



# THE MONTEREY CURRENT

## JULY, 2014

### INSIDE THIS EDITION:

*Cal OSHA Targets Construction Site for Safety Rules Compliance*

*OSHA Announces Future Rulemakings Affecting Subcontractors*

*The Right to Repair...and What's Left*

*Subletting and Subcontracting Fair Practice Act Goes into Effect July 1*

*Assembly Bill 1705 Moving thru the Legislative Process*

*JATC Accepting Applications*

*NECA Convention*

*Classes Offered through JATC*

*Congratulations to Those Completing Classes*

*LU #234 Availability List*

*Employee Background Checks*

*Greenlee Apprentice Kits*



### CAL OSHA TARGETS CONSTRUCTION SITES FOR SAFETY RULES COMPLIANCE

Cal/OSHA is focusing on safety compliance at construction sites in the San Francisco Bay Area, following a recent series of fatal accidents in the region. Investigators have been deployed to inspect construction worksites throughout the coming weeks to determine whether adequate measures have been taken to identify safety hazards and prevent injury. Fall protection will be among the items Cal/OSHA inspectors will be checking, from railings on buildings to personal devices such as hooks that attach to vests. Cal/OSHA's teams will also examine trench and equipment safety and

potential site hazards such as power lines.

Hazards at construction sites include open trenches and moving equipment at ground level, but elevated areas are particularly dangerous. Four recent incidents occurred in California, which is why OSHA is encouraging employers to talk with its workers about fall hazards and prevention.

Cal/OSHA has posted an industry-specific [fact sheet on fall protection](#) online.



*"All the adversity I've had in my life, all my troubles and obstacles, have strengthened me... You may not realize it when it happens, but a kick in the teeth may be the best thing in the world for you."*

— Walt Disney

**To Benefit...Participate!**



## OSHA ANNOUNCES FUTURE RULEMAKINGS AFFECTING SUBCONTRACTORS

OSHA announced its plans for new final and proposed rulemakings as required by the Regulatory Flexibility Act. OSHA reported that within the next 10 months, it intends to publish at least six final rules that may impact construction subcontractors:

- June 2014: Updated Occupational Injury and Illness Recording and Reporting Requirements.
- August 2014: Confined Spaces in Construction.
- October 2014: Walking Working Surfaces and Personal Fall Protection Systems (Slips, Trips, and Fall Prevention).
- October 2014: Procedures for the Handling of Retaliation Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, as Amended.
- February 2015: Procedures for the Handling of Retaliation Complaints Under Section 1558 of the Affordable Care Act of 2010.

- March 2015: Improved Tracking of Workplace Injuries and Illnesses. OSHA also announced plans to publish three notices of proposed rulemaking that will impact subcontractors:
- August 2014: Clarifying employers' continuing obligation to make and maintain accurate records of each recordable injury and illness.
- August 2014: Identify unnecessary or duplicative provisions or paperwork requirements in the construction standards.
- August 2014: Identify unnecessary or duplicative provisions or paperwork requirements in OSHA's construction standards



## THE RIGHT TO REPAIR AND WHAT'S LEFT

*How The Courts Made It All  
As Clear As Mud*

John McGill

The courts are supposed to determine how the facts fit the law and then apply the law, and they do that with great efficiency. But the fact that they decide if the facts fit the law also means that the

courts get to determine what the law means, and therein lies the problem. If a judge does not like the way an outcome might be determined under one interpretation of a statute they can *re-interpret* the law to get the decision that is more in line with the outcome they might think is better suited to the case. Sometime this is OK, but sometimes it monkey wrenches the whole scheme and where there is a monkey wrench thrown into the law, you can bet there will be attorneys fighting over whose monkey wrench it is and whether it should stay or go.

That's what happened and is happening with the Right to Repair Act (SB 800) that the Legislature implemented in 2003. The point of the legislative scheme was to clarify how homeowners with construction defects could have those issues addressed by the builder or general contractor in an efficient and fair way. Prior to 2003, construction defect litigation was a free for all and the law was unclear and sometimes contradictory in the way that construction defect claims could be adjudicated. One particular case *Aas v Superior Court* precipitated a lot of debate because the California Supreme Court ruled that if a deficiency had not caused any damage, even if it was likely that it

would, the homeowner could not sue the contractors for repair costs. The Aas court ruled this type of issue was a breach of warranty claim (an economic loss because you didn't get what you paid for) and not a defect that entitled the plaintiff to damages. Warranty was still actionable, just not as a defect claim.

