

# ABC TODAY



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## Administration Introduces Ergonomics Regulation



Marc Freedman

Despite the vocal opposition of Congress and the business community, the Clinton administration recently released a controversial ergonomics regulations.

Both chambers of Congress passed legislation this year that would have delayed the introduction of the regulations.

At ABC's recent attorneys conference in Washington, D.C., Marc Freedman, counsel, Senate Small Business Committee, said that a draft of the regulations "takes the worst of last year's proposal and marries it with the worst of the 1995 draft proposal."

The regulation includes an "exhaustive and overwhelmingly burdensome" checklist of risk factors that employers must review for each employee once an injury occurs, Freedman said.

The regulations, which do not apply to the construction industry, also include a "single-injury trigger" in

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## ABC May Sue Labor Department Over Restrictive Helper Rule

ABC may sue the U.S. Department of Labor for recently releasing a final rule that reverts to an outdated definition of helpers that is so restrictive that it essentially eliminates helpers as a classification on Davis-Bacon work.

"ABC is disappointed that at the eleventh hour the Clinton administration would push through a regulation that is harmful to American workers," said ABC President W. Thomas Musser in a statement to the news media.

"This Davis-Bacon helpers regulation closes the door on entry level helpers who should be allowed to earn while they learn," Musser said.

"By refusing to designate wages for helpers who assist skilled journeymen, this regulation forces employers to pay artificially inflated wages for entry level jobs, thereby pricing out and ex-

cluding vital new entrants to the industry."

The rule allows the use of helpers only in certain, restricted situations, where:

- their duties are clearly defined and distinct from those of journeyworker and laborer classifications in the area;
- the use of such helpers is an established prevailing practice in the area; and
- the term "helper" is not synonymous with 'trainee' in an informal training program.

ABC criticized the Labor Department for reverting to a rule that was deemed unworkable by the department in 1982.

"It is remarkable that the Labor Department has promulgated a rule which codifies an obsolete, unworkable definition of helpers and fails to recognize prevailing practices in the industry," Musser said.

"It is also troubling that

this regulation, which will hurt American workers, was enacted so that it goes into effect only a day before a new administration is to be sworn in at the White House."

For more information, visit the ABC website at [www.abc.org](http://www.abc.org) and click on the government affairs section, or contact Charley Maresca at ABC, (703) 812-2039, [maresca@abc.org](mailto:maresca@abc.org).



*Wishing you and yours a safe and happy holiday.*

## ABC Attorneys Get the Inside Story On Regs, PLAs, at Attorneys Conference

ABC attorneys from across the United States were in Washington, D.C., recently to hear about the Clinton administration's proposed blacklisting and ergonomics regulations as well as the latest developments in cases involving union-only project labor agreements. They also heard an insider's view of the National Labor Relations Board from a former board member—all during the association's annual national attorneys conference.

Marc Freedman, counsel, Senate Small Business Committee, updated the group on the imminent release of the Clinton administration's proposed blacklisting regulations. The regulations, he said, have been criticized by agencies within the Clinton administration, including the Department of Defense,



J. Robert Brame, III

which recommended that the proposal be withdrawn. Nevertheless, the administration plans to move forward, Freedman said, despite growing evidence that the regulations would prove costly and problematic for contractors.

"No logical argument is sufficient to stand in [the administration's] way. It's not a matter of not having facts on our side. The ad-

ministration just doesn't want to listen to them," Freedman said.

Anita Drummond, formerly of the Small Business Administration's Office of Advocacy, said it is only a matter of time before OSHA develops an ergonomics regulation specifically for the construction industry. "I think it is very important that [contractors] articulate specifically how the regulations would affect the industry," she said.

