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“No Match” No Longer a Safe Harbor

If you get a “no match” letter from the Social Security Administration, don’t ignore it. Otherwise you could open yourself up to greater risk that the government will use the letter against you to show you knowingly hired workers unauthorized to work in the U.S.

That’s the essence of a revised and expanded immigration rule from the U.S. Immigrations and Customs Enforcement of the Department of Homeland Security. This final rule clarifies what an employer must do and sets deadlines for responding to “no match” letters from the Social Security Administration.

The rule now says that filing an I-9 form to verify employment no longer gives you a “safe harbor” from liability. That’s because the DHS expanded the importance of the “no match” letter, which now constitutes “constructive knowledge” that an employer knows an employee could be unauthorized to work.

Under the old rule, you could essentially ignore the “no match” letter without any repercussions. Now, you must respond to the Social Security Administration within 30 days of a 90 day verification process that concludes with a new I-9 form –if the worker’s status is verified. **FCA**

IF YOU RECEIVE A “NO MATCH” LETTER

Day 1-30: Check your internal records for mismatches, errors.

Make verifications and changes to DHS, SSA

Day 30-90: If you don’t find any errors: Ask the employee to verify the correct information. May even need to go to the local social security office to resolve the situation.

Day 90-93: If you and the employee can’t resolve the matter, you can complete a new I-9 form using the same procedure as if the employee were a new hire.

You cannot use the ssn in the no-match letter.

Verification requires photo identification.

TIPS

Keep a paper trail of all your communication with the Social Security Administration, including phone calls, emails and letters.

The SSA and Department of Homeland Security consider a no-match letter “resolved” when you follow up with the SSA to confirm that the name and SSN match or with the DHS to verify that the employee is authorized to work.

RESOURCES:

- Social Security Administration Employee SSN Verification 1-800-772-6270 weekdays 7 a.m. - 7 p.m. On the Web <http://www.ssa.gov/employer/ssnv.htm>
- USCIS Systematic Alien Verification for Entitlements (SAVE) Program and E-Verify <https://www.vis-dhs.com/EmployerRegistration>

- ICE Imagine Program <http://www.ice.gov/partners/opaimage/index/htm>

You will find resources and the full text of the new ruling on the FCA Web site (www.finishingcontractors.org.) Just click on “Government Relations” and look for the link that says “No Match Letters”

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Growing Your Business

At the FCA Summer Board meeting, we carved out time to discuss best practices and industry trends that have the potential to affect the way that subcontractors work or grow their businesses. These three are at the forefront:



- As you may already know, both the AIA and the AGC are planning to release new industry standard documents sometime this fall. Through our contract documents legal expert, Stephen Yoch, the FCA will provide information to help our members understand both sets of documents. In a review of the early drafts, it appears that these new standard construction contract documents will be more favorable to subcontractors. Stephen Yoch will provide analysis in an upcoming issue of Contract Insight.
- Manpower – how to recruit and retain the best is a subject at the top of every contractor’s “hot topics.” Board members discussed several methods that are achieving success in attracting qualified candidates. For example, you’ll read an article in this issue about the proactive approach of board member Tim Wies, who recruits his own apprentices. Other board members highlighted innovative approaches such as St. Louis, where a series of television ads is attracting both apprentices and potential customers for union employers. The FCA’s goal is to collect and disseminate these best practices.
- The “Green Movement” could soon bring LEED Certification requirements to subcontractors such as ourselves. The number of LEED Certified projects has quadrupled in the last decade and now that owners are on board through tax incentives to “build green,” FCA is planning to keep abreast of the requirements and keep members posted through our Web site. (www.finishingcontractors.org)

Finally, we plan to keep building on the advances we made last spring at the first gathering of the FCA Leadership Council. Our goal is to help our affiliates build exceptional local leaders and associations. At the May meeting, association management expert Paul Greeley offered advice from his 35 years of work in management and leadership. FCA attorneys and industry fund experts Bill Ecklund and Steve Burton offered advice on how to properly fund an association with an industry promotion fund. You can watch excerpts of both presentations on the FCA Web site.

To further support our affiliates and members, we now have FCA regional vice presidents, Jay Weaver in the Eastern U.S. & Canada and Bill Knopf, who covers the Central and Western United States. Through building relationships with our affiliate executives and company members, Jay and Bill are helping local associations plan strategically, share solutions to problems faced by others and grow their membership. **FCA**



CONTRACTOR TALK

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Contractor Talk is published every other month by the Finishing Contractors Association. The newsletter is distributed as a benefit of membership to the contractors in the FCA.

