Administration Introduces Ergonomics Regulation

Despite the vocal opposition of Congress and the business community, the Clinton administration recently released a controversial ergonomics regulation. 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ABC may sue the U.S. Department of Labor for recently releasing a final rule that reverts to an outdated definition of helpers that is so restrictive that it essentially eliminates helpers as a classification on Davis-Bacon work.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 helper 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 excluding 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 unacceptable 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 and click on the government affairs section, or contact Charley Maresca at ABC, (703) 812-2039, maresca@abc.org.

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, the Department of Labor, and the Small Business Administration.

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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 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 Development.

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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Putting Briefly

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, 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 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.”


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 46.9 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.

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.

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’ efforts 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.

TDIndustries’ Jack Lowe Honored by Ernst & Young

Honored by Ernst & Young

TDIndustries’ Jack Lowe

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.

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 bidding process.

One study, conducted by Professor Paul Carr, an engineering and management consultant in New York, showed that the higher the percentage of union 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 24 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 the first place or can be compensated for by 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.

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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 ergonomics 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 injury, 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 ABCs to Junior Achievement to Colin Powell's America's Promise—Grounding Job Shadow Day, Feb. 2.

Job Shadow Day is composed of several components built around a half-day visit to a job site in the private, nonprofit or government sectors. Participating students will have the opportunity to tour a job site, "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 job site 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 sectors. 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."