J. Robert Brame, III, who served on the National Labor Relations Board between November 1997 and August 2000, explained the process by which cases are assigned and reviewed, giving an insider's view of what it is like to work on the board. He urged attorneys with cases being reviewed by

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## PLA on Wilson Bridge Would Increase Costs, Study Shows

A union-only project labor agreement on the Woodrow Wilson Bridge project in the metropolitan Washington, D.C. area would add approximately \$150 million to the project's \$2.2 billion price tag, according to a new study by Dr. Armand Thieblot.

"There are no tangible benefits from a PLA in this instance, and there is no question but that the interests of the state are far better served by not having a union-only PLA than having one on the Wilson Bridge," he concluded in a report released by the

Maryland Foundation for Research and Economic Education.

ABC is using the study to persuade Maryland Gov. Parris Glendening (D) to refrain from enacting a union-only PLA on the project. However, local television and news outlets are

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## PLA on Wilson Bridge Would Increase Costs, Study Says

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reporting that Glendening is negotiating with the unions regarding a PLA.

### Fewer Bidders

In the study, Thieblot attributed part of the \$150 million sum to less competition due to a reduced number of contractors willing to bid on the project because of the PLA.

Thieblot highlighted two studies that showed a correlation between union-only PLAs and diminished competition. In the first, the Weber Merritt Company, in Alexandria, Va., conducted a telephone survey that showed that 70 percent of firms surveyed said they would be less likely to bid on public projects that required them to sign a PLA.

The second study, conducted by Professor Paul Carr, an engineering and management consultant in New York, showed that the higher the number of bidders, the lower the bid price. As a result, Carr said, a PLA requirement on a county courthouse project would increase the project's cost by 5.6 percent.

Thieblot added that union-only PLAs typically increase costs between 4

percent and 16 percent due to restrictive and inefficient union work requirements.

Thieblot said a review of the major heavy highway projects performed in the region between 1990 and 1999 shows that 83 percent of the projects were performed by open shop firms. Consequently, "it is highly doubtful that labor organizations in the area can provide a reliable source of skilled, experienced workers in all crafts needed on the jobsite for the duration of the project."

Thieblot added that unions typically say a PLA will help ensure that a project is completed on time and on budget. To the contrary, a review of the less than 100 major projects performed under a PLA in the past decade showed that at least 14 had cost overruns and at least nine had significant project delays. On at least two of these projects, the delays were caused by strikes—essentially what union-only PLAs intend to prevent. "The problems that union-only PLAs are said to be designed to correct do not exist in troublesome or even detectable amount in the labor area of the Wilson

Bridge. And where PLAs have been implemented elsewhere in the past, they have not been effective in bringing projects in on time and under budget. Indeed, they have not even succeeded in preventing strikes and labor disputes, which they had guaranteed to do."

### DOT Guidance

Thieblot framed his study as a series of responses to the U.S. Department of Transportation's "guidance" to help agencies decide whether to enact a PLA. The five factors the DOT encourages public owners to evaluate include: past experiences with PLAs in the area; the probability of labor-related delays on the project; the capability of labor organizations in the area to provide a reliable source of skilled, experienced workers needed to complete the project; the existence of uniform work rules and established procedures for resolving labor disputes; and the level of labor-management cooperation.

To obtain a copy of the study, contact Jim Ryan at ABC, (703) 812-2042, or [ryan@abc.org](mailto:ryan@abc.org).

## TDIndustries' Jack Lowe Honored by Ernst & Young

Jack Lowe, Jr., CEO of TDIndustries, Dallas, received the National Ernst & Young Entrepreneur of the Year award for Principle-Centered Leadership at an awards ceremony in New York last month.

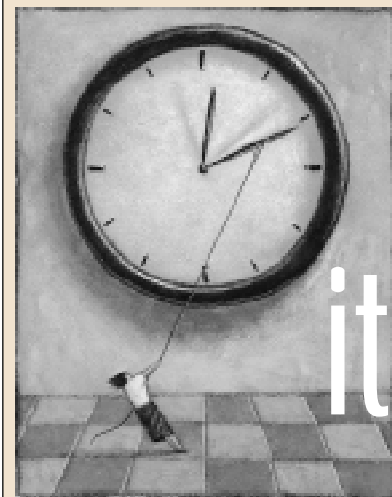
In presenting the award, Stephen Covey, co-chairman of the Franklin-Covey Co., said, "His unusual leadership style and unorthodox approach to management have successfully inspired employees to work hard, rise to the best within them, and become leaders in their own right. This has translated into sustained business and profit growth for the company."

