



January, 2008

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LEGISLATIVE BILLS/ACTIONS

S.742: Ban Asbestos in America Act of 2007

Amends the Toxic Substances Control Act to reduce the health risks posed by asbestos-containing materials and products having asbestos-containing material.

Status: Passed in the Senate (20 co-sponsors) with an amendment and referred to the House.

FCA Position: FCA supports legislation that bans using asbestos materials.

H.R.3285: Ban Asbestos in America Act of 2007

Amends the Toxic Substances Control Act to reduce the health risks posed by asbestos-containing materials and products having asbestos-containing material.

Status: Referred to the Energy and Commerce Committee.

FCA Position: FCA supports legislation that bans using asbestos materials.

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H.R.2764: Consolidated Appropriations Act of 2008

Makes appropriations for the Department of State, foreign operations, and related programs; it included \$107B for Federal construction programs for FY 2008.

Status: Signed by President Bush on December 26, 2007.

IMMIGRATION REFORM

Immigration Bills: "Rapidly Evolving at the State Level"—approximately 1,562 bills related to immigration have been introduced among the 50 state legislatures; of these, 244 have been signed into law in 46 states which indicates that the states are not waiting for Congress to pass comprehensive immigration reform legislation. Ironically, many of the immigration laws that states and municipalities have passed may fall in the wake of numerous legal challenges on the grounds that they may conflict with Federal immigration laws that prohibit civil or criminal sanctions by states, thereby making them unconstitutional.

"No-Match Rule" Lawsuit: Appeal to Lift Injunction—on December 14 a federal trial judge agreed to stay proceedings in a legal challenge to block the government from implementing a policy that would threaten employers with criminal and civil liability for failing to resolve employees' mismatched social security numbers. This ruling came in the wake of the DHS's asking the U.S. Court of Appeals on December 4 for the Ninth Circuit to lift an injunction against implementation of its new social security number no-match rule. Regardless of how the Court might rule, the injunction has already prompted the introduction of legislation in Congress (**H.R.3950: Approve No-Match Letter Final Rule**), curtailed the sending of no-match letters, and forced the DHS to consider revising the rule. **"No Match" Letters Placed on Hold**—on November 13 the Social Security Administration (SSA) announced that it would not send out "no match" letters to employers for the remainder of 2007 because of the lawsuit challenging the DHS's new employment authorization rule. The announcement also suggests that the SSA is not likely to send out any such letters until at least the spring of 2008.

Ideas on “How to Improve the E-Verify Program” Discussed/2008 Survey Evaluation Planned

The U.S. Citizenship and Immigration Services held an E-Verify meeting to discuss ways of improving the E-Verify Program (the system used by federal program employers to electronically verify worker eligibility) which has come under scrutiny because of accuracy problems. The issues identified and prioritized at the meeting should help Westat, a private research firm who has been contracted to conduct a 2008 E-Verify Evaluation, to create survey questions for employers and employees who are currently testing the system. The new evaluation is expected to be completed within one year and will look into problems relating to the new photo identification tool incorporated into the E-Verify system, the timing and resolution of tentative non-confirmations, the prescreening of employees using E-Verify, and the specific concerns of special employers such as temporary staffing agencies. Four main evaluation goals have been identified: reducing the employment of unauthorized workers, reducing discrimination, protecting employee civil liberties and privacy, and preventing undue burden on employers who use the program.

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Approve No-Match Letter Final Rule (H.R.3950)

Approve a final rule of the DHS relating to employers who receive a “no-match” letter from the Commissioner of Social Security.

Status: Referred to the Judiciary and Education and Labor Committees.

FCA Position: FCA does not support this legislation because it does not seem fair to either the illegal alien employee, who could be mistakenly terminated through an inaccurate verification system, or the contractor, who could encounter recrimination for wrongful termination.

