

TENNESSEE



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CONTRACTORS ASSOCIATION®

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The TN PHCC Newslink

Feb/Mar 2020

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Office: 865-531-7422
taphcc@bellsouth.net
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Day on the Hill - February 19th

On February 19th we will join forces with other industry professionals and meet on the Capital steps in Nashville armed with our voices and our professional experience to encourage and hopefully influence our state legislators to support our initiatives.

This is a unique opportunity for each of our members, (contractor and associate) and their employees to not only have a seat at the proverbial business table, but also to make a difference and influence the factors that affect your day-to-day business activities and protect your future.

If you are not at the table, you are on the menu- Unknown

Many of you aware from PHCC National about the state of Texas on the brink of losing its statecontractor licensing because of the Sunset Law last year. Through the intervention and last minute efforts of the Texas Governor, their licensing board was reinstated. In Tennessee, our state licensing board is under Sunset Review this year as well. **We fully support the bills to extend the TN State Contractor Licensing Board until 2026.**



We have been working with the American Subcontractors Association (ASA), AGC, ABC and other construction groups across the state to reform the laws and statutes that have plagued the industry for years.

A very dedicated group headed by our member, Jeremy Howard of Merryman-Farr in Nashville and others have spent countless hours and effort to see these reforms hit the legislative table this session. The Paid-if-Paid Contractor Act or the "Construction Payment Protection Act" offers sweeping reform of the four current construction payment acts to include more cohesive language and definitions while protecting, solidifying and making more consistent the payment structures for contractors across the board. We thank them for their efforts and **join them to fully support the Construction Payment Protection Act.**

We will also be reviewing other bills as they are introduced this week. There will be an informative during breakfast at our Day on the Hill to fully prepare you for your face-to-face meetings with legislators and give you the opportunity to make a difference.

Join us today and register to be part of the solution! See page 4 for registration details

TN PHCC Scholarship Application Deadline - March 1st

Please tell your **employees and their families** that the TN PHCC Scholarship deadline is approaching fast. All paperwork must be completed and postmarked by March 1st.



The scholarship program is available to **contractor members and associate members employees and their families, even their grandchildren!** The scholarships are \$1000 each and funded by our annual golf tournament. The first page of the scholarship application details the eligibility requirements and the materials needed for submission.

Click here for the [scholarship application](#) or online at taphcc.com and use the "Scholarship" tab.

Member News

Upcoming Date Reminders...

- Feb 19th: TN PHCC Day on the Hill, Nashville TN
- March 1: Deadline for TN PHCC Scholarship Applications
- April 17: TN PHCC Wiffle Ball Sports Challenge, TriStar Park, Knoxville
- May 6th: TN PHCC Spring Board Meeting, State Office, 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 19-21: PHCC National Day on the Hill, Washington DC
- July 24-25: TN PHCC Summer Board Meeting, 200 Main, Highlands NC
- September 11: TN PHCC Clay Shoot Challenge, Crossville Shooting Sports Park
- September 30-Oct 2: PHCC 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."

Welcome New Associate Members:

Mutual of America

555 Marriott Drive- Suite 510
Nashville, TN 37214
615-872-8223
Contact: Tracey Smith
Tracey.Smith@MutualofAmerica.com



Retirement Services • Investments

Founded in 1945, **Mutual of America** provides retirement plans and services nationwide to organizations and their employees. With more than 45 offices across the country, Mutual of America can tailor services and solutions to the needs of local and regional employers and their employees. As a full-service provider, we eliminate the need for third-party administrators or recordkeepers – which may help plan sponsors save on expenses. The comprehensive retirement benefits we offer help plan participants build the assets they need to support the life they deserve.

Arzel Zoning Technology, Inc.

4801 Commerce Parkway
Cleveland, Ohio 44128
Contact: Anette Justice
anette@arzelzoning.com



For almost 40 years, **Arzel Zoning Technology** has been manufacturing and distributing the highest quality HVAC zoning equipment from our factory in Cleveland, Ohio. Our products offer superior quality and reliability, ease of installation, and the industries only lifetime warranty.

We want to help contractors be more efficient and increase their profits by providing outstanding technical support, NATE accredited training and HVAC zoning equipment that will last a lifetime. Our zoning solutions are designed for new construction and retrofit, residential and light commercial applications. Our commitment to outstanding customer service, innovative and affordable products, and overall dependability makes us the right choice for contractors who want to do it right the first time.

We appreciate the chance to be associated with the TN PHCC and look forward to starting serving the Tennessee HVAC market.

TN PHCC Online Apprentice School Deadline to Enroll– March 1st

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.

