



CENTRAL STATES INSULATION ASSOCIATION'S

INSULATOR

July 2020

OSHA Update

OSHA Raises the Bar For Investigating the Work-Relatedness of COVID-19 Cases

Business Management
How to Work Through Customer Conflicts

Business Culture
I Am Not Your Bystander

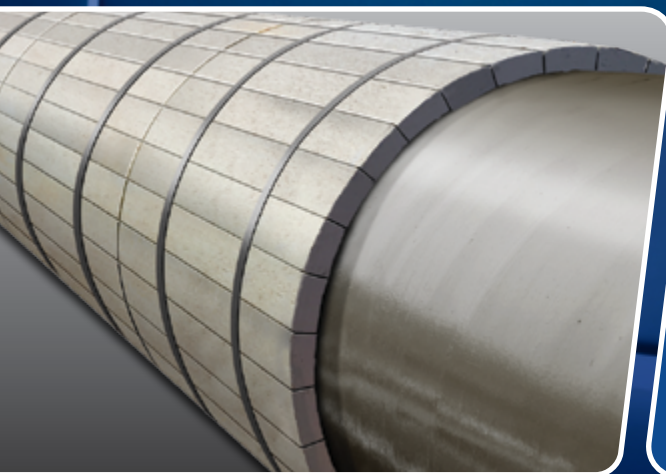
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INSULATOR

Magazine



editor
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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Presidents Message

Brad Viers - Advanced Industrial Services, LLC



PRESIDENT
Brad Viers

NAVIGATING A SAFE RETURN TO WORK

Have you ever driven into a brick wall cruising at a leisurely 60 MPH? Well, neither have I. However, the first half of 2020 certainly comes close. With this immediate stoppage to our day to day activities comes time to reflect, analyze, listen, encourage, prepare, plan and ultimately restart our operations. We all have faced a tremendous amount of personal and professional challenges over the past several months. Remaining self-isolated in our homes has removed us all from loved ones, friends, social gatherings, work, sports, hobbies, etc. leaving us with the question of “How we are ever going to return to normal?”.

As we sit here in late July and reflect, we see cause for optimism. Many of our states have partially or fully reopened. People are coming out of their homes and reengaging social behaviors on their terms. Projects are opening back up with new safety guidelines. Many of the social activities we took for granted have begun to resume. Spending holidays such as Father’s Day weekend with loved ones certainly feels much different than a Zoom call for Easter and Mother’s Day.

The last thing any employer wants to do is start a new coronavirus hotspot within your office, workplace or jobsite. The idea of working through the process will likely be frustrating, irritating, disjointed and full of starts, stops, mobilizations and demobilizations. You will need to plan accordingly to effectively navigate this rocky path and lessen exposure to all of your team members.

Within our Toledo office, we have slowly begun to resume safe work activities. Customers are looking for face to face meetings again. Lunches, golf games and entertainment are on the horizon. The need for administrative support is increasing as projects kick off and hours are being reported. Managers and estimators are seeing increased bid activities. Delayed and postponed projects need revisiting and restart plans discussed. Operations are requesting support to pull together project materials, equipment and safety plans. Owners are requesting safe start plans for their projects and looking for backup related to screening processes.

There are many ways to address day to day operational requirements while maintaining a safe workplace. Creating a safe and effective return to work program is critical to getting your operation off the ground and running. The last thing any of us want to do is lose the confidence of our team, customers and peers due to a lack of planning related to this virus. Preparing yourself and your company for the foreseeable future is critical to maintaining operations and keeping yourself viable in the marketplace.

How do we prepare to safely reopen our workplace?

Working from Home

If you have team members that can perform work from home, encourage it. Ensure they have the tools needed to accomplish their tasks while working remotely.

Workplace Safety Management

Create a safe return process: Distancing floorplans, sanitized workstations, staggered work shifts, scheduled cleaning tasks, masks/PPE requirements in common areas.

Limit Visitors

Reduce onsite exposure by limiting the number of guests permitted to visit the jobsite or office. When guests are permitted ensure they follow the same screening requirements as your team members. Consider leaving your office doors locked to reduce walk-in traffic. Work with local postal services, UPS and Fed Ex drivers for delivery drop sites.

Virtual Meetings

Hold meetings remotely where / when possible. Zoom, Teams, Skype are all solid options to hold virtual meetings.

Employee Readiness Surveys

Consider gauging your team's readiness to return to the office or jobsite. A quick online survey, phone call or email will provide you with important information on how and when your team is ready to fully reengage into the workplace.

Employee Health Screenings

Verify employees meet workplace entry requirements through onsite screening. Provide your team with the tools needed: Such as screening stations at point of entry that should include digital thermometers, hand sanitizer, wipes, daily logs to record date, time, temperature, etc.

Workplace PPE Inventory Management

Manage your PPE inventory across locations and facilities to meet the physical safety needs of your workforce.

As managers and leaders, we must try to understand

the challenges these new situations have created for our teams. Ensuring that we are accounting for employees' individual circumstances while listening to their needs, health issues, childcare and personal concerns are critical to your operation. It is our responsibility to establish a viable workplace policy that addresses the safety needs of all employees while maintaining a healthy working atmosphere. Knowing that we have created and implemented a safe return to work program will go a long way in maintaining employee confidence and reducing potential coronavirus exposure.

