



# THE MONTEREY CURRENT

## OCTOBER, 2014

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*Perpetual optimism is a force multiplier.*

[Colin Powell](#)



### **“HOW CONTRACTORS CAN IMMEDIATELY IMPROVE PROFITS” CLASS SCHEDULED**

October 23, 2014  
8:00am-5:00pm

**Location:** Lawrence Restaurant, 611 Canal Avenue, King City, CA

**Registration Fee:** \$100 for Monterey Bay and California Central Coast Chapter Members  
\$400 Non-Chapter Members

#### **Course Description:**

Improving your company's processes to increase productivity can have a substantial effect on how competitive you can be. This course discusses how contractors can better

compete in a low bid award system by using their knowledge and experience to increase productivity. This course will be facilitated by Ted Garrison. Please see the attached flyer and sign up today!! This should prove to be an excellent course!



### **GOVERNOR SIGNS AB-1522 BILL PAID SICK LEAVE**

*Article provided by Politico*

Gov. Jerry Brown recently signed Assembly Bill 1522, which will require nearly all California employers to provide a minimum of three paid sick days to their workers each year.

Business groups across the state, including NECA, opposed the legislation. While we

opposed the measure throughout the process, we were able to secure amendments specifically for the construction industry that will provide construction employers with some relief from the new law.

Those amendments provide that:

1. Employees in the construction industry covered by a valid collective bargaining agreement entered into **before** January 1, 2015 are not covered by the new law.

2. Employees in the construction industry covered by a valid collective bargaining agreement entered into **after** January 1, 2015 are not covered by the new law if the collective bargaining agreement expressly waives the requirements of the new law in clear and unambiguous terms.

The new law will go into effect on July 1, 2015.

#### **Additional important information:**

- "Pay" is at the employee's base rate.
- The right to use paid sick leave begins at 90 days of employment.
- Sick leave accrues from the first day of employment.
- The employee earns an hour of sick pay for each 30 hours worked.

- The employer can limit paid sick leave to 3 days or 24 hours per 12 month period (rolling, calendar, or anniversary year).
- Accrued sick leave carries over to the next year. But the employer can cap accrual at 48 hours or 6 days.
- Personal time off (PTO) and existing sick plans may be sufficient if they satisfy the minimums in the law.
- Employees who are reinstated within 12 months from termination with the same employer are entitled to any sick leave that accrued while previously employed with that employer.
- No requirement to payout unused sick leave upon termination.
- The employer must include the accrued balance of sick pay on the employees wage statement or provide a separate document at each pay day.
- No private right of action. The law is enforced by the DLSE or the attorney general.



### **TO PAY OR NOT TO PAY**

*Prevailing Wage And Where You Build That Stuff*

John McGill

On public projects it should go without saying that you need to pay prevailing wage. And prevailing wage is not the prevailing wage where your main office is but what it is in the area where the project is located. If your office is in Stockton and you are working in Oakland, the prevailing wage is for Oakland, not Stockton. The Department of Industrial Relations website will have the rates and all of the add-ons for subsistence, fringes, travel, and any other contributions that need to be included in the employee's wages. For signatory contractors, prevailing wage is second nature; for open shops, prevailing wage can be a bit troublesome and complicated.

One issue that can be a problem for both signatory and merit shops is what to pay the workers that do not work at the project but at the home office shop. If the project work requires that certain materials be fabricated and those can be

fabricated offsite, does the contractor need to pay the employee prevailing wage if they are not working on the actual project site? This is the question that the court addressed in *Sheetmetal Workers Intern'l Assoc. Local 104 v Russ Mill Mechanical Inc.*, and the short answer is that it depends.

In the *Sheetmetal Workers* case a subcontractor, Russ Mill Mechanical (RMM), was an open shop contractor that was working on a community college project in Santa Clara. RMM properly paid prevailing wage for the workers on the project but then also fabricated some of the sheetmetal work at its shop in Hayward. One of the employees at the shop insisted that he should be paid prevailing wage for the fabrication work that was used on the community college project and he filed a claim with DIR claiming a Labor Code violation. Local 104 intervened on his behalf. The DIR first ruled for the worker but then reversed that decision. Local 104 filed a writ in the local superior court asking the court to overturn the DIR decision, which the court granted and that overturned the DIR ruling. RMM appealed and the court of appeals reversed the trial court and reinstated the DIR decision.