There are 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. More information and registration details can be requested online at taphcc.com. Navigate to the Online Apprentice School tab and request a link to the online application.



Contractor and Associate Member of the Year Nominations Requested

Do you know a contractor or associate that is worthy of recognition? Simply go to taphcc.com on the home page and download and submit the nomination form. The deadline for nominations is April 15, 2020 and the winners will be awarded at the Annual Convention May 7th in Knoxville.



Upcoming State Events



Wednesday February 19, 2020

Day on the Hill

8:30am-2pm (lunch served)

Cordell Hull Building, Nashville

Construction Payment Act Support Needed!

Registration form on next page



Friday, April 17, 2020

TN PHCC Wiffle Ball Sports Challenge

3pm-5pm (dinner served)

TriStar Park- 4901 Ball Camp Pike, Knoxville

Wiffle Ball, Corn Hole and Sand Volleyball– Sign up your team, bring your lawn chair and join us for fun!

Registration form on page 7

123rd Annual Trade Show and Convention

Theme: Focus on the Future

Thursday, May 7, 2020

Knoxville Expo Center, 5441 Clinton Highway, Knoxville TN

- **FREE Parking and Convenient Location**
- **Apprentice and Contractor Contests during the show**
- **Free dinner for contractors and exhibitors**
- **Trade Show hours– 2pm to 6:30pm**



Tools of the Trade Show during the evening on Wednesday May 6, 2020



Friday, May 8, 2020

TN PHCC Golf Classic

7am-2pm (lunch served)

Avalon Country Club, Lenoir City TN

Golf, Fellowship and Fun while supporting the TN PHCC Scholarship Fund!

Tennessee PHCC- Day on the Hill

DATE: **Wednesday, February 19, 2020**
LOCATION: **Cordell Hull Building, Nashville**
TIME: **8:30am- 2:30pm**



Your opportunity to make a difference by meeting face-to-face with your legislators to discuss topics affecting our industry!

Schedule: (meeting with legislators approximate)

8:30am Meet at our reserved room in the Cordell Hull Building for a briefing/ schedule (continental breakfast provided).
9:30am First meetings with our Legislators on Capitol Hill
12-1pm Group Luncheon at the Capital
1-2:30pm Second Meetings with our Legislators

Each appointment with our legislators is approx.15 minutes. You will be given a brochure with our background, bills we support or oppose and a briefing prior to discussing the issues with legislators. You will be informed and ready to influence before each meeting.

We have 2 MAJOR bills we will be discussing along with any new bills that may be filed before the February 10th deadline:

Extend the Tennessee State Contractor Licensing Board until 2026. (HB1769 by Daniel and SB1691 by Roberts)– If this is not passed, due to the Sunset Law, the board will dissolve and we will not have any licensing for contractors.

Construction Payment Protection Act. (HB0271 by Gant and SB0324 by Johnson) – Also called the “Paid if Paid Contractor Act” - Sweeping reform of 4 construction payment acts and statutes to protect, solidify and make consistent the payment structure for contractors.

Details: Business suit or suit jacket, comfortable dress shoes. Parking: A map of generally available parking lots will be emailed to you with your registration.

Please bring plenty of business cards.

COMPANY _____

ATTENDEE NAME(s) *HOME Address and Contact Email

1. _____
2. _____
3. _____
4. _____

*We need to know your home address so we can arrange meetings with your designated state representatives ASAP

THERE IS NO CHARGE TO PARTICIPATE IN THIS EVENT!

FAX this form to TN PHCC at (865) 531-7045 or scan and e-mail to taphcc@bellsouth.net by February 14



Member News

Member Spotlight

As a feature of our the newsletter we will have periodic member features to share information and insight to our readers.

For this issue, we are spotlighting **Quality Plumbing and Mechanical** from our Knoxville Chapter. We interviewed **General Manager, Rick Pittser** about the company:



How long have you been in the PHCC business?

Quality Plumbing & Mechanical was established in 1985 by Eric Johnson. We have been a member of the PHCC since 1995. I have personally worked here since 1993 and have been in the plumbing trade since 1988.

What is the focus of your business?

Quality Plumbing & Mechanical has two divisions, Construction and Service. Our Construction division does Commercial Plumbing & Gas installations. Our Service division does residential and light commercial HVAC & residential and commercial plumbing.



Has your company gone through any changes since you opened your doors?

