



# Glass Facts

July - September 2015

## SEGA Chairman's Message



### Glass Build 2015

Fresh back from spending half a week (three days) in Atlanta at this year's Glass Build produced some interesting thoughts and observations and reminded me that indeed the glass

business is continuing to change and evolve. The large presence of Chinese companies in both machinery and glass products was somewhat a surprise to me. I expected to see a few, but never expected to see the amount of companies that were in attendance. But, the Chinese were not alone in representing overseas companies. There were companies from Europe, South America, Australia and Canada all there hoping to acquire new customers and pickup business. There was a group of companies selling what I would refer to as the largest collection of glass handling equipment ever displayed at any of the Glass Build shows to date. Then there were the machine exhibitors displaying their products to whoever would stop and take a look. Yours truly was one of those who spent a large amount of time in this area of the show looking at fabrication equipment.

What continues to be the big turn-off in the last few Glass Build shows is the absence of the primary metal and glass suppliers we all do business with. They continue to choose not to exhibit but rather send their sales and management people to walk the trade floor to see and visit with their main customers who are

attending the show. I saw and visited with most all the manufacturers I do business with. Due primarily to cost, these guys have chosen not to display at the show which short changes most all glass shop people in seeing the new products these companies are designing or have rolled out for production. These same companies have shifted their priorities folks. This year's AIA (American Institute of Architects) national show was in Atlanta in March at the Georgia World Congress Center in the same hall as Glass Build was recently. I attended the AIA show and was blown away by the size of the show and by the companies exhibiting. And yes, all of the primary glass and aluminum suppliers were exhibiting at this show. The glass show this year featured companies, or the most part, that sell hardware and sundry items used in the glass trade, software developers and vendors, professional trade organizations and a few specialty glass suppliers along with the equipment and machinery.

In closing, I would say the buzz word and the general trend within the glass business at the show focused on two things: 1) Glass handling equipment with demand created by the ever increasing shortage of manpower (labor) along with the ever increasing weight of glass products required by current design and codes; and 2) Pre-glazed product to unitized walls again created by the shortage of qualified labor were the two prevalent trends the equipment and fabrication machines signified. It will be interesting to see what another year in this business brings us.

*Until next time!*

*Woody Watters  
SEGA Chairman*

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Please submit your news releases, articles and comments for this publication to the SEGA office, attention: Julie, 231 West Bay Avenue, Longwood, FL 32750-4125. Advertising Space is also available. Please call the SEGA office at (407) 831-7342 for current rates and information.

## SOUTHEAST GLASS ASSOCIATION CALENDAR OF EVENTS 2015

### **October**

13-14 ..... Glass & Glazing Specialty License Exam  
14-16 ..... CILB Board of Director's and Committee  
Meetings, Sandestin Golf and Beach Resort, Destin

### **November**

11-13 ..... CILB Board of Director's and Committee  
Meetings, Embassy Suites Orlando – North,  
Altamonte Springs  
TBA ..... SEGA Board of Director's Meeting  
Conference Call

## 2016

### **January**

TBA ..... CILB Board of Director's and Committee  
Meetings, TBA

### **February**

9-10 ..... Florida Building Commission Meeting, TBA  
16-17 ..... Glass & Glazing Specialty License Exam  
TBA ..... CILB Board of Director's and Committee  
Meetings, TBA

### **March**

TBA ..... CILB Board of Director's and Committee  
Meetings, TBA

### **April**

12 ..... Florida Building Commission Meeting, TBA  
TBA ..... CILB Board of Director's and Committee  
Meetings, TBA

### **May**

TBA ..... CILB Board of Director's and Committee  
Meetings, TBA

### **June**

8 ..... Florida Building Commission Meeting, TBA  
14-15 ..... Glass & Glazing Specialty License Exam  
TBA ..... CILB Board of Director's and Committee  
Meetings, TBA

### **July**

TBA ..... CILB Board of Director's and Committee  
Meetings, TBA

### **August**

TBA ..... CILB Board of Director's and Committee  
Meetings, TBA

### **September**

TBA ..... CILB Board of Director's and Committee  
Meetings, TBA

### **October**

TBA ..... CILB Board of Director's and Committee  
Meetings, TBA

### **November**

TBA ..... CILB Board of Director's and Committee  
Meetings, TBA

# 2016 Legislative Session Dates

Next year's Legislative Session will start earlier than the normal first Tuesday of March. The 2016 Legislative Session will start on January 12.

