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June 2018

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CSIA Spring Labor Conference





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Magazine

CSIA 2077 Embury Park Rd. Dayton, OH 45414 www.csiaonline.org 937-278-0308



Rachel Pinkus

The Central States insulation Association is a not-for-profit trade association dedicated to working with its member firms and their labor counterparts, the International Association of Heat and Frost Insulators and Allied Workers, to insure that their customers get the best engineered, installed and maintained mechanical insulation systems.

CSIA is dedicated to keeping its members at the forefront in helping their clients and industry partners realize the full benefits of the positive "Green" impact mechanical insulation systems can have on their power, petrochemical, pulp and paper, refining, gas processing, brewery, health care, institutional, food processing, manufacturing and commercial projects.

Disclaimer: The opinions and positions stated in articles published herein are those of the authors and not, by the fact of publication, necessarily those of CSIA. CSIA does not endorse insulating products or systems and shall not be deemed by anything herein to have recommended the use or non-use of any particular insulation system.



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Not my Grandfather's Insulation Industry Anymore.....A Wake Up Call for the International, Union - Contractors, Locals and Members

Unemployment at historic lows, stock market at all-time highs, construction outlook promising, the push for energy conservation and emissions reduction driving insulation levels higher and higher. Facility owners, manufacturing, processing, power generation and petro-chem plants around the country are acknowledging the benefits of "going green". Demand for mechanical insulation contractors and insulators is rising and will continue to rise. Recent articles in USA Today and Money magazine cited a Bureau of Labor Statistics (BLS) report among all careers that Mechanical Insulator is one of the top 10 fastest growing jobs. The BLS report projected Mechanical Insulation growth at 37.6% between 2012 and 2022. A projected growth rate of 3.2% per year for each of the 10 years.

So WHY the gloomy headline? Our industry should be high fiving. But Union Insulation Contractors and Unions are NOT "high fiving"-we're scrambling. Union insulation contractors and local unions are NOT experiencing the 3.2% growth rate each year as predicted by the BLS. Union membership growth in about 25% of the union locals in the country, namely California, Washington, New Jersey, Maryland, Boston and St. Paul Minnesota, have matched the BLS predicted annual growth rate. Unfortunately, the remaining 75% of union locals have experienced less than predicted growth and many have experienced losses. Traditionally strong union markets like Cleveland, Detroit and Chicago are not experiencing the predicted membership growth rate. In fact, these three markets are down -9% each year since 2012. Even with this current economic boom, the Chicago insulation local is suffering the lowest employment rate in the last 10 years. Across the country, union membership data from annual union LM-2 BLS filings indicate that membership over the same time period is growing at only 0.9%; well short of the BLS predicted 3.2% growth. Growth is good but when our Union growth is far short of the industry as a whole - then we are only in survival mode.

So where is the growth going? Well here is the CALL to union contractors, locals, International Union and union members......It's time to WAKE UP! Despite some promising work on the horizon, we ALL must wake up and see that we are merely surviving – when we should be thriving. Mechanical Insulation work is growing year after year. We must not only keep pace with the growth, we MUST be better. We can ALL be better. Better than all that threatens us. Better than Non-Union. Better than other trades doing insulators work.

But the WORST scenario facing all of us (who have been loyal 100% union) – is the scourge and rise of double-breasted insulation contractors! They are everywhere today. Even in what used to be "strong" union markets like Detroit and Chicago. Most double-breasted insulators are the large national firms recently gobbled up by private equity (Wall Street). Operating covertly and right under the noses of the International, locals and in plants we all worked so hard to be union. Its time union members working for these large double-breasted insulators to not look the other way or even sign them to another local CBA. Locals, contractors, members and especially the International must band together and tell them to STOP! Join us. These private equity double-breasted beasts need to be told by the International that you are either with us OR against us. Tell em "You are either 100% union or you are none at all!"

