



April, 2020

INSIDE THIS EDITION:

NECA Online Education

Contractor Compliance Registration

May You Not Live in Interesting Times

Milwaukee Apprentice of the Month

Education Opportunities

Classes Offered through JATC

Congratulations to Those Completing Classes

LU #234 Availability List

Calendar of Events



TO BENEFIT ... PARTICIPATE!



NECA ONLINE EDUCATION

With temporary adjustments to work schedules and working conditions, this is the perfect time for everyone to undergo personal development with online training.

NECA offers a wide range of on-demand online training classes on topics ranging from writing for business to Microsoft Office to project management.

For a limited time NECA is offering more than 100 online training courses to all employees of NECA members for FREE!

Use the coupon **NECA2020** during checkout and view the full list of courses here. NECA will be continually adding additional courses to these offering, so keep checking back.

You must be logged in to NECA's website and linked to a NECA member company to

access these benefits. If you have questions on this process you can refer to this 'How To' guide or contact education@necanet.org.

CONTRACTOR COMPLIANCE REMINDER

CalSavers Registration

The CalSavers Retirement Savings Program first launched as a voluntary pilot program beginning July 1, 2019. All contributions to the program are employee contributions and employees have the option to opt out.

Beginning July 1, 2020, large employers that don't offer a workplace retirement savings vehicle to all of their employees will be required to either begin offering one via the private market or provide their employees who don't receive retirement benefits access to CalSavers. Eligible employers can register for CalSavers at any time but are required to register and comply by the following deadlines:

Size of business	Deadline
Over 100 employees	June 30, 2020
Over 50 employees	June 30, 2021
Five or more employees	June 30, 2022

Qualifying employers must register even if it is simply to state that they already provide retirement benefits to their employees.

For more information on the CalSavers program [Click Here](#)

MAY YOU NOT LIVE IN INTERESTING TIMES

What The COVID-19 Virus Might Do To A Contract



John McGill

“May you live in interesting times” is a backhanded way of wishing ill without blatantly wishing bad things. And so, here we are, living in

interesting times. The COVID-19 outbreak is wreaking havoc around the world and, more immediately, locally. In the Bay Area and California generally, counties and cities are issuing restricted assembly directives or shelter in place orders to slow, if not actually stop, the spread of the disease. How long those orders last and whether they will be effective, is anyone’s guess, but it seems three weeks is the average restriction. What does this mean for your ongoing projects, and any that you have pending contracts for? If you are an “essential activity” the restrictions may not affect you- yet- but it remains to be seen what the fallout will be from all of this.

So, what are your options when the local governmental agency issues specific directives that affect your ability to even get to your project, let alone work on it. You can’t ignore the directive, but eventually, hopefully sooner rather than later, you will be back on the job. What then? How do these directives affect your contractual obligations and your contractual rights? Who bears the risk for any project delay and any additional costs? What are the defenses to the finger-pointing that may follow; the argument that YOU were contracted to perform a contract, YOU accepted the risk, so YOU have to bear the risk for any consequences,

and any loss is all YOURS to bear. The following are some considerations to think about as response to what you might hear if an issue does come up. First, there is the *force majeure* defense: some significant intervening cause prevented your performance of the contract. The intervening cause doesn’t just make it more difficult or costly to do the job, it has to stop your performance.

It used to be that construction contracts typically included a Force Majeure clause that excused performance when certain uncontrollable and unexpected events occurred. A typical clause might be: *Subcontractor shall not be liable under this paragraph if such default is caused by strikes, lockouts, or Acts of God, as long as notice is given in writing 48 hours by Subcontractor to Contractor.*

Or, the provision might be more detailed *i.e.- 'Force Majeure' shall include, but not be limited to, fire or other casualty, bad weather, inability to secure materials, strikes or labor disputes . . . acts of God, acts of the public enemy or other hostile governmental action, civil commotion, governmental restrictions, regulations or control affecting, and/or other events over which the party obligated to perform (or its contractor or subcontractors) has no control.*

In any case, according to the Civil Code, performance has to be “*prevented or delayed by an irresistible, superhuman cause, or by the act of public enemies of this state or of the United States, unless the parties have expressly agreed to the contrary.*”

And therein lies the liability question: did the parties to the contract “*expressly agree*” that one party would accept all or any of the risk for a *force majeure* occurrence? The contract language will dictate any *force majeure* defense. You want to be paid; the other side wants you to pay them. What does the contract say? Other provisions in the contract will come into play; remember the contract is read as a whole, not in discrete bits and pieces. If you intend to assert that *force majeure* prevented your performance, you need to give notice. As a general rule, and especially now, if you have any contract-based issue, you need to know what your contract requires. Whatever it says to do- Do it!