As we move through these coming summer months, it is certainly my hope that our combined efforts will assist in reducing the spread and help all of you in returning to some sort of normal.

Brad Viers

CSIA President

Advanced Industrial Services, LLC



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Directors Message

COME OUT STRONGER ON THE OTHER SIDE



The life of a business (or Association) can be appreciated in similar ways to our own lives. As we get older, we hopefully grow wiser by gaining knowledge from past relationships, jobs, and life events, whether good or bad at the time. In retrospect, we may see our life's journey as a series of planned events and personal decisions, and it can be a comforting feeling if you believe life turned out the way you envisioned. But, our lives (and business) today may possess more chaos and uncertainty than usual. While uncomfortable, we all must remember that there is nothing wrong with that. Just like life, our businesses are a constant struggle between trying to control the chaos and uncertainty and trying to find ways to embrace and enjoy it, and maybe even use it to our advantage.

The unforeseeable COVID-19 pandemic has undoubtedly turned the entire world on its head and people's businesses and personal lives are feeling the effects. With many cities and states still on lockdown, and no vaccine in site for the near future, events are still being cancelled, travel is still restricted, materials are delayed, clients are anxious, and legal issues may be creeping in all while health and safety for everyone must be kept at the forefront.

Times are certainly tough, but despite the challenges, we must not forget that we have all gone through struggles both in our personal lives and in our businesses and in one way or another, we have overcome, and possibly come out stronger on the other side. Let us take this time of uncertainty and try to make the best of it. Maybe having your children at home instead of in a traditional school

setting everyday can also be a chance for memories to be made. Maybe those cancelled meetings and events have forced you to learn a new technology that will make running your business easier or more convenient in the future. Maybe having no where to go has freed up time otherwise spent driving back and forth to the office and has forced you outside where you have gotten back in touch with nature and your health. Maybe holding up job contracts or waiting on material has given you the opportunity to train employees in other areas that were previously pushed aside due to time constraints, or allowed you to step up your company's safety program.

Staying positive and trying to see the bright side is the only way we are going to successfully get through this. I urge you to have faith in yourself in dealing with these challenges and these changes as we all push through these times. We're all in this together, and together we can build ourselves as individuals, as members of a business, and as members of an association.

Rachel A. Pinkus
CSIA Executive Director

CENTRAL STATES INSULATION ASSOCIATION (CSIA) ANNOUNCES THE 2019 “BEST PRACTICES IN SAFETY” AWARD WINNERS



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 Member Firms and honors 4 levels of excellence: Platinum, Gold, Silver, and Bronze.

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 sends the applicants a detailed multi-page letter explaining why that firm received the score they did. The goal of the program is self-improvement. After receiving Gary's letter, firms are urged to review their program and make some, if not all, of the suggestions and improvements outlined in Gary's letter. Members are encouraged to re-apply every year as 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!

PLATINUM:

Advanced Energy Solutions
Advanced Industrial Services
American Mechanical Insulation Sales
Extol of Ohio, Inc.
Michigan Mechanical Insulation
Performance Contracting, Inc.
R.L. Bondy Insulation Co.
Thermal Solutions – Ohio, Inc.

GOLD:

Geo V. Hamilton, Inc.
Gribbins Insulation Co.
M&O Insulation

BRONZE:

Distribution International

CSIA Company Safety Program Template - Now Available!

The Central States Insulation Association (CSIA) has published a customizable Safety Manual for its members. The template was developed by the Legal Counsel at Auman, Mahan & Furry specifically for mechanical insulation contractors to address your company's specific safety needs.

Occupational Safety and Health Administration (OSHA) regulations are updated frequently, and the industry standards are continuously subject to developments in technology, products, and equipment. The most important directive, no matter the size of the business, is to train employees in hazard recognition and protective equipment. As job sites are changing constantly, workers need to identify hazards as they arise. In response to daily safety challenges faced in the industry, general guidance is provided for contractors to develop safety rules and programs.

The CSIA's Safety Manual, which is available now to CSIA members only, addresses every conceivable issue, from fall protection to fire safety to prevention of mobile phone distraction.

Safety for the men and women on the job sites is always a top priority. Be sure to get the Safety Manual and use it!

The CSIA Safety Manual Template is available for purchase for just \$300 per year. Your company will be provided with the entire template and all manual updates arising from changing OSHA regulations. Just contact the CSIA Office at 937-278-0308 or csia@assnsoffice.com.

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NIA ANNOUNCES NEW 2020–2021 EXECUTIVE COMMITTEE AND BOARD OF DIRECTORS OFFICERS

Herndon, Virginia—June 18, 2020—The National Insulation Association (NIA) is pleased to announce its officers for 2020–2021, led by NIA's new President, John T. Lamberton. The Executive Committee officers assumed their positions on Wednesday, May 27, in conjunction with the NIA Board of Directors meeting that took place virtually. On June 18, the full slate of officers and representatives assumed their positions following a majority vote by the NIA membership during NIA's special Business Session, which also took place virtually. NIA's Board of Directors normally assume their new roles at the conclusion of NIA's Annual Convention, which was scheduled for April and canceled due to COVID-19 safety concerns.