These double-breasted Wall Street beasts sign a CBA in a faraway Local, then infiltrate a once "union" plant hundreds of miles away. They won't sign a CBA in the locals they are working. Then, the unsuspecting local provides them trained union members. Once in, they quickly convert the future contracts to their non-union "united" side and the union is out for good. If the International continues to allow these private equity beasts on their path of picking off local by local, market by market....it is only a matter of time before union membership growth is negative in every market. It's happening in Indiana, Pennsylvania, Ohio, Chicago and today in Detroit. And worst of all, it's only a matter of time before most (medium to smaller) privately owned 100% past loyal union contractors see this as the only way to survive and proclaim..."if you can't beat em....join em."

This is a call for a national meeting, discussion and common direction among us all working for the Union Insulators way - to come together. Work together to identify opportunities to be more competitive – make REAL changes now. Remove barriers and old ways are restricting Union growth. Build together on the strengths that differentiated us from all others - quality and safety. And most of all....THRIVE together.

Its time to wake up! Evolve or die. LETS DO IT!!

Your President, Mike O'Connell Smart Energy Insulation

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Heat Illness Prevention

As we move into the summer months it is time for all contractors to consider implementing a Heat Illness Prevention Program. There have been increasing reports of heat illnesses in the workplace.



By: Gary Auman Auman, Mahan & Furry



mployees, who work in a high heat index environment, are vulnerable to various
heat related illnesses. At their worse, heat illnesses can result in the death of the
employee. Back in 2011, OSHA instituted

a program to make employers aware of the dangers of working in a high heat index environment. Since then, there have been numerous OSHA citations of employers for heat related illnesses. The increase in reported cases can partially be attributed to the new OSHA reporting rules that now require reporting the hospitalization for treatment of even one employee (the old rule was three employees) for treatment. Prior to this, reports of heat illness injuries were pretty much limited to fatalities. But with the change of rules, employers must report employees who are hospitalized for treatment of heat related illnesses.

While there have been numerous reported decisions, the leading OSHRC decision was by Judge Patrick Augustine in March of 2012 in his decision in the case titled "Secretary of Labor v. Post Buckley Schuh & Jernigan, Inc." In his decision, Judge Augustine upheld a general duty clause violation against the employer related to the death of an employee from heat stroke. Judge Augustine listed five components of the NIOSH criteria document for heat illness prevention as essential for an employer to be in compliance with the OSHA General Duty Clause. Judge Augustine's decision makes sense, and provides a practical checklist for employers to follow to ensure a safe workplace for employees from a heat illness prevention standpoint.

The steps an employer should take are as follows (be aware that all of these steps need to be implemented and enforced by the site supervisor. You should not rely on employees taking responsibility for self-compliance):

1. Establish an acclimatization program for employees upon their initial assignment to a worksite with a high heat index environment. Such a program should also be used for an employee who is returning to the high heat index environment after a period of time away from the high heat index environment. Such a program will have all of the remaining four steps, but will also gradually expose the employee to the high heat index environment. Many employers start their employees with one to two hours of labor in the high heat index environment, extending the work hour in the environment over a period of five to ten workdays. I recommend discussing your program with your company doctor to get their opinion on the best way to acclimatize your employees. As I emphasize to all employers, the acclimatization period as well as the actions taken to comply with the requirements in the next two steps will vary depending on the heat index at the job site. The point for each of these steps is that the steps taken to protect your employees will vary depending on the heat index to which your employees are exposed.

- 2. The second step is to have the site supervisor establish a work/rest regimen based upon the heat index on the job site. So at the start of the work day, if the heat index is in the low caution range the site supervisor might schedule rest breaks every 90 129 minutes. As the heat index increases into the caution range and higher, the rest periods may become longer and more frequent. Again, to be absolutely sure you are doing what is necessary you should run the guidelines you provide to you supervisors by your company doctor.
- 3. The third step involves hydration. Here the NIOSH Criteria document suggests that employees drink 5-7 ounces of water every 15-20 minutes. Again, I suggest running by your company doctor a hydration schedule as to the quantity of water employees should take in and the frequency over which they should consume it. Again, the quantity and frequency will vary as the heat index varies. In an OSHA decision involving the Sturgill Roofing Company of Dayton, Ohio in 2015, Judge Carol Baumerich stated that she felt that the employer should proactively monitor the water consumption by employees and remove any employees from the site who fail or refuse to comply. Such a requirement would place a tremendous burden on the employer. Judge Baumerich's decision is effectively on appeal to the full Review Commission and no decision on that appeal has yet been reached. So, at this time the original language of the NIOSH Criteria Document is still effective.