Quality Plumbing started with Eric and an apprentice working out of a pickup doing whatever it took to get a job, whether a toilet change out or a small house rough in. Quality Plumbing really found its niche around 1993 landing a few hotel projects and hiring some very key employees that would help us grow to what we are today. Quality Plumbing now is known for being able to provide a quality installation, done in a timely manner, with a competitive price. We help design most plumbing projects on the front end to help keep costs to a minimum.

We started a service division out of necessity to handle the calls coming from our construction customers. Today we have over 10,000 service customers and are growing at about a 25-30% pace over the last 3 years.

What changes have you seen in the industry or the area, (if any) in the last 5 years?

In the last 5 years, we have seen our construction division stay pretty even. We have a core group of general contractors that we have a great relationship with that we do design builds with.

As for Sevier County in general, with the fires in Gatlinburg of 2016, there has been a large boost in residential building. Over 2500 residences were burned out and are being rebuilt along with the need for local housing. There is a large increase in apartments in the area too. With this, there are a lot of pop up plumbing company's in town that are taking a lot of the labor resources, causing an ever-growing manpower shortage.

What changes do you predict for the next 5 years?

It's an election year, so there is always that looming over our heads. There is still a large amount of work being discussed in Sevier County. We are fortunate to be a tourist destination and things are always being updated and built. I think the outlook is still positive but a slow down of sorts will happen.



Is there anything that surprises you about the PHCC trades?

I am surprised that there are not more company's here locally taking advantage of all the things PHCC has to offer. I know that the PHCC has helped our company and myself grow in ways that we would not have thought of without being a member.

Why are you a member of the PHCC?

PHCC is made up of a group of peers and industry partners that work towards a common goal of improving our industry. Being a part of it gives you a voice, unlimited resources to help your business, and relationships that will last forever. Everyone is willing to share to help your business succeed.



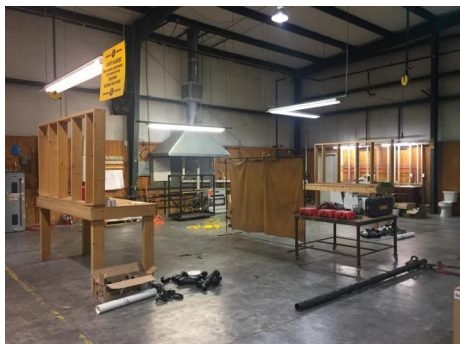
Continued

Member News

Member Spotlight (continued)

What is your favorite TN PHCC or local chapter event and why?

For me, it would be our yearly trade show. It is where you can go and see new products, attend seminars, and catch up with old friends. There is also the apprenticeship contest, which really excites me, because you get to see men and women excited to compete in their field.



I understand that you have made a commitment to trades education with your company, what type of program do you have?

Quality Plumbing is proud to say we put a lot of emphasis in training. We send all apprentices to the local PHCC program along with biweekly training in house. We have a full classroom and hands on lab here at our shop. We teach everything from blueprint reading and codes to hands on installation of rough plumbing and fixtures. We also have a hands-on lab for HVAC to work on heat pumps and gas furnaces.



What can a trade association do for you?

A trade association can be a larger voice for the group rather than one voice. They can lobby for us at a higher level. Facilitate group training and continuing education classes.

Thank you Rick and Quality Plumbing and Mechanical! www.Quality-PM.com!

Members at "the Table" for the Trades

Member Kay Keefe, (and Chairman of the TN PHCC Board) of Keefe Plumbing in Chattanooga and Executive Director Beth Killen are members of the Tennessee Department of Education Architecture & Construction Advisory Council. The council is part of the division of college, career and technical education (CTTE) and plays a critical role in preparing students for careers in the areas of architecture and construction.



The council meets quarterly and helps the TN DOE CTE division to ensure that the programs are relevant to the community, address current industry standards, meet workforce needs and have appropriate resources to support high quality student outcomes.

Member Kay Keefe at TN CTE Advisory Table

To accomplish this purpose, the Advisory Council focuses on, but is not limited to, the following functions: program development, course review, career cluster evaluation, retention, placement and the public information role as examples of the focus.



Spring Career Fairs at Schools Underway

Fall is not the only time of year for area school career fairs and presentations. We have almost a dozen events we have scheduled to attend from February to April for this Spring. We heavily promote our trades careers and the Ride and Decide program.

If you would like to attend or send someone from your HR or recruiting staff, please let us know, we would be happy to have you join us!