The following is a list of important dates for the Committee Meetings:

- October 5–9, 2015
- October 19–23, 2015
- November 2–6, 2015
- November 16–20, 2015
- November 30–4, 2015

The following is a list of important dates for the 2016 Legislative Session:

- August 1, 2015 – Deadline for filing claim bills (Rule 4.81(2)).
- November 20, 2015 – 5:00 p.m., deadline for submitting requests for drafts of general bills and joint resolutions, including requests for companion bills.
- January 8, 2016 – 5:00 p.m., deadline for approving final drafts of general bills and joint resolutions, including companion bills.
- January 12, 2016 – Regular Session convenes (Article III, section 3(b), Constitution) 12:00 noon, deadline for filing bills for introduction (Rule 3.7(1)).
- February 27, 2016 – All bills are immediately certified (Rule 6.8). Motion to reconsider made and considered the same day (Rule 6.4(4)).
- March 1, 2016 – 50th day—last day for regularly scheduled committee meetings (Rule 2.9(2)).
- March 11, 2016 – 60th day—last day of Regular Session (Article III, section 3(d), Constitution).

## Legislators Return for Committee Meetings

*By R. Bruce Kershner*

Lawmakers returned to Tallahassee in September to hold their initial round of committee meetings in preparation for the 2016 Legislative Session which will begin, earlier than normal next year, on Tuesday,

January 12. They will return the week of October 5th for another round of committee meetings. Legislators are scheduled to meet a total of six weeks before they convene the 60-day regular session. Also sandwiched in their committee meetings schedule is yet another Special Session, the third one this year. This one will address the redrawing of Florida Senate District lines.

State lawmakers have spent a lot of time at the Capitol this year. Earlier this year, the House had walked out on the Senate, abruptly adjourning the spring session three days early when the Senate refused to withdraw a proposal expanding Medicaid coverage. They returned to Tallahassee in June to finish business by approving the budget, the only issue they are constitutionally required to complete each year. Legislators again trudged back to the Capitol in August to redraw congressional district lines after the Florida Supreme Court ordered new congressional maps after ruling the maps originally approved by the Florida Legislature were unconstitutional.

That Special Session did not end well. The House and Senate could not reach an agreement, and the Special Session adjourned without the two chambers agreeing on what the maps should look like. The issue is now in the hands of Judge Terry Lewis of the Second Judicial Circuit Court of Florida.

It goes without saying that all of this dysfunction has created tense times in the House and Senate relations. How this will play out in the coming months is hard to predict. Both sides appear dug in for now.

When the House met in September for committee week, they formally elected **Representative Richard Corcoran (R – Land O'Lakes)** as designated speaker of the Florida House for the two-year term beginning in November 2016. The job comes with prestige and enormous power over the 120-member chamber. As a former legislative aide and legal adviser to three former speakers, **Representative Corcoran** brings with him more than 25 years of legislative experience.

Meanwhile, over in the Senate, **Representative Corcoran's** counterpart has yet to be decided. The race for Senate President remains up in the air with both **Senator Joe Negron (R – Stuart)** and **Senator Jack Latvala (R – Clearwater)** claiming victory.

So what important issues will the 2016 legislature focus on when they convene in January? First, of course, is the budget. The Revenue Estimating

Conference is estimating millions of dollars in budget surplus. Lawmakers will have decisions to make regarding what to do with any surplus. The money could go to providing additional funding for various programs and projects or by providing tax cuts. One of the first bills to have a hearing during the September committee meetings was whether or not to allowing Floridians with concealed-weapons licenses to carry guns on university and state college campuses. On an 8-5 vote the House Criminal Justice Subcommittee approved removing the current probation of carrying a concealed weapon onto a college or university.

### **2016 Legislative Issues**

Issues of interest to SEGA members and the construction industry will include:

#### **Building Code Bill**

The bill is currently being drafted but will look very similar to last year's legislation which failed, however, without swimming pool, water heater sensors, apartment maintenance or google provisions. As with last year's bill, it deletes reference to "advance code" CE requirements and instead authorizes, rather than directs, DBPR to develop code-related training. This bill always draws a lot of interest from the construction industry and is one that I will monitor throughout the 2016 Session.