Members are encouraged to contribute stories and photos. Please include your name, e-mail, phone numbers and address so that we may contact you to verify your submission.

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Tools + Candy + Contractor Involvement = Success

Ask drywall contractor Tim Wies his method for a better than 90 percent apprentice retention rate and he'll tell you, "A big bowl of candy and about \$400 worth of studs and drywall supplies."

Located near the urban center of St. Louis, Wies faced the same dilemma as most union contractors – retaining quality apprentices who could become his journeymen or women. Although St. Louis is a strong union city, many high school graduates headed directly to four year colleges. Others who came into the IUPAT's apprenticeship training programs dropped out when they couldn't meet the rigorous training standards.

So, five years ago, Wies decided it was time to start recruiting apprentices himself. He identified schools outside the heavily recruited ones in St. Louis, where the word "union" brought more cold shoulders than warm smiles.

"They are not pro-union in those communities," Wies recalled. "So it took some patient relationship and trust building."

That's where the bowl of candy came in handy. He and his field superintendent Bill Wehde didn't set up a slick display adorned with colorful brochures that touted the benefits of careers in union construction. Instead, beneath the T.J. Wies Contracting banner and a Perry Scaffold, the pair set out a huge bowl of candy, samples of wall construction and tools of the trade.

That first year, Wies got only one recruit who ended up taking another job. However, Wies established a tenuous contact with a high school shop teacher, who asked him if he had any leftover metal studs he could donate to shop classes.

"We sent him metal studs, screw guns and cords – just to get him started – an investment of about \$400," Wies recalled. "After that, when we went back for career day, that shop teacher helped us out by referring his best students to us."

The next year, Wies attracted a couple of apprentices who stayed with the training program. Each year, the numbers increase. The retention rate for these recruits is 100 percent.

"I look for attitude and work ethics," Wies says. "If they have that, you can teach them the trade. After all, I'm looking for my future journeypersons and foremen."

Contrary to the popular "slack" image that many employers have of teenagers, Wies sees potential. "You just have to know their "hot buttons", he advises. "There are young people who want to succeed. But you have to give them information. They want to know the direction of the company, how they are going to fit in and what their opportunities with the company will be. They like to be involved and kept abreast of what's going on with the industry."

For his fellow contractors, Wies offers this insight. "Go and find the people you want in your company." **FCA**



Tim Wies

DID YOU KNOW

Sorting out the "Alphabet Soup"

Ever wonder what BPAC, CBWC, TAUC or LEED stand for? You'll find the answers on a new section available to members only on the FCA Web site. We've created a glossary of terms, acronyms and industry-specific language. Just log onto the FCA Web site at www.finishingcontractors.org. Then click on "Newsroom" and follow the sub-menu to "FCA Glossary."

You will need your user name and password.

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Third Annual Finishing Industries Forum Registration

Online registration is underway for the third annual Finishing Industries Forum, hosted by the LMCI. Just log onto www.lmcionline.org to register.

Last year, more than 400 contractors gathered with their Labor partners for this week of educational and professional development opportunities.

The general schedule begins on Monday, November 12, 2007 and ends on Thursday, November 15, 2007. Wrapped around the LMCI events are FCA meetings and attorneys seminar that's open to both labor and management attorneys. Please consider asking your association counsel to attend. A full schedule is available on the FCA Web site under "Calendar of Events" (www.finishingcontractors.org).

Throughout the week are FCA activities as well. These include meetings for:

- The FCA Board on Monday afternoon
- FCA BPAC, WAC and Industrial Painters Peer Group on Tuesday afternoon.
- The Annual Business Meeting & Leadership Council Meetings on Thursday, November 15, 2007

- Affiliate Executives Meeting on Friday, November 16, 2007.

Questions regarding FCA events should be directed to Angela Hingston-Oliver, FCA Director of Administration & Special Events at (703) 448-9001 or via email at ahingstonoliver@finishingcontractors.org.

FTI Joins Forces with International Faux Painting Organization

The Finishing Trades Institute inked an agreement with Faux Effects International that will bring master faux expertise to trainers through the FTI. Faux Effects International sets international standards for professional faux paint training and usage.