Aas was great for contractors, but not so good for homeowners, and so the Legislature got together with attorneys and representatives of the insurance and building industry and worked out the SB 800 framework. The statutory scheme addressed what kinds of defects would be covered (water intrusion, structural issues, soil issues etc), what standards would apply, and what time limits would attach for bringing any claim. It didn't matter whether the defect was causing damage or not, if there was a problem because the work did not meet the statutory requirements, the homeowner could make a claim.

Once the homeowner knew of the problem though they had to let the builder/general contractor know. The builder would then have an opportunity to inspect the problem in a certain time frame and then to make an effort to repair the problem; hence the name Right To Repair Act. The parties would work together to correct the problem. If they could not,

then a lawsuit could be filed, but before then there was a procedure in place to address the issues. And of course the builder and homeowner could always settle their dispute.

This worked well enough until 2013 when it was all thrown up in the air by the decisions in two cases: *Liberty Mutual v Brookfield* and *Burch v Superior Court*. In both cases, the Courts of Appeal ruled that the SB 800 Right to Repair statutes are not the exclusive remedy for homeowners with construction defect claims. Instead, according to these cases, the Right to Repair Act is only intended to allow homeowners to make claims for defects that have not resulted in damage. SB 800 therefore does not preclude the homeowner from asserting other defect claims under common law and because the common law claims have a different statute of limitations, any SB 800 timeframes and functionality standards that determine whether there is a defect do not apply.

So much for SB 800 and cutting down on construction defect litigation!

According to these two decisions, the SB 800 scheme is limited and does not really address the full scope of construction defects. The fact that the first part of SB 800 states that "In any action seeking

recovery of damages arising out of, or related to deficiencies in residential construction .... the claimant's claims or causes of action shall be limited to violation of the following standards, except as specifically set forth in this title" apparently does not mean what it says. The SB 800 statutes also provide that "The standards set forth ...are intended to address every function or component of a structure..." , so again, it is not clear how the courts arrived at the conclusion that SB 800 is not all inclusive.

Likewise, courts dealing with the notice provisions of SB 800 have decided that until and unless a homeowner complies with the statute, they cannot bring an action for defects, assuming the builder included the SB 800 provisions in the purchase agreement. (*The McCaffrey Group Inc v Superior Court*) If the *Burch* and *Liberty Mutual* decisions are correct, then a homeowner can ignore all of the purchase agreement SB 800 requirements and immediately sue the builder under common law causes of action.

The *Burch* and *Liberty Mutual* courts also based their decisions on the fact that the Legislature did not change the patent defect and latent defect statute of limitations so therefore the Legislature must not have

intended to change the common law claims that were traditionally raised in defect litigation. The argument ignores the fact that the SB 800 scheme changed the limitations periods for residential defects only and there are other patent and latent construction defects in, for example, commercial or industrial construction projects that would not be covered by SB 800.

If you are working on residential projects, be aware that the provisions in SB 800 can no longer be taken for granted. What the Legislature gave, the courts have (somewhat) taken away and what was once a fairly clear statute (SB 800) is now not so clear; in fact, it's pretty muddled up.

Bio: John P. McGill is an attorney and represents contractors and suppliers throughout the Bay Area and Northern California in both private and public work disputes and in employment, transactional, and administrative matters. He is the author of California Contractor's DESKTOP GENERAL COUNSEL What You Need To Know About California Construction Law. Contact: Work - 925-952 5403 or Cell- 707 337 1932. Or email [johnmcgill310@gmail.com](mailto:johnmcgill310@gmail.com) at



## **SUBLETTING AND SUBCONTRACTING FAIR PRACTICES ACT GOES INTO EFFECT JULY 1, 2014**

Last year Governor Brown signed into law AB 44, a new twist to The Subletting and Subcontracting Fair Practices Act. The change goes into effect on July 1, 2014. Contractors submitting a bid to a public entity for a California public works project, will be required to include the contractor license number of each subcontractor listed.

The Act also requires any public entity taking bids for the construction of any public work or improvement to specify that any person making a bid or offer to perform the work shall, in his or her bid or offer, include specified information, including the name and location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the work or improvement.

The July 1, 2014 change added the requirement that the subcontractor's license now be included.