TN PHCC Wiffle Ball Sports Challenge

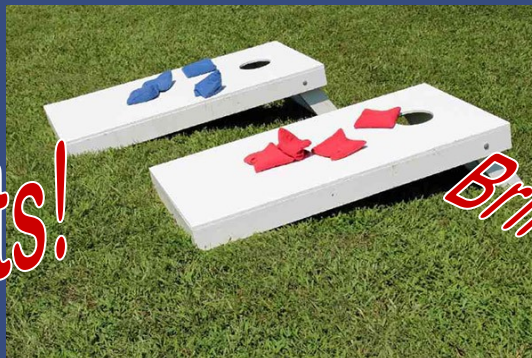


Friday, April 17, 2020
3pm-5pm (dinner served)
TriStar Park
4901 Ball Camp Pike, Knoxville

TENNESSEE



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Bragging Rights!

Bring your lawn chair!

**Please join us for a fun afternoon of fellowship and sportsmanship
at our Wiffle Sports Challenge!**

Team Games:

WIFFLE BALL, CORN HOLE and SAND VOLLEYBALL

Included:

Team medals, one adult beverage ticket per person and dinner.

Fees:

\$250 for 4 person team (5 or 6 person team optional for \$50 each additional person).

Fans- (cheering section only) \$30 per person and includes adult beverage ticket and dinner.

We will provide all sports equipment and referees. Each team will play all of the events in rotation. (Additional games of egg relay, red cup stack, etc. may be added based on number of registered teams.) Maximum of 4 team members per game. Two alternate team members can be substitute for individual events but must be registered. Minimum of 6 teams required to hold event. Rain or shine, no refunds but player substitutions are permissible day of event. Event rules and mode of play are up to the discretion of the TN PHCC and all decisions are final. No outside beverages permitted, alcohol must ONLY be purchased at the location. Additional adult beverage tickets will be available for purchase.

Sign up as an individual, partners or a team. If you do not have your team member names, please print "TBD" below.

Team Name: _____

5th and 6th team members (if any): _____

Player 1: _____

Company: _____

Player 2: _____

Company: _____

Player 3: _____

Company: _____

Player 4: _____

Company: _____

Team: \$250

Fans at \$30 each \$ _____

Total Registration Fee enclosed \$ _____

I would like to help sponsor the tournament for \$ _____ (minimum \$100) My company name will be listed on the event materials and signage.

Return completed form with your payment to: TN PHCC, 9041 Executive Park Dr., Ste 220, Knoxville, TN 37923, email to taphcc@bellsouth.net or call the office with your credit card payment (3.5% handling charge) 865-531-7422. Fax number: 865-531-7045

Company Contact: _____

Email: _____ **Phone:** _____

Registration Deadline is April 1st!

National News

United States Proclamation on Career and Technical Education Month, 2020

Issued on: January 31, 2020



Our Nation's economy is booming, and Americans are thriving. To ensure that our country's workforce remains the best in the world, it is imperative that we equip students and workers with the skills necessary to fill the jobs our economy is creating at an incredible pace and to enable them to reap the benefits of successful careers. During Career and Technical Education Month, we reaffirm our commitment to expanding access to high-quality career and technical education for all Americans.

Career and technical education helps develop a 21st century workforce, providing students with the knowledge and technical skills needed to fill the jobs of the future. My Administration appreciates the value of career and technical education, which is why we continue to prioritize access to the best training and retraining opportunities for American students and workers. We are preparing our workforce to flourish amidst advances in technology and automation, and we are confident that with the right training, hardworking Americans can harness technology to do their jobs even better and faster than they do them today. In July 2018, I signed an Executive Order establishing the President's National Council for the American Worker to facilitate a much-needed partnership between education and business, which will help resolve pressing issues related to workforce development. As a part of the Council's work, my Administration is asking companies and trade groups throughout the country to sign our Pledge to America's Workers, committing themselves to refocusing resources to retrain our workforce and equip students and workers with the skills they need to be successful right here in the United States. Already, more than 400 businesses have signed the pledge and committed to creating 14.5 million enhanced employment, training, and education opportunities for American students and workers over the next 5 years.

We are living in an age of incredible progress, with an abundance of new career fields offering high-wage jobs, especially in science, technology, engineering, and mathematics. Career and technical education provides students with the in-demand skills required by these coveted positions, developing their talents and providing them with the tools to be successful in the modern economy. In July 2018, I was proud to sign the bipartisan reauthorization of the Carl D. Perkins Career and Technical Education Act, which is benefiting more than 11 million students. This critical legislation is modernizing and increasing access to career and technical education programs, providing students and workers with the necessary training that will strengthen our Nation's economic competitiveness. Given the importance of career and technical education, my fiscal year 2021 budget proposal to the Congress will include significant increases in funding for these programs.

