

# TENNESSEE



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# The TN PHCC Newslink

Nov/Dec 2019

## Tennessee Apprentice Takes 3rd in PHCC National Competition

On October 4th in Indianapolis at the PHCC National Annual Awards Ceremony, David Wark of Lee Company in Nashville was awarded 3rd place in HVAC for the PHCC National Apprentice Contest. David won the Tennessee PHCC state competition in April and is the first apprentice to place in the national competition from our state.



The three day competition featured apprentices from around the country in Plumbing and HVAC. We asked David a few questions about his win:

**How did it feel to have your name called when they announced the winners?**

*It was a surreal feeling, I didn't know if I would place but I gave it my best and of course hoped for the best.*

**What did you like the best about attending the national competition?**

*They didn't try to make it easy, it was a strong competition and really tested your knowledge.*

**Who was most excited that you won?**

*My kids and wife were excited and happy for me. The people at Lee Company are still congratulating me when they see me and I am proud of my win.*



**What prizes did you win?**

*In addition to all the great tools that they gave us to compete with in the contest I won: from Milwaukee Tool- wireless jobsite Bluetooth speaker and Power drill, from Fluke- HVAC Multimeter with temperature 116 and Pipe clamp temperature probe, from Southwire- Auto-Ranging Multimeter and from the PHCC Educational Foundation- \$250.00 cash prize.*



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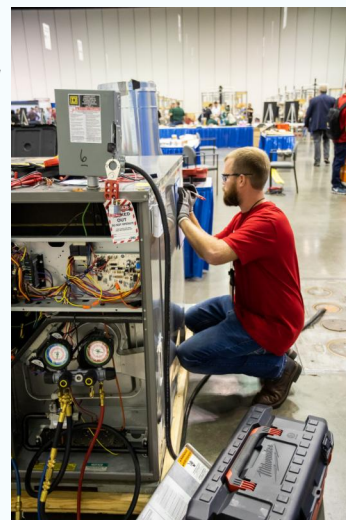
**Would you recommend future apprentices to enter the state and national contests?**

*If you have the opportunity it is well worth your time and effort to enter the competition. It was fun and a great time.*

**One last question, what is the number one reason you would encourage people to enter the trades?**

*Job security. It is always continuous learning, there is always something new to learn and challenge yourself. And you can never replace a technician with a computer or outsource one to another country.*

*For more on the apprentice contest, please see page 8*



# Member News

## Member Spotlight

As a new facet to this newsletter, we will have periodic member spotlight features to share information and insight to our readers.

For this issue, we are spotlighting Total Group of Nashville from our Middle TN Chapter. Their company just went through some company changes and we interviewed **Vice President Wayne Lowman** about the company:



**How long have you been in the PHCC business?** *Total Group, LLC was founded in 1996 by a U.S. Veteran, Rob Hosseini. Rob has been in the PHCC business since 1981. I have personally been in the PHCC business since 1980.*

**What is the focus of your business?** *Our focus at Total Group, LLC is multi-faceted, as we have 6-unique groups. These include: Commercial HVAC & Plumbing (large commercial and light commercial), Commercial Service, Refrigeration & Food Services, Plumbing Service, Residential Sales & Service, as well as Generator Installation and Service.*

**Your company went through a name and business model change recently, tell us about that.** *Our company started out as an HVAC service company in 1996 under the name of Total HVAC, LLC. Over the years, our business units have evolved and grown based on our client's needs. When we made the decision to focus on growing our HVAC & Plumbing construction group in 2015, we realized that our clients were not thinking of us in terms of plumbing since our name only included HVAC. That coupled with the fact that we had multiple groups within the company, we felt that the time was right for a name change that was more representative of our numerous offerings, thus the name Total Group, LLC. And while we knew that changing the name of the company would be a monumental task, from logos and branding, to vehicles wraps, contractor licenses, even down to letterhead and envelopes, we knew it was the right thing to do.*

**What changes have you seen in the last 5 years?** *We have seen an unprecedented growth in the middle Tennessee area over the past 5-years. This growth has resulted in both a construction boom as well as large influx of contractors into the area capitalizing on the construction market. This combination is a double edged sword, in that while there is a large amount of work, there are also a lot of contractors vying for this work, and even more importantly, vying for the same pool of workers. We are witnessing a labor shortage unlike anything we have ever seen which has forced us to look outside of the middle Tennessee area as well as outside of the State for qualified workers. We have also seen projects as being more price driven rather than value and relationship driven.*

**What changes do you predict for the next 5 years?** *We are of the opinion that the construction boom is likely to last another year or two, but as real estate prices continue to skyrocket, the growth will begin to subside. Frankly, it would be nice to get back to some sense of normalcy.*

**Is there anything that surprises you about the PHCC trades?** *I am a bit surprised that the profit margins in the PHCC industry have remained fairly flat overall, at least locally in this booming market.*



**Why are you a member of the PHCC?**

*We see the value of the many tools and resources that PHCC provides for our industry.*

**What can a trade association do for you?** *Workforce development, programs such as Ride and Decide, access to a knowledge and information base, education, training & certifications, facilitate personal connections and relationships via networking opportunities, increase our purchasing power, be an influential voice in politics that benefit our industry and enhance the reputation of its members.*

**Thank you Wayne and Total Group!**

[www.TurnToTotal.com](http://www.TurnToTotal.com)



# Member News

## Upcoming Date Reminders...

January 24-25: TN PHCC Winter Board Meeting, The Whitestone Inn, Kingston, TN

Feb TBD: TN PHCC Day on the Hill, Nashville TN

March 1st: Deadline to submit registration and payment for the TN PHCC Online Apprentice School

March 1st: TN PHCC Scholarship Application Deadline

May TBD: TN PHCC Spring Board Meeting, Knoxville

May 6th: KAPHCC Apprentice School Graduation and Awards Banquet, Knoxville Expo Center

May 7th: TN PHCC 123rd Annual Convention and Trade Show, Knoxville Expo Center

May 8th: TN PHCC Golf Classic, Avalon Golf Club, Lenoir City TN

May 26-27: PHCC National Day on the Hill, Washington DC

Sept 30-Oct 2: PHCC National CONNECT 2020, Dallas TX

## Mission Statement:

*"The TAPHCC is dedicated to serving and improving the PHC industry by providing opportunities for continuing education, communication, social networking, and business improvement.*

*We are dedicated to the protection of the environment and the health and safety of our society."*

## TN PHCC Students Win PHCC National Scholarships

On October 4th at the PHCC CONNECT Awards Luncheon, it was announced that four scholarships were awarded to TN PHCC member students:



- Insinkerator, PHCC National Auxiliary & PHCC Education Foundation– Dallas McKinney and Donovan McKinney (Ivey Mechanical)
- Delta Faucet Company– Lauren Jacoby (Hobbs & Assoc.)
- IAPMO– Lauren Jacoby (Hobbs & Associates)

### Congratulations to our students!

Please don't forget that the TN PHCC state scholarship program is now accepting applications for next year and the deadline is March 1st to apply.