A special congratulations goes out to CSIA Members Brian Willett with Gribbins Insulation Company, Inc. and John Stevens with Thermal Solutions – Ohio, Inc.

The 2020–2021 Executive Committee members are:

- President: John Lamberton, Irex Contracting Group



President
John Lamberton
Irex Corporation



President-Elect
Dave Cox
Owens Corning



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Joe Leo
Atlantic Contracting &
Specialties, LLC



Assistant Treasurer
Laura Wells Dover
Dover Insulation, Inc.



Immediate Past President
Dana Vlk
Distribution International, Inc.

- President-Elect: Dave Cox, Owens Corning
- Secretary/Treasurer: Joe Leo, Atlantic Contracting & Specialties, LLC

- Assistant Treasurer: Laura Wells Dover, Dover Insulation, Inc.
- Immediate Past President: Dana Vlk, Distribution International, Inc.

Regional Board Members

- Brian Willett, Gribbins Insulation Company, Inc., representing the Central States Insulation Association (CSIA)
- Jerry McCaffrey, Thermal Solutions Contracting, Inc., representing the Eastern States Insulation Contractors Association (ESICA)
- Jeffrey DeGraaf, Industrial Construction & Engineering Co., representing the Midwest Insulation Contractors Association (MICA)
- Matt Caldwell, Caldwell Insulation, Inc., representing the Southeastern Insulation Contractors Association (SEICA)
- Mike Feehery, Specialty Products & Insulation, representing the Southwest Insulation Contractors Association (SWICA)
- Rick Sutphin, Performance Contracting, Inc., representing the Western Insulation Contractors Association (WICA)

At-Large Members

- Mellanie Askew, Coverflex Manufacturing, Inc.
- Vince Darder, BrandSafway Services, LLC
- Jake Erickson, Armacell (Associate)
- John K. Freeman, Petrin, LLC
- Rudy Nigl, L & C Insulation, Inc.
- John Stevens, Thermal Solutions—Ohio, Inc.

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- Jack Bittner, Johns Manville

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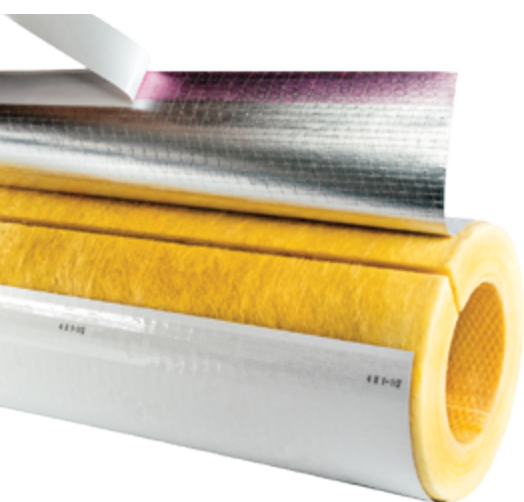
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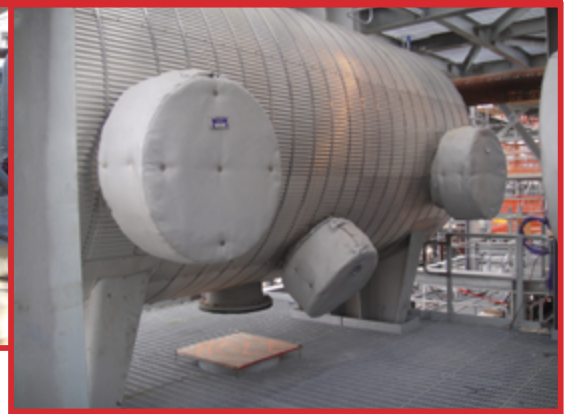
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The Construction Labor Research Council

The Construction Labor Research Council (CLRC) is the nation's foremost resource for data and research on union crafts in the construction industry. For well over 30 years its work has earned the respect of, and credibility with, both labor and management for its fair data analyses and rigorous methodologies. The CLRC database for wages and fringe benefits contains information on hundreds of contracts in over 200 cities for 18 crafts. CLRC serves as a key resource on labor costs, market share, workforce needs, labor contract terms, safety, and associated topics.

CLRC is sponsored by 11 management associations in the construction industry.

- Associated General Contractors of America (AGC)
- Central States Insulation Association (CSIA)
- FCA International (FCA)
- International Council of Employers of Bricklayers and Allied Craftworkers (ICE)
- Mechanical Contractors Association of America (MCAA)
- National Association of Construction Boilermaker Employers (NACBE)
- National Electrical Contractors Association (NECA)
- National Fire Sprinkler Association (NFSA)
- North American Contractors Association (NACA)
- Sheet Metal and Air Conditioning Contractors' National Association (SMACNA)
- The Association of Union Constructors (TAUC)

In addition to doing work directly for these associations, CLRC offers consulting services to their regional chapters/affiliates and others. The other side describes some of our most popular reports.

- Market Share Study*
- Union-Nonunion Wage and Fringe Benefits Comparison*
- Benchmark Analysis*
- Contract Costing*
- Survey Development, Administration and Analysis
- Workforce Planning
- Custom Work

*For members of the associations listed above, the cost for each of these reports is \$2,500. For more information on CLRC's products and services, please contact Carey Peters, Ph.D., Executive Director, at clpeters@clrcconsulting.org or 865-414-2678.