This month, we draw attention to the importance of career and technical education in building a stronger American workforce. Our Nation's students and workers are helping to write the next chapter in our proud American legacy of ingenuity and innovation. We will continue to pursue approaches that best fit the needs of individual students and workers and prepare them to unlock their full potential.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim February 2020 as Career and Technical Education Month.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of January, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP

Business News

Are You Complying with Minimum Wage and Overtime Pay Laws?: 81% of Employers Are Not! - SESCO Management

The Fair Labor Standards Act commonly known as the Federal Wage and Hour Law was enacted in 1938 as a remedy to the depression. It specifies a minimum wage, requires overtime pay and places restrictions on child labor. The purpose of the Act was to spread employment by placing financial pressure on employers via overtime pay and to compensate employees for working lengthy hours. Despite a long history of clarification and education, confusion about the FLSA and resulting non-compliance still exists. In fact, back wage fines and legal fees resulting in non-compliance of the Fair Labor Standards Act remains the number one employer liability when it comes to labor and employment laws. **In FYI 2019, the Wage-Hour Division recovered a record \$322 million in wages owed to workers.**

In FYI 2019, the Wage-Hour Division recovered a record \$322 million in wages owed to workers.

As we consider the Wage-Hour Division, we must first understand their mission as follows:

"To promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce."

It doesn't take long to understand how aggressive the Wage-Hour Division is as when exploring their website. If you Google Wage and Hour Division Data, they make it very clear about how proud they are in terms of the back wages that have been collected for workers, how many millions of workers they've helped and what it means to employees to receive these back wages to include estimating what employees can buy with back wages received.

As SESCO was founded by an ex-Wage-Hour officer in 1945 what then was the first Wage-Hour consulting company in America, our history is deeply rooted in compliance. SESCO has literally audited thousands of employers over these many years to determine their compliance with the Fair Labor Standards Act. As stated above, what is concerning is that non-compliance is significant based on our auditing practices and, in fact, **81% (8 out of 10) of those employers audited by the Department of Labor, Wage-Hour Division are, in fact, in non-compliance.** So, if you think you are complying, more than likely you are not.

Wage-Hour Division Statistics

When we look at DOL investigations, we must consider:

- Fifty-one percent (51%) of Wage-Hour investigations are complaint driven. This means that an employee or ex-employee of the employer has contacted the Wage-Hour Division and made a complaint.
- Forty-nine percent (49%) of the remaining cases are non-directed meaning that employers are selected "randomly" for an audit. However, we know based on the Wage-Hour Division that they have identified what they call "high violation industries" and have such targeted these employers for investigations. These include: Distribution, Auto Repair, Construction, Food Services, Healthcare, Retail, Hospitality, Landscaping Services, Pest Control, Manufacturing

There are many other "high violation industries" but the list above will provide an idea of those employers that should be on high alert.

Another concerning statistic is that the Wage and Hour Division has been automatically doubling penalties because their competitor, i.e., lawyers and state court cases apply doubled damages/liquidated damages as part of their cases. Therefore, if investigated and found in non-compliance, the Department of Labor will issue wages due back two (2) years for all current and previous employees. Then they will automatically double these back wages.

Common Minimum Wage Violations

The current minimum wage is \$7.25 per hour. However, many states and even cities and municipalities have passed their own minimum wage which are higher. You must comply with the highest rate enacted.

Can weekly rates be averaged? The workweek (7 consecutive 24-hour periods starting on any day as selected by the employer) is the basis for establishing a minimum wage rate. Therefore, each week must stand alone and you cannot average hours in multiple workweeks.

Uniform purchase and maintenance When employees are required to purchase or clean uniforms, a minimum wage violation will occur if such costs reduce an employee's wages below the FLSA's minimum and the week's uniforms are purchased or cleaned. This same principle will apply to any other required tool, computer, etc.

Breakage, shortage and theft deductions Deductions from an employee's paycheck for losses due to such things as breakage, spillage or cash register shortages are not allowed if the effect would be to reduce the employee's pay below the minimum rate. Funds allegedly misappropriated may not be deducted if that will cause the wage rate to fall below the FLSA minimum —deductions for theft that result in payment of less than the minimum wage can be made only if a court has judged the employee guilty of criminal misconduct.

Continued

Business News

Are You Complying with Minimum Wage and Overtime Pay Laws?: 81% of Employers Are Not! (continued)

Hours Worked

What are hours worked? An employee must be paid for "all hours worked." That includes the time an employee is required to perform principle activities related to the job on the employer's premises or a prescribed workplace and also the time an employee performs work with the knowledge of the employer even if no order to work has been given (FLSA calls this "suffered or permitted" to work). Most importantly, this means working before or after hours and at home.