## Free Vehicle Decals for Members

**FREE vehicle decals** are now available for your entire fleet with your 2020 membership renewal.



Help us get your Association noticed! We have been asked by our members for decals for company vehicles and PHCC National is offering the reflective decals for our renewing members this year. Just email us let us know how many of the 6" round decals you need or include the order form from your renewal packet. Deadline to order the free decals is January 15th.

## Med Gas Class

We would like to schedule a Medical Gas Certification Class in January or February of 2020 in Nashville or Knoxville. If you will need certification, please let us know as soon as possible. There are a minimum number of students required to book the class. Please call the state office if you would like to register your employees.



## T-Shirt Time

Back by popular demand– TN PHCC t-shirts in safety orange or green. Join us to show your pride in your Association and help us to promote your company and your PHCC. The t-shirt to the right will be available for pre-order to all of our member companies in January. Your company logo can be printed on the front pocket. Stay tuned for the email with ordering information.



## TAPHCC Board of Directors

**Kay Keefe**  
Chairman of the Board

**Gordy Noe**  
President

**Scott Robinson**  
Vice President

**Terry Self**  
Secretary-Treasurer

**Donna Johnston**  
Director, Knoxville

**Doug Mayes**  
Director, Knoxville

**Michael Vance**  
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**Steve Gammon**  
Board Member-at-Large

**Gary Nave**  
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**TENNESSEE**



# State News

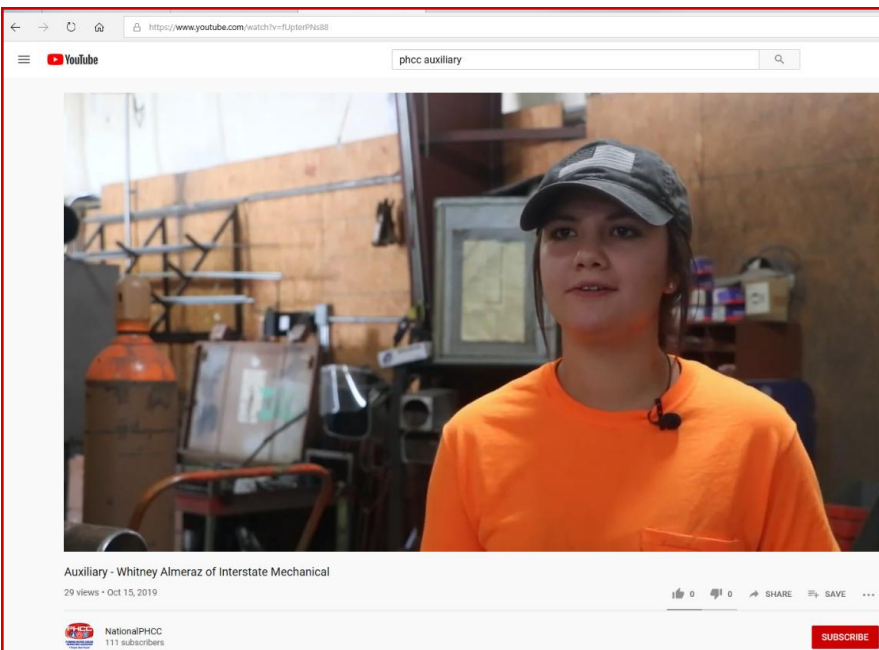
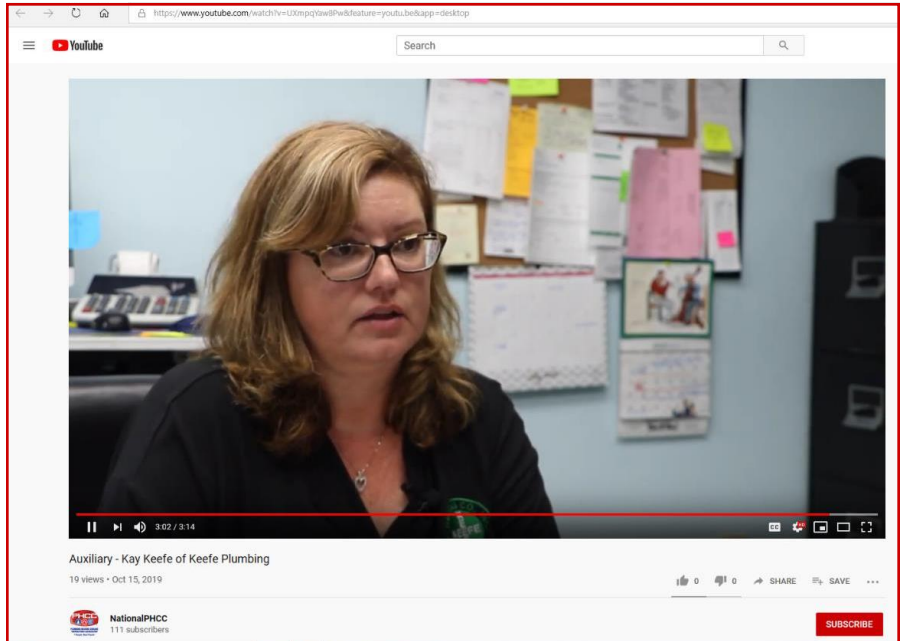
## PHCC Auxiliary Features Tennessee Women in new “Women in Industry” Videos

### TN PHCC Board Chair and Owner of Keefe Plumbing Featured in PHCC Video

The PHCC Auxiliary theme for this year, (chosen by President Anne Rivers), is “Women in the Industry.” Videos highlighting women who are in the HVAC and Plumbing fields were shown at PHCC CONNECT 2019 in Indianapolis during the Workforce Development Breakfast. The Auxiliary hopes that the videos will be a tool that can be used in schools to encourage young women to enter the trades.