The award for Principle-Centered Leadership was established in 1997 to recognize entrepreneurs who have achieved outstanding business results in a "deeply principled manner."

A number of ABC members won Ernst & Young awards in the general real estate/construction category at the regional level, including Scott Bailey, Stronghold Engineering, Inc., Riverside, Calif.; Paul Choquette, Jr., Gilbane Building Co., Providence, R.I.; Ron Foster, Foster Supply, Inc., Scott Depot, W.Va.; David Hardy, David J. Hardy Construction Co., Syracuse, N.Y.; Bill Love, Encompass Electrical Technologies, Overland Park, Kan.; Bruce Merrick, Dant Clayton Corp., Louisville, Ky.; and Jim Troups, East Coast Fire Protection, Richmond, Va.



Jack Lowe, right, with, from left, ABC Executive Vice President Bob Hepner; former ABC President Ben Houston, COO of TDIndustries; and Stephen Covey, who presented the award.



# Putting it Briefly

## Tax Committee Member Speaks at IRS Conference

ABC Tax Committee member Richard Shavell represented the construction industry/CPA practitioners at a national IRS conference last month in New Orleans.

Shavell was invited to speak by the director of the IRS' Construction Industry Market Segment Specialization program. The MSSP program is part of the IRS' effort to become more responsive to the needs of specific industries. "Because the construction industry has unique and stringent tax reporting requirements, it is at the forefront of this outreach initiative," Shavell said.

Shavell also has served as ABC's Tax Committee chairman.

## Nominations for Trimmer Award Due Jan. 15

Nominations for the John Trimmer Excellence in Teaching award are due Jan. 15.

The Construction Education Foundation presents the Excellence in Teaching award to recognize a faculty member of a two- or four-year construction program who best combines teaching skills with merit shop philosophy, interacts with the merit shop construction community and possesses knowledge of merit shop construction.

The winner is announced at ABC's national convention and receives a check for \$3,500 and a plaque.

Nominations should be sent to: Jody Romano, CEF, 1300 North 17th St., Rosslyn, VA 22209.

## Union Election Wins Rise During First Half of 2000

Unions won 52.4 percent of representation elections held during the first six months of this year, up from the number won the same time last year (51.6 percent).

Moreover, the number of decertification elections decreased slightly, from 199 during the first six months of 1999 to 188, reported the Bureau of National Affairs.

However, construction was not one of the industries to experience the highest percentages of union wins, an analysis of elections by industry during the first 10 months of 1999 showed. In the construction industry, unions won 48.9 percent of the elections held during that period. The industries to experience the highest percentages of union wins were the services and healthcare industries, in which unions won 61.1 percent of the elections.

## Controversial Ergonomics Regulation Released

(Continued from page one)

which the report of a single injury would require employers to determine whether the injury was caused by a musculoskeletal "incident" and whether the employee is exposed to risk factors that typically cause ergonomic injuries.

In a statement to the news media, ABC President W. Thomas Musser said, "Congress as well as the business community have clearly stated that they do not support the release of the regulations until more study definitively shows they are warranted."

He added, "Until we understand what particular activities in the workplace cause these injuries and how we can prevent them, the administration's work on ergonomics regulations is, at best, misguided and, at worst, a waste of limited government resources and taxpayer dollars."

"Without a proper scientific foundation, ill-crafted ergonomic regulations would force businesses to spend billions of dollars without guaranteeing the prevention of a single injury."

Several lawsuits have been filed in the D.C. Circuit Court challenging the regulation.

