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OSHA Expands Electronic Reporting for High-Hazard Employers

The Occupational Safety and Health Administration (OSHA) has announced a final rule that will require certain employers in designated high-hazard industries (which includes construction companies and building material & supplies dealers) to electronically submit additional injury and illness information to OSHA.

The final rule takes effect on January 1, 2024 and includes the following submission requirements:

- Establishments with 100 or more employees in certain high-hazard industries must electronically submit to OSHA detailed information about each recordable injury and illness entered on their previous calendar year's OSHA Form 300 Log and Form 301 Incident Report. This includes the date, physical location, and severity of the injury or illness; details about the worker who was injured; and details about how the injury or illness occurred.
- All the establishments required to submit information from their Form 300 Log and Form 301 Incident Report to OSHA under this rule are currently required to collect and retain this information, and are already required to electronically submit to OSHA information from their OSHA Form 300A Annual Summary.

OSHA will publish some of the data collected on its website to allow employers, employees, potential employees, employee representatives, current and potential customers, researchers and the general public to access information about a company's workplace safety and health record. OSHA believes that providing public access to the data will ultimately reduce occupational injuries and illnesses. The data must be electronically submitted through OSHA's Injury Tracking Application (ITA), found on OSHA's website.

The ITA will begin accepting 2023 injury and illness data on January 2, 2024. The due date to complete this submission is March 2, 2024. The submission requirement is annual, and the deadline for timely submission of the previous year's injury and illness data will be on March 2 of each year.

The final rule retains the current requirements for electronic submission of information from Form 300A from establishments with 20-249 employees in certain high-hazard industries.

Prevailing Wage on Utility Work Signed by Governor

On August 16, 2023, Governor Kathy Hochul signed legislation that amends the Labor Law to enact the "Roadway Excavation Quality Assurance Act". This legislation mandates that utility company contractors and subcontractors pay the prevailing wage to employees on projects where a permit to use, excavate, or open a street is required to be issued.

The legislation defines "covered excavation project" as "construction work for which a permit may be issued to a contractor or subcontractor of a utility company by the state, a county or a municipality to use, excavate, or open a street".

No permit shall be issued for a covered excavation project until an agreement confirming the payment of prevailing wages has been contractually mandated and filed with the state or municipal corporation. These new prevailing wage requirements will be enforced by the Department of Labor, however, nothing contained in this law shall be deemed to construe any covered excavation project as otherwise being considered public work.

The law will become effective on September 16, 2023 and shall apply to all contracts executed and permits issued on or after that date.

Mark Your Calendar!!

***NESCA's 42nd Annual
Trade Show***

***Thursday, October 12, 2023
The Century House * Route 9, Latham
4:00 – 8:30 p.m.***

***See the latest in construction industry technology,
equipment, products and services while networking
with industry peers!***

More Information to Come!



PRESIDENT'S MESSAGE

As we roll into September, make sure to get your payment applications out for the hard work you guys put in this summer. Based on all the conversations I've had, schedules have been tight and a lot of work was crammed into the past couple of months.

This past month NESCA's officers, committees and staff have been very busy planning the coming year's activities including upcoming membership meeting programs, educational seminars and courses, young professional activities, legislative and regulatory initiatives, and special events such as our upcoming golf outing and our annual trade show.

Speaking of the trade show, one of NESCA's trademark events, we recently sent members information and exhibitor registration forms for this event. This year the trade show will be held on October 12th at the Century House. Exhibit space sells out very quickly, so if you haven't reserved your spot yet, please do so quickly or you'll be out of luck. We once again expect over 500 general contractors, subcontractors,

designers, facilities managers, and others to attend. Please mark October 12th on your calendar, particularly if you have never attended before.

NESCA's September event will be our annual golf outing on September 18th at Troy Country Club. I know some members of Troy CC and they asked to try and not hack up the course too bad! The greens keepers are having nightmares about this group of 250 "golfers" on the course.

On the membership side, we would like to thank the more than 70% of members who have already sent their 2023-24 dues payment to NESCA. I would also like to send a special thanks to those who have made additional voluntary contributions to NESCA's sustaining dues fund, to our political action committee, and to our college scholarship funds. Any members who still owe dues please send them in as soon as possible. We ask that you make NESCA's modest annual dues payment a part of your annual budget. We firmly believe that businesses should belong to the association that represents their industry and their business interests.

As we approach the autumn months, NESCA and our state affiliate, the Empire State Subcontractors Association (ESSA), will be busy lobbying the Governor's Office to sign our 5% retainage bill into law. This legislation will limit retainage on commercial construction projects to no more than 5%. When our bill is sent to the Governor for her consideration, NESCA will be reaching out to members to draft letters in support of this legislation. Don't worry, we'll provide you with a sample letter. So when we make the ask, please send a support letter on your company letterhead. Our lobbyist, Greg Serio, says support letters from businesses directly

impacted by a piece of legislation have a significant impact on whether the bill is signed or vetoed. If the Governor does sign this bill, it will be the fortieth (40th) time NESCA and ESSA have drafted and ushered into law legislation of significant importance to all subcontractors and suppliers doing business in New York State. Now THAT'S worth your continued support of the association!