The FTI, based outside Washington, D.C., provides training to trainers from IUPAT District Councils in the United States and Canada. Additionally, contractors can send their non-bargaining employees to the FTI where they can develop training knowledge and skills.

For more information on the FTI, log onto the Web site at www.finishingtradesinstitute.org. **FCA**

LMCI Supervisor Training Program Schedule 2007

The schedule is subject to change, so check the Web site at www.lmcionline.org for the latest dates.

STP I

Course Location	Dates (2007)	Area
Sept. 27-29, 2007	Springfield, NJ	DC 711 Eastern
Oct. 2-4, 2007	Berkeley, IL	DC14 Central
Oct. 11-13, 2007	Aurora, IL	DC30 Central
Oct. 18-20, 2007	Philadelphia, PA	DC 21 Eastern
Oct. 18-20, 2007	Rock Island, IL	DC 81 Western
Oct. 25-27, 2007	Milwaukee, WI	DC 7 Central
Dec. 6-8, 2007	Berlin, CT	DC 11 Eastern
Dec. 14-16, 2007	Toronto, ON, CN	DC 46 Canada
Jan. 10-12, 2008	Decatur, IL	DC 58 Central
Jan. 17-19, 2008	Collinsville, IL	DC 58 Central
Jan. 24-26, 2008	Cleveland, OH	DC 6 Central
Jan. 24-26, 2008	St. Louis, MO	DC 2 Central
Feb. 7-9, 2008	Suitland, MD	DC 51 Eastern

STP II

Course Location	Dates (2007)	Area
Oct. 5, 2007	Berkeley, IL	DC 14 Central
Oct. 10, 2007	Aurora, IL	DC 30 Central
Oct. 17, 2007	Rock Island, IL	DC 81 Western
Oct. 22, 2007	Philadelphia, PA	DC 21 Eastern
Oct. 27, 2007	Ancaster, ON, CN	DC 46 Canada
Nov. 24, 2007	Toronto, ON, CN	DC 46 Canada
Jan. 9, 2008	Decatur, IL	DC 58 Central
Jan. 16, 2008	Collinsville, IL	DC 58 Central
Jan. 23, 2008	Toledo, OH	DC 6 Central
Jan. 23, 2008	St. Louis, MO	DC 2 Central

Will I Get Sued?

Contractor Exposure under the IUPAT's Top Workplace Performance Plan

Editor's Note: Several contractors attending the LMCI Western Regional Roundtable wanted to know whether they'd face additional legal risk if they fire an employee for cause under the union's Top Workplace Performance Plan. In response, Steve Burton, the FCA's legal counsel detailed the risk factors for contractors in a letter available to FCA members via the Web site (www.finishingcontractors.org). Just click on the "Labor Relations" link and navigate to the LMCI Regional Roundtable page. The letter is under the heading, "3 Strikes".

What follows are excerpts of the letter. Many contractors consider it easier to lay off an unproductive worker on the grounds of lack of work rather than to document and terminate for cause. However, as Steve Burton points out, taking the easy way out may actually increase the risks for contractors.

You have requested our opinion regarding the potential exposure of those contractors that elect to terminate employees for cause, rather than to lay them off for lack of work

The Association is aware that, in some cases, contractors have been releasing employees with performance or behavior problems, and labeling the reason for their separation as a "layoff," rather than a discharge. Presumably, the contractor is operating under the assumption that it is less risky to layoff such an employee, rather than to discharge the employee for cause. The perceived benefits from a legal standpoint of laying-off employees, rather than discharging them, are, for the most part, illusory.

In the event that a contractor releases an employee, the employee – regardless of whether the action is characterized as a "layoff" for lack of work, or a discharge for just cause – has the right to file a grievance under the dispute resolution procedures set forth in the labor agreement

It is important to consider the context in which any challenge to the discharge decision will be decided. Presumably, the contractor will elect to discharge an employee for cause in an area where the local union has previously adopted the Top Workplace Performance Plan. Such being the case, the local union leadership, as well as rank and file members, will have previously endorsed a philosophy that only qualified, productive individuals should be employed in the finishing trades. That necessarily means that any contractual claim by an employee will be viewed, and potentially resolved, by individuals that have recognized that the employer has a legitimate right to establish reasonable standards of on-the-job conduct.