Local 104 argued that because the CA. Labor Code does not specifically require, and limit, prevailing wage to the "site of

the work" as the Federal Davis-Bacon Act language does, the Legislature therefore did not intend prevailing wage to be limited to only the site of the work but rather intended it to include all work that would be used in the construction of the project, regardless of whether the work took place on site or off.

The court disagreed with Local 104's broad conclusion because it would have unintended consequences and would not necessarily further the purpose of the prevailing wage statutes. The court and the DIR took the position that if prevailing wage extended to offsite fabrication facilities, and if materials were purchased from a catalogue or an out of state manufacturer, then California Labor law would be imposed on out of state manufacturers. Not only does California not have that authority, but if it attempted to assert that kind of authority, the cost of materials for California projects could be ridiculously high. Likewise, it would be virtually impossible to know what pre-manufactured materials were going to be consumed in a public work project and so paying prevailing wage would not be feasible. The court and the DIR concluded that the Legislature did not intend that DIR's enforcement authority to be so expansive,

especially when the Labor Code did not say so expressly.

There are exceptions and in some instances prevailing wage is required even for manufactured or shop built materials. If the fabrication shop is set up on the project site then prevailing wage is required to be paid. Likewise, if a fabrication facility is *specifically* set up to provide materials for a prevailing wage job, then regardless of location (onsite or remote) prevailing wage has to be paid. Lastly, if the contractor has a shop that is used for all of its fabrication for any of its projects, but the contractor sets aside a specific area for the production of materials for a prevailing wage project, then workers that perform that production- and that production only- could arguably fall under the prevailing wage requirement.

The court and DIR seem to take a pragmatic approach to the determination of whether prevailing wage needs to be paid or not. If fabrication of materials takes place at the contractor's shop and that shop is used for providing materials for all of the contractor's projects- prevailing wage and any others- then employees working in the shop on fabrication of parts for a prevailing wage job do not need to be paid the

prevailing wage. On the other hand, if the shop is set up solely for fabrication of materials for the prevailing wage project, then prevailing wage must be paid.

An interesting, but not answered, question is what prevailing wage needs to be paid by the signatory contractor performing offsite fabrication for a project located in another jurisdiction. Presumably the other jurisdiction's prevailing wage is paid, but what happens if the wage is lower and what happens if the work is change order work and the contract calls for change order work at the local prevailing wage only? No answer, but it could be an issue.

For now, the court set out a fairly bright line general rule: "Offsite fabrication is not covered by the prevailing wage law if it takes place at a permanent, offsite, manufacturing facility and the location and existence of that facility is determined wholly without regard to the particular public works project." That pretty much sums it up and it makes sense too.

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 at [johnmcgill310@gmail.com](mailto:johnmcgill310@gmail.com)



### **AM I QUALIFIED?? NFPA-70E Questions**

One of the most common questions asked, almost daily, is "can someone work on energized equipment." According to the NFPA 70E, a "Qualified Person" is one who is trained and knowledgeable of the construction and operation of the equipment or the specific work method, and trained to recognize the hazards present with respect to that equipment or work method. Such persons shall also be familiar with the use of precautionary techniques, personal protective equipment, insulating and shielding materials, and insulated tools and test equipment. A

person can be considered qualified with respect to certain tasks but still be unqualified for others. In addition, to be permitted to work within the limited approach of exposed energized conductors and circuit parts, the person shall be trained in all of the following:

- The skills and techniques necessary to distinguish exposed live parts from other parts of electric equipment;
- The skills and techniques necessary to determine the nominal voltage of exposed live parts;
- The minimum approach distances specified in this section corresponding to the voltages to which the qualified employee will be exposed; and
- The decision-making process necessary to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the task safely

### **A few notes to add to the NFPA 70E definition:**

- Only the employer can deem an employee qualified after they have had the proper training and have demonstrated proficiency using the

skills and methods learned.

