careers, www.electrifyingcareers.com. The new site features locations for students, parents, and guidance counselors to access unique information on nearly 60 careers in the electrical construction industry ranging from electrical apprentice up to Business Manager of the IBEW. It's comprehensive approach to directing future business leaders to the electrical industry should provide valuable information to anyone interested in the industry.

The NECA Show has grown into the premier expo for the electrical, power, and cabling industry where contractors can view the latest innovations in tools, system controls, software, vehicles and services that can help them run their businesses successfully. The NECA Show is the once-a-year opportunity for large and small electrical contractors to meet the manufacturers, utilities, inventors, distributors, consultants and engineers that make their companies work.

Don't miss the NECA Convention

As you know by now, NECA will hold its annual Convention and Expo in Boston, MA this year. The dates of the convention are October 7-10 with the opening reception kicking things off at the Boston Museum of Science on Saturday, October 7. General sessions will be held Sunday and Tuesday mornings, and the NECA Show will be open Sunday through Tuesday. In addition to the general sessions, there are many technical and management seminars and presentations for attendees to see. The IBS and Lighting Conferences will be held concurrently with the NECA Convention, making it a most comprehensive event for electrical contractors nationwide. The closing gala will be a special concert by the Boston Pops at Symphony Hall on Tuesday, October 10.

The Wisconsin Chapter will be staying at the Marriott Copley Place hotel in Boston, and will be sponsoring a hospitality suite again this year.

Registration information and a brochure were mailed to all members, and further information on the convention, the show, the IBS and Lighting conferences can all be found at the official NECA convention website; www.necaconvention.org. The early registration deadline is August 18, so fill out your application form today.

Lack of Proper Notice Can Now Result In Loss of Unemployment Insurance Benefits

Effective April 2, 2006, Wisconsin's misconduct standard under the unemployment insurance laws changed. The misconduct statute now allows for an employer to disqualify a claimant from unemployment insurance benefits if the individual has excessive absences and tardiness without proper notice to the employer. In order to take advantage of this new provision, an employer must adopt the following:

1. Excessive absences without notice must be defined as five (5) or more in a 12-month period.

The employer's standard for excessive absence without notice must be defined to reflect the definition in the statute. An employer would not be able to terminate an employee, for example, after four (4) late notices of absence and disqualify an employee for unemployment benefits.

2. Excessive tardiness without notice must be defined as six (6) or more in a 12-month period.

The employer's standard for excessive tardiness without notice must be defined to reflect the definition in the statute. An employer would not be able to terminate an employee, for example, after five (5) instances of tardiness without proper notice and disqualify an employee from unemployment benefits.

3. An employer must have a written policy for notification of absence and tardiness.

The employer can establish any reasonable policy for notice of absence or tar-

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From the Desk of Attorney Kay

Contractors often enter into contracts with owners or prime contractors where the contract provisions call for a waiver of subrogation rights. Subrogation waivers mean that each party to the contract must look to its own insurance carrier to pay a claim filed against the contracting party, and neither the insurer for the contractor nor the insurer for the owner may sue the other party to the contract to recover the insurance benefit paid. In reviewing contracts for owners and contractors, I often have a brief discussion on subrogation waiver. Many owners call for it and many contractors wonder what it means.

Each contractor should have its own commercial general liability insurance policy, and often the policy limits are dictated by the contract terms entered into between the contractor and the owner, or between the subcontractor and the prime contractor. These commercial general liability policies insure the contractor against claims made against it arising out of property damage or personal injury sustained by others. A construction site is a dangerous place and such insurance is obviously needed.

Sometimes a third party (one neither building the project, nor the owner of the project) may be injured, or their property damaged. If that injured or damaged party files a suit against the contractor and the owner, one or both may be held liable and then the insurance company that has issued the CGL policy to pay insurance benefits to the injured or damaged party. Sometimes the contract between the contractor and the owner provides for a mutual waiver of subrogation. This means that neither insurer can sue the other party to recover the insurance benefits. Recently, a Wisconsin case decided whether the mutual waiver contained in the construction contract trumped the right in each of the insurance policies to pursue subrogation claims. The Court of Appeals held that it did.



In the Wisconsin Court of Appeals decision entitled *Factory Mutual Insurance Company v. Citizens Insurance Company of America*, decided in December of 2005, the Court considered an owner of a manufacturing facility and its insurer who had brought an action against the contractor's general liability insurer as a result of a fire that broke out while the contractor was working on the project. The owner's insurer paid insurance benefits to the owner and sued the contractor's insurer to recover those benefits. The case was complicated by the claim of the manufacturing owner that the contractor had breached the construction contract by failing to obtain the required insurance coverages on the owner and by walking off the job for nonpayment.

The Court of Appeals held that regardless of whether the contractor had failed to obtain the insurance required by the construction contract, naming the manufacturing owner as an additional insured to the contrac-

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July 2006 Meetings

- July 6**
La Crosse Membership
- July 12**
Madison Membership
- July 19**
Northeastern Membership
- July 27 - 29, 2006**
Summer Meeting
Spring Green, WI

Upcoming Meetings

- October 7 - 10, 2006**
NECA Convention
Boston, MA
- January 26 - 27, 2007**
Winter Meeting
Madison, WI
- March 18 - 21, 2007**
Spring Conference
Tucson, AZ
- July 26 - 28, 2007**
Summer Meeting
Sheboygan, WI



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The Bunker Hill monument cornerstone was laid by Lafayette in 1825. Was not completed until 1843 because of lack of funds. Was the tallest structure in American until 1883.