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CLRC Custom Reports

Report	Description	Benefit
Market Share Study	Shows what percent of a given occupation (e.g., plumbing/ pipefitting, carpenters) is worked by union contractors.	Allows management and/or labor to more precisely define their share of the market, and more importantly, the trend over time. Also, can document the impact of specific programs (e.g., market recovery, new classifications).
Market Share Study with Sectors	Adds to the standard Market Share Study by breaking market share into sectors: Residential, Commercial, Service and Industrial	Gives more understanding and greater precision by showing how market share compares among different segments of the market.
Union-Nonunion Wage and Fringe Benefits Comparison	Compares a specific local's wage and fringe benefits package to nonunion data for that craft in the same geographic region.	Tangibly shows the difference in both dollars and percents between union and nonunion pay and fringe benefits.
Benchmark Analysis	Graphs actual wage and fringe benefits rates compared to indexes (e.g., CPI, nonunion) over time to show the trend.	Compares actual pay to what it would have been using an index.
Contract Costing	Provides a detailed cost analysis of 8-12 categories in a contract (e.g., 2 nd shift, foreman ratio, clean-up time) on a per employee per hour and total contract cost basis.	Helps the parties in collective bargaining better understand the real costs associated with contract language clauses.
Survey Development, Administration and Analysis	A survey is a valuable means of collecting information from key constituents (e.g., owners, contractors).	Survey results provide a useful summary of one or more topics as well as guidance for future actions.
Workforce Planning	Evaluates a specific local's employment trends and combines that with growth projections to determine future workforce needs.	Provides useful data for planning apprentice classes, understanding workforce demographic information (e.g., average age, number close to retirement), and related topics.
Custom Work	Tell us what you are looking for, we can probably help you.	Offers you greater understanding and useful data to use during collective bargaining or internal business decisions.



HOW TO WORK THROUGH CLIENT CONFLICTS

Have you ever had an upset customer? Take heart, we all have. Surprisingly, studies show that 96 percent of dissatisfied clients don't complain. At least not to you.



By: Ted Janusz

Studies also show that of the customers who do complain, between 54 and 70 percent will do business again with the organization if the complaint is resolved. The figure soars to an incredible 95 percent if the client feels that the complaint was resolved quickly.

In addition, if you handle your customer's situation when they complain using the insights in this article, not only might you keep that client but you may also be able to turn them into a customer evangelist for your company.

Word-of-mouth is the most effective form of marketing for your business, since up to 80 percent of consumer choices are the result of personal recommendations, from family, friends, or online resources.

“Treat Me the Way I Want to Be Treated”

One of the ways to provide great customer service is through “personality-based issue resolution,” as

discussed by Matthew Dixon, Nick Toman and Rick Delisi in their book **The Effortless Experience**.

The authors relay the results of the efforts of Bradford & Bingley, a United Kingdom-based financial services firm, which reported a 20 percent increase in “willingness to recommend” and a 40 percent decrease in repeat customer calls after using this approach.

It's a process that allows you to make an educated guess about the personality profile of any customer, typically within no more than thirty to sixty seconds.

The four basic profiles of customers (and the names I have assigned them):

1. The **Analytical**, who needs to analyze and understand
2. The **Amiable**, who leads with their emotional needs
3. The **Administrator**, who just wants what they

want, when they want it

4. The **Associator**, who loves to talk and show off their personality

The best part, say Dixon, Toman and Delisi, is that the process only requires you to ask no more than three questions in your quest to determine the personality of your customer:

1. **Is the customer's issue complex?** If *no*, you do not need to continue the diagnosis process. If the customer's issue can be resolved quickly and easily, there is really no need to do anything besides be courteous and professional. In fact, for simple-issue situations, treat all customers as **Administrators** – just get them what they need as quickly and politely as possible.

But if the customer's issue *is* a complex one (such as a billing dispute), the authors advise to listen carefully to the words the customer uses to describe their issue. Continue with these questions ...

2. **Is the customer issuing clear directives?** If the answer is yes, then the customer is likely an **Administrator**. No need to further determine their personality, just promptly and concisely answer the customer.
3. But if the answer is “no,” then ask the third and final question: **Is the customer displaying “emotional” behaviors?** If not, they are probably an **Analytical**. However, if the answer is yes, they are likely an **Amiable** or an **Associator**. What's the difference? **Amiables** want their personal point of view to be taken into consideration while **Associators** like to entertain, joke, and chat.

How to Handle Each of the Four Personalities

The **Analytical** is **process-oriented**. Their mantra is, the authors state: *Take the time to fully explain the resolution steps and allow me to talk.*

Remember:

- Do not interrupt
- Explain the process to resolve the issue
- Slow down the pace of the conversation

Be sure to demonstrate

- Good listening skills
- Thoroughness
- Clarity

The **Amiable** is **empathy-oriented**. They request that you, *“Understand how I feel and take a*

sympathetic approach to resolve it.”