CONTINUED PG.8

- 4. The fourth step requires the employer to provide cooling off areas in close proximity to the jobsite for use by employees as needed. NIOSH has indicated that a cooling off area should have an ambient temperature of approximately 75 degrees Fahrenheit. I believe this is a guideline and you could vary a little from this temperature, especially if you pass the temperature you would like your cooling off area to be by your company doctor. As you can guess, supplying umbrellas for shade on a 95 degree heat index environment will probably not be sufficient.
- 5. The final step addressed by Judge Augustine requires you to train your employees in the illnesses that can be caused by working in a high heat index environment, the symptoms of those illnesses, how employees can recognize those symptoms in themselves and others and the first aid actions that should be taken if those symptoms are observed.

The preceding summarizes what you need to do to protect your employees and to have a compliant heat illness prevention program. I highly recommend having at least every site supervisor download the free OSHA Heat

Illness Act onto their smart phone or tablet. This app will provide an immediate heat index level at the location at which the app is used and it will also state the OSHA recommendation for steps for you to take to protect your employees.

Remember, you are the employer and therefore the responsibility for the safety of your employees (including their compliance with all safety programs you have to provide for their safety including heat illness prevention) is yours. Also you should be aware that all General Duty Clause violations are cited as serious violations and OSHA will not negotiate them down to anything other than serious. So, if you are cited for not complying with the requirement to have an effective heat illness prevention program, you will get a serious citation and you will have just two choices. You will either be able to negotiate it for a lower penalty (but keep it as a serious citation) or litigate it. If you accept it as serious you will have to report it on IS Net World and as a serious on any pre-guals you may have to complete to bid new jobs.



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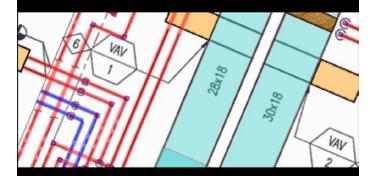
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NIA Safety Award Winners



Orlando, Florida - April 20, 2018 - The National Insulation Association (NIA) announced the 2017 Theodore H. Brodie Distinguished Safety Award winners at its 63rd Annual Convention in Orlando, Florida, on April 19, 2018.

NIA's Safety Award is the only national award for outstanding safety performance in the mechanical insulation industry. NIA created the award program more than a decade ago to recognize top companies that have established structured safety programs to ensure the well-being of their employees and create safe working environments.

NIA's Safety Award program honors 4 levels of excellence: Platinum, Gold, Silver, and Bronze for Associates (Manufacturers), Contractors, Distributors/ Fabricators, and Metal Building Laminators.

NIA's Executive Vice President/CEO Michele M. Jones said, "NIA applauds our member companies who have received NIA's highest honor for safety. We are very proud to have 28 Platinum winners and 6 first-time applicants this year. It is essential for NIA to support the efforts of these outstanding companies, as safety is a cornerstone of our industry. Congratulations to all of this year's winners."

Throughout the judging process, applicant companies remain anonymous and winners are evaluated on the basis of their overall safety program, means of communication, and safety policy. The judging panel of expert safety professionals includes Health and Safety Committee leadership and NIA's General Counsel Gary Auman of Auman, Mahan & Furry. All applicant companies receive an individualized and detailed Safety Training Analysis Results (STAR) Report. The STAR Report includes personalized recommendations based on each applicant's answers to the application questions.