There are other defenses as well. *Impossibility of performance* or the related defense of *impracticability of performance* are two that can be asserted if there is an issue related to performance during this crisis. These defenses don’t necessarily allow you to make a claim for delay costs, but they can provide a defense to any claim for delay costs

against you, or any claim of breach.

‘Impossibility’ is defined as actual impossibility (cannot be done- period), but also as *impracticability* because of the *extreme and unreasonable difficulty, expense, injury, or loss involved*. In the case of the California shutdowns and restrictions, any argument your non-performance was unjustified and therefore a breach, would likely be dismissed out of hand. Not only could your continued performance require a violation of a directive, it might involve an “*injury*” if your crews were exposed to the virus, whether they got sick or not.

The shutdown hopefully will result in only *Temporary impossibility*; i.e.- until the restrictions are lifted you cannot perform work. Once the restrictions are lifted you would need to resume work, if you can. The obligation to perform your contract is suspended only while the impossibility exists. If the local authorities extend restrictions, or if the virus takes on some new and more aggressive dimension, then the temporary impossibility could and perhaps would become a permanent discharge of your contractual obligations.

Hopefully that doesn’t happen, but even if the U.S. is no longer affected, your suppliers overseas might be. If you can only get what you need from a

foreign supplier, then the condition overseas can create a permanent impossibility based on impracticability: “*A performance may be so difficult and expensive that it is described as ‘impracticable,’ and enforcement may be denied on the ground of impossibility.*” But the courts have made it very clear it’s just not *any* facts that make performance more difficult or expensive, but only facts of the most “*gravest importance*”; where the performance would result in “*unreasonable and excessive cost*”. If you can get what you need from another supplier, even if it costs more, you need to do it. If you do though, provide notice and a change order for that cost. There are good arguments you should be paid, so go for it.

A last issue to consider if you are confronted with a claim you breached your contract by not performing: the argument of nonoccurrence or non-performance of a condition precedent. This circumstance can arise where your work follows another contractor’s work, and is dependent another’s work so yours can be performed or completed. The preceding trade may argue impossibility or impracticability in the performance of their work. In that situation, arguably there is a domino effect where the earlier work prevents the later work, and the failure of the performance of the earlier work is a failure of a condition for the

performance of the later (your) work.

These are some things to keep in mind while we adjust to the new conditions this nasty little bug is creating. Hopefully you don't need any of this information and your projects pick up and complete as if nothing ever happened; as if we did *NOT* live in interesting times. Stay well.

Bio: John P. McGill is an attorney representing contractors and suppliers in the Bay Area and Northern California in both private and public work disputes. He is the author of California Contractor's DESKTOP GENERAL COUNSEL What You Need To Know About California Construction Law. 3d Ed. Contact: jmcgill@mcgill-lawfirm.com or cell- 707 337 1932.



MILWAUKEE APPRENTICE OF THE MONTH

The Apprentice of the Month program is sponsored by

Milwaukee Tools. The goal is to encourage apprentice participation and reward a high performing student for achieving outstanding results both in the classroom and on the job. For April 2020 the JATC has chosen to recognize 2nd year apprentice **Darien Rosbach** as the Milwaukee Apprentice of the Month. The apprentice of the month will have a dedicated parking space at the Training Center and also receive a gift provided by Milwaukee.



UPCOMING CLASSES OFFERED THROUGH THE JATC

**ALL JW CLASSES ARE
CURRENTLY SUSPENDED
DUE TO THE SHELTER IN
PLACE ORDER**

CONGRATULATIONS TO THOSE COMPLETING UPGRADE CLASSES

Congratulations to the following individuals who have recently completed classes offered through the apprenticeship program! We appreciate your commitment to the industry!

Foreman Development March 9, 2020

- Arturo Gonzales
- Manuel Ramos
- Hector Camacho,
- Juan Vargas
- Jacob Taylor

First Aid/CPR March 14, 2020

- Adrien Antosz
- Cory Hoffman
- Javier Martinez
- Adalberto Padilla
- Nick Prelgovis
- Robert Rovella
- Charles Ruiz
- James Stanchfield
- Moises Zuniga

APPRENTICE APPLICATION INFORMATION

SUSPENDED APPLICATIONS FOR NOW

The Tri-County Electrical JATC generally accepts applications on a year-round basis; however, due to the recent Shelter In Place orders, we are not accepting applications at the office. Online applications are now available and can be completed but not turned in until further notice. For more information regarding the process, please click in the following link:

[JATC INFORMATION](#)