Remember:

- Call me by my name
- Assure me that my issue will be resolved
- Show how you are personally involved

Be sure to demonstrate:

- Empathy
- Patience
- Understanding
- Sincerity

The **Administrator** is **results-oriented**. They demand, *“Don't spend time on unnecessary details, just resolve my issue!”* Or as my father-in-law, Mr. Administrator Extraordinaire, asserts, *“Answer the question asked!”*

Remember:

- Directly address my issue
- Speed up the pace of the conversation
- Provide a clear timetable for results

Be sure to demonstrate:

- Confidence
- Your ownership of the issue
- A “can do” attitude

The **Associator** is **social-oriented**. They will eventually get around to telling you, *“Treat me like a person; don't provide me with generic answers.”*

Remember:

- Maintain an informal tone
- Do not provide scripted answers
- Mention personal information, if appropriate

Be sure to demonstrate:

- A sense of humor
- Creativity in your resolution
- Friendliness

Employ the Platinum Rule

The key to resolving customer issues is the Platinum Rule: “Treat your customers the way they would like to be treated, not necessarily the way that you would

(continued on pg 16)

(continued from pg 15)

like to be treated.” The faster and better you are able to employ the Platinum Rule, the more issues you will be able to resolve and the more customers you will be able to retain.

A Quick Case Study

On a recent sales call, I encountered an **Administrator**, who was yelling objections at me even before he entered the room.

I am an **Analytical-Amiable**, so my natural reaction would be to reply, “Oh, I’m sorry. I’ll just escape outside a side door here. You have a good life, okay?”

But something came over to me. Instead, I went over to the **Administrator’s** desk, picked up a book, slammed it down and commanded, “Let me tell you something!”

I saw the **Administrator** straighten right up and puff out his chest. I could almost hear him thinking, “Alright, an **Administrator** ... just like me! Let’s go at it!”

And I was thinking, “This process really works!”

“Seek First to Understand”

Do you see yourself or your employees in one (or more) of these four personality styles?

Why wait until you have conflicts in the office to employ a personality-based process to more effectively deal with others?

Be proactive! You and your employees can take a free personality-based assessment at www.personalityperfect.com. Once you get the results, discuss how you can improve interactions both within the office and with your customers.

As members begin to leave their homes and again attend conferences, they are eager to interact with their fellow members. Ted Janusz facilitates a different kind of opening session, “Creating Strategic Relationships: Here and Now.” Rather than just sit and listen to a speech by a speaker, participants begin the networking they can continue through the rest of the conference. ted@januspresentations.com

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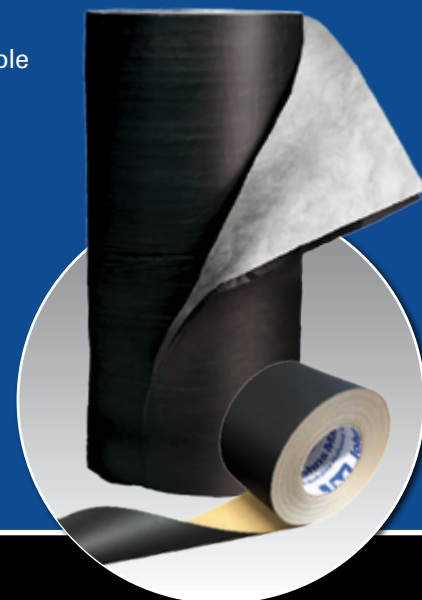
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CAN USING CBD OIL RESULT IN A FAILED DRUG TEST?

THE ANSWER MAY SURPRISE YOU...



By: Nadia A. Lampton

employers should take time now to review their substance abuse policies to see how those policies would treat CBD products



If you thought you had a handle on marijuana issues in the workplace, get ready for a curveball. Employers in Ohio have been grappling with marijuana-related issues for the last couple of years. Despite the time that has elapsed since medicinal marijuana was legalized in Ohio and nearby states, as well as the flood of states that have legalized the recreational use of marijuana, many questions remain unanswered and new issues have emerged. One such issue relates to the use of the seemingly innocuous line of “CBD” products, such as oils, topical lotions, bath bombs, vape pens, and even chewable gummies. These sorts of CBD products have been all the rage, with many companies selling CBD products, such as pills and oils, and marketing them with claimed medicinal properties. This hype can be described as nothing less than a national phenomenon, with CBD making headlines across national news (or commentary) outlets over the past several months:

- “Sunsoil USDA Certified Organic CBD” – Daily Beast
- “Best CBD Oil for Anxiety, Depression and Stress” – Observer
- “50 Best CBD Oil Companies of 2020” – Austin Chronicle
- “The Only 10 CBD Products That Are Worth Your Money, According to Our Editors” – Yahoo! Lifestyle
- “Here are the Best CBD Products of 2019 That Are the Real Deal” - HuffPost

But, beware of the CBD buildup! Claims such as “authentic” or “certified” CBD products are a misnomer, and marketing efforts that claim a certain oil or lotion can treat a variety of ailments, such as pain, anxiety, acne, sleep, etc. are, simply put, false – or

at the very least highly misleading. This is because the jury is still out on the actual impact and related side effects of CBD use.

CBD, more formally known as cannabidiol, **is actually a Schedule I drug** according to the Food and Drug Administration because any cannabis with tetrahydrocannabinol (or, THC) levels greater than 0.3% is considered to be marijuana under federal law. Thus, according to the FDA, CBD may not be added to food or drinks or marketed as a therapeutic remedy without FDA approval. As you would likely suspect, **the FDA has not approved any CBD products**, nor has it offered any guidance with respect to CBD use.

