

## Safety awareness: Workplace safety, contractor rights, and what may trigger an OSHA inspection.

At the last bi-monthly LAP&FCA general membership meeting, the group was addressed by Mr. Dan Leiner, Area Manager of CAL/OSHA Consultation Services. This is the second opportunity for Dan to speak before our members and guests, as he presented a safety awareness seminar a few years ago. During his September visit, Leiner highlighted the benefits provided by CAL/OSHA Consultation Service, as well as informed contractors regarding their rights when faced with an enforcement inspection.

CAL/OSHA has two separate branches to monitor workplace safety throughout the state. The consultation branch aids employers in advance of an injury, and assists in identifying potential hazards. Employers should embrace what the consultation branch provides, as they can help in avoiding the second branch of CAL/OSHA, which is their enforcement division. Once the enforcement division is visiting you or your worksite, violations and fines are more than likely to result.

The consultation branch assists employers to avoid that by finding and eliminating workplace hazards that can lead to on the job accidents. Mr. Leiner began his presentation by stating the consultation division's purpose, which is, to prevent injuries before they occur, and to stress that actions of his office do not relate to a subsequent visit from the enforcement office. The two efforts



### Don't Miss Our Next LAP&FCA Meeting!

January 12, 2016 • 11:30am — 1:00pm



**Note:**  
Meeting location  
to be announced

Associates Meeting 10:50am — 11:30am  
Social: 11:30am — 12 Noon  
Lunch served 12 Noon followed by Program



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Tom Unsell - Chapter President

As we approach the holiday season, I ask myself, "Am I ready for this?" First, it's Halloween. Then, Thanksgiving. Soon, Christmas, and on to a New Year. You know the saying, "so much to do, so little time..." Thankfully, we've all been through this before, and knowing what to expect, we are prepared for what needs to be done.

Does the same hold true for your businesses? Are you prepared for what comes next? Many of us can rely on years of experience and valuable mentors to help us meet the ongoing challenges of our industry, but we should never believe that we know it all or don't need to embrace

**Yes, You Can Win an iPad**

Attend membership meetings and earn tickets to a year end drawing to win an APPLE I-PAD!!! Starting on January 13th, each time a contrac-



tor attends a General Membership meeting they will earn one attendance ticket for the drawing, and if you make it to all six meetings you will be

granted two (2) bonus tickets. Then at the 2015 Holiday party one lucky contractor will win the iPad.

new concepts. That is one of the reasons I have chosen to be so involved with the LAP&FCA, and other organizations. When something is working well we should keep doing it, but not at the peril of ignoring new innovations. When something no longer is as effective as it once was, we shouldn't stubbornly hold onto it, being resistant to change.

With this thought in mind, at the last board of directors meeting, we started to examine what next steps



should be pursued to advance our (and therefore your) position in the industry. Our marketing consultant, John Tenorio of J. Arthur & Associates, presented a variety of ideas and approaches to consider, and as a group we will be narrowing down and prioritizing those options. One idea is to partner with existing groups, such as building managers, facility and maintenance associations, and construction manager or general contractor affiliations. We also are considering becoming a presence at trade shows and conventions of those same organizations, with the hope of increasing our visibility among them. We need to educate our customers of the reliability, dependability, and value we bring to the construction industry. We hope to educate them that the

"bottom line" isn't always as simple as the lowest bid.

Moving forward we need your help in this. The LAP&FCA board does not operate in a vacuum, and that is where you come in. We need to hear your thoughts on this, either to confirm the options I've mentioned here, or to present additional thoughts and strategies we may not have heard. We need to be as open minded in this as possible, and we profess to not having all the answers. You might just be the

mentor I mentioned above to provide key advice as we face the challenges of this post-recession economy.

What we are asking is for you to share any of the three "A's" you may have: Advice, Approach or Action. Give us some ideas about what you think will work, and equally important what you think won't work. Please give Don a call at the chapter office or contact him via e-mail at lapfcavulich@gmail.com to help us move forward in promoting our association.