- There is no such thing as NFPA 70E certification; going to a training course does not make an employee qualified.
- The most misunderstood part of the "qualified" term is that it is all encompassing; you are "qualified" to work on a specific type or piece of equipment.
- Neither a Journeyman card, license, or an engineering degree make you a "qualified person."

*From September 2014 issue of Los Angeles NECA Panelboard, by Allen Sloan, Safety Director, NECA/IBEW Los Angeles.*

## **CALCTP WELCOMES CALIFORNIA STATE UNIVERSITY SYSTEM**

The California Advanced Lighting Controls Training Program (CALCTP) is proud to announce that the California State University System ("CSU") has become a partner and stakeholder in CALCTP. The 23 campus CSU system has joined the Los Angeles Department of Water and Power (LADWP), SCE, PGE, SDG&E, SMUD and many other organizations in support of the CALCTP training and certification program. With CSU's participation, all three branches of California's

higher education system are stakeholders in CALCTP.

The CALCTP nonprofit collaborative now includes the following partner organizations:

- University of California-Davis California Lighting Technology Center (CLTC)
- Southern California Edison
- California Energy Commission
- California State University System
- California Community College System
- San Diego Gas and Electric
- 14 Lighting and Control Manufacturers
- California State Labor Management Cooperation Committee
- Pacific Gas and Electric
- Sacramento Municipal Utility District
- National Electrical Manufacturers Association
- Los Angeles Department of Water and Power



## **STATE APPROVES \$66 MILLION IN PROP 39 MONEY**

**More than 75 Energy Plans Approved by CEC in First Fiscal Year**

More than \$66 million of California Clean Energy Jobs Act (Prop 39) money is going to 244 schools in California that submitted energy project spending plans to the California Energy Commission (CEC) during the first fiscal year of the program. The funds will be used to improve building energy efficiency and expand clean energy generation in California schools.

More than \$380 million was available the first year. Local education agencies (LEAs), including county offices of education, school districts, charter schools, and state special schools, are eligible for funding and request money by submitting an energy expenditure plan application to the CEC. LEAs had an option to receive part or all of their first-year award allocation for energy planning purposes.

"Nationally, K-12 schools spend more money on energy than computers and textbooks combined," said Commissioner Andrew McAllister, who is the agency's lead on energy efficiency issues. "The

Energy Commission and Local Education Agencies are taking the lessons learned over the last year and working to streamline the application process, adapt it to best meet schools' needs, and ensure overall program success. Prop 39 allows schools to apply for funding over the next four years so that they can continue making improvements, and then spend the savings to educate students."

In the last 12 months, the CEC developed program guidelines and a handbook for LEAs, provided comprehensive training to more than 800 participants and approved 79 energy expenditure plans for 244 schools across the State. In addition, more than \$150 million was distributed to 1,644 schools for planning purposes. This money was only available in the first year. The CEC will accept energy expenditure plans for the second of five years in September. Any unallocated funds in the first year will roll forward into the second year. Upwards of \$280 million is available now.

To help schools through the application process, the CEC developed easy-to-use energy savings calculator tools for simple energy projects and is adding several engineers and energy specialists to review and approve expenditure plans. Schools can access these online resources

by [clicking here](#) or call (855) 380-8722.

The CEC is the lead agency for Prop 39 implementation and works collaboratively with the California Department of Education, California Community Colleges Chancellor's Office, California Public Utilities Commission, California Workforce Investment Board, the Division of the State Architect, and the California Conservation Corps.

Prop 39 changed the corporate income tax code and allocates projected revenue to the General Fund and the Clean Energy Job Creation Fund. Under the initiative, roughly up to \$550 million annually is available for appropriation by the Legislature for eligible energy projects such as energy efficiency upgrades and clean energy generation at schools. Over the next five years, Prop 39 will transfer an estimated \$2.5 billion in new revenues to create clean energy jobs, reduce greenhouse gas emissions and participants will receive 0.6 CEU's for their participation.

### **UPCOMING CLASSES OFFERED THROUGH THE JATC**

### **SIGNIFICANT CHANGES TO THE 2014 CODE**

Will be offered on the second Tuesday of the month

(October 14<sup>th</sup>) from 5:30 to 8:30 pm with instructor Dave Martinez.