The video featuring Kay Keefe, TN PHCC Board Chair and owner of Keefe Plumbing in Chattanooga details how Kay got started in the business and why the trades are a great profession for women and why she encourages them to choose the trades for a career.

[Click here for the full Kay Keefe video](#)



### Interstate Mechanical's Whitney Almaraz Featured in PHCC Video

As the only female welder at Interstate Mechanical in Knoxville, Whitney Almaraz details how she started with the Ride and Decide program, tried out the trades and picked welding. She loves her job at Interstate and she discusses the challenges she has overcome.

Whitney talks about why college isn't the only option and encourages women to join the trades.

[Click here for the Whitney Almaraz video](#) or search NationalPHCC on YouTube.com for the video.



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**Ride and Decide is looking for more employers for the 2020 summer program. If you are concerned about the future of finding employees for the trades, please consider joining the program. We hope to expand into 2 more areas by January. Please contact the TN PHCC office for details and registration info.**

# State News

## TN PHCC ONLINE APPRENTICE School is Open for Registration

Our online program is **registered as part of the national apprentice system** with the US Department of Labor Employment and Training Administration– Office of Apprenticeship. The program is **powered and accredited by the NCCER (National Center for Construction and Education Research) Connect** online program.

The training program is designed to provide students the opportunity to learn the textbook fundamentals of the **HVAC or plumbing** trades.

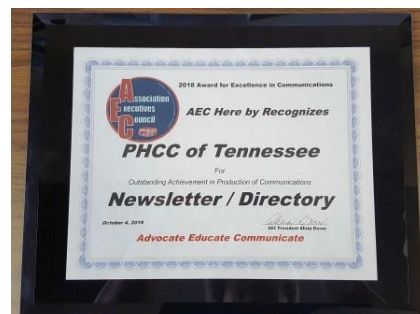
- The training course must be supplemented by an employer through on-the-job training.
- NCCER Certification is achieved by completing the on-line assignments for each module and passing a proctored Competency Test at a designated time and location.
- Two employer options for apprentices: 1. NCCER credentials only. 2. Add US Dept. of Labor registration as a Certified Apprentice.
- Apprentice must complete the course by 12/31 of the enrollment year.

Registrations will be accepted until March 1st for the 2020 Plumbing I and HVAC I courses. More information and registration details can be requested online at [taphcc.com](http://taphcc.com). Navigate to the Online Apprentice School tab and request a link to the online application.



## TN PHCC Newslink Wins National Communication Award

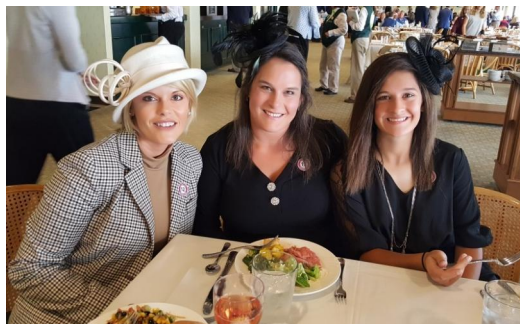
At PHCC CONNECT in Indianapolis, the PHCC of Tennessee received a prestigious Communication Award from the PHCC Association Executives Council (AEC). The award states, "Outstanding Achievement in Production of Communication in Newsletter/Directory." The award for our entry, the Tennessee PHCC Newslink, (the newsletter you are currently reading) was chosen for this achievement from all of the entries from state and local chapters.



## TN PHCC Fall Board Meeting

Every few years the TN PHCC Board travels to Lexington, Kentucky and the Keeneland Race-track for the Thoroughbred races and our Fall Board Meeting.

Kristen Hodge, Jennifer Vance and Lillian Vance, (photo below) were in high style enjoying and experiencing the Kentucky horse racing action.



## Fall Career Fairs in Full Swing

The State Office has participated in 9 area career fairs since September with 2 more slated by the end of November.

The career fairs are an important component to the future of the trades in that not only do we educate students on the benefits of careers in the trades, we try to change their perception of what a plumber and an HVAC technician actually do on a day-to-day basis.

Many students are undecided as to their career path and we promote making informed decisions about their future and give them some tools to review with their parents regarding how and what you have to do to enter careers in the trades.

If you or a member of your staff would like to join us and give prospective trades people your perspective on the trades, we would love to have you!





# Legislative News

## TN PHCC Supports Contractor Paid-if-Paid Legislation



TN PHCC President Gordy Noe and Board Member Donna Johnston

On October 16th, TN PHCC President Gordy Noe and Board Member Donna Johnston attended a meeting in Nashville to discuss and show support for the newly revised Paid-if-Paid contractor legislation.

Senator Jack Johnson and Representative Ron Gant hosted the meeting of stakeholders to discuss House Bill 271/ Senate Bill 324 (the "ASA Bill"), which seeks to make a number of modifications to statutes applicable to the construction industry in Tennessee.

During the last legislative session, the ASA, (American Subcontractors Association ) Bill brought to light a number of issues facing the construction industry, most notably, the lack of adequate protections for prime and remote contractors furnishing labor, materials, and services on construction projects throughout the state. The ASA Bill generated strong comments from a number of industry stakeholders on both sides of the bill.

On June 18, representatives of the construction industry came together to discuss potential solutions. Through numerous meetings and negotiations, the parties recognized that several statutes applicable to the construction industry have been modified in a piecemeal fashion over the last 13 years, leaving the statutes internally inconsistent and insufficient to provide the necessary payment protections. Accordingly, the parties worked together to construct comprehensive amendments to:

- Tennessee's Lien Law (T.C.A. §§66-11-101, *et seq.*)
- The Truth in Construction Act (T.C.A. §§66-11-201, *et seq.*)
- The Prompt Pay Act of 1991 (T.C.A. §§66-34-101, *et seq.*)
- And Construction Defect Statute (T.C.A. §§66-36-101, *et seq.*), among others.

These amendments eliminate internal inconsistencies and applicability loopholes, ensure the acts have adequate timing, notice, and penalty provisions to protect the industry, while clarifying and strengthening the rights of prime and remote contractors to recover amounts owed under their written contracts.