Public Law 110-81 Levies New Lobby Reporting/Filing Procedures—S.1: the Honest Leadership and Open Government Act of 2007 (Public Law 110-81)

Amended the Lobbying Disclosure Act of 1995, has set new lobby report filing procedures and forms. As of December 10, 2007, new registration and reporting forms will be available for both Windows and Macintosh platforms that enable simultaneous filing with the House Clerk and the Senate Secretary, using a Senate password and not requiring an ACES digital signature. These forms (version 5.0.1) and instructions may be downloaded at <http://lobbyingdisclosure.house.gov> and www.senate.gov/lobby. You may continue to use the previously issued registration and reporting forms that use the ACES digital signature for filings for 2007 and earlier up to March 15, 2008. You are invited to join the Lobbying Disclosure Subscribers’ List, so that you can be notified via email of future filing deadlines and pertinent information regarding Lobbying Disclosure Filing Procedures. This service is available at: <http://lobbyingdisclosure.house.gov/subscribe.html>. For further information, contact the Legislative Resource Center at 202/226-5200 or the Senate Office of Public Records at (202)224.0758.

Repeal Mandatory 3% Withholding Tax—S.2394: Good Government Contractor Act of 2007

Seeks to repeal Section 511 of Public Law 109-222. In addition, the Senate Finance Committee continues its efforts to resolve the issue by working with the IRS. The push back on repeal is coming mainly from the Senate Finance Committee. In addition, the House passed **H.R. 3056: Tax Collection Responsibility Act of 2007** that would delay until 2012 the requirement for federal, state, and local agencies to withhold the 3% and require the Secretary of Treasury to report to Congress the impact of this tax.

IRS Worker Classification Initiative to Catch Tax Evaders

The IRS continues its Questionable Employment Tax Practice Initiative—an initiative for which the IRS and 29 state agencies share information aimed at deterring the misclassification of workers and attempts to evade/reduce employment tax liabilities. This initiative will enable the parties to exchange audit reports and audit plans and to participate in side-by-side examinations, as well as to monitor compliance with Form 1099 for independent contractors and Form W-2 for employees. The IRS, under pressure from Congress, is looking for ways to reduce the tax gap (i.e., the \$290B annual shortfall between taxes owed and taxes paid)—a major reason for which Congress initially passed the 3% Withholding Tax. Pending legislation, **S.2044: Independent Contractor Proper Classification Act**, also addresses the misclassification of workers’ issue.

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Independent Contractor Proper Classification Act of 2007 (S.2044)

Provide procedures for the proper classification of employees and independent contractors. In effect, the bill would (1) amend Section 530 to allow the IRS to require employers to reclassify workers that they have misclassified in the past, (2) eliminate the ban on the IRS's issuing regulations or revenue rulings on employee/independent contractor status, and (3) eliminate the ability of employers to rely on others in the industry who misclassify their employees (the so-called "common law" loophole) as a basis for continuing to misclassify their own.

Status: Referred to the Senate Finance Committee with 6 co-sponsors.

FCA Position: The FCA supports this legislation.

Good Government Contractor Act of 2007 (S.2394)

Amend the Internal Revenue Code of 1986 to simplify, modernize, and improve public notice of and access to tax lien information by providing for a national, internet accessible, filing system for Federal tax liens. The bill also supports the repeal of Section 511 of P.L. 109-222.

Status: Referred to the Senate Finance Committee.

FCA Position: FCA supports the requirement that under FAR contractor qualifications, a contractor must not have any tax debt to be deemed responsible and/or eligible for Federal contracts and the repeal of Section 511 of P.L. 109-222.

Tax Collection Responsibility Act of 2007 (H.R.3056)

Amend the Internal Revenue Code of 1986 to repeal the authority of the IRS to use private debt collection companies, delay implementation of withholding taxes on government contractors, and revise the tax rules on expatriation.

Status: Passed in the House with nine co-sponsors and referred to the Senate Finance Committee.

FCA Position: FCA supports the repeal of Section 511 of Public Law 109-222.