## **ASSEMBLY BILL 1705 MOVING THROUGH THE LEGISLATIVE PROCESS**

AB 1705 has passed the Senate policy committee... now to the Senate floor. AB 1705 closes a loophole in a recent law that allows public entities to declare any construction project as "substantially complex." If the agency does so it can avoid the 5% cap on retention that NECA helped secure last year in SB 293. AB 1705 requires the agencies to explain what makes a project "substantially complex" and to also notify bidders that in so doing, the 5% cap is removed with more money retained. The bill was co-sponsored by several subcontractor organization including NECA, CalSMACNA, and ASAC.





## JATC ACCEPTING APPLICATIONS

The Tri-County Electrical JATC accepts applications on a year round basis. Applications are accepted Tuesday, Wednesday and Thursday from 9-11 am and 1-4 pm at the JATC Office located at 10300 Merritt Street, Castroville, CA.

Next Aptitude Testing Date is Saturday, August 16, 2014 with a deadline to apply on Thursday, July 17, 2014.

**Minimum Requirements:** Each applicant must:

- 1) Be a minimum of eighteen (18) years of age.
- 2) Provide an official transcript for high school or post high school education and training. All GED records must be submitted if applicable.
- 3) Qualify for interview using the NJATC Electrical Trade's Aptitude Test developed and validated by the American Institutes for Research.
- 4) Prior to being indentured, applicants selected from the pool of interviewed applicants will be required to pass a drug screening test and provide a copy of their DMV printout which verifies that they have a valid driver's license.

### What to Provide When You Make Application:

- 1) Complete an application form. Application must be made in person at the JATC office.
- 2) Valid driver's license

- 3) Application Fee of \$25 – payable by check or credit card only (refundable upon completion of the Aptitude Test)
- 4) High School Diploma and/or Certificate of Completion, GED, or two-year Associate Degree or higher
- 5) Sealed, embossed, official transcript showing that you have completed one full year of High School Algebra with a "C" grade or better or one post High School Algebra course with a passing grade of "C" or better. Successful completion of the online NJATC Tech Math class [www.njatc.org/training/online.aspx](http://www.njatc.org/training/online.aspx) will also satisfy this requirement.

Information may also be found online at [www.tricountyjatc.org](http://www.tricountyjatc.org)



## CLOSING GENERAL SESSION

**ROB O'NEILL**

*Former Navy SEAL Team Leader*



With most of his career shrouded in a classified cloak, Rob O'Neill kept America safe as he deployed more than a dozen times and held leadership roles in more than 400 combat missions in

four different theaters of war. A Navy SEAL team leader, he trained more than 800 special operations and tactical operators, was involved in many of our nation's most important military actions, and earned more than 52 honors. In his talk to NECA conventioners, he'll translate his elite SEAL training and combat experience into high-impact, actionable insights on leadership, decision-making, operating in uncertain environments, and becoming the "best of the best."



## CLASSES OFFERED THROUGH THE TRI-COUNTY JATC

### FIRST AID/CPR

CPR/First Aid is scheduled to take place on **Saturday, July 19<sup>th</sup> at 8am**. Instructor Roni Jane Sudyka will be teaching the basics of First Aid and CPR along with Blood Borne Pathogens. Call Stacy at (831) 633-3063 to reserve your place. Class size is limited.

## 2014 SIGNIFICANT CHANGES TO THE CODE

Instructor David Martinez will be leading the way through the Significant Changes of the 2014 National Electrical Code on the second Tuesday of the month. Drop on in! You are welcome to attend one class or as many as you like in this series. This is a (3) hour class. The next class is scheduled for **Tuesday, July 8th at 5:30pm.** David will be covering Article 100 of the NEC and Chapter one of Significant Changes.

## EVITP 3.0

The **Electric Vehicle Infrastructure Training Program** (EVITP) 3.0 class with Instructor Stephen Slovacek is scheduled to begin on **Monday, June 16th** at 5:30pm. This class is a 35 hour course. It is a prerequisite for EVITP that you are a California Certified General Electrician. As a bonus, there is a \$125 stipend available upon successful completion provided by the Monterey Bay LMCC.

## CALCTP

California Advanced Lighting Controls Training Program (CALCTP) with Instructor Stephen Slovacek is again available for signups! This class is a total of 50 hours: 10 hours of lecture and 40 hours of lab. The class schedule will be coordinated with those in attendance. Those interested should contact Stacy at the

JATC office.