#### **Assignment of Benefits**

Look for insurance companies to bring this issue back during the 2016 Legislative Session. Especially since the courts ruled in favor of the contractors this past summer.

#### **Wage Theft**

The bill would preempt existing anti-wage theft ordinances.

#### **Statute of Repose:**

The bill will probably not lower the 10 year statute of repose. Last year's bill was highly controversial. Instead, it will amend statute of repose to start when the contractor is paid in full.

#### **Workforce Development/Job Training:**

Many construction trade groups are looking at ways to build up the workforce. The bill will focus on craft training vs. four year apprentice programs.

#### **Local Hiring Ordinances:**

**HB 181** by **Representative Charles Van Zant**.

The bill is a revamp of last year's bill addressing Project Labor Agreements (PLA). This year's bill will not reference the divisive PLA term but instead

will focus on limiting local government employment requirements (ordinances) of contractors on public works projects. This would include pay and benefits as well as any requirements for the contractor to recruit, train or hire their employees from a designated, restricted or single source.

One issue that we must continue to monitor is Florida's Construction Lien Law. This is an issue that **House Speaker Designate Richard Corcoran** has a keen interest in. No bills have been filed as yet, and we are not expecting one to be filed. This is an issue that, if brought forward, will most likely be by an amendment in the latter part of session when deals are cut and emotions run high. **Representative Richard Corcoran** believes that lien rights of non-privity lienors should be **ELIMINATED** for all work on primary residential properties [homestead or intended homestead properties]. The construction industry functions on a credit-based system. Without it, every general, residential and building contractor would have to have the financial ability to finance all of their ongoing projects themselves. In short, without the current credit scheme which relies upon the construction lien law as an additional remedy if payment is not made, many contractors would simply be unable to compete and do business.

Look for my weekly Legislative Reports "From the Halls of the Capitol" starting in January where I will keep track of issues important to SEGA members.

## **Court Backs Contractors in Insurance Benefits Battle**

**By Jim Saunders of News Service of Florida**

Wading into a high-profile insurance-industry issue, a South Florida appeals court sided with contractors who do emergency repair work for homeowners and pursue payment directly from insurance companies on May 21, 2015.

The issue centers on a practice known as "assignment of benefits," in which homeowners sign over insurance-policy benefits to contractors who do work such as repairing water damage. In three cases

from Palm Beach County, the 4th District Court of Appeal ruled against property insurers arguing that an “assignment of benefits” is invalid.

In a lengthy opinion in one of the cases, the appeals court said debate about the issue boils down to competing “public policy considerations” that could be addressed by state lawmakers. The court, which reversed rulings by circuit judges, also pointed to past cases that upheld assigning contractual rights.

“On the one side, the insurance industry argues that assignments of benefits allow contractors to unilaterally set the value of a claim and demand payment for fraudulent or inflated invoices,” said the opinion, written by appeals-court Judge Carole Taylor and joined by Chief Judge Dorian Damoorgian and Judge Melanie May. “On the other side, contractors argue that assignments of benefits allow homeowners to hire contractors for emergency repairs immediately after a loss, particularly in situations where the homeowners cannot afford to pay the contractors upfront.”

The appeals-court panel ruled in all three of the Palm Beach County cases, though it issued a full opinion in only one of them.

That case started in 2012 when the Royal Palm Beach home of William Hughes sustained wind and water damage, according to documents filed in the case. One Call Property Services Inc. did emergency repair work and was assigned the benefits under Hughes’ policy with Security First Insurance Co.

One Call filed a breach-of-contract lawsuit in 2013 against Security First, arguing it had not been fully paid for the work. Security First raised a number of arguments in seeking to dismiss the case, including that the assignment of benefits was invalid under the policy and under state law, according to Wednesday’s opinion.

While the appeals court ruled against Security First, it noted that it was not resolving some remaining legal issues in the case. It added similar caveats in the other two cases, which involved Tower Hill Signature Insurance Co. and United Property & Casualty Insurance Co.

Lawmakers this spring considered a pair of bills (HB 669 and SB 1064) that would have substantially restricted assignments of benefits in such cases. But the bills did not pass.