*Tom Unsell*

## LAP&FCA Chapter News

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Website: [LAPFCA.org](http://LAPFCA.org)

LAPFCA is a proud member of:



General Membership Meeting

*l to r: Raz Bronstein-Shapiro-Ben Basat, David McLean-Summit Painting, John Tenorio-J. Arthur & Associates, Jesus Fernandez-DC 36 Apprenticeship Training Director, Wiley Zagajeski-LMCC, Bert Moreno and Rocio Moreno, PSW Administrators.*



*Roger Rivas-Pro-Mark Group, Tom Parks and Richard Carson of Vista Paints, Rob Stewart-A.B. Stewart, Inc., and Barbara Goshorn-The Blakely Company.*



*Austin Vulich-Endurance Painting, Nick Weintraub of Leavitt Pacific Insurance, Allie Correy-Colors in View, Dan Leiner of CAL OSHA, and Harold Gidish-H&E Equipment Services.*

Visit: [LAPFCA.org](http://LAPFCA.org)

# Calendar

## 2015-16

November 8-11	Employee Benefits Conference	
	Executive Director to Attend	
November 19	Congressional Pension Reform	Washington, DC
December 5	Annual Holiday Event	Embassy Suites, Glendale, CA
December 6-9	Finishing Industries Forum	Las Vegas, NV
December 7-8	FCA Committee Meetings	Las Vegas, NV
January 12, 2016	General Membership Meeting	TBD

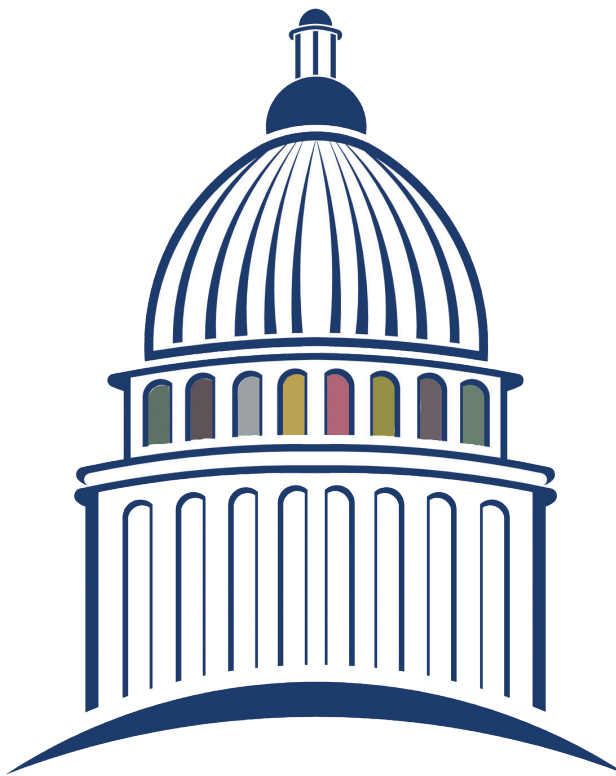




## STATE NEWS

At the state capitol we saw limited success in the bills that were important to subcontractors. The most important issue concerned prompt issuance of change orders to subcontractors, in order to expedite invoicing. The submitted legislation (AB 1347, Chiu) was originally supported by LAP&FCA and the American Subcontractors Association of California (ASAC), however we withdrew that support as a result of amendments to the bill that greatly altered its intent. The bill, as amended, did pass the Assembly and Senate, but Governor Brown vetoed the measure. We hope to revive the bill with greater bi-partisan support in the second year of the current session. The Democratic controlled Legislature passed multiple bills that affected bidding procedures in public contracts, apprenticeship programs, prevailing wage project extensions and design-build procedures.

The ASAC also tracked several bills that were returned to the authors as 2 year proposals, meaning they will be continued in the second year of the session. With this in mind we still have hope for the future of the



following proposed legislation:

(1) AB 846 (Gallagher) will reduce the allowable time limit for a plaintiff to enforce a mechanic's lien from 2 years to 6 months. The ASAC opposes this as the reduced time frame will greatly hinder less costly methods of securing payment, and also to reduce the need to seek relief through the courts. (2) AB 1152 (Frazier) was supported by ASAC and was intended to reduce the dark cloud over contractors resulting from construction defects litigation, while still maintaining owners right to protection from faulty new construction. (3) SB 653 (Berryhill) defines the intent of the legislature to address issues relating to the underground economy and ensure a level playing field

for businesses in the state of California. This bill is supported by ASAC and we will be highly proactive in promoting it during 2016.