## ABC Members Encouraged To Join In Job Shadow Day

ABC members are encouraged to participate in what has become an annual event for ABC contractors and organizations ranging from ABC to Junior Achievement to Colin Powell's America's Promise—Groundhog Job Shadow Day, Feb. 2.

Job Shadow Day is composed of several components built around a half-day visit to a jobsite in the private, nonprofit or government sector. Participating students will have the opportunity to tour a jobsite, "shadow" an employee for at least two hours

and engage in some workplace activities.

Students, ranging in age from middle-school to college-aged, generally participate in activities in the schools that prepare them for their "shadow" visits, and following the visit, they discuss their experiences in the classroom.

The jobsite visit does not need to take place on Feb. 2 but can occur any time throughout the year.

If you are interested in getting involved, ask your chapter if it plans to participate in any Job Shadow Day activities.

## Construction Growth Will Slow in 2001

ABC predicted continued construction growth during 2001, but it will grow at a slower pace than in 2000, ABC President-Elect Henry Kelly said in the association's yearly economic forecast.

Kelly said, "For ABC contractors, backlogs of work remain steady, but with a slowdown imminent in the housing market, we expect a slight cooling of growth in the commercial and industrial markets."

There will be some areas of growth, Kelly said, with manufacturing and highway construction leading the way for growth in the commercial and industrial sec-

tors. ABC also anticipates a continued growth boom in the southeastern United States. However, construction in other areas of the nation may level off, he said.

Nevertheless, Kelly was generally upbeat about the coming year. "As U.S. construction firms place increased emphasis on improving information technology systems, training the construction workforce and strengthening safety programs, both productivity and profitability steadily increase. ABC is optimistic about the U.S. economy and sees signs of steady economic strength on our industry's horizon."

## Attorneys Get Inside Scoop At National Attorneys Conference

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the board to "put everything in writing that you think helps you ... Sometimes [attorneys] don't provide sufficient documentation."

When asked if having partisan board members, such as those currently serving, is an impediment to ensuring a fair hearing of labor cases, Brame said, "I don't know that it matters. In fact, I think having served in the trenches provides a more realistic world view."

ABC General Counsel Maurice Baskin led a discussion of PLA cases around the country and described recent public relations successes.

"If you are advising a chapter," he said, "you should tell them that going to court should be a last resort because there has been a lot of success through media, grassroots efforts...especially combined with the fact-finding studies that prove to the public at large and to public



Los Angeles-Ventura Chapter Attorney Tom Lenz, left, and wife Sandi chat with NLRB Chairman John Truesdale.

officials that union-only is not the way to go."

Ron Mason, chapter attorney for the Central Ohio Chapter, said ABC of Ohio's challenge to a ruling that struck down a law prohibiting public entities from requiring a PLA on projects in Ohio could go to the Ohio Supreme Court.

Other highlights of the

conference included discussions on providing evidence in union picketing cases, several contract law issues, and concerns related to online employment advertisement and other Internet issues.

This was the second year ABC expanded the conference to issues beyond labor law.

## New and Improved Newline, ABC Today

Be on the lookout for a new and improved version of *Newline*, ABC's weekly email and online newsletter, to come out in early January. The newsletter provides brief synopsis of all key news items relating to ABC—legislation, legal cases, regulations, safety and more.

ABC will send an email alert with a link to the newsletter to all ABC members and subscribers for whom the association has email addresses.

Meanwhile, look for an enhanced version of *ABC Today*, which is being restructured beginning with the January issue.

If you haven't already sent your chapter your email address, please do so so that you can enjoy the benefits of the improved online newsletter.

Check out the Public Relations Guide for Contractors (formerly called the Communications Guide for contractors) on ABC's website for some tips on using public relations techniques to enhance your company's reputation. The guide, located at [www.abc.org/prguide](http://www.abc.org/prguide), includes information on how to develop news releases, websites and company newsletters.

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