The Florida Property & Casualty Association and the Florida Insurance Council filed a brief in the Security First case arguing that assignments of benefits have driven up costs for insurers and will lead to higher premiums for customers.

“Vendors have no incentive to charge competitive or market prices for their work,” the insurance companies argued, because “they will seek direct reimbursement for the full amount of their invoices from a homeowners’ insurance carrier ... Under the guise of aiding insureds in emergency situations, vendors use AOBs (assignments of benefits) for their own profit, forcing insurance carriers to choose between paying substantially inflated invoices or defending themselves in costly litigation and facing potential liability for vendors’ attorney’s fees and costs.”

But attorneys for One Call Property Services argued in a brief that Florida case law has long upheld the validity of such assignments.

“Post-loss assignments are often given in payment for services performed after a loss occurs, so that the insured does not have to pay in advance for covered services which are often performed on an emergency basis,” the brief said. “The courts have never imposed a condition on the insured of adjusting the loss or of reaching agreement, final judgment or appraisal award before an assignment of benefits can be enforced. Such a construction would allow an insurer to defeat a claim simply by refusing to cooperate and would delay an insured’s ability to make emergency repairs.”

The appeals court said Wednesday it wasn’t in a position to evaluate the policy arguments.

“There is simply insufficient evidence in the record in this case – or in any of the related cases – to decide whether assignments of benefits are significantly increasing the risk to insurers,” the appeals-court opinion said. “If studies show that these assignments are inviting fraud and abuse, then the Legislature is in the best position to investigate and undertake comprehensive reform.”

Don’t be surprised if the Legislature addresses this issue again in the 2016 Legislative Session.



# 5th Edition (2014) Florida Building Code (FBC), Energy Conservation Software Approved

The Florida Building Commission has approved two software programs for the 5th Edition (2014) Florida Building Code, Energy Conservation. One is for Residential (Energy Gauge USA) and one is for Commercial (Summit). For more information please visit [http://www.floridabuilding.org/fbc/committees/energy/Energy\\_Code\\_Compliance\\_Software.html](http://www.floridabuilding.org/fbc/committees/energy/Energy_Code_Compliance_Software.html).

Should you have any questions, please call us at (850) 487-1824.

## Section 69, Chapter 2015-222, Laws of Florida, 5th Edition (2014) Florida Building Code (FBC)

During its Special Session in June, the Legislature enacted the following in an implementing bill SB 2502-A, which is now **Chapter 2015-222, Laws of Florida**, associated with the State's budget:

1. In order to implement Specific Appropriation 2250 of the 2015-2016 General Appropriations Act and notwithstanding any provision of the Florida Building Code or other provision of law, the following provisions shall not take effect until June 30, 2016:
  - (a) Mandatory blower door testing for residential buildings or dwelling units as contained in Section R402.4.1.2 of the Florida Building Code, 5th Edition (2014) Energy Conservation Volume;
  - (b) A second fire service access elevator as contained in Section 403.6.1 of the Florida

Building Code, 5th Edition (2014) Building Volume; and

- (c) Mechanical ventilation for residential buildings or dwelling units as contained in Section R303.4 of the Florida Building Code, 5th Edition (2014) Residential Volume.

2. This section shall expire July 1, 2016.

This bill takes effect on July 1, 2015.

## Proposed Code Modifications to the Proposed 6th Edition (2017) Florida Building Code

The proposed code amendment cycle to the 6th Edition (2017) update to the Florida Building Code (FBC) will commence July 1, 2015 and closed on midnight August 3, 2015. The draft 6th Edition (2017) update to the Florida Building Code consists of the 2015 International Building Codes (I-Codes) as the foundation and the Florida specific amendments which consist of the state agency regulation, High Velocity Hurricane Zone wind standards and those code provisions mandated by law that are currently existing within the 5th Edition (2014) Florida Building Code and compiled in documents titled "Florida Supplements to the 2015 I-Codes". The 2015 I-Codes and Florida supplements are available here: [http://www.floridabuilding.org/fbc/thecode/2017\\_Code\\_Development\\_Process.html](http://www.floridabuilding.org/fbc/thecode/2017_Code_Development_Process.html)

Florida law was amended in 2011 to eliminate the automatic re-adoption of existing Florida specific amendments into new editions of the FBC. Now, all Florida specific amendments, other than those noted above, must be approved through the same process as newly proposed amendments each time the FBC is updated to a new edition. For more information regarding the code development process and the work plan for the 6th Edition (2017) update to the FBC, please see the link above.