Are time clocks required? Employers must maintain accurate records of time worked by employees covered by the Act, but time clocks or time recordkeeping systems are not required. If an employer uses a time system, voluntary early or late punches may be ignored if no work is performed before or after hours. Permitting employees to forego punching time clocks during lunch does not require lunch periods to be counted as hours worked if employees are relieved of all duties and the lunch period occurs at a regularly appointed time.

Overtime Pay

Must unauthorized overtime be paid? An announcement or policy that overtime work will not be permitted or that overtime work must be authorized in advance will not always protect an employer. An employee can collect overtime if he or she is actually **suffered or permitted** to work extra hours that is, if the employer or a supervisor actually knows the employee is working overtime or if the overtime appears on payroll records.

For example, employees have recovered overtime pay despite prohibitions against unauthorized overtime work where (1) an employee filed daily reports showing overtime hours and handed them to the time keeper; (2) a supervisor knew that an employee was working overtime hours; and (3) an employee consistently started working in the morning before regular hours.

What is the correct overtime rate? The FLSA overtime rate is one and one-half (1.5) of an employee's "**regular rate.**" The regular rate generally means an hourly rate —it is roughly equal to straight time earnings divided by hours worked. Because overtime is figured on a weekly basis, the regular rate must be computed each week. What is critical and one of the most common violations is that the employee's regular rate does not mean an employee's hourly rate. The regular rate must also include bonuses for accuracy of work, attendance, continuation of employment relationship, incentives, production, quality of work, contest prizes, shift differentials and many other payments. These payments must be included in the computation of the regular rate which, in turn, increases the cost of overtime.

SESCO Staff Recommendations

On-Call Time- Whether or not the time an employee is on call need be counted as part of his/her compensable working time depends on his/her freedom while on call. If he/she must remain on the employer's premises or so near thereto that he/she cannot use the time as he/she pleases, this would be compensable time. If on the other hand the employee is free to come and go, even though he/she must leave a telephone number where they may be reached, the time can be excluded from hours worked.

Lectures, Meetings and Training Time- Attendance at lectures, meetings, training programs, and similar activities need not be counted as working time if all of the following four (4) criteria are met:

- Attendance is outside employee's regular working hours.
- Attendance is voluntary (*it is not voluntary if required by the employer or if the employee is led to believe that non-attendance will prejudice working conditions or employment standing*).
- Employee does no productive work while attending.
- Program, lecture, or meeting is not directly related to the employee's job (*it is directly related to the job if it aids in handling the present job better as distinguished from teaching another job or a new or additional skill*).

Travel Time- The guidelines which apply in determining whether or not time spent in travel is working time depends upon the kind of travel involved.

It is the position of the Wage-Hour Division that an employee who is required by their employer to drive an automobile or a truck for the transportation of other employees to or from work at any time is working while traveling. It makes no difference whether the vehicle is the employee's own car, the employer's car, a rented car, or a truck.

If you are currently not a SESCO client, please contact SESCO at 423-764-4127 or sesco@sescomgt.com to learn more about our professional firm and the services that we provide to our valued clients in all industries across all states.

Distracted Driving Awareness: Curbing the Power of Smartphones

We don't need Distracted Driving Awareness Month to know that the impacts of distracted driving can be lifelong. One listen to the poignant stories of those who have lost loved ones to distracted driving hammers the point home.



And yet, the fatal statistics keep trending upward. In an interview with Lytx, National Safety Council statistician Ken Kolosh revealed that in 2015 and 2016, the U.S. experienced yearly increases exceeding 6 percent in motor vehicle fatalities, the largest two-year percentage increase in deaths in 53 years. Reversing that trend starts with curtailing distracted driving, Kolosh said.

In fact, according to Lytx data, a person is seven times more likely to have a collision when reaching for a device, and 23 times more likely to have a collision when texting.

While smartphones aren't the only culprit in the distracted driving space (navigation devices, loose objects and eating play a role), their unique power propels the distracted driving problem, said Larry Rosen, Ph.D., a research psychologist and educator at California State University, Dominguez Hills.

Rosen, the author of *The Distracted Mind: Ancient Brains in a High-Tech World*, discussed Americans' obsession with technology on *60 Minutes* last spring. Calling the smartphone "the biggest driving force to distract us," Rosen talks with Lytx about why this gadget drives distraction so much—while Lytx's Gary Johnson joins Rosen in offering tips on what fleets can do to curb distraction at the wheel.