Importantly, this means that CBD products currently on the market are **unregulated** with respect to the manufacturing and sale of CBD products, which is further complicated by the fact that nearly 20 states have recently enacted laws that allow for CBD use for the treatment of certain medical conditions. Sounds a lot like the debate over medical marijuana, right? Perhaps one of the starkest differences between CBD products and marijuana, however, is the ease of use of CBD products. Because of the unregulated market, CBD products are incredibly easy to obtain – you can purchase hemp and CBD products on Amazon without any regulation or prescription requirement!

Unregulated CBD use is even further complicated by the fact that **employees who use CBD products may test positive on workplace drug tests**, particularly if they use more than the product’s suggested “serving size.” In fact, this exact scenario has already reared its ugly head in Ohio where an employer was forced to take disciplinary action against a valued employee who had failed a post-accident drug test, which, according to the employee, was the result of CBD use and not recreational or medicinal marijuana use.

(continued on pg 22)

So, how does CBD impact an employer's analysis of workplace drug issues? For now, until the FDA offers guidelines or the Ohio legislature enacts legislative direction, employers should **treat CBD products just as they would marijuana** or any other Schedule I drug. For Ohio employers, this means that nothing under the law requires you to permit or accommodate an employee's use, possession, or distribution of medical marijuana (or CBD products that contain greater than 0.3% of THC), and nothing under the law prevents you from enforcing your company's drug-testing or zero-tolerance drug policy with respect to employees using CBD products.

The issue is complicated, though, when it comes to ADA reasonable accommodations. What if an employee comes to you and says that they need to use CBD oil or lotion to treat a condition, effectively asking for CBD use as a disability accommodation? If the CBD product contains less than 0.3% THC, then it would not be considered a Schedule I drug, and therefore, the employer would have to consider whether an employee's use of CBD products during working time is a reasonable accommodation that would not present a direct threat to the employee or fellow workers. However, if the CBD product contains greater than 0.3% THC levels, then the product is a Schedule I drug and the employer may ban the use of it in the workplace, even if faced with an accommodation request. Unfortunately, similar to marijuana, there is no testing apparatus on the market that can assess the exact level of CBD (or THC) or test an individual's exact level of impairment.

Given the many unknown variables and potential complications associated with CBD products, employers should take time now to review their substance abuse policies to see how those policies would treat CBD products, and they should educate employees

and supervisors on the consequences of violating those policies.



Nadia Lampton is an employment law attorney representing employers. For more information, use your Legal Services Plan and contact Nadia at (937) 641-2055 or email nlampton@taftlaw.com.

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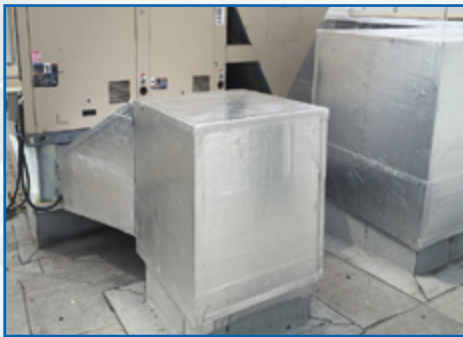
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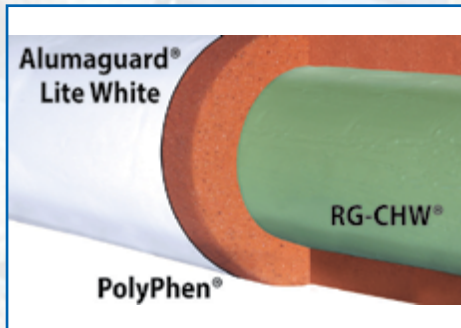
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OSHA RAISES THE BAR FOR INVESTIGATING THE WORK-RELATEDNESS OF COVID-19 CASES



By: Gary Auman



On May 19, 2020 OSHA once again revised its guidance to employers concerning enforcement of the recordkeeping requirements found in 29 CFR §1904, as they pertain to the recording of COVID-19 cases.

From the start of the COVID-19 outbreak in the United States, OSHA has stated that COVID-19 is a recordable illness and must be recorded on an employer's 300 log, if the following three criteria are met:

1. The employee has a confirmed case of COVID-19, as defined by the CDC (meaning that the employee has had at least one respiratory specimen that tested positive for SARS-CoV-2).
2. The case is work-related as defined by 29 CFR §1904.5; and
3. The illness results in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, loss of consciousness, or the illness is a significant injury or illness diagnosed by a physician or other licensed health care professional.

While the first and third criteria are relatively easy to verify, determining the work-relatedness of COVID-19 is particularly difficult for employers when there is known community spread of the virus. In [previous guidance](#), OSHA recognized this difficulty and stated that it would not require employers to determine the work-relatedness of a COVID-19 case (and would not enforce 29 CFR §1904) unless¹:

1. There was objective evidence that a case of COVID-19 may be work related (for example, a number of cases developing among workers who work closely together without an alternative explanation); and
2. This objective evidence was reasonably available

to the employer (including information given to the employer by employees, as well as information an employer learned regarding its employees' health and safety *in the ordinary course of managing its business and employees*).