Should you have any questions, please call us at (850) 487-1824.

## DBPR Phone Scam

DBPR has received notification of a delinquent account telephone scam targeting licensees. Be aware that DBPR does not contact licensees for credit card or bank account information. If you receive a suspicious phone call from someone claiming to be from the Department, please hang up and verify the status of your account by contacting DBPR's Customer Contact Center at (850) 487-1395.

## Certified Contractor License Renewal Reminder

Just a reminder that the Registered Contractor licenses issued by the Department of Business and Professional Regulation (DBPR) are up for renewal on August 31, 2016.

Current law requires licenseholders to obtain 14 hours of continuing education with at least one hour in workplace safety, one hour in workers' compensation, one hour in business practices, one hour in the advance building code module, one hour in laws and rules (Chapter 489) and one hour in wind mitigation (this requirement only affects general, residential, building, roofing and glass and glazing contractors).

## OSHA Directive Explains New Process to Assist Early Resolution of Whistleblower Complaints

The Occupational Safety and Health Administration (OSHA) issued **policies and procedures**\* for applying a new process for resolving whistleblower disputes. The new process is an early resolution process that is to be used as part of a regional Alternative Dispute Resolution (ADR) program. The ADR program offers whistleblower parties

the opportunity to negotiate a settlement with the assistance of a neutral, confidential OSHA representative who has subject-matter expertise in whistleblower investigations. The **Administrative Dispute Resolution Act**\* requires that each federal agency "adopt a policy that addresses the use of alternative means of dispute resolution and case management."

"OSHA receives several thousand whistleblower complaints for investigation each year," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. "The Alternative Dispute Resolution process can be a valuable alternative to the expensive and time consuming process of an investigation and litigation. It will provide whistleblower complainants and respondents the option of exploring voluntary resolution of their disputes outside of the traditional investigative process."

OSHA piloted an ADR program in two of its regions from October 2012 to September 2013. The pilot proved that the early resolution ADR process is a successful method for helping parties to reach a mutual and voluntary outcome to their whistleblower cases. The pilot program demonstrated that having staff dedicated to facilitating settlement negotiations provides an efficient and effective service that is highly desired by complainants and respondents alike.

The success of the early resolution ADR process has resulted in the agency making it available to all of its regions. This directive does not prohibit OSHA whistleblower offices from offering complainants and respondents other alternative dispute resolution processes, such as third-party mediation.

OSHA enforces the whistleblower provisions of 22 statutes protecting employees who report violations of various securities laws, trucking, airline, nuclear power, pipeline, environmental, rail, maritime, health care, workplace safety and health regulations, and consumer product safety laws. For more information, please visit [www.whistleblowers.gov](http://www.whistleblowers.gov).

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit [www.osha.gov](http://www.osha.gov).

## Statement from Secretary of Labor Thomas E. Perez on Fatal Occupational Injuries in 2014

Preliminary results from the Bureau of Labor Statistics' *Census of Fatal Occupational Injuries* show the rate of fatal work injuries in 2014 was 3.3 per 100,000 full-time workers, the same as the final rate for 2013. While the preliminary total of 4,679 fatal work injuries was an increase of 2 percent over the revised count of 4,585 in 2013, there was also an increase in hours worked in 2014. U.S. Secretary of Labor Thomas E. Perez issued the following statement:

“Far too many people are still killed on the job — 13 workers every day taken from their families tragically and unnecessarily. These numbers underscore the urgent need for employers to provide a safe workplace for their employees as the law requires.

“Preliminary results tell us 789 Hispanic workers died on the job in 2014, compared with 817 in 2013. While we were gratified by that drop, the number is still unacceptably high, and it is clear that there is still much more hard work to do.

“BLS data shows fatalities rising in the construction sector (along with an overall increase in construction employment). Dangerous workplaces also are taking the lives of a growing number of people in oil and gas extraction. That is why OSHA continues extensive outreach and strong enforcement campaigns in these industries. The U.S. Department of Labor will continue to work with employers, workers, community organizations, unions and others to make sure that all workers can return home safely at the end of every day.”