## FEDERAL NEWS

There are no actual bills that were at the forefront of our attention, however two issues continue to receive our support and active involvement. First, is the topic of job training programs, and on September 9th President Obama

unveiled several programs to boost such actions, including federal grants to expand apprenticeship programs. The President announced the Labor Department will award \$175 million in American Apprenticeship Grants to 46 programs that will help with hiring and training 34,000 new apprentices in a variety of fields. Obama's actions are part of the administration's effort to help the middle class, and strengthen the economy. He also seeks to increase job training through community college enrollment, even providing free education to aid in these efforts. It remains to be seen if any of these efforts will

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be available locally, and be sure that our own Finishing Trades Institute will make all attempts to secure additional funding, but the overall national trend toward this type of training is to our overall benefit.

Multiemployer Pension Reform Act, and as a result, the Pension Benefit Guaranty Corporation has seen an increase in premiums that has strengthened their ability to protect pension benefits of over 10 million retirees. The

reform act also restricts the sale of an existing company to a new owner, and also limits the willingness of new contributing employers. The answer is a hybrid plan that combines the promise of a defined benefit, but also the stability of a defined contribution plan. This “composite plan” model is being endorsed throughout the halls of congress, and has received bi-lateral support from employers and labor groups, including our own IUPAT. In November, a number of FCA contractors and affiliate executives (including our executive director) will be gathering in Washington DC to promote this idea of a composite plan and build legislative support. Stay tuned for an update in the next issue.



The second issue we are actively involved in is the continuing effort of pension reform. Last year Congress approved the

has on attracting new employers to multiemployer pension plans. This long term liability, the result of defined benefit plans, often



## Contractors Liability for Installing Materials Complying with Specifications

A California court case will determine whether a subcontractor can be held “strictly liable” for installing material on a project that complied with specifications which the contractor did not write, and which was approved by the architect.

An amicus brief was filed in late September, in the case of Joel Hernandezcueva vs. E.F. Brady Company, Inc. arguing that a subcontractor cannot be held strictly liable for installing materials that complied with specifications. In part, the brief states “Strict liability on subcontractors

would place liability on a party who does not control the risk... which in turn would unnecessarily raise construction costs in a still struggling economic environment. This would place undue burden on the construction industry that is unnecessary to protect the public.”

The case involves drywall products installed by the subcontractor, E.F. Brady, that later were deemed to contain hazardous substances resulting in a mesothelioma case to a janitor, Joel Hernandezcueva. The subcontractor argued that they had

merely purchased and installed products that had been specified by others, with no particular recommendation from the installing contractor. The initial court agreed with the subcontractor that liability did not belong to them unless the products were installed outside of manufacturers recommendations. Shortly after the original trial Hernandezcueva died and the plaintiffs have appealed the decision to the California Court of Appeals.

The American Subcontractors Association, along with other

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### Congressional Advocacy Continued

are completely separate, and the consultation department does not report their findings to anyone beyond the employer. The second portion of Dan's presentation featured what events may trigger an enforcement inspection, what responsibilities are expected of employers, and strategies that can mitigate enforcement action.

## what events may trigger an enforcement inspection

The remainder of discussion centered on injury prevention tactics that, when implemented by employ-

ers can and will keep employees safe, and eliminate the threat of violations and fines from an enforcement inspection. Among the suggestions presented by Mr. Leiner were task specific and jobsite specific tailgate topics, OSHA 10 & 30 training institutes, State Compensation Insurance Fund safety alerts, Hazard Evaluation System and Information Service (HESIS), and OSHA web sites. Dan concluded his remarks pointing out that the consultation branch: (1) must be invited to your operations, (2) will not share information with the enforcement group, (3) does not issue citations, (4) consults proactively with employers, often by telephone, and (5) is totally free of charge. You can gain more information by calling his office



Dan Leiner, Area Manager of CAL/OSHA Consultation Services

at 818-901-5754, and they or another regional consultation office will aid you in providing a safe working environment.