Have you got a code question for Tom? Let us know and we'll ask him to answer it in a future newsletter.

NECA & IBEW Work on Craft Certifications

The NJATC is working with industry professionals including manufacturers and suppliers to begin to create the Electrical Worker Craft Certification (EWCC) program. Creating a general craft certification standard including evaluation and needs assessment and creating the curriculum to meet those needs would provide a standard to gage qualifications of not only IBEW electricians but all construction electricians. The EWCC will be a means by which a consumer can make a safe, economical and quality choice of electrical contractors. The standard could also then be used to assess skills of newly organized workers, and direct them to additional training, if necessary. Craft certification standards could also be used by the JATC to see how well their training programs are meeting the training goals they have specified.

Sample written tests have been studied to set score levels, and the pilot written examination process is nearly complete. The next phase will be to conduct pilot testing of the standards to ensure it is effective. The JATCs will be encouraged to adopt the program once the pilot program is completed.

The NJATC hopes the EWCC will allow a standardized independent evaluation of all electrical workers, to ensure users get the quality of work they expect on their projects.

UW NECA Student Chapter Recognized

The newest issue of *NECA News* features a lengthy article on the NECA Student Chapter at the University of Wisconsin, and is being used as an example of the cooperative efforts between the NECA Chapter, NECA members and the university's Civil and Environmental Engineering Department.

Tom's Code Corner

Question: I've wired many swimming pools over the years and have always used Type UF cable. The inspector tells me that this is not permitted by the NEC. Is that true?

Answer: Yes, Section 680.21(A)(1) says, "The branch circuits for pool-associated motors shall be installed in rigid metal conduit, intermediate metal conduit, rigid nonmetallic conduit, or Type MC cable listed for the location. Other wiring methods and materials shall be permitted in specific locations or applications as covered in this section." Section 680.21(A)(4) adds that, "In the interior of one-family dwellings, or in the interior of accessory buildings associated with a one-family dwelling, any of the wiring methods recognized in Chapter 3 of this Code shall be permitted that comply with the provisions of this paragraph. Where run in a raceway, the equipment grounding conductor shall be insulated. Where run in a cable assembly, the equipment grounding conductor shall be permitted to be uninsulated but it shall be enclosed within the outer sheath of the cable assembly."

From the Desk of Attorney Kay

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tor's policy, the subrogation rights existing in both of the insurance contracts was trumped by the provision in the construction contract between the contractor and the owner that provided:

Each party shall cause its insurance underwriters to waive their rights of subrogation against the other party and its respective contractors and subcontractors.

Contractors ask me what to do when such waivers are requested by owners or by prime contractors. The answer is, contact your insurance agent and provide the agent with a copy of the insurance language in the construction contract requesting subrogation waiver. The agent should then obtain the consent of the insurance carrier to the waiver. Not obtaining that consent could very well cause a serious legal dispute.

Excessive Tardiness, Absenteeism Affects Unemployment

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diness. For example, an employer can have as its policy that employees must give notification no later than one hour prior to the start time when an employee will be absent or late. Or an employer can mandate that the employee contact a certain number and leave a voice mail message no later than 30 minutes prior to the beginning of the shift in cases of absence or tardiness. This policy can, and should, be made a part of the employee handbook. Initially, a separate written policy could be used. The policy should be dated to show its effective date. The policy must specifically state that failure to provide adequate notice of an absence or tardiness may lead to discharge.

4. An employer must be able to demonstrate that the employee received a copy of the policy.

An employer should have an employee sign an acknowledgment form when the new policy is distributed. If the employer's attendance policy is revised in the employee handbook, it is recommended that employees sign a separate form for this policy or at least an acknowledgment that they are aware that the absenteeism/tardiness policy has changed. This would be the document that would be submitted to the Department of Workforce Development to verify that the employee was aware of the employer's notice policy.

5. An employee must receive at least one warning prior to discharge.

This step is crucial to the discipline process. The employee must be put on notice that termination will result in the next violation of the policy.

6. The policy must be consistently applied to all employees.

Consistency is always a requirement when an employer's disciplinary policy is being implemented. If an employee can demonstrate that he/she was treated differently from other similarly situated employees, the misconduct disqualification will not be allowed.

Benefits will be denied until six (6) weeks have elapsed and the employee has earned six (6) times his/her weekly benefit rate.

Beginning in the month of the June and continuing into August, the Wisconsin Chapter has begun reviewing and amending the Division Bylaws for each of our nine divisions. Many of the bylaws were written at the time the Chapter was formed (1962) and have not been revised since then! Each member will receive a copy of the proposed bylaw changes at least one week prior to the meeting, and the proposed changes will then be reviewed and voted on at the division meeting. Chapter bylaws are also scheduled for review and a vote, to be held at the annual Summer Meeting. Amendment of the bylaws requires an affirmative vote by 2/3 of the members in good standing present at the meeting.