Manufacturer category winners are:

Bronze:

• Polyguard Products, Inc., Ennis, TX Gold:

- Proto Corporation, Clearwater, FL
- Platinum:
- Armacell, Chapel Hill, NC
- CertainTeed Corporation, Malvern, PA
- · Dyplast Products, LLC, Miami, FL
- ITW Insulation Systems, Houston, TX
- Owens Corning, Toledo, OH

Contractor category winners are:

Bronze:

• L.C. Insulations, Inc., Lititz, PA

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- Gagnon, Inc., St. Paul, MN
- hth Companies, Inc., Union, MO
- Triangle Enterprises, Inc., Paducah, KY

Gold:

- BC Flynn Contracting, Oxford, CT
- Hawkeye Insulation Specialists, Inc., Cedar Rapids, IA
- Smart Energy Insulation, Farmington Hills, MI

Platinum:

- Advanced Energy Protection, LLC, Greenwood, IN
- Advanced Industrial Services, LLC, Toledo, OH
- Advanced Nuclear, LLC, Greenwood, IN
- Advanced Specialty Contractors, LLC, Aston, PA
- APi, Inc., New Brighton, MN
- ATI, Inc., Grand Junction, CO
- · Atlantic Contracting & Specialties, LLC, Hicksville, NY
- · Cornerstone Services Group, LLC, Kansas City, MO
- DKB, Inc., Pasco, WA
- · Gribbins Insulation Company, Inc., Evansville, IN
- Industrial Construction & Engineering Co., St. Peters, MO
- · Iowa Illinois Taylor Insulation Company, Davenport, IA
- I-Star Energy Solutions, East Petersburg, PA
- L & C Insulation, Inc., La Crosse, WI
- Luse Thermal Technologies, Aurora, IL
- · Performance Contracting, Inc., Lenexa, KS
- · QCI Thermal Systems, Inc., Iowa City, IA
- · Thermal Solutions-Ohio, Inc., Proctorville, OH

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· Ideal Products of America, LP, Malvern, PA Platinum:

- Bay Insulation Systems, Inc., Green Bay, WI
- · Extol of Ohio, Inc., Norwalk, OH
- FBM-SPI, Tustin, CA
- · Shook & Fletcher Insulation Co., Birmingham, AL

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Bay Insulation Systems, Inc., Green Bay, WI

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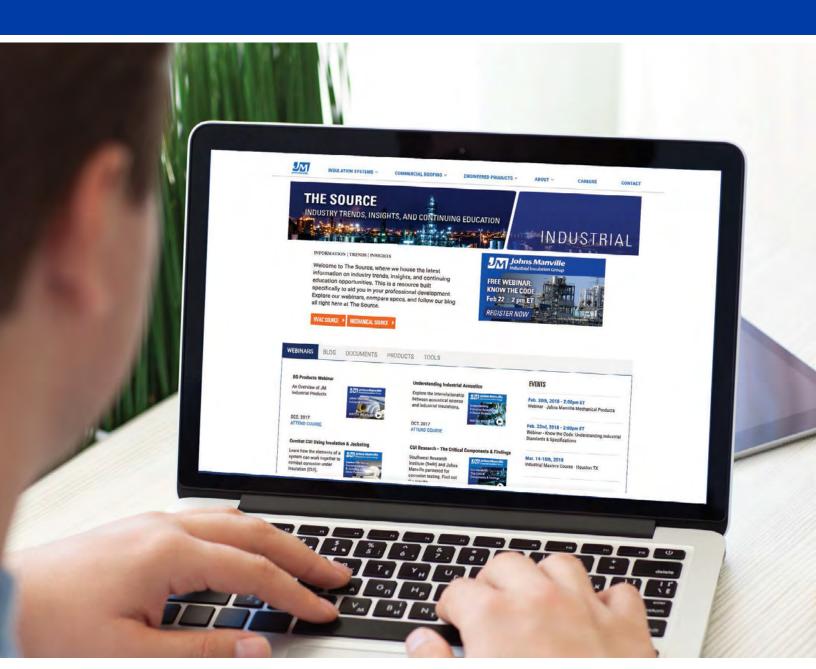
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EMPLOYMENT OF YOUNG WORKERS