## OSHA Extends Comment Period for Proposed Rule Clarifying Employers' Continuing Obligation to Make and Maintain Accurate Records of Injuries, Illnesses

The Occupational Safety and Health Administration (OSHA) is extending the deadline for submitting comments on the proposed rule that clarifies an employer's continuing obligation to make and maintain an accurate record of each recordable injury and illness. The comment due date has been extended to October 28, 2015.

OSHA issued this proposed rule in light of the decision of the U.S. Court of Appeals for the D.C. Circuit in *AKM LLC v. Secretary of Labor (Volks)\** to clarify its long-standing position that the duty to record an injury or illness continues for as long as the employer must keep records of the recordable injury or illness. The proposed amendments add no new compliance obligations; the proposal would not require employers to make records of any injuries or illnesses for which records are not already required.

The proposed rule was published in the July 29, 2015, issue of the Federal Register. Members of the public can submit written comments on the proposed rule at <http://www.regulations.gov>, the Federal e-Rulemaking Portal. See the Federal Register notice for submission details.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing



standards, and providing training, education and assistance. For more information, visit [www.osha.gov](http://www.osha.gov).

U.S. Department of Labor news materials are accessible at <http://www.dol.gov>. The department's Reasonable Accommodation Resource Center converts departmental information and documents into alternative formats, which include Braille and large print. For alternative format requests, please contact the department at (202) 693-7828 (voice) or (800) 877-8339 (federal relay).

## **DOL's Labor's Wage and Hour Division Issues Interpretation on the Identification of Employees who are Misclassified as Independent Contractors**

On July 15, 2015, the Department of Labor's Wage and Hour Division (WHD) issued an interpretation of how to determine if a worker is an employee or an independent contractor in relationship to the employer.

WHD assumes most workers are employees under the Fair Labor Standards Act (FLSA). Because of ambiguities and vagueness in the statutory definition of this employment relationship, federal courts have fashioned a test for determining the status of a worker under the FLSA. The WHD Interpretation provides an analysis of the courts' economic realities test and the application of factors that the WHD will be used to determine if a worker is an employee or an independent contractor.

It is important to note that these factors must be considered together and no one factor should be over-emphasized. No one factor is determinative of whether a worker is an employee or independent contractor.

In general, a worker is an employee if he or she is economically dependent on the employer. A worker is an independent contractor if he or she is in business for him or herself. The factors are intended to help determine the worker status. Just because one factor suggests an employment relationship or an independent contractor relationship does not mean the relationship should be characterized as such. WHD will look at the totality of the circumstances to determine the worker-employer relationship.

### **The Six Factors**

Here are the six basic factors and how the WHD views their scope (though the agency cautions that some courts may consider other factors).

#### **1. Is the Work an Integral Part of the Employer's Business?**

The more essential the work is, the more likely the worker is to be economically dependent on the employer. It doesn't matter how many workers perform a particular task.

WHD uses the example of a call center. Answering calls is integral to a call center's business "even if it is performed away from the employer's premises, or at the worker's home."

Similarly, the work of a carpenter framing houses for a homebuilder is integral to the business. In contrast, work performed by a software developer on behalf of the same company on a program that "assists the company in tracking its bids, scheduling projects and crews" would not be integral to the business.

#### **2. Does the Worker's Managerial Skill Affect His or Her Opportunity for Profit or Loss?**

This gets at the question of whether the individual is truly running a business. For example, "a worker's decision to hire others, purchase materials and equipment, advertise, rent space, and manage time tables may reflect skills" that impact profit or loss, the WHD document states. If the worker's only way to affect earnings is deciding how many hours to work, that would indicate an employment relationship. The document illustrates the principle by describing a worker who provides cleaning services for

corporate clients. The individual “performs assignments only as determined by a cleaning company, does not independently schedule assignments, solicit additional work from other clients, advertise his services or endeavor to reduce costs.” This appears to be an employment relationship.

On the other hand, if the worker does tasks such as negotiating contracts and deciding which jobs to perform and when, his exercise of such managerial skills is indicative of an independent contractor.