The parties are finalizing the language of an Amendment to the ASA Bill for consideration in the upcoming legislative session that will address the inadequacies and proposed modifications to the current statutes applicable to the construction industry (the "Amendment"). The Amendment is supported by the Tennessee construction industry, including the American Subcontractors Association of Tennessee, the Associated Builders and Contractors of Greater Tennessee, the Associated General Contractors of Tennessee, the AGC of East Tennessee, the American Institute of Architects, Tennessee Chapter (AIA Tennessee), the Tennessee chapters of the American Council of Engineering Companies and National Society of Professional Engineers, the

West Tennessee Chapter of Associated Builders and Contractors and the Tennessee PHCC.



The Amendment provides adequate payment protections to all prime and remote contractors furnishing labor, materials, and services on construction projects throughout Tennessee.

We will be hopefully relaying the final amendment to our members by the end of the year. Your PHCC will need your help and support with your local legislators for the 2020 session.



# PHCC CONNECT 2019



## Tennessee PHCC Attends PHCC CONNECT

At PHCC CONNECT in Indianapolis in October, our members and apprentices enjoyed 3 days of event filled networking, education and fun at the national convention.

Our TN Chapter members including President Gordy Noe, met for dinner with our apprentice contestants and we joined our fellow Zone 2 members from PHCC NC and PHCC GA at the regional meetings.



## Our Past PHCC Zone 2 Director Elected to PHCC Vice President

At the PHCC Annual Business Meeting at PHCC CONNECT 2019, Joel Long, (our former Zone 2 Director from North Carolina) was elected to the position of PHCC Vice President.

Joel Long believes PHCC is:

- In existence to support our state and local chapters.
- Built to improve the lives and businesses of our contractor members.
- Successful when we use our storied past to shape our future direction.
- Invaluable as we dedicate time to legislative efforts.
- At our best when we lead efforts to supply education for our members.
- Dedicated to improving our industry through partnership and collaboration.

***We congratulate Joel and look forward to his Presidency in October 2021!***





# PHCC National News

## 2019 National Apprentice Contest Winners Announced

The **Plumbing-Heating-Cooling Contractors — National Association's (PHCC) Educational Foundation** is proud to announce the winners of the national plumbing and HVAC apprentice contests. The contests were held October 2<sup>nd</sup> & 3<sup>rd</sup> in Indianapolis, Indiana on the tradeshow floor during the PHCC—National Association's CONNECT 2019 event. A total of nineteen plumbing and ten HVAC apprentices from across the nation took part in the contests.

### HVAC Apprentice Contest Winners

- 1st Place: Kyle Robert Dennis, Pipefitters Local 539/Yale Mechanical in Saint Francis, Minn., Sponsored AHRI.
- 2nd Place: Nicholas S. Cruz, UA Local 393/Pacific Coast Trane in San Jose, Calif., Sponsored by Emerson.
- **3rd Place: David Wark, Lee Company in Pulaski, Tenn., Sponsored by Rheem.**



### Plumbing Apprentice Contest Winners

- 1st Place: Christopher Redfern, Plumbers and Pipefitters Local 553 in Staunton, Ill., Sponsored by RIDGID.
- 2nd Place: Mark Morcos, Eastwick College of HoHoKus Trade School in Bushkill, Pa., Sponsored by Tyler Pipe.
- 3rd Place: Carter M. Hagen, UA, Local 25 in Davenport, IA, Sponsored by the IAPMO.

The HVAC competitors were required to complete a written test, demonstrate proper brazing techniques and perform a hands-on diagnostic on an HVAC package unit, with system errors created by the Foundation's contractor volunteers for the competition. The competitors also had to perform a pressure and leak test, demonstrate proper refrigerant recovery procedures and the ability to accurately take a variety of instrument readings.



TN PHCC Contestants:  
Grayson Butler (Plumbing) and David Wark (HVAC)  
with Brent Thompson, (sponsor attendee)  
from Lee Company

Company; Mechanical Hub Media; Milwaukee Tool; North American Technician Excellence (NATE); NIBCO INC.; Oatey; PHCC-National Auxiliary, Reed Manufacturing Co.; Rheem; RIDGID; State Water Heaters; Tyler Pipe & Coupling; Viega, LLC; and Zoeller Pump Company.

Milwaukee Tool made a major contribution to the Apprentice Contests this year by donating most of the tools needed by the contestants for the competition. This gift allowed the competitors to skip the trouble of shipping their own tools and to go home with a new set of tools to power their work long after the competition ends.

"I'm proud that we can present this opportunity for the apprentices to show off their skills," reports Foundation Chair Craig Lewis. "The contests give these participants a chance to get away from home, be a part of a national event and see that how much support all of us in the industry are putting behind their success. It can be the experience of a lifetime. I am so thankful for the sponsors and the hard work put in by our volunteer committee members and staff in pulling it all together in a new exhibit hall every year."

The plumbing apprentices were required rough-in a bathroom system. The set-up includes a toilet, sink and shower, complete with supply, waste and vent lines, plus cleanouts and extra features designed to test the contestants' knowledge and skills. The test set-up includes a variety of pipe materials – cast iron, copper, PVC and PEX, and corresponding joining methods.

A dedicated team of contractor volunteers arrived two days before the competitions to assemble the competitor test benches, distribute the materials and supplies and setup the testing areas. They monitor the competitions, evaluate the apprentices' work and provide constructive feedback on each competitor's performance following the event.