The Power of Smartphones Can Fuel Distracted Driving

Well before smartphones became popular in the early 2000s, people had an "implicit agreement that they would return calls when they could," Rosen said. But as email, cell phones, and texting became more common, the expectation of a timely reply ramped up, too.

Social media fueled people's craving for immediate feedback even more, Rosen said. And though smartphones are useful for several things, they distract us for three key reasons:

1. We thrive on feeling connected, and smartphones offer connectivity.

"Smartphones have turned us into information-foraging animals," Rosen said. "We're like animals foraging for food, but we're foraging for information instead." By offering a combination of information and connectivity to our social networks, smartphones "have everything we live for," Rosen said.

2. Smartphones consume our attention.

That's fine if we have nothing else to do, but when there's work to be done (such as commercial driving), smartphones hinder one's ability to focus. In writing *The Distracted Mind*, Rosen learned that unless a task is very simple, human beings can't perform two tasks at once. "When we try to focus on two things at the same time, it takes us longer to do them both and adds a lot of stress," he said. Not to mention, checking your phone requires removing your eyes from the road.

3. Checking in is a compulsion.

Rosen emphasized people's heavy reliance on smartphones doesn't constitute an addiction. Rather, it's a compulsion. "If it were an addiction, we'd enjoy it," he said. "But most of us don't enjoy it. When logging in to social media, most people actually get a feeling of relief—like 'I've checked in and everything's cool.' They can check it off their list."

Propelling that compulsion is the "ding" a smartphone produces. Though it may seem benign, Rosen has found that it actually raises anxiety levels. "It's very difficult to be doing anything, including driving, and have your smartphone ding," Rosen said. "On *60 Minutes*, every time my colleague Dr. Nancy Cheever texted anchor Anderson Cooper, his arousal spiked. That shows that when a smartphone dings, people will be drawn to it, and it detracts their attention from the task at hand."

So what can commercial safety managers do to curb distracted driving, considering the power that smartphones have on us? Rosen and Lytx Director of Risk and Compliance Gary Johnson make these suggestions:

4. Turn the smartphone off or use the "Do Not Disturb" setting while driving.

"It's very difficult to be driving and have your smartphone ding every time a text comes through," Rosen said.

Continued

Distracted Driving Awareness: Curbing the Power of Smartphones (continued)

4. Continued- “By turning the phone off or the volume down, you increase your chances of putting your attention where it needs to be - on driving.”

5. Invest in video telematics such as the Lytx Driver Safety Program.

Fleets that have a distracted driving problem among drivers often don't even know it until they've installed a program such as the Driver Safety Program, Johnson said. Such safety technologies give fleets visibility into what's really happening with their drivers, he added. Just as important, the Driver Safety Program empowers companies to coach drivers who are distracted at the wheel, helping them improve while keeping their jobs.

A person driving while dialing a smartphone is six times more likely to be involved in a collision than someone who's not, as indicated by Lytx data. “By adopting video telematics technology, you obtain the tools to address distracted driving behaviors,” Johnson said. “They're behaviors that put not only the company at risk, but especially the driver.”

Even a routine call by a dispatcher can tempt drivers to answer the phone while driving, despite whether company policy or state law forbids it. “Sure, many state laws forbid using a cell phone while driving, but if a phone's in the vehicle, that temptation is always there,” Johnson said. “The Lytx Driver Safety Program can show, through concrete video, whether or not your policies are being followed and enforced.”

6. Train your drivers to take a smartphone break.

It's called a “technology break,” said Rosen, who suggests fleet managers work with their drivers to reduce their dependence on smartphones. “The best thing you could do for your drivers is to help behaviorally train them not to check in while they're driving,” he said. “Getting the phones out of the vehicle is a good place to start.”

In their free time, drivers can work to wean themselves from their smartphones by checking it at intervals farther and farther apart, Rosen added.

7. Reframe the sensation of anxiety as “excitement.”

The chemicals that make you feel anxious are really just arousal chemicals, Rosen said. “We can just as easily reinterpret them as excitement, and then people won't feel the need to check in.” Rosen also suggests drivers listen to music, podcasts or audiobooks while they drive to get their minds off their smartphones. “Audio stimuli bring up a whole new pleasure system in your brain that isn't based on anxiety,” he said. “They're a distraction from the distraction.”

Ultimately, Johnson said, it's family members who are driving on the road every day. “So why would you put families at risk by not addressing this behavior?”