### 3. **How Does the Worker’s Relative Investment Compare to the Employer’s Investment?**

“The investment of a true independent contractor might ... further the business’s capacity to expand, reduce its cost structure, or extend the reach of the independent contractor’s market,” the document states. WHD again illustrates the principle with an example from a cleaning business. A company provides insurance, a vehicle and “all equipment and supplies” for the worker, does advertising for her and finds clients for her, yet classifies her as an independent contractor. Based on the size of the investment of the company, the company is likely her employer. Even if she occasionally brings some of her own preferred cleaning supplies, her investment must be compared to the company’s investment.

If, instead, the worker “invests in a vehicle that is not suitable for personal use and uses it to travel to various work sites ... rents his or her own space to store the vehicle and materials ... [and] advertises and markets her services and hires a helper for larger jobs,” that would support independent contractor status.

### 4. **Does the Work Performed Require Special Skill and Initiative?**

“A worker’s business skills, judgment, and initiative, not his or her technical skills, will aid in determining whether the worker is economically independent,” declares the WHD document. How does that play out?

The WHD offers the example of a “highly skilled” carpenter who provides services for a construction company. He doesn’t choose his job site, the sequence of his work, order additional materials

“or think about bidding the next job.” This fact pattern doesn’t support independent contractor status.

In contrast, a carpenter who “provides a specialized service for a variety of area construction companies, for example, custom handcrafted cabinets that are made-to-order, may be demonstrating the skill and initiative of an independent contractor,” the WHD opines.

### 5. **Is the Relationship between the Worker and the Employer Permanent or Indefinite?**

Naturally, the more “permanent” the relationship appears, the more it looks like an employment relationship. But “permanent” doesn’t have to involve years.

“Even if the working relationship lasts weeks or months instead of years,” the document states, “there is likely some permanence or indefiniteness to it as compared to an independent contractor, who typically works on one project for an employer and does not necessarily work continuously or repeatedly for an employer.”

However, the WHD cautions that the lack of permanence doesn’t necessarily indicate independent contractor status. The key “is whether the lack of permanence or indefiniteness is due to operational characteristics intrinsic to the industry.” For example, sporadic part-time work assignments provided directly by companies or staffing agencies doesn’t preclude an employment relationship.

### 6. **What is the Nature and Degree of the Employer’s Control?**

This assessment should be made “in light of the ultimate determination whether the worker is economically dependent on the employer, or truly an independent businessperson,” according to the document. The worker “must control meaningful aspects of the work performed such that it is possible to view the worker as a person conducting his or her own business.”

Moreover, that control can’t just be theoretical. “The worker must actually exercise it” the WHD states.

### **Labels Don’t Matter**

Relationship status depends on the economic realities, the WHD stresses, “and not the label an employer gives it.” Just because a business asks a worker to sign a contract stating he or she is an independent contractor, and issues a Form 1099–MISC, doesn’t mean the individual isn’t an employee.

“This form simply indicates that the employer engaged the worker as an independent contractor, not that the worker is actually an independent contractor under the FLSA,” the document states.

The Administrator’s Interpretation concludes with this assertion: “In sum, most workers are employees under the FLSA’s broad definitions.” However, keep in mind that this test applies to DOL determinations and may not be relied upon by other state or federal agencies, such as the IRS. In light of the position from the WHD, if you have any doubt about whether you have classified a worker appropriately, the wise course of action would be to consult a legal professional.

## **NCCI to Consider Reducing Workers’ Compensation Rates in 2016**

State Regulators will consider a proposal to reduce workers’ compensation insurance premiums by an average of 2.2 percent in 2016, according to documents released on Friday August 21. The National Council on Compensation Insurance, which annually proposes workers’ compensation rates, pointed to a series of reasons for the potential decrease, which would vary depending on the type of industry. For example, the office and clerical industry would see an average 5.1 percent rate cut and the manufacturing industry would receive an average 4.7 percent reduction. The contracting industry, however, could see an average 1 percent increase, according to a summary of the proposal.

“Today, Florida’s workers’ compensation insurance rates, overall, remain stable and commensurate with other southeastern states,” said the summary by the organization, which is commonly known as NCCI. The summary, however, also warned that two workers’ compensation lawsuits pending in the Supreme Court — and another potential Supreme Court case — could

affect rates. The state Office of Insurance Regulation is expected to hold a hearing in October as it decides whether or approve the NCCI proposal.