A list of minors employed and a written record of the hours worked and rest breaks taken must be maintained for two (2) years ith summer • often comes employment of • young workers. This answers

many of the common guestions • about restrictions imposed by state and federal wage-hour laws. In general, the type of work that a minor may perform is related to the youth's age, the nature of the work and schooling status. State and federal laws vary somewhat so pay attention to your state's regulations. Here is a basic summary:

14 and 15 year olds:

- can work up to 3 hours on a school day, Monday through Friday and 18 hours during a school week.
- can work up to 8 hours a day • on a non-school day, or 40 hours in a non-school week.
- cannot work during school hours.
- cannot work before 7:00 a.m. or after 7:00 p.m. when school is in session (except from June 1 through Labor Day when evening hours are extended to 9:00 p.m.)
- cannot work in any manufacturing, processing, 2. mining, construction, warehouse operations, maintenance or repair of machinery, and many restrictions apply in cooking.
- cannot work in any of the 17 Hazardous Occupations listed below, for "16 and 17 year olds."

- cannot load/unload trucks.
- cannot use power driven 4. Logging and sawmilling machinery, mowers or cutters.
- Under federal law the prohibited occupations for minors under 16 includes such things as outside window washing from ladders, work in boiler/engine rooms vehicles using lifting apparatus or tire inflation of removable rims, mowers and cutters.

16 and 17 year olds:

- While federal laws do not restrict the number of hours 9. Mining other than coal mining or times of day that workers be employed, many states do so and these state restrictions primarily address work during the school day.
- in any occupation except those declared hazardous by the Secretary of Labor. The 17 Hazardous Occupations for non-farm work deal with the following:
- 1. Manufacturing or storing explosives
 - Driving a motor vehicle as primary job or being a vehicle 16. Roofing operations outside helper -- but 17 year olds can perform incidental/ occasional daytime driving for vehicles not exceeding 6.000 • pounds within a 30 mile radius of the place of employment

- 3. Coal mining
- 5. Powerdriven wood working machines

CSIA

- is broader than it appears and 6. Exposure to radioactive substances and to ionizing radiations
- and work in connection with 7. Powerdriven hoisting apparatus, including forklifts, bobcats and skid-steers
 - 8. Powerdriven metal forming, punching and shearing machines
- 16 years of age and older may 10. Meat packing or processing (including powerdriven meat slicing machines)
 - 11. Powerdriven bakery machines
- 16 and 17 year olds can work 12. Powerdriven paper products machines
 - 13. Manufacturing brick, tile, and related products
 - 14. Powerdriven circular saws, band saws, wood chippers, and guillotine shears
 - 15. Wrecking and demolition

 - 17. Excavating operations
 - Door-to-door sales/solicitation is permitted at age 16 under certain restrictions and swimming pool lifeguarding

is permitted at age 15.

18 year olds:

• can work in any job for unlimited hours

Parental employment:

A parent's employment of his own child under the age of 16 is permissible in any occupation other than manufacturing, mining or in any of the 17 Hazardous Occupations listed above.

Apprentice/Student Learners:

Occupations hazardous for children between ages 16-18 do not apply to apprentices or student learners but restrictions on this include the child must be enrolled in a formal apprenticeship program or state cooperative vocational training program. Other restrictions apply.

State laws:

State laws related to employment of minors vary from federal requirements and frequently are more restrictive. Employers should review the requirements of the states in which they do business. For example, Ohio requires a written wage agreement specifying the rate of pay for the youth.

Other laws:

Employment laws such as workers' compensation, safety, minimum wage/overtime and discrimination are equally applicable to young workers.

Minimum wage:

\$7.25 federal minimum wage unless \$4.25 "youth sub-minimum wage" used for first 90 days.