In practice, this meant that an employer was not required to undertake an extensive inquiry into the potential work-relatedness of an employee's COVID-19, and could rely upon objective information that was reasonably available to it. Unless the causal link between COVID-19 and the workplace became known to the employer through the normal course of operating the business, the employer was not expected to record the case.

However, OSHA has announced that it will now enforce 29 CFR §1904 with respect to employers across all industries,² and has issued [new guidance](#) that raises the bar for employers investigating the work-relatedness of COVID-19 cases.

Effective May 26, 2020, employers must make a "reasonable determination" as to the work-relatedness of employee COVID-19 cases. Now, employers must take affirmative steps to question employees with confirmed cases of COVID-19, rather than simply relying upon information that the employer could learn through the regular course of managing the business. To make a "reasonable determination," employers should "(1) [A]sk the employee how he believes he contracted the COVID-19 illness; (2) while respecting the employee's privacy, discuss with the employee his work and out-of-work activities that may have led to the COVID-19 illness; and (3) review the employee's work environment for potential SARS-CoV-2 exposure," keeping in mind any other workers in the same environment who have contracted COVID-19. OSHA cautions that employers, and particularly smaller employers, "should not be expected to undertake extensive medical inquiries, given employee privacy concerns and most employers' lack of expertise in this area." So the "reasonable determination"

¹ This "hands off" policy did not apply to employers of workers in the healthcare industry, emergency response, or correctional institutions. Employers in those industries were required to continue making work-relatedness determinations on a case-by case basis.

² As always, employers with 10 or fewer employees are not subject to the injury/illness recording requirements in 29 CFR 1904 and need only report cases of COVID-19 that result in death, hospitalization, amputation or loss of an eye.

(continued from pg 27)

is modified by the ability of the employer to obtain information while pursuing the steps enumerated in this paragraph in light of the caution regarding employee privacy concerns and the recognition that most employers do not have expertise in these areas.

In addition to questioning employees, OSHA will continue to look at information that was reasonably available to the employer at the time the work-relatedness determination was made. But, OSHA announced that it will also look at information that the employer learned *later* (after the work-relatedness determination was made) to assess whether the employer's determination was reasonable. This Monday-morning quarterbacking by OSHA places a burden on employers to revisit the "work-relatedness" determination of COVID-19 cases that were not recorded, if subsequent information suggests that the case should have been recorded.

OSHA outlined the types of evidence that would weigh in favor of a COVID-19 case being work related, stating that cases are "likely work related" when several cases develop among workers who work closely together; if contracted shortly after a lengthy and close exposure to a customer or coworker who has the virus; or if the employee's job duties involve frequent and close exposure to the general public in a locality with ongoing community transmission, and if there is no alternative explanation other than workplace exposure. OSHA stated that it would also "[G]ive due weight to any evidence of causation, pertaining to the employee illness, (sic) at issue provided by medical providers, public health authorities or the employee herself."

On the other hand, OSHA acknowledges that an employee's COVID-19 illness is likely not work-related if the employee is the only worker in his work area to contract the virus; his job duties do not include frequent contact with the general public; or if the employee, outside of work, closely associates with someone who has COVID-19.

Last, OSHA clarified that employers must evaluate the work-relatedness of each case using a "more likely than not" standard. OSHA stated, "If, after the reasonable and good faith inquiry described above, the employer cannot determine whether it is more likely than not that

exposure in the workplace played a causal role with respect to the particular case of COVID-19, the illness is not recordable." In other words, a mere possibility that the exposure occurred in the workplace does not make a case recordable.

It remains to be seen whether this new guidance ends up being a distinction without a difference, as many employers are already investigating employee COVID-19 cases to protect their other employees and comply with various state government directives. But, in the event OSHA pays a visit, employers should be prepared to prove they have made a "reasonable determination" as to the work-relatedness of employee COVID-19 cases. When an employer questions an employee with a known case of COVID-19, the questions and responses should be documented by the employer, dated, and stored in a location where the employee's health information will be protected. If an employer decides that a particular case is not work related, it should document any and all reasons supporting that determination. In addition, employers who typically rely upon their workers' compensation insurance carriers to investigate worker claims, should not strictly rely on the insurance company's investigation to determine the work-relatedness of the virus. To comply with OSHA's directive, employers should undertake an independent investigation (which may have to be more extensive than their workers' compensation insurance carrier's investigation) of each claim and arrive at their own conclusions about the work-relatedness of COVID-19 cases. If the employer is in one of the few states that prohibit private workers' compensation insurance the bulk of the investigation on work relatedness will fall on the employer's shoulders. OSHA has made it clear that it is the responsibility of the employer to make the reasonable determination and, therefore the employer will have to defend itself in the case of recordability by demonstrating that it did act reasonably in making its determination.





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5. Identify Principals of Company and Titles: _____

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7. Labor Organizations representing your employees: _____
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I Am Not Your Bystander

This is something I wrote a few years ago.... As we all grapple with the murder of George Floyd and a myriad of African American people by the police and others I thought this again had relevance, pertinence, and was worth re-exploring. I have visited this and updated it for today.



By: Bruce Hodes

Dedicated to keeping its members at the forefront in their industry

Not everything that is faced can be changed. But Nothing can be changed until it is faced.