H.R.3339: Bruce Vento Ban Asbestos and Prevent Mesothelioma Act of 2007

Amend the Toxic Substances Control Act to reduce the health risks posed by asbestos-containing materials and products having asbestos-containing material.

Status: Referred to the Energy and Commerce Committee (Environment and Hazardous Materials Subcommittee and Health Subcommittee) with 52 co-sponsors.

FCA Position: FCA supports legislation that bans using asbestos materials.

President Signs Terrorism Risk Insurance Bill—On December 26, 2007, President Bush signed into law **H.R.2761: Terrorism Risk Insurance Revision and Extension Act** that largely accepted the Senate version which was passed as amended (S.AMDT.3800, proposed by Senator Reid for Senator Dodd in the nature of a substitute). This legislation adopted the Senate's 7-year extension (instead of its earlier 15 years) with an effective date of January 1, 2008, and dropped House provisions that required insurers to make available coverage for attacks using weapons of mass destruction (i.e., nuclear, biological, chemical, and radiological).

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H.R.2761: Terrorism Risk Insurance Revision and Extension Act of 2007

Extends the Terrorism Risk Insurance Act (TRIA) for 7 years with current co-payments and deductibles for conventional terrorism acts; change TRIA's definition of terrorism to include acts of domestic terrorism; set the program trigger at \$50 million; add group life insurance to the lines of insurance for which terrorism coverage must be made available; decrease deductibles and triggers for areas previously impacted by a significant terrorist act; and continue to require studies of the development of a private market for terrorism risk insurance.

Status: Signed into law by President Bush on December 26, 2007.

FCA Position: FCA supported this legislation.

OSHA'S CONFINED SPACE RULE

OSHA recently published in the Federal Register (72 Fed. Reg. 67352) a proposed rule to enhance the protection provided to construction employees working in confined spaces. OSHA has indicated that it will accept our comments on the proposed standard until January 28, 2008.

SUMMARY OF RULE: Please visit FCA's Web site for a summary.

The rule includes a step-by-step procedure for employers to follow in deciding which one of four types of confined spaces is present (i.e., continuous-system permit-required spaces, permit-required spaces, controlled-atmosphere spaces, and isolated hazard spaces), how to address any hazards that exist in those spaces, and the dangers of performing rescue operations. The four types of confined spaces are defined below:

In addition to twice as many defined confined spaces as the current general industry rule, the proposed rule includes an explicit requirement for permits in two of the types and an entry supervisor to monitor conditions during entry to a permit-required confined space.

Under the rule OSHA is requiring employers to provide retrieval systems for quickly removing injured workers (e.g., a chest or full-body harness and a retrieval line), and where such removal involves a vertical distance of more than five feet, a mechanical device in place on the site. (NOTE: Employers are not authorized to use forklifts, powered wenchers, or overhead cranes because they could injure the person being rescued.) **Training:** The standard includes specific requirements for confined space training, hazard analysis, classification, entry, work, exiting, and rescue for the four types of confined spaces and their hazard levels.

On December 10, an email "Regulatory Alert: Call for Confined Space Comments" was sent to all FCA members. The alert emphasized that OSHA is particularly looking for comments in the following areas:

- Comparisons between the proposal and the existing standard (Subpart P)
- Equipment necessary for a single attendant to monitor multiple permit-required confined spaces
- Alternatives to a mechanical device for vertical retrieval during rescue
- How to define "timely response" to a rescue summons, and whether it should remain performance-based
- How long required documentation on controlled atmosphere and isolated hazard spaces should be maintained
- How to keep public sector emergency services updated on confined spaces that may often be reconfigured.

This alert asked you to forward your comments to Jay Weaver, Government Relations' Liaison, at 703/448-9002 (fax) or jweaver@finishingcontractors.org (email) **NLT January 18, 2008**, for him to consolidate FCA's input to OSHA, particularly comments being gathered by the Industrial Painting Peer-to-Peer Group. This alert also identified key OSHA personnel: for technical questions, Garvin Branch, OSHA's Directorate of Construction, at 202/693-2020; for general questions about the collections' process, call Jay at 703/448-9001; and for a copy of the proposed standard, see FCA's website: www.finishingcontractors.org and click on the proposed rule, "29 CFR Part 1926."