## Help Manage Workers' Compensation Costs

By: Nick Weintraub, Leavitt-Pacific Insurance Services



As an employer you have many tools available to help reduce your workplace injury exposure, and I'm sure you already hold regular tailgate safety meetings, encourage on-going workplace education and otherwise reinforce general safety awareness. Yet, in addition to that, I strongly suggest that every employer establish within their own com-

pany a Workers Compensation Claims Management Program. By doing this you not only enhance workplace safety, but this also can require employees to meet in-house safety standards.

You can stipulate expectations that every employee must abide by under this claims management process, and in so doing you have intensi-

fied the importance of safety among your crew. It is advisable that you expect the following:

1. Report accidents immediately
2. Employees attend weekly safety meetings, whenever physically possible
3. Ask for and receive updates on their medical condition and

progress, expect specifics

4. Participation in alternative job activities, if available

5. Compliance with company written ILLP policy

6. A signed acknowledgement by employees that they have been informed and understand these requirements.

Whereas this seems to be time consuming and duplicating of common sense safety application, but by being more stringent and establishing strict expectations you are helping to reduce fraudulent and un-necessary claims. Your employees, especially new hires, will take notice of in-house policies and realize that you are very serious about workplace safety. Remember, an ounce of prevention is worth a pound of cure.





## Where are the willing and able apprentices?

A longstanding dilemma for the construction trades and their apprenticeship programs is the means of attracting quality apprentice candidates. Questions abound such as who are the right candidates? What about age, experience, economic standing, Veteran, high school or college student, college dropout, family member, career changer, or others? The issue of how to identify the right candidates and attract their attention is what my associate and I will be presenting at this year's Finishing Industries Forum in Las Vegas. We will focus on programs within the finishing trades.

Before moving on, I should provide some enlightenment of what many apprenticeship programs are faced with. Unlike our private clients in other industries who have a defined



hierarchy, i.e., CEO, president, vice president, CFO, marketing director, etc., apprenticeship programs are lead by a combination of persons with different ideas. Construction trades have several influential individuals associated with their apprenticeship programs, and all hold vital roles toward the success of the programs. These roles include labor leaders, management, labor-management representative(s), joint apprenticeship trust, and apprenticeship staff members. Everyone has their own opinion when it comes to marketing and it is my experience that without an outside company organizing and planning a cohesive campaign, the motor may continue to idle. This is not to say that a program cannot run its own recruitment marketing campaign, although, a clear and reasonable plan should be in place and adhered to.

So, where do we find willing and able apprentices? Experience tells me they are all around us. The next question is, how do we reach them, and what do we tell them once we reach them? These are all loaded questions with varying answers or suggestions. But, the first answer is this—get your plan together. Consider thinking backwards. First, while you have your ideas on the target market, and how you



are going to reach out to it, you MUST have a polished and branded image, along with a clear vision for the future of the program. Take a strong look at your program and how an apprentice candidate sees you. Is he or she impressed? Does your image properly represent your construction trade? Is your image interesting to the people you are reaching out to? If not, make it interesting.

There is no secret that most construction trades apprenticeship programs seek men and women from ages 20 to 30 years of age. Guess what the number one means of this age group attaining information? The Internet and in particular social media. All one must do is watch apprentices when they are on a break. What do you see them doing? They pull out their phones and check their social media channels and messages. This communication happens quickly. If a message entices them, they may visit a website or social media page. Their minds are used to seeing excellent, attractive and functional websites. What do you think happens when they visit your social media page or website and it appears to have an amateurish look? They are immediately disinterested and are gone in a flash.

The Internet is a great way to

communicate to apprentice candidates, but personal meeting is always best, that is if you are able to secure personal meetings. Once you meet potential candidates what do you have to provide him or her while making your 'elevator pitch'? Likely a link to your social media or website, and/or a top-notch printed brochure.

While speaking to apprenticeship training directors, trainers, contractors, labor representatives, and apprentices themselves, I have heard nearly every method to attract apprentices. Anything such as passing out flyers, attending job fairs, representing themselves at Job Corps, print ads, direct mail, online job postings, social media announcements, asking apprentices about their family members, and other interesting suggestions. Collectively, these ideas are not possible with the limited apprenticeship staff. I thoroughly understand the confusion and difficulty of apprenticeship programs unable to spread themselves thin to reach out to market their programs. An apprenticeship program's number one function is to train labor and the Finishing Trades are among the best available. We don't expect these programs to be expert marketers. This is the exact reason we are called upon for our services.