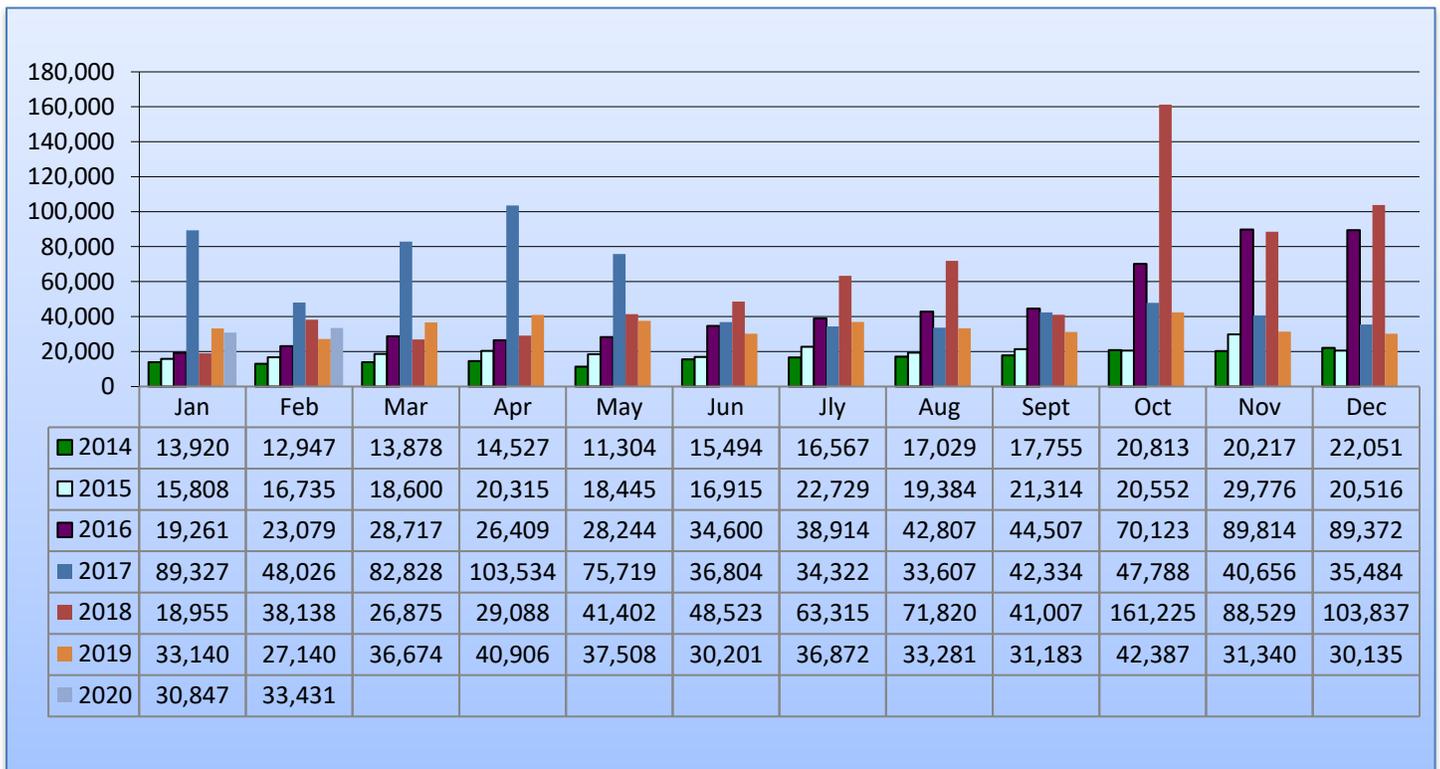


68 on Book 2, 13 on Book 3 and 7 on Book 4. There are 2 on Book 1, 0 on Book 2, 4 on Book 3 and 0 on Book 4 for Sound & Comm. There is 1 on CW Book 1 and 5 on CW Book 2. There are 7 Inside apprentice available for work at this time.

AVAILABILITY LIST UPDATE

On the Inside Out-of-Work List, there are 12 on Book 1,

INSIDE MONTHLY HOURS REPORT





**WE WILL KEEP YOU POSTED AS TO THE STATUS OF THESE MEETINGS
AS WE BECOME AWARE.**

May 8, 2020

Tri-County JATC Graduation
The Tides Hotel
Monterey, CA

July 21-30, 2020

National Training Institute
University of Michigan
Ann Arbor, MI

October 3-6, 2020

NECA Convention and Trade Show
Chicago, IL

October 10, 2020

Local #234 Family BBQ
Toro Park – Buckeye Area
Salinas, CA

October 21-22, 2020

The Bob Golf Tournament (ECCT)
The Grand Del Mar
San Diego, CA