The contests are made possible by the generous support of several industry sponsors who provide monetary support and in-kind material and tool donations. Sponsors for the 2019 competition include, with headline sponsors appearing in bold: AB&I Foundry; AHRI; A.O. Smith; Bradford White Corp.; BrassCraft Manufacturing Co.; Chemours, Copper Development Association, Inc.; Delta Faucet Co.; Emerson; IAPMO, Kohler



Craig Lewis– PHCC Foundation Chair, David Wark and Scott Balmer (SKMES)– HVAC Competition Chair



# PHCC National News

## Licensure and Enforcement Ensure the Health and Safety of the American People

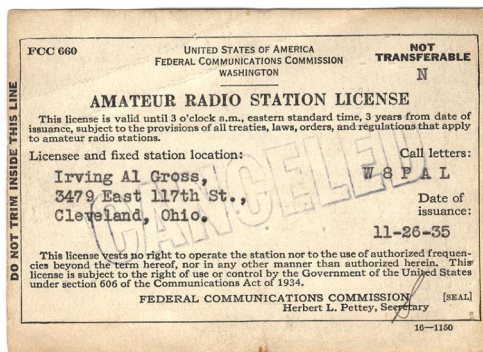


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**Background:** PHCC has witnessed a trend over the past several years in state legislatures across the country to attempt to water-down or eliminate licensing requirements for plumbers and other skilled trades. In South Dakota the state legislature in 2019 voted to eliminate licensing requirements for individuals who want to perform plumbing work on their own properties. In Texas, the state legislature voted to eliminate the state's Board of Plumbing Examiners, which would have relegated licensing and enforcement to localities: had the Texas governor not signed an executive order to delay the legislature's decision, plumbing regulation would have become a patchwork nightmare in the state of Texas.

**Why is licensing important?** Plumbing work is complex, maintains safe potable water, provides proper sanitation, and must be completed by a professional licensed plumber with demonstrated competencies. Plumbing codes are in place to which professional plumbers must adhere in order to safely and effectively install fixtures and other components of plumbing systems, codes that plumbers spend years learning as part of their apprenticeship and ongoing training. Preventing water heater explosions, providing protection from thermal shock, eliminating cross contamination of the water supply are but a few examples of benefits that professional plumbers provide.

In states where licensing is relegated to municipalities, plumbers need to be licensed in each of the localities where they work, increasing the costs for licensure and limiting the areas where plumbing businesses can operate. A regulatory model such as this means plumbers will pay up to thousands of dollars in annual licensing and bonding fees for each jurisdiction in which they operate. Unlicensed "handymen" performing plumbing work that is not up to code pose a serious risk to public health and safety.



**What is PHCC's solution?** PHCC understands licensing accomplishes two very important objectives that must not be overlooked by policymakers:

- Licensure verifies plumbers have demonstrated the capabilities to install, repair and maintain complex residential and commercial plumbing systems that, first and foremost, ensures public health and safety.
- Licensure means a plumber commands the knowledge, skills and abilities to perform a variety of work that assures proper system function and long-term performance of modern plumbing systems.

PHCC supports the licensing of professional plumbers after completing a registered apprentice program and passing appropriate licensing examinations.

PHCC further supports the permit and inspection process as a method to ensure compliance with requisite codes and standards. In order to facilitate this, the state plumbing board or oversight commission must have the funding and resources necessary to carry out this mission. PHCC believes in the value of taking the time to master the comprehensive skillset required of a competent licensed professional workforce.

## PHCC Licensure Continues to Be an Issue

In Tennessee, we are fortunate to have state licensure for Plumbing, Limited License Plumbing and HVAC- (projects over \$25k in scope). However, we are missing a Limited License HVAC to fully protect the public from unlicensed and in many cases, unsafe work.

Many states including Ohio, (see a recent Facebook post to the right,) and Pennsylvania continue to work toward requiring any type of state licensure.

The TN PHCC will revisit our efforts for a Limited License HVAC next year.



## U.S. Department of Labor Increases the Minimum Salary Level for Overtime Exempt Employees



On September 24, 2019, the U.S. Department of Labor (USDOL) published a final rule on the "white collar" employee exemptions from overtime under the Fair Labor Standards Act (FLSA).

**The new rule, which increases the minimum salary level for exempt employees, will take effect on January 1, 2020.**

By way of background, in 2016, under President Obama, the USDOL issued a rule which would have raised the minimum salary level to \$913/week (\$47,476/year). That rule was invalidated by the federal courts in 2017. In March 2019, under the Trump administration, the USDOL proposed to rescind the 2016 rule and increase the minimum salary threshold from \$455/week (\$23,660/year) to \$679/week (\$35,308/year). The proposed rule would also allow employer to pay certain nondiscretionary bonuses and incentive payments for up to 10% of the new \$679 per week salary level.

The final rule announced by USDOL increases the minimum salary level from \$455/week to \$684/week (equivalent to \$35,568/year for a full-year worker), slightly higher than was proposed 6 months ago. This final rule will also allow employers to use nondiscretionary bonuses and incentive payments (including commissions) that are paid at least annually to satisfy up to 10 percent of the salary level for exempt employees. This will allow an employer to "catch up" an employee's earnings at year end so that an employee qualifies for the overtime exemption.

**Key provisions of the final rule are as follows:**

- **The new guaranteed salary requirement is a minimum of \$684.00 per week (\$35,568.00 annually). This salary requirement applies to the Executive, Administrative and Professional Exemptions.**
- **For the Highly Compensated Exemption, the new salary requirement is \$107,432.00.**

During the days of 2019 that still remain before the effective date of this rule, employers with salaried exempt employees should evaluate their exempt employees' salary levels. Those salaried exempt employees that are slated to be paid less than \$684/week in 2020 may become non-exempt and eligible for overtime if they work more than 40 hours a week. If an employee's initial salary level will be less than \$684/week, then an employer may be able to make it up to them at year end (December 2020) with a bonus, rendering them exempt throughout the year.

*Article on this page courtesy of SESCO Management Consultants- Bristol, TN, (423) 764-4127, [sesco@sescomgt.com](mailto:sesco@sescomgt.com)*

## As Small Businesses Continue to Struggle with the Cost of Health Care – the Chamber Attempts to Jump Start the Administration's Expanded Association Health Care Plan Rule– Mark Riso

With efforts to push House and Senate bills on Capitol Hill - regarding Association Health Plans (AHP) - all but dead...the US Chamber of Commerce, along with the NFIB, the Texas Association of Business, the United Service Association for Health Care and 65 state and local chambers - have filed a brief in the DC Circuit in support of AHPs.

As you may be aware, last year the Trump Administration finalized a rule that would have made it easier for small businesses to join together to create low cost health care plans for small businesses that aren't subject to certain requirements of the Affordable Care Act. However, the DC Circuit agreed with attorney generals from 11 states and DC that the rule is unlawful (process over purpose – an attempt to lower the cost of health care for small businesses is unlawful?)