\$8.30 Ohio minimum wage as of January 1, 2018.

Rest period:

Under Ohio law and some other states' laws, employees under eighteen must receive a 30 minute uninterrupted rest period (unpaid) after the first five hours of work.

Penalties:

Employers who violate the Fair Labor Standards Act child labor law provisions are subject to a civil money penalty of up to \$11,000 for each child labor violation and \$50,000 for a violation which causes the death or serious injury of a minor. Imprisonment can occur for repeated infractions.

Record keeping:

A list of minors employed and a written record of the hours worked and rest breaks taken must be maintained for two (2) years. Ohio requires a written agreement related to the compensation to be received and the display of a poster is also required.

Developments:

In May 2018, the Labor Department announced an initiative to unwind decades-old child labor restrictions by allowing teenagers to work longer hours in some of the most hazardous occupations – primarily 16 and 17 year-old apprentices and student learners – a method to provide youths with more workplace opportunities.

This summary cannot provide all of the requirements for employing minors. If you wish additional information, contact **Bob Dunlevey**, Board Certified Labor and Employment Law Specialist at **Taft/ Law** at (937) 641-1743 or email rdunlevey@ taftlaw.com.

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AVOID EMPLOYMENT CLAIMS BY AVOIDING **"DESPERATION HIRING"**

Help wanted signs increasingly are starting to litter the business landscape.



By: Steve Watring Auman, Mahan & Furry



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nline help wanted postings are on the rise. It is rapidly turning into an "employee's market" in which jobs are more plentiful than qualified and quality workers.

This dynamic often leads to what I refer to as "desperation hiring." You need someone to do the work. You need them to start yesterday. You find a candidate that looks qualified. You are concerned that someone else will beat you to the punch and hire them out from under you. You move too quickly. You take some shortcuts in the screening process. You miss or disregard some red flags.

A desperation hire can work out, but it is high risk. The reality is that desperation hiring usually is better for your attorney's business than it is for yours. This is because today's desperation hire frequently cultivates in the petri dish until it flourishes into a full blown employment problem: next week, next month or next year. Just give it time.

In our firm's employment law group, we frequently say that 5% of the employees create 95% of the employment problems. There is only one reason we say that...because it's true! And what is worse, sometimes that one desperation hire spreads problems like a virus, and infects the other 95% of your workforce as well.

The best solution is relatively simple. The single best way to limit employment problems is to screen out that 5% before they become your employees, and your problem. The single best way to do that is to establish and exercise good applicant screening practices. Avoid desperation hiring by taking a disciplined approach and sticking to those practices even in an "employee's market." Furthermore, try to get others in your organization (yes, even your bosses) to buy into and follow those practices. Show them this article if necessary. While it cannot always be controlled, a manager's back door job offers to

acquaintances still are subject to the 5% rule. And a mistake in hiring a management level person can be even more catastrophic for your organization.

While applicant screening steps can vary depending on your business and the position involved, here are a few precautions that every employer should at least consider including in its screening process:

- Develop a good employment application! Our model application (updated this year) is available on our website www.amfdayton.com for those who are interested.
- Require a completed employment application for all applicants-NO EXCEPTIONS! And actually take the time to scrutinize the application. A partially completed or poorly completed application alone can be a red flag. A resume is fine, but it is no substitute for a completed application.
- Utilize proper interviewing techniques! Watch for red flags along the way.
- Conduct drug testing! Remember that a drug test is NOT considered to be a medical examination under the ADA. Ideally, a drug test should be conducted AND the results received before an offer is made, not after. Just the fact that you drug test can deter substance abusers from pursuing employment with your business.
- Conduct background checks! Remember to follow the requirements of the Fair Credit Reporting Act.
- Conduct skills, competence, intelligence or personality testing! It is amazing how few employers take advantage of this. I equate it to looking under the hood before you buy a car. If the job requires that an employee be able to hit a nail with a hammer, why not

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Central States Insulation Association

require them to demonstrate that ability before you hire them? The testing doesn't always have to be elaborate or expensive, and the legal restrictions are fairly easy to navigate.