It is clear that there are instances where laying off an employee may actually backfire. For example, if the contractor hired

additional employees immediately after releasing the employee under the guise of a layoff, this would support the employee's claim that he was, in reality, discharged rather than laid-off – i.e., that the contractor's layoff claim was pretextual, and designed to hide the real reason for severing the employee. Once it is determined that the contractor attempted to conceal the real reason for releasing the employee, it will be very difficult for the contractor to later establish that the discharge was justified under the just cause standard. If, on the other hand, the contractor is up front, and labels the action as a discharge from the very beginning, it will be far easier to sustain that action in the face of a challenge.

It should also be considered that employees may challenge their separation from employment by means outside of the contract. This is equally true regardless of whether the contractor labels the action as a layoff, or a discharge.

If the reviewing court or agency determines that the employee was not, in fact, laid-off for lack of work, the agency may conclude that the reasons asserted for the separation were "pretextual," and part of an attempt to hide a discriminatory or retaliatory motive. Such a finding may significantly increase the chances that the reviewing court or agency will find that the separation of the employee was unlawful.

It should also be noted that some states, such as Minnesota, have adopted statutes that require the employer to provide an employee with the truthful reasons for that employee's separation from employment. In turn, the statutes provide protection for the employer that provides such information pursuant to state law. That protection generally evaporates, however, if the reasons provided by the employer are untruthful.

It can readily be seen that if an employee is laid-off for lack of work, in the context where the employer has then immediately hired a replacement employee, the employer's actions in characterizing the separation as a lay-off may actually result in a violation of the statutory provision. In such a circumstance, the potential for liability is actually greater than if the employer had provided the truthful reasons why the individual was discharged in the first place.

The unfortunate reality is that in most states, the termination of an employee for any reason – including layoff – carries some level of risk. However, it is erroneous to assume that risk can be eliminated merely by stylizing an individual's separation from employment as a lay-off, rather than a discharge, where cause for discharge exists.

Further, labeling the release of an employee as a layoff in circumstances where discharge is warranted hinders the ability of the union to supply, and the contractors to obtain, truly qualified employees through the hiring hall. **FCA**

More than a Century and Looking Ahead

Taking the long term view matters. That's why the members of the Association of Master Painters and Decorators of New York, Inc. remain optimistic, despite the eroding union market share. The contractors in this almost 200 year-old association envision a stable union construction industry 20 years from now, according to Bruce Ruinsky, Executive Director.

Ruinsky explains, "Our association is run by a whole core of experienced and talented senior members who have served on executive level positions in the association, and are still active because they care; they're successful for a reason – vision and good practices."

He considers his association to be "the number one voice for members" on topics such as issues with the union, contract concerns and arbitration matters. More than half of Ruinsky's members work in the commercial painting sector, with both new construction as well as maintenance work. A couple members worked on include the AOL Time Warner building and Shea Stadium.

Members are able to stay optimistic for a few reasons. First, Ruinsky says the association maintains a positive relationship with labor. Second, his members are committed to open communications with their labor partners by effectively voicing concerns to union leaders regularly. Third, Ruinsky works with his volunteer leaders to map a long-term strategy for the association.

But Ruinsky is the first to say that none of this long range planning comes easy. He adds that developing a strong labor management relationship first takes work and time. But for an association that's been around since 1825, the members feel they have a long future.

ASSOCIATION OF MASTER PAINTERS AND DECORATORS OF NEW YORK, INC.

President: Todd Nugent

1st Vice President: Randy Pearlman

2nd Vice President: Peter Cafiero

Executive Director: Bruce Ruinsky

Number of Members: 62

Year Began: 1825

Web site: <http://www.masterpaintersnyc.com>

Phone Number: 212-697-4790

His members work on strategically focused committees that address manpower, training and retention of apprentices, market share and market recovery.

Market share is a huge issue in New York City. Ruinsky said New York is a unique and important marketplace for national affiliate and it's a good gauge of the future of the industry because it effectively maintains the core market. One secret to the association's success – open, two-way communication between all the committee leaders and the ability to react quickly to change.

Since labor-management is key to growing and maintaining market share, the contractors in the Master Painters Association of New York say that keeping a strong, open relationship with their labor partners will help keep this nearly 200-year-old association going for, who knows, another 200 years or so. **FCA**

DID YOU KNOW

Traveling Journeymen

The IUPAT maintains a database of journeypersons who are willing to travel for work in the United States and Canada. The information is available to contractors by request to your local BM/ST who can get the list for you.