**YOU MUST BRING PROOF OF COMPLETING THE ONLINE COURSE TO THE FIRST CLASS OR EMAIL TO [stacy@tricityjetc.org](mailto:stacy@tricityjetc.org).**

Students will not be allowed to attend the class if they have not completed the online coursework. Go to [bit.ly/IBEW234CALCTP](http://bit.ly/IBEW234CALCTP) to get started today. There is a \$125 stipend available upon successful completion provided by the Monterey Bay LMCC.

## CALCTP-AT

The California Energy Commission has adopted changes to the California building Efficiency Standards (Title 24, Parts 1 and 6) that require lighting controls and devices to be certified as properly installed and operational, prior to issuance of occupancy permits. The California Advanced Lighting Controls Training Program-Acceptance Technician (CALCTP-AT) certifies acceptance technician employers and technicians. All acceptance test technicians must be employed by an acceptance test employer that provides support as well as quality control.

California Advanced Lighting Controls Training Program-Acceptance Testing (CALCTP-AT) with Instructor Stephen Slovacek available for signups too! This class is a total of 24 hours. The class schedule will be coordinated with those in attendance.

The prerequisite for this class is completion of the 50 hour CALCTP. An application form must be completed prior to starting class. To register for this class there is a \$125 application/record fee. Go online to [goo.gl/qkW7AI](http://goo.gl/qkW7AI) to complete an application and pay the application/record fee.

There is a \$125 stipend available upon successful completion provided by the Monterey Bay LMCC. Interested? Call Stacy at the JATC office.



**CONGRATULATIONS  
TO THOSE WHO HAVE  
COMPLETED  
UPGRADE CLASSES**



home town and county of residence, looking at credit reports, pulling up leasing contracts, checking federal crimes, going through the national criminal database, and more.

The Fair Credit Reporting Act prohibits excluding someone from employment solely based on database searches because, as mentioned earlier, between records being expunged and/or not updated frequently, databases are only about 60 percent accurate.

A good background check provider will send a researcher to any county where there might be a “hit” to verify the record with the county clerk. This is full due diligence. This better protects your business legally.



Some records won't even show a “hit” because they cannot even be found in an online database. I have lived in Santa Barbara my entire life. If I hijacked a car in Ventura, the record would not show up in the Santa Barbara County records, and you wouldn't know to check Ventura County records because I have never

lived there. That is why you always check the national criminal database. This database is brilliant at finding crimes outside the person's county of residence.

In addition to the national criminal database, federal crimes – such as smuggling drugs across state lines, embezzlement, bank robbery, carjacking, and kidnapping – are also not listed on basic database searches.

Yes, these searches cost more, but it is much worse to do a non-comprehensive background check than to be overly concerned with cost. The cost of advertising, training, and retaining an employee versus the cost of potential harm to your company's image and reputation is minimal. When you see background checks as a commodity and try to buy one for the lowest price, you can put yourself in a precarious situation.

Rather than being viewed as an add-on commodity, background checks should be viewed as a protective process. The question of any recruiter, human resource manager, or business owner should not be “What is the cost?” but “What does the background check entail?” and “How is it protecting my

company and my employees?”

Background checks, done properly, keep companies large and small safe and protected.

*Todd Malesky, president at Falcon Vision, specializes in providing background checks. He started Falcon Vision after working as a recruiter and becoming frustrated and confused by the background check process.*



## GREENLEE APPRENTICE KITS

Greenlee has always been known as the premier source for professional grade tools and testing equipment, offering a complete line of tools for the electrical and datacom professional - from knockout punches and benders to fiber optic and copper testing equipment. As part of our commitment to the future of the electrical and telecommunications industry, Greenlee is proud to offer the **Apprentice Purchase Program**.

The program offers students enrolled in electrical and communications trade programs an opportunity to purchase Greenlee products



at special discounts to help build their personal stock of tools during their training. Students can receive a **35% discount on tool kits and a 30% discount on individual tools from suggested user price.** Enclosed are program order forms for the electrical and datacom programs which provide program specifics for the student's purchase, including a complete tool listing for each kit.

The **Educational Discount Program** offers accredited training centers, high schools, vocational-technical schools, college or university programs with a defined vocational track a **10% discount off suggested user price.**

Orders for all programs should be placed with your local authorized **Greenlee** distributor and include copies of the completed order form and proof of enrollment to receive the student discount. Products can be shipped to the distributor branch or your local trade school.

If you have any questions regarding this, please call [1-800-435-0786](tel:1-800-435-0786) or email [CustomerService@greenlee.technetron.com](mailto:CustomerService@greenlee.technetron.com).