OSHA'S NEW RESPIRATOR FIT-TESTING PROTOCOL

OSHA also recently published a Notice of Proposed Rulemaking in the Federal Register (72 Fed. Reg. 72971) on December 26 for a new fit-testing protocol: the Abbreviated Bitrex Qualitative Fit-Testing (ABQLFT) Protocol under Appendix A of OSHA's "Respiratory Protection Standard" (see www.osha.gov). This rule will add a new fit-test method to the four existing OSHA-approved fit-test protocols—one that has a shorter exercise duration than the current methods (reduced from one-minute to fifteen seconds). In order for the FCA to consolidate its input to OSHA, please forward your comments to Jay Weaver, Government Relations' Liaison, at 703/448-9002 (fax) or jweaver@finishingcontractors.org (email) **NLT February 15, 2008**. Technical questions can be addressed to John E. Steelnack, OSHA Directorate of Standards and Guidance, at (202) 693.2289.

DOL'S 2008 REGULATORY AGENDA

The DOL plans to address employment training programs for young adults (YouthBuild Program), apprenticeship program registration, safety and health, and pension protection in 2008. In the area of safety and health, look for the following items to be addressed: a peer review on the health effects and risk assessment for silica, and reports on beryllium, methylene chloride, and diacetyl. The Employment Standards Administration plans to revise the LM-2 form to create a form for labor unions to file annual financial reports for trusts in which they have an interest, along with implementing the provisions of the Pension Protection Act of 2006.

Proposed Rule: Modernization of Apprenticeship Program System

The DOL has issued a proposed rule that would update regulatory provisions under the National Apprenticeship Act—providing more clarification and flexibility, as well as strengthening oversight procedures for measuring apprenticeship program performance. The rules would also revise the process for determining an apprenticeship program's eligibility for being registered by either the DOL or a state agency. Also, it would provide three methods that apprentices could use to meet an industry standard. Comments need to be submitted NLT February 11, 2008, by one of two methods: (1) via the Federal–Rulemaking portal www.regulations.gov or (2) via mail or hand-delivery to: Thomas M. Dowd, Administrator; Office of Policy Development and Research; U.S. Department of Labor (Room N-5641); 200 Constitution Avenue, N.W.; Washington, D.C. 20210. Visit <http://www.gpoaccess.gov/fr/index.html> or contact Ms. Sherril Hurd at hurd.sherril@dol.gov or 202/693-3700 for more information.

EPA CONSIDERS REVOKING LEAD STANDARD

EPA's Advisory Panel Criticizes Agency for Considering Lead Standard Revocation

Members of the EPA's Clean Air Scientific Advisory Committee on the lead air quality standard chastised the EPA for suggesting that revoking the standard is an option under consideration. The EPA listed a range of options for modifying the standard, but with no scientific backing (e.g., to tightening the standard from the current 1.5 micrograms per cubic meter of air to a level as low as 0.02 micrograms to 0.05 micrograms, or to even revoking the standard entirely). The EPA is under a court order to issue a formal proposal NLT May 1, 2008, with a final rule by September 1.

Please visit to see a summary of FCA's 2007 legislation issues:

<http://www.finishingcontractors.org/i4a/pages/Index.cfm?pageID=3514>

RESOURCES

United States

- Look up a bill at www.thomas.gov
- For Congressional information, visit <http://www.congress.org>

Canada

- Ministry of Labour <http://www.labour.gov.on.ca/english/>
- Labour Unions <http://canadianlabour.ca/>

For government relations information, please contact FCA Vice President, Jay Weaver at 703.448.9001, or via e-mail at jweaver@finishingcontractors.org.

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