### **CPR/FIRST AID WITH BLOODBORNE PATHOGENS**

Will be held on Saturday, October 11<sup>th</sup> beginning at 8 am at the training center in Castroville.

### **STATE CERTIFICATION PREP CLASS**

Will be held on October 11<sup>th</sup> at 8 am at the Training Center as well.

Interested in any of these classes? Contact Stacy at the JATC office for more details! (831) 633-3063.

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

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

### **FORKLIFT TRAINING**

- Wallace Barnes
- David Boggs
- Sergio Castillo
- Guillermo Estrada
- BJ Heading
- Miguel Huerta
- Ruben Lozano
- Juan Palacios
- Issac Rivera

- Brian Sabado
- Richard Smith
- Raymond Sykes
- James Walker

- Guillermo Estrada
- Jesus Ramirez
- Frank Aldape
- Jonathan Stanley
- Mark Hiura
- Brian Stanley

3. For Sound & Communications there are 2 on Book 1 and 1 on Book 2. There is 1 CW and 1 CE on the book and we currently have 2 Inside apprentices available for work.

## SIGNIFICANT CHANGES TO THE CODE

- Robert Rovella
- Brian Sabado
- Hector Camacho
- Charles Ruiz
- James Brown
- Issac Rivera

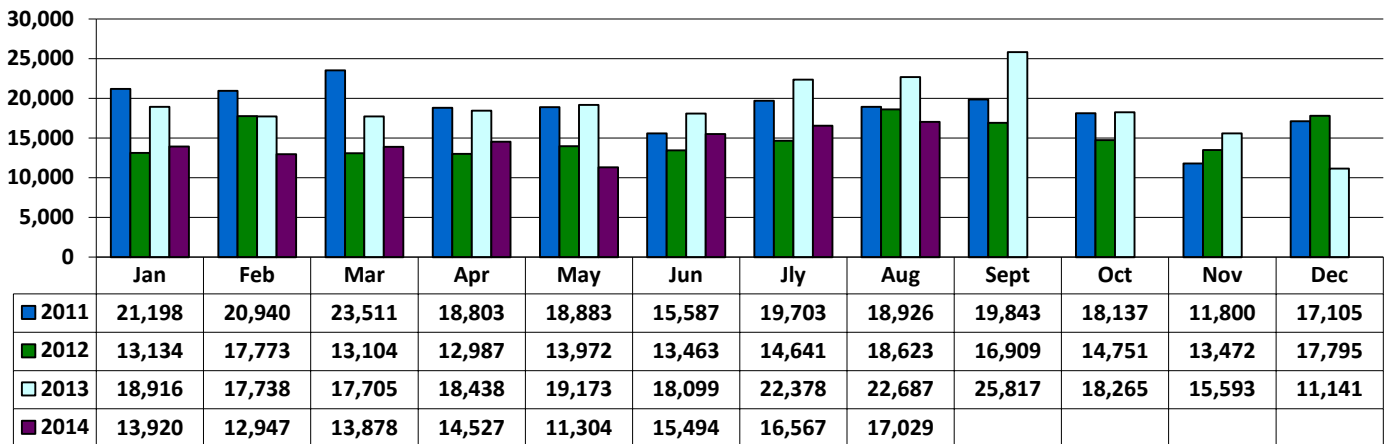
## LOCAL #234 AVAILABILITY LIST UPDATE

On the Inside Out-of-Work List, there are 37 on Book 1, 39 on Book 2 and 2 on Book

*To Benefit...Participate!*



# INSIDE MONTHLY HOURS REPORT



# UPCOMING EVENTS CALENDAR



October 23, 2014

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

October 29, 2014

Statewide JATC Meeting  
Anaheim, CA

November 2, 2014

Daylight Savings Time Ends

November 15, 2014

Mike Mowrey Retirement Dinner  
Sacramento, CA

November 19-21, 2014

Electrical Training Alliance Fall Regional Seminar  
Las Vegas, NV

November 27-28, 2014

Thanksgiving Holiday

December 24-25, 2014

Christmas Holiday