- Conduct an internet or social media search! Whether or not you are conducting background checks, there sometimes is a wealth of information available concerning the applicant on the internet. While there are some legal pitfalls and risks associated with such searches, more often than not the benefits outweigh the risks. Sometimes these searches can tell you more about a candidate than anything else.
- · Check references from prior employers! Remember that a letter of reference is no substitute, and may actually be a warning sign. Make sure you direct the reference inquiry to the proper person or department, which may not be where the employee wants you to direct it. Don't settle for a reference from someone that is no longer with the organization. Checking references is one of those unpleasant tasks that is easy to find an excuse not to do. While it can be a frustrating process, just do it. Think of it as business networking! Always ask if your applicant would be rehired or is eligible for rehire. It is the one question that I recommend that every employer asks and that almost every employer answer (with very limited exceptions). And the answer often tells you all you need to know.
- Make your offers conditioned on medical examinations or inquiries! The EEOC has indicated that the window of time between a conditional offer and the final offer is the time when the employer's right to make medical inquiries is the broadest. The inquiries don't even have to be job related! The main restriction is that the inquiries are made of all job offer recipients for the same position.

True, even if you get unfavorable information, it may be necessary to proceed with the hire. But sometimes it is a basis for rescinding the offer. Either way, you want to be able to make an informed decision.

- Remember that you are allowed to make subjective judgments! How did the person interview? Are there concerns that the applicant did not adequately address? Would the person be a good fit for your organizational culture? What do your instincts tell you? True, you have to be prepared to defend against discrimination claims. At the same time, your right to make subjective hiring decisions is one of the reasons that failure to hire claims are among the least common and easiest to defend.
- Document, document, document! You want to be able to prove the steps that you took and your reasons for rejection of an applicant. Remember that under Ohio law, discrimination claims can be made five years after the alleged discrimination occurred. Are you going to be able to prove why you rejected an applicant five years ago?

Not all of these ideas are right for all employers and for all jobs. But all of them are part of the menu of options that you should be considering as part of your applicant screening process. If you have your process in place so that it goes smoothly, the associated delay can be kept to a minimum. It can even project to that hot prospect that you are a sophisticated employer that knows what you are doing!

Desperation hiring can open your doors to the very workers that you want to keep out of your work force. Reduce employment claims later by developing and exercising good hiring practices now!



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CSIA Safety Award Winners

Central States Insulation Association (CSIA) Announces the 2017 "Best Practices in Safety" Award Winners

Lexington, Kentucky - April 25, 2018 – The Central States Insulation Association (CSIA) announced the 2017 "Best Practices in Safety" Award Winners at its Annual Labor Conference, Symposium and Golf Outing.

As we place an ever increasing value on safety in the workplace, the CSIA Board of Directors decided there was a need for a regional program to underscore the importance of safety. They wanted a program that would not only recognize top companies that have established structured safety programs to ensure the well-being of their employees and create safe working environments, but also assist our members in improving their safety programs.

CSIA's Safety Award program currently caters to its Contractor Member Firms and honors 4 levels of excellence: Platinum, Gold, Silver, and Bronze. CSIA hopes to expand the program to its Manufacturer/ Supplier and Distributor/Fabricator Members in the near future.

The judging process is carried out by workers' compensation and occupational safety and health law expert, Gary Auman of Auman, Mahan & Furry and the applications are graded anonymously. Following the grading process and receipt of the award, Gary will send each participant a detailed multi-page letter explaining why they received the score they did. The goal of the program is self-improvement. After receiving Gary's letter the applicants are urged to review their program and make some if not all of the suggestions in Gary's letter and to reapply next year. Each year CSIA will change out some of the questions so that eventually we will cover the entire safety program of our members.

Congratulations to all of this year's winners!

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- Smart Energy Insulation Farmington Hills, MI
- American Mechanical Insulation Sales, Inc.-Farmington Hills, MI

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