The Chamber cites that the number of small businesses offering health coverage has been cut in half since 2000 (47% in 2000 down to 29% in 2016). Further, the Chamber reports that 25% of business owners do not have enough information to make a decision about health insurance and another 25% are concerned with keeping premiums low when reviewing health care plans. Also, the Chamber reports that the President's expanded AHP rule could newly insure up to 400,000 Americans (while providing renewal for 4 million) – as scored by the Congressional Budget Office. Updates as they are available....

*Mark Riso is a public policy professionals and government relations consultant. He can be reached at [MarkRiso.com](http://MarkRiso.com)*



# Business News

## Disciplining Employees for Social Media Use

This SESCO Staff Recommendation is designed to assist in determining whether an employee may be disciplined or terminated for objectionable content posted via a social media site. For use of this staff recommendation, it is presumed that the employee engaged in posting objectionable content is a non-union employee.



### Consider Whether Employee Discipline May Be Appropriate for Unlawful Social Media Post

From Facebook to Twitter to LinkedIn to Blogger, social media platforms are widely used by employees. From time to time the nature of the content posted on social media platforms can be harmful or destructive for individuals within or businesses to which the content relates. When employees post objectionable or offensive content online, SESCO clients should take into account the following considerations before imposing discipline.

### Analyze the Content of the Objectionable Social Media Post

As a starting point, carefully analyze the nature of the content and the reasoning behind potentially imposing disciplinary action against the employee. For example, does the content constitute an unauthorized disclosure of confidential, intellectual property or trade secret information? Or is the content false and defamatory, harassing or offensive? Does the content amount to a violation of your social media policy, anti-harassment policy or standards of conduct?

### Review Social Media Policies

Your social media policies and procedures are critical in determining whether or not an employee has acted inappropriately. SESCO prepares employee handbooks and related policies and if you question whether or not your policy is adequate, have SESCO conduct a review. A well-drafted social media policy must strike a balance between providing clear guidance as to what is acceptable in light of company culture and expectations without infringing on speech (National Labor Relations Act). A tailored and comprehensive social media policy will address the types of activities while acknowledging that certain speech is permitted and will incorporate examples to ensure clarity and compliance.

After reviewing the social media policy for potential red flags, determine whether the employee's misconduct was in violation of your policy and if so, what type of discipline may be imposed.

### Topics to be Covered in a Social Media Policy

- Define social media
- Address when the policy applies
- Identify information that is considered proprietary and confidential and discuss importance of non-disclosure
- Inform employees that they are responsible for what they post on any social media forum.
- Identify topics not to be discussed such as negative statements about a competitor, or a client, negative statements about other employees, revealing confidential or private information, etc.
- Provide and maintain a list of "FAQ's" with examples of what content is discouraged
- Address the potential consequences for violation of the policy (disciplinary action up to and including termination)

### Consider These Scenarios (Actual SESCO Cases)

#### Case 1

**Issue:** An employee with your organization was terminated after she posted a complaint on Facebook claiming that she was never paid the overtime wages that she was owed. She is now suing your organization alleging that you unlawfully retaliated against her in violation of the FLSA. Was she successful?

**Answer:** No. In a case with similar facts, a Federal District Court in Florida ruled that an employee who complained on Facebook that her employer did not pay her overtime did not file a "complaint" within the meaning of the FLSA. The employee in this case never lodged a complaint with her employer; she merely "voiced her disagreement" with the employer's pay practices on Facebook.

#### Case 2

**Issue:** After one of the Regional Vice Presidents left your organization to work for a competitor, he posted information about his new employer on Facebook, touting his professional satisfaction with that company's product. Since his departure, he has been actively posting information relating to his new employer on his personal Facebook page and his Twitter account has generated invitations to your associates to join the social networking site. Believing that his social media activity breached your company's non-solicitation agreement, you are seeking to enjoin his Facebook and Twitter activities. Will he be successful?

**Answer:** Probably not. In a case with similar facts, a Federal District Court in Oklahoma ruled that an employee's ongoing posts to his personal Facebook page relating to his new employer did not constitute solicitation under the terms of his employer's non-solicitation agreement. There is no evidence that the employee either intended to or had solicited anyone other than a single colleague to leave.

Article on this page courtesy of SESCO Management Consultants- Bristol, TN, (423) 764-4127, [sesco@sescomgt.com](mailto:sesco@sescomgt.com)

# Business News

## 5 Reasons-Other Than Pay-Star Employees Leave

-By Refresh Leadership in Executive Insights

It's a job seeker's market and skilled workers have more options than they've had in more than a decade. The struggle to recruit workers with the right mix of skills and expertise needed to fill open positions is reaching a fever pitch, which means businesses must go to greater lengths to attract top talent, including luring workers away from the competition. So, even star employees who seem happily engaged in their current jobs may be tempted to test the waters with another company if the offer is right.

According to a study by Digital marketing firm AdTaxi, as reported on HRDrive.com, "52% of workers plan to look for a new job in 2019, and of those who will take part in the hunt, 54% landed their current job less than a year ago." So, anyone is susceptible, no matter how long they've been with their employer, and the reasons they choose to leave might surprise you.

Here are five reasons other than pay that could drive your star employees to leave:

### Training or Advancement Opportunities

Not only is employee training and development an important part of maintaining a strong, productive business, it's also vital to retaining top talent. According to a study by TINYpulse, a developer of employee engagement software, "employees who don't feel supported in their professional goals are three times more likely to be looking for a new job." So, an opportunity with another company that better aligns with an employee's desired career path is a tempting prospect.

### Flexible Work Environment

We all have lives outside the office, so opportunities to create work-life balance with a flexible work environment that better fits our lifestyle are hard to pass up. According to a survey from Flexjobs, "61% [of workers] have left or considered leaving a job because it did not have work flexibility" and 77% said "having a flexible job would allow them to be healthier (eat better, exercise more, etc.), and 86% said they'd be less stressed."

### Feeling like their skills are underutilized/underappreciated

High achievers are driven to perform, so if they feel their skills and expertise aren't being fully utilized, they get bored and may start looking for a more challenging opportunity. Often, this comes down to recognition, which can be a key driver of retention. In fact, the research from TINYpulse, found that "employees who feel under-appreciated are unlikely to stay with their employers," and "21.5% of employees that don't feel recognized when they do great work have interviewed for a job in the last three months, compared to just 12.4% that do feel recognized."