What makes J. Arthur & Associates special is the fact that we have non-competitive clients in labor and in management. This type of experience provides us an extraordinary perspective into either construction trades sectors. When hired by a construction trades organization, we hold a formidable and objective "outside in" perspective for our clients. Apprenticeship recruitment is a hot topic and we were asked to provide insight and ideas on December 7th, 2015 at the Finishing Industries Forum. If you are wondering where the willing and able apprentices might be, and you are attending FIF, please register to attend one of our two presentations.

*John Tenorio  
President, J. Arthur & Associates  
Email: JohnT@JArthurAssociates.com*



## FROM OUR EXECUTIVE DIRECTOR

Having returned recently from the Finishing Contractors International Affiliate Executives meeting in South Carolina (prior to the devastating rainfall, thank goodness), and I am about to travel to the International Employee Benefits Conference, let's touch base on what is currently on the table for LAP&FCA. In South Carolina, many issues were presented, and from my perspective I think the most important was the discussion regarding marketing our industry. The FCA and IUPAT have been attempting in recent years to advocate the advantages and benefits of utilizing a highly trained and professional workforce. Their emphasis has been to promote our ability to close out projects when everyone is most anxious to occupy developed work sites, as well as the value that comes with skilled and competent applicators completing finished projects on time, that last longer due to proper installation of materials. The problem, as I see it, is we haven't seen much fruit from these efforts yet. Additionally, it seems much of the past emphasis has been concentrated on the east coast, and not here in our own backyard. As we move forward, it is the hope of all involved that we can begin to see market share growth for the organized contractors of the

finishing trades, and we are taking a hard look at how to best achieve that goal.

Locally, the LAP&FCA board of directors is also discussing ways to better promote and present our members to the decision makers of construction projects, building managers and facility directors right here in our own backyard. We recently heard a presentation on various approaches to expand our identity in Southern California, and the board is actively considering how to best utilize our limited resources. But how many of you are aware of the past marketing resources that we already have on hand to assist our members to promote both their own company and our industry in general?

We developed a multi-page brochure that places an emphasis on the value, professionalism, safety and competency we offer our clients, and we also have a short DVD that demonstrates these same attributes by showing finished projects accomplished by our members. These marketing products also tout our relationship with the Finishing Trades Institute Apprenticeship and Journeyman training program. Please feel free to contact the chapter office to obtain as many copies as you may need, with no cost to members. Using these marketing tools

and in conjunction with your own company brochure or introductory letter, you can make a highly professional presentation to prospective clients. I hope that in the next edition of the newsletter to provide more details on the future direction of the LAP&FCA marketing plan.

In November I will be attending the Employee Benefits Conference, intent upon learning more about the impact of the Affordable Care Act on multi-employer health plans, as well as discerning current trends in apprenticeship training programs. Locally, we do not actively participate as trustees on the international pension plan, but I will still sit in on some pension related seminars to become more informed on the emerging movement away from strictly defined benefit plans to the composite style plan, which we hope will result in a lowering of unfunded liability to contractor members. As a trustee, I'm committed to keeping the cost burden on contractors as minimal as possible, while at the same time providing the greatest amount of benefits to our members. It is my hope that the Employee Benefits Conference will help me to achieve both those ends.

*Don Vulich*

### *Contractors Liability Continued*

associations, led the defense of this and continues to represent the subcontractor in the appeals process. ASA has offered warnings in court statements that if the appeals process reverses the trial court "it will change long-standing California law and unfairly impose

liability on California contractors for risks they do not control". E. Scott Crawford Jr., an attorney with ASA-member firm Crawford & Bangs, LLP, wrote and filed the brief on behalf of ASA and other related associations. This article has been summarized from a more extensive article written by Mr.

Crawford. The case can have a major impact on California construction contractors and will be closely watched as the process unfolds.



## CUTTING TO THE QUICK SAVE THESE DATES

**December 5, 2015 - Annual Holiday Event**

Embassy Suites, Glendale, CA (*please bring unwrapped toy*)

**Dec 6th-9th, 2015 - Finishing Industries Forum**

Las Vegas, NV