Get Green, Make Green?

One of the few downsides of my move to Big Sky, Montana two years ago is the feeling that I'm on the front lines of global warming. Fewer "powder days" on the mountain, smoke from raging wild fires and lower water levels are all scary signs of climate change. Add in the constant rumble of trucks and heavy equipment in this growing town and it's hard not to consider man's impact on the environment.

Ultimately, it was far better to pull my head out of the sand and wake up to the problem. And while I respect the decades of activism by traditional environmentalists, I personally don't expect to see significant change until "going green" equates to "making green." That is, free market forces need to reward those that make positive environmental changes.

The good news is that the recent momentum behind green building has been driven in large part by building owners that realize the economic benefits of building green. Some estimates figure that building costs account for only 2 percent of a facility over its life cycle. The other 98 percent of costs are related to maintenance, operations and employees. Building green can have a major impact on reducing these ongoing life cycle costs.

Aside from the lifecycle benefits which accrue from operating green buildings, federal and state governments are also acting to subsidize the upfront costs of green building. The federal government is offsetting additional first costs by 3 percent and states such as New York are providing tax credits of up to 6 percent.

A key mover in the green building effort is the U.S. Green Building Council (USGBC), a non-profit composed of

leaders from every sector of the building industry working to promote buildings that are environmentally responsible, profitable and healthy places to live and work.

The USGBC has established The Leadership in Energy and Environmental Design (LEED) Green Building Rating System, a nationally accepted benchmark for the design, construction, and operation of green buildings. LEED gives building owners and operators tools and guidelines to develop buildings that have immediate and measurable improvements in performance and sustainability.

LEED promotes a whole-building approach to sustainability by recognizing performance in five key areas of human and environmental health: sustainable site development, water savings, energy efficiency, materials selection, and indoor environmental quality. Since its inception in 1998, LEED has grown to encompass over 14,000 projects in 50 US States and 30 countries covering 1.062 billion square feet of development area (July 2007 USGBC). **FCA**

Don Fornes is CEO and President of Construction Software Advice, a website dedicated to helping contractors research and select software. Email Don (don@softwareadvice.com) or visit www.SoftwareAdvice.com to compare software and find a project management system that is right for your business. You will also find the software directory on the FCA Website under the heading, "Construction IT." This is a benefit to FCA members.

LEGISLATIVE WATCH

U.S.: Federal Construction Contracting Reform



Bill Tracking: H.R. 3033 Contractor & Federal Spending Accountability Act of 2007; Sponsor:

Rep. Carolyn Maloney (D-NY)

Rep. Maloney once again has introduced legislation that targets unscrupulous contractors who apply for federal contracts. For several years the FCA, working with the Campaign for Quality Construction, has worked with Rep. Maloney to get this legislation passed. It would strengthen the accountability of the government-wide suspension and debarment system, giving the government a greater ability to take action against unscrupulous contractors.

Status: The measure has been referred to the House

Committee on Oversight and Government Reform.

FCA Position: The FCA supports this legislation.

Canada: Act to Establish the Wage Earner Protection Program Act



Bill Tracking: C-62 Amendments to Chapter 47, Statutes of Canada, 2005.

The Ministers of Labour and Economic Development announced support for a measure aimed at protecting workers who lose wages when their employers become bankrupt. The measure would provide insurance that would cover up to \$3,000 in lost wages.

Status: The legislation is under review to resolve technical issues before becoming law. **FCA**

FINISHING CONTRACTORS ASSOCIATION

An Invitation to Influence the Future of the Union Construction Industry

Take a Seat

The FCA Nominating Committee is developing a slate of candidates to fill vacant seats on the Board of Directors.

Elections will be held at the FCA Annual Business Meeting in November.

This year is unusual because there are six seats to fill. Four directors' terms expire and two others are resigning early for business reasons.

Any FCA contractor member in good standing is eligible.

HOW TO MAKE A NOMINATION

Call or email Vincent R. Sandusky, FCA CEO at (703) 448-9001 or via email at vsandusky@finishingcontractors.org.

You'll find more information about what's expected of FCA board members on our Web site. Just click on the link "FCA Board Nominations" that scrolls beneath the main photos.

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