**95 PERCENT  
OF MY ASSETS  
DRIVE OUT THE  
GATE EVERY  
EVENING.**

It's my job to maintain a work environment that keeps those people coming back every morning.

via [www.wordsonimages.com](http://www.wordsonimages.com)

### Ambivalence toward the company mission

Most people want to know that the work they do each day contributes to a higher purpose or makes a difference in at least their small part of the world. So, an employee who may be generally engaged in their work and performing well could be tempted to leave if an opportunity arises with a company whose mission more closely aligns with their life's passion, core values, or personal beliefs. In a survey conducted by Lexington Law, a law firm specializing in credit repair, people were asked to "choose between two extremes – a job you love, but half your current pay or a job you hate, but twice your current pay." Three in five participants said they would take the 50% pay cut to have a job they loved.

### Personal reasons you may never know

It's possible you may never truly know why a star employee decides to leave.

From personal health issues to simply wanting to shake things up with a change of pace, everyone has their own motivations for the decisions they make and you may simply have to chalk it up to unknown factors outside your control.

### TOP 5 REASONS WHY TALENTED EMPLOYEES LEAVING THEIR JOB





# Business News

## Tennessee Adopts 20-Factor Test in Independent Contractor Analysis

Rejecting the strict “ABC” test adopted by its appellate court, Tennessee has enacted a new law adopting a 20-factor test to determine employee-versus-independent contractor status.



**The new law becomes effective January 1, 2020.**

### Current Standard

Under the current standard, courts consider multiple factors when evaluating employee or independent contractor status. These factors include:

- The right to control the conduct of the work;
- The right to terminate the worker;
- How the worker is paid;
- The worker's freedom to select and hire helpers;
- Who furnishes the tools and equipment;
- Who controls the working hours; and
- The worker's freedom to offer services to other entities.

The right to control is the primary factor, and the existence of the right to control, rather than the exercise of such right, is sufficient to establish this factor. Additionally, the burden of establishing that a service provider is an independent contractor rests on the employer and the presumption is that absent such showing, an individual is an employee.

### New Standard

The new statute rejects the current approach in favor of a more employer-friendly standard. Under the new law, the Tennessee Code is amended such that statutory employment obligations apply only “if the individual performs services for an employer for wages and the services performed by the individual qualify as an employer-employee relationship with the employer based upon consideration of the twenty (20) factors as described in ... Internal Revenue Service Revenue Ruling 87-41, 1987-1 C.B. 296.” Those factors are:

- Whether the worker is required to comply with other persons' instructions about when, where, and how the worker is to work.
- Whether the worker must be trained by an experienced employee through correspondence, mandatory meetings, or other methods indicating that the person(s) for whom the services are performed want the services performed in a particular method or manner.
- Whether the worker's services are integrated into the business operations, which, if present, generally shows that the worker is subject to direction and control.
- If the services must be rendered personally, then the persons for whom the services are performed are presumably interested in the methods used to accomplish the work, as well as in the results.
- If the person(s) for whom the services are performed hire, supervise, and pay assistants, then that generally shows control over the workers on the job.
- A continuing relationship between the worker and the person(s) for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring, although irregular, intervals.
- The establishment of set hours of work by the person(s) for whom the services are performed is a factor indicating control.
- If the worker must devote substantially full time to the business of the person(s) for whom the services are performed, then the person(s) has control over the amount of time the worker spends working and impliedly restrict the worker from doing other gainful work. An independent contractor is free to work when and for whom the independent contractor chooses.
- If the work is performed on the premises of the person(s) for whom the services are performed, then that suggests control over the worker, especially if the work could be done elsewhere.
- If a worker must perform services in the order or sequence set by the person(s) for whom the services are performed, or if the person(s) for whom the services are to be performed retains the right to control the sequence, then that shows the worker is not free to follow the worker's own pattern of work, but, instead, must follow the established routines and schedules of the person(s) for whom the services are performed.

*Continued on next page*

# Business News

## Tennessee Adopts 20-Factor Test in Independent Contractor Analysis (cont.)

- A requirement that the worker submits regular or written reports to the person(s) for whom the services are performed indicates a degree of control.
- Payment to the worker by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on straight commission generally indicates the worker is an independent contractor.
- If the person(s) for whom the services are performed ordinarily pays the worker's business or traveling expenses, then the worker is ordinarily an employee.
- The fact that the person(s) for whom the services are performed furnishes significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.
- If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees, such as the maintenance of an office rented at fair value from an unrelated party, then that tends to indicate that the worker is an independent contractor. However, lack of investment in facilities indicates dependence on the person(s) for whom the services are performed for the facilities and the existence of an employer-employee relationship.
- A worker who can realize a profit or suffer a loss as a result of the worker's services, in addition to the profit or loss ordinarily realized by employees, is generally an independent contractor, but the worker who cannot is an employee.
- If a worker performs more than minimal services for multiple, unrelated persons or firms at the same time, then that generally indicates that the worker is an independent contractor.
- The fact that a worker makes the worker's services available to the general public on a regular and consistent basis indicates an independent contractor relationship.
- The right to discharge a worker is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor cannot be fired so long as the independent contractor produces a result that meets the contract specifications.
- If the worker has the right to end the worker's relationship with the person(s) for whom the services are performed at any time the worker wishes without incurring liability, then that indicates an employer-employee relationship.

Pursuant to the new test, none of the 20 factors are determinative of employment status and there is no presumption that an individual performing services is an employee. Hence, the 20-factor test is more akin to a "totality of the circumstances" approach, rather than its predecessor, which considers fewer circumstances and imposes a greater burden on alleged employers.

## Why is ASSOCIATION MEMBERSHIP SO IMPORTANT?

According to recent research, over 85% of trade businesses that fail are not members of a trade association. No matter the industry, trade associations give their members many advantages in a fast-paced competitive world.

To join an association is to become a member of a community, a place to belong, where like minded people share knowledge and work together toward goals they couldn't achieve alone.

For all of the non-members who still have the mind set, "What's in it for me" and it "Costs too much," we want to ask you a few questions:

- Who publishes and provides the complimentary plumbing and HVAC newsletter you are reading right now?
- Who routinely monitors all legislation on a state and national level to keep you informed and work on your behalf?
- Who is on the firing line, 24/7 defending the interest of the plumbing and HVAC industry?
- Who is launching an online apprenticeship program to help train and educate our future workforce?
- Who attends over 40 career events a year to encourage the next generation of your employees to consider the trades?
- Who keeps you up-to-date with fast-moving developments in the industry?
- If you can't afford members as a business expense, what are you doing wrong in your business?