The following links for additional details and order forms:

[Apprentice Flyer - Greenlee Greene Apprentice Order Form](#)

[Comm Aoprentice Flyer](#)  
[Comm Apprentice Order Form](#)



## INDEPENDENCE DAY TRADITIONS

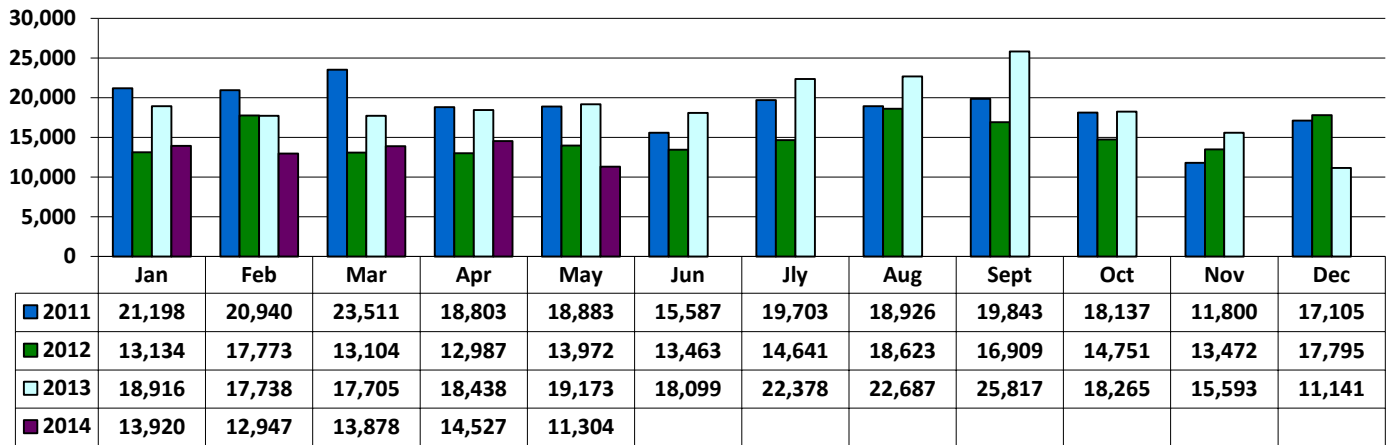
- Held since 1785, the Bristol Fourth of July Parade in Bristol, Rhode Island is the oldest continuous Independence Day celebration in the United States.
- Since 1868, Seward, Nebraska has held a celebration on the same town square. In 1979 Seward was designated "America's Official Fourth of July City-Small Town USA" by resolution of Congress. Seward has also been proclaimed Nebraska's Official Fourth of July City" by Governor James Exon in proclamation. Seward is a town of 6,000 but swells to 40,000+ during the July 4 celebrations.<sup>[22]</sup>

- Since 1912, the Rebild Society, a Danish-American friendship organization, has held a July 4 weekend festival that serves as a homecoming for Danish-Americans in the Rebild municipality of Denmark.
- Since 1972, Nathan's Hot Dog Eating Contest in Coney Island, Brooklyn, New York City
- Numerous major and minor league baseball games are played on Independence Day.
- Famous Macy's fireworks display usually held over the East River in New York City has been televised nationwide on NBC since 1976. In 2009, the fireworks display was returned to the Hudson River for the first time since 2000 to commemorate the 400th anniversary of Henry Hudson's exploration of that river.
- Since 1970, the annual 10 kilometer Peachtree Road Race is held in Atlanta, Georgia.





## INSIDE MONTHLY HOURS REPORT



# UPCOMING EVENTS CALENDAR



July 4, 2014

Independence Day Holiday

July 17, 2014

Cut-Off Date for Apprenticeship Applications

July 27 -August 1, 2014

National Training Institute  
University of Michigan

August 14, 2014

Tentative Date  
ECAP Class  
Training Center  
Castroville, CA

August 16, 2014

Apprentice Applicant Aptitude Test

August 21, 2014

Board of Directors Meeting  
Collins Electrical Board Room  
Marina, CA

September 20, 2014

IBEW Local #234 BBQ  
Toro Park Buckeye Area  
Salinas, CA

September 27-30, 2014

Board of Governors and NECA Convention  
Chicago, IL

October 23, 2014

“How Contractors Can Improve Profits”  
Education Class  
Lawrence Restaurant, King City, CA