James Baldwin

It is a cloudy day in Los Angeles, and I am at one of our beloved clients. As I weave my way through the parked white delivery trucks, I notice that much of humanity is represented here by the workforce going about their activities. Everyone is represented, men and women of different races and ages all engaged and doing tasks. Diversity is apparent as I walk into this urban workplace.

Recently, I saw a powerful movie called: 'I AM NOT YOUR NEGRO'. The movie is based on the last writings of James Baldwin. While I knew Mr. Baldwin as a prominent African American thinker, I did not know much about his writings. One of the ideas that impacted me was the idea of institutionalized racism and poverty.

Yes, the urban workplace at my client's is diverse, but the diversity is split, segregated along back of the house manufacturing jobs versus front of the house more executive and technical jobs. This segregation usually occurs from lower paying jobs to the higher paying jobs. The non-white folks are over there, and the white folks are over here.

Where does the segregation cycle start? Mr. Baldwin suggests it starts with separate neighborhoods with high incidents of violence, poverty, and bad schools. You know the neighborhoods that I am referring to. People born into this kind of culture are more likely to not be as economically successful as those born into more affluent surroundings. If you look you can see veracity in this. It is possible to overcome the circumstances and it does happen and it is not likely.

The research holds this up and it intuitively makes sense. This institutionalized racism is not just going away with people with the right attitude pulling themselves up in the workplace. It is unfortunately a much more complex problem that.

Mr. Baldwin contends that the race debacle will not be solved if we think of it as those people versus us people. Until it occurs as our problem involving our people and our children, there is very little entrance into solving

these problems. In some ways, we must get beyond race to deal with race. Another cut to this is to get over our white fragility in talking about race.

I am also impacted by a portion of the film "I AM NOT YOUR NEGRO" in which Robert F. Kennedy said progress was being made regarding the advancement of the negro. He said that in forty years one of them could even be President of the United States. The narrator commented that this would have been an intolerable statement if it had been made about whites or Jews, or Greeks, etcetera. That took me aback. Why is it acceptable about anyone?

“In business, our conversation is about controlling costs, the price of labor, running good businesses and making profit.”

In business, our conversation is about controlling costs, the price of labor, running good businesses and making profit. I do not think in terms of people having a living wage. Nor am I concerned if workers could support themselves and live somewhere where they could have access to good schools. I do not think like that because workers are not my people; they are those people. At best, it is the government's problem, not my problem. Not so much that I am out to do anything tangible about it other than feel bad.

It is revealing that during the Pandemic. Congress raised unemployment benefits by \$600 a pay period. What does that say about what frontline workers are paid that they felt compelled to do this? What is going on?

Does my Mexican housekeeper have a living wage? Do I even care? Am I out to just get the best deal that I can and pay as little as possible? What if she was my people and her children were my children? Having seen the movie, I discovered some things about my racism. This movie opened me up to confronting and being responsible for my racism. When you look, there is no question that there is institutionalized racism in our neighborhoods, schools, and jobs.

continued pg.34

(continued from pg 33)

People can and do impact the quality and destiny of their lives. There are countless inspiring examples of people who find themselves in very bad circumstances transforming and elevating their ability to succeed economically. With that said, there is also a lot that I am rethinking.

The murder rate in Chicago is the highest in the country, but only in some neighborhoods, not in mine and probably not in yours. The high murder rate in Chicago occurs in impoverished neighborhoods. Why is that? I have been listening to African American colleagues and they report routine harassment and police surveillance when they walk in their neighborhood. This is not my experience as a white man when I walk in my neighborhood. No surveillance here.

Now what to do? That is the question. What can I do? I am starting a conversation with business owners. This is my first effort. What is our role in this? Who are we going to be in the face of institutionalized racism and poverty? How are we going to define a role for ourselves in the discussion about a living wage? What is going to work? Where is technology going to fit in? The Pandemic and the murders of African Americans have elevated this conversation and put it on steroids.

What can I do? What actions can I take beyond being bothered and overwhelmed by the sheer magnitude of this issue? What can I influence? It is easy to be a bystander when it is those people having issues. When I see it as **OUR** people having issues, **OUR** schools that do not work and **OUR** people who do not have access to jobs and safety then my world alters and a new view emerges.

These are interesting times for engaging in the possibility of a world that works for everyone with no one left out. Ending racism is an idea whose time has come. Is this a possibility worth working for? Is this really an Idea whose time has come? Stay tuned and let me know where you are here in this inquiry.

“These are all our children. We will profit by or pay for whatever they become.”

James Baldwin

About the Author

Since growing up in his family’s boating business to founding his company CMI, Bruce Hodes has dedicated himself to helping companies grow by developing high performance cultures. Bruce’s adaptable Breakthrough Strategic Business Planning methodology has been specifically designed for small-to-mid-sized companies and is especially valuable for family company challenges. In February of 2012, Bruce published his first book *Front Line Heroes: How to Battle the Business Tsunami by Developing Performance Oriented Cultures*. Currently, Bruce is working with companies to powerfully come through the pandemic and social unrest. Recently his articles regarding the pandemic have been published in Training Magazine – June 12, 2020 and the TRSA association magazine – July issue. With a background in psychotherapy, Hodes also has an MBA from Northwestern University and a Masters in Clinical Social Work. More info: bhodes@cmiteamwork.com, 800-883-7995, www.cmiteamwork.com

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