Robert L. Kind, President

NESCA NEWSLETTER

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COUNSEL'S MESSAGE

Most of the membership have worked projects on which they have encountered "changed conditions" or "differing and unanticipated site conditions". These circumstances are different than when a scope of work was known to be needed during design, and prior to bid, but left out the construction drawing thereby resulting in a change order modifying the work with a cost increase.

A "changed or unanticipated" site condition or "differing and unforeseen condition" does not normally address an existing project condition known to the contractor or owner at the time of contract. Rather they are site, or project conditions, not known to the parties at the time of contract. The United States Government contracts refer to those conditions as "differing site conditions". The American Institute of Architect (AIA) reference these conditions as "concealed or unknown conditions".

A typical example is when a subsurface condition differs from that which is known. One example is

encountering a previously unknown stream flowing through a project site or encountering exorbitantly large boulders uncovered or moved during Hurricane Irene a few years ago.

Historically a contractor was not always entitled to an increase in compensation, or time, due to a "changed" or "unanticipated condition". These contract clauses are intended to benefit a contractor due to "unforeseen" or "unanticipated conditions". They also protect the Owner from a windfall by the contractor for a "guesstimate" cost incorporated within the contract price in the event such condition be encountered but not as severe as the "guesstimate" provided.

To receive benefit of the differing subsurface condition clause, the contractor must demonstrate the condition encountered conforms to the contract definition of a compensable differing or unanticipated site condition. If they do not match, the contract will not provide for extra payment to the contractor. The exception to this rule is if the owner misrepresented the site condition or engaged in fraud.

The contractor must also comply with contractual written notice of a changed condition, cost estimate documentation and contract time extension requirements created by the changed condition impact.

Contractors are strongly encouraged to review the "changes" and "differing site conditions" language definition in their next bid. If the language does not sufficiently protect the contractor from damages it may potentially incur, adjustments to the bid price may be necessary.

Walter G. Breakell, NESCA Legal Counsel

New I-9 Form Announced by USCIS

The U.S. Citizenship and Immigration Services (USCIS) recently announced a new I-9, which has been streamlined and shortened, that employers should use beginning August 1, 2023. Employers may continue to use the older Form I-9 through October 31, 2023. After that date, employers will be subject to penalties if they use the older form. The new version is available for download on the USCIS website.

The I-9 must be completed at the time of hire. Section 1 of the new form collects identifying information about the employee and requires the employee to attest to whether they are a U.S. citizen, noncitizen national, lawful permanent resident or noncitizen authorized to work in the United States. When new hires have preparers and/or translators assist them in completing Section 1, the preparer/translator must complete Supplement A.

Section 2 of the new form collects information about the employee's identity and employment authorization. The employee must present original documentation proving the employee's identity and employment authorization, which the employer must review. The I-9 must be completed within three days of the employee's hire.

Employers must maintain a person's Form I-9 for as long as the individual works for the employer and for the required retention period after the termination of an individual's employment (either three years after the date of hire or one year after the date employment ended, whichever is later). Employers must make I-9 forms available for inspection upon request by officers of the U.S. Department of Homeland Security (DHS), the U.S. Department of Justice or the U.S. Department of Labor. Employers that don't complete and retain I-9 forms properly may face civil penalties and, in some cases, criminal penalties, according to the DHS.

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Calendar of Events

September 7, 2023

Board of Directors Meeting
Century House, Latham, 6 pm

September 18, 2023

39th Annual Golf Outing
Troy CC, Troy

October 5, 2023

Board of Directors Meeting
Century House, Latham, 6 pm

October 6, 2023

Y.P. Community Serv. Project
Northern Rivers, Albany

October 12, 2023

42nd Annual Trade Show
Century House, Latham, 4 pm

Milestone Member Anniversaries

American Sun Control
20 Years

Couch Dale Marshall PC
20 Years

Gross Electric, Inc. – 25 Years

JAT Construction Co., Inc.
30 Years

NESCA Thanks Members for Additional Contributions

Thank you to all members who have paid your 2023-24 membership dues. A special thank you is reserved for the following members who have made voluntary Sustaining Dues, PAC and Scholarship Fund contributions:

Sustaining Dues Contributions

President's Circle (\$1,000)

Arold Construction Co. ★ Commercial Interiors ★ Teal Becker & Chiamonte, CPAs

Leadership Team (\$500)

Above & Beyond Fire Safety ★ Ashley Mechanical ★ Stone Bridge Iron & Steel

Patron Group (\$250)

Alltek Energy Systems ★ Carey Electric ★ JPW Erectors
Chip Kronau Construction & Equipment ★ Maximum Security Products
John M. Mullins Rigging & Hauling ★ New Castle Asphalt ★ Postler & Jaeckle
SRI Fire Sprinkler ★ E.W. Thompkins ★ Troy Boiler Works

Sustaining Member (\$100)

Allegion ★ Associated Lightning Rod ★ BPI Piping ★ Curtis Lumber
Cutting Edge Group ★ Eastern Heating & Cooling ★ Eckert Mechanical
EMCOR Services New England Mechanical ★ Ferrara Electrical
William Halpin, Inc. ★ KHM ★ T. Lemme Mechanical ★ MMC Millwork
Martino Tile ★ T.P. Monahan ★ N.E.P Glass ★ North East Underlayments
Oggi Concrete Forms & Accessories ★ CD Perry ★ RBM Guardian Fire Protection
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PAC & Scholarship Fund Contributions

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