***Provided by News Service of Florida***

## **Division of Workers’ Compensation Offers Free Classes**

The Florida Department of Financial Services, Division of Workers’ Compensation, is offering free classes regarding Florida’s workers’ compensation laws and workplace safety to business owners, licensed contractors and employers.

Workers’ compensation topics covered include:

- Review of Key Statutory Definitions
- Contractor Responsibilities
- Exemptions
- Insurance Coverage Requirements
- Enforcement Provisions

Workplace safety topics presented by OSHA (U.S. Dept. of Labor, Occupational Safety and Health Administration) include:

- Direct and Indirect Costs
- Inspections
- Florida Fatalities

The following is a list of dates and times for future sessions.

### **October 5, 2015**

Fort Myers  
9:00 a.m. – 12:00 noon  
State of Florida Office Building  
2295 Victoria Avenue, Room 165A  
Fort Myers, FL 33901

### **October 7, 2015**

2:00 p.m. – 3:00 p.m. EST  
Workers’ Compensation  
WEB Based class

### **October 8, 2015**

2:00 p.m. – 3:00 p.m. EST  
Workplace Safety  
WEB Based class

**October 27, 2015**

Jacksonville  
9:00 a.m. – 12:00 noon  
State of Florida Jacksonville Regional Service Center  
921 North Davis Street, Building B, Room 350  
Jacksonville, FL 32209

**November 4, 2015**

2:00 p.m. – 3:00 p.m. EST  
Workers' Compensation  
WEB Based class

**November 5, 2015**

2:00 p.m. – 3:00 p.m. EST  
Workplace Safety  
WEB Based class

**November 9, 2015**

Tampa  
9:00 a.m. – 12:00 noon  
State of Florida Park Trammel Building  
1313 North Tampa Street, Suite 605  
Tampa, FL 33603

**November 16, 2015**

Miami  
9:00 a.m. – 12:00 noon  
State of Florida Rhode Building  
401 N.W. 2nd Avenue, South Tower, Room S-123  
Miami, FL 33128

**December 2, 2015**

Tallahassee  
9:00 a.m. – 12:00 noon  
Hartman Building  
2012 Capital Circle SE, Room 102  
Tallahassee, FL 32399

**December 3, 2015**

Orlando  
9:00 a.m. – 12:00 noon  
State Office Building  
Hurston Complex  
400 West Robinson Street, North Tower, Conference  
Room N-101  
Orlando, FL 32801

**December 9, 2015**

2:00 p.m. – 3:00 p.m. EST  
Workers' Compensation  
WEB Based class

**December 10, 2015**

Lantana  
9:00 a.m. – 12:00 noon  
Gold Coast Schools  
6216 South Congress Avenue, Classroom A  
Lantana, FL 33462

**December 10, 2015**

2:00 p.m. – 3:00 p.m. EST  
Workplace Safety  
WEB Based class

The Division of Workers' Compensation is an authorized provider (Provider Number: 0004354) for continuing education purposes through the CILB. Course Number: 0010118 – one hour satisfies the workers' compensation requirement and Course Number: 0010630 – one hour satisfies the workplace safety requirement.

Advanced registration is required. The form is available on the Division's website at [www.myfloridacfo.com/WC](http://www.myfloridacfo.com/WC). For additional information, e-mail [bocseminars@MyFloridaCFO.com](mailto:bocseminars@MyFloridaCFO.com), or call (813) 221-6518.

## Not a Member of SEGA?

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To take advantage of this pricing today and join the southeast's premier glass and glazing trade association, ***please click here for a SEGA Membership Application*** or contact the association office at (407) 831-7342 and request a membership application.



# CILB Update

## ADVERTISING: Signs to Social Media, License Numbers Required!

Advertising is important to Florida contractors and can make the difference between a great business year and just making ends meet. Florida contractors have many new ways of promoting their businesses with the increased use of internet websites and the advent of social media technologies. As advertising evolves, it is important for Florida contractors to remember that their license number must be included in all offers of service, bids, business proposals, contracts or advertisements, regardless of the medium. Pursuant to **Rule 61G4-12.011, F.A.C.**, advertisements include any electronic media including Internet sites. So please remember to include your license number on your websites, social media pages and other advertisements.

If you have any questions regarding advertising requirements please review the Construction Industry Licensing Board's **FAQs** or you may contact the Department's Customer Contact Center at (850) 487-1395.