Isn't it about time you decided to give something back to an industry that has helped provide you with the means to make a living through the years? Don't you want to gain access to the most powerful, successful and influential business people in the industry to help you overcome problems and become more successful? It's about time you joined or renewed, you owe it to yourself.

*-Reprinted with additions from the OHIO PHC CONTRACTOR*





# Business News



## Protecting Your Business: You Hold the Keys

Auto crashes continue to wreak havoc on our nation's roads — and as a result on businesses that rely on vehicles to move people or products. The devastation is apparent in employees and their families, who must cope with tragic consequences, and in courtrooms, where businesses are held responsible for the behavior of employees driving for company purposes.

Court decisions designed to punish businesses are becoming more and more common. Your best chance to avoid a ruling that could reach into the tens of millions is to proactively address the common issues that arise in auto crash claims. Do your driving policies address the right factors, such as substance use and mobile device distraction? Are you doing your homework on your drivers?

Can you demonstrate that you did everything you could to help prevent a crash?

Strong policies and effective communication are a great foundation, but you have to go further.

### Who's Behind the Wheel?

Understanding your drivers' driving history is key to strong hiring practices. Do they have a record of crashes or driving-related arrests? Is it worth the risk to put them behind the wheel of a company vehicle?

Even if a driver has a satisfactory driving record, it might not stay that way forever. But how will you know if that happens? Consider a monitoring service that automatically orders motor vehicle records (MVRs) periodically. It will reduce the likelihood that you will miss a change in an employee's driving record, potentially.

### An Eye on Your Fleet

Technology can help you monitor your vehicles. Telematics systems give you a set of eyes in the cabs of your vehicles and on the road ahead of them. The data they collect helps you discover risky behaviors, optimize productivity, reduce fuel costs, and increase uptime, among other benefits.

Drivers might be nervous about this constant surveillance at first, but the point of the systems is not to babysit your employees. Rather, they help you coach your drivers to be at their best. They also help you and investigating authorities understand crashes, which could exonerate innocent drivers and reduce claims.

### Prevention is Protection

Auto crashes are not going away, and their financial consequences keep growing. The best thing you can do as a business owner is realize that you could be a target for high-stakes litigation. Sitting back and hoping that your drivers will stay safe on the road just won't do anymore.

Take the initiative. Showing a judge and jury that your business did all it could to prevent a crash will go a long way toward helping you defend your business if you find yourself in a courtroom.

Contact your local [Federated Insurance marketing representative](#) for more information on this and many more risk management topics.



## National Safety Council Cell Phone Policy Kit Available

The National Safety Council Cell Phone Policy Kit is a resource that contains everything you need to successfully implement or strengthen a cell phone policy in your organization.

The kit contains dozens of ready-made communications to gain employee buy-in and compliance including Videos, Fact Sheets, Infographics and Posters. Kit materials are designed to educate employees year-round and reinforce the policy that you establish. They can be used individually or as part of an ongoing communications plan.

Click here for your kit and materials to start or strengthen your Cell Phone Policy: [Safety Council Cell Phone Use Information](#)

Or order your kit here: [www.nsc.org/policykit](http://www.nsc.org/policykit).

## The TAPHCC Newslink

TENNESSEE ASSOCIATION OF PLUMBING -  
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9041 Executive Park Drive - Suite 220  
Knoxville, TN 37923

# STATE ASSOCIATE MEMBERS SUPPORTING PHCC

### *ASSOCIATE MEMBERS listed*

#### *support the TENNESSEE PHCC:*

A6 Sales  
Beaty Chevrolet Company  
Ben O'Neal Company  
Boiler Supply Company  
Bradford White Corporation  
Charlotte Pipe & Foundry  
Coastal Supply Company  
Crawl Space Ninja  
Downtown Nashville Nissan  
DUSA Metals Recycling  
Enviro-Systems  
FC<sup>2</sup> Sales Inc.  
Federated Insurance Company  
Ferguson, Knoxville  
Ferguson, Nashville  
Freeland Chevrolet  
Geny Insurance  
Gray Hodges Corporation

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Kenny Pipe & Supply Inc.- Knoxville  
Lewis Thomason- Knoxville  
Lewis Thomason- Nashville  
Life Insurance Company of Alabama  
Lytx  
Mercedes Benz of Knoxville  
Mid America Marketing  
Milwaukee Electric Tool  
Peacock Sales Company  
PDI- Plumbing Distributors Inc.  
Pulley & Assoc. of TN, LLC  
R1 of Middle Tennessee  
REA, Inc.  
Reeder Chevrolet

Safety and Health Compliance  
ServPro of Rocky Hill, Sequoyah Hills,  
South Knox  
Stowers Rentals  
Sunbelt Marketing  
Tennessee 811  
The Underground Detective  
Tim Morales and Associates  
TIS Insurance Services  
Titeflex Corp– Gastite Division  
Tradesmen International  
Trane  
Trillium Construction  
United Testing & Balancing  
Victaulic  
Viega  
WM McClain Company  
West Chevrolet Inc.  
Wiggs, Haun, & Bohan Sales Co.  
Willis, Towers, Watson PC.

# SUPPORT YOUR CHAPTER PHCC ASSOCIATION



### **KNOXVILLE**

President: Scott Robinson

Secretary-Treasurer: Jim McCampbell

**Bi-monthly Meeting** - 4th Monday, 11:45 am, Bearden Banquet Hall, 5806 Kingston Pike  
RSVP- Rose Mayfield - appschool@taphcc.com

### **MIDDLE TENNESSEE**

President: Chris Gray

Secretary-Treasurer: Curtis Frizzell

**Bi-monthly Meeting**: 3rd Tuesday, 11:00 am, Piccadilly's at Murfreesboro & Wilhagen  
RSVP Required– TBD

### **NORTHEAST TENNESSEE**

President: Mark Lucas, Vice-President: Keith Rhymer, Treasurer: Leslie Persinger

**Meeting** - 2nd Tuesday, 11:30 am

Call for Location: 423-926-2665