Ready to install video in your vehicles to help combat distracted driving? **Contact Lytx.** *Larry Rosen, Ph.D., a research psychologist and educator at California State University, Dominguez Hills, has called the smartphone “a major game changer in our lack of attention.”*

Part-Time Work by Choice Is on the Rise in the US - Refresh Leadership

Since the Great Recession, the number of Americans working part-time for economic reasons-such as the lack of full-time opportunities-has declined by more than 50 percent, from more than 9 million to less than 4.5 million. At the same time, the number of Americans working part-time for non-economic reasons-such as child care or semi-retirement-has risen steadily from around 18 million to more than 21.5 million. (Source: [Bureau of Labor Statistics](#))

In a recent survey, Express Employment Professionals polled job seekers about whether they preferred full-time (63%) or part-time work (37%). Those who preferred part-time work were asked to give specific reasons. Given the trends over the last decade, it is unsurprising that virtually all responses cited non-economic reasons:

Examples include:

- “Part-time actually motivates me to complete work in a more efficient manner.”
- “I have simplified my life, and work is not the most important thing. A part-time job supports my passion.”
- “Flexibility to take classes.”

Continued

Business News

Part-Time Work by Choice Is on the Rise in the US (continued)

- “I have grandkids who need to get picked up after school, and I am the one that has to provide transportation and two hours after school of care.”
- “I want something I can do while my kids are in school.”

Terri Greeno, an Express franchise owner in Crystal Lake, Illinois, says that the most preferred part-time schedule is one that “enables parents to drop off and/or pick up their kids from school.”

She also notes that part-time work is a good option for baby boomers who are ready to transition out of the workforce but still want to stay busy and earn some money.

“Many people would like to continue to work part-time while they collect Social Security,” she explained. This can be a win-win for baby boomers and employers, who are already struggling to find and train talent. “It’s better to have the boomers’ experience and wisdom on a part-time basis than not at all,” Greeno added.

Yvonne Rockwell, an Express franchise owner in Santa Clarita, California, says that employers should embrace this opportunity to offer flexibility.

“The days of ‘full-time or nothing’ are in the past,” she said. “Employers need to flex with the market in terms of maintaining their competitive edge. Employers need to ask themselves, ‘Why not?’ versus saying, ‘We won’t,’ and ‘We can’t’ or ‘We have never.’”

Janis Petrini, an Express franchise owner in Grand Rapids, Michigan, says a boomer working part-time in a mentoring capacity can be valuable, “especially in skilled positions where they really need the expertise of the boomers.”

“Choosing part-time work is an empowering decision for so many Americans, but for some, it’s not a choice—they’d rather work more,” said Bill Stoller, CEO of Express. “Our economy and country will be better off when as many Americans as possible can be part of the workforce. That will mean providing enough flexibility so they can work the hours they need while living the lives they want.”

The survey of 290 job seekers was conducted in October 2019 through the Express Job Journey blog. The survey of 276 decision makers was conducted in October 2019 through the Express Refresh Leadership blog.

New Forms I-9 and W-4 Released

Form I-9 The U.S. Citizenship and Immigration Services (USCIS) has released a new version of Form I-9. Federal law requires that all employers complete a Form I-9 to document verification of the identity and employment authorization of each new employee hired after November 6, 1986, to work in the U.S. The updated I-9 contains minor changes to the form and its instructions and is effective immediately. Employers may continue using the prior version of the form **until April 30, 2020. Starting May 1, 2020, employers may only use the new form with the October 21, 2019 version date.** The version date is located in the lower left corner of the I-9 form. Employers do not need to complete a new I-9 for current employees who already have a properly completed Form I-9 on file, unless re-verification applies.

Form W-4 The new 2020 W-4 for employee withholding has been released and can be downloaded on www.irs.gov. The new design reduces the form’s complexity and increases the transparency and accuracy of the withholding system. While it uses the same underlying information as the old design, it replaces complicated worksheets with more straightforward questions that make accurate withholding easier for employees.

Allowances are no longer used for the redesigned Form W-4. This change is meant to increase transparency, simplicity, and accuracy of the form. In the past, the value of a withholding allowance was tied to the amount of the personal exemption. Due to changes in law, currently you cannot claim personal exemptions or dependency exemptions.

Current employees do not have to fill out a new W-4 but all new employees starting in 2020 will have to use the new form. If an employee hired prior to 2020 wants to change his/her withholding, they must fill out the new form.

IRS Lowers Standard Mileage Rate for 2020

Effective Jan. 1, 2020, the optional standard mileage rate used in deducting the costs of operating an automobile for business is 57.5 cents per mile, down one-half cent from 2019, the IRS announced Dec. 31 in Notice 2020-05. **This is the first time the rate has fallen in three years.**

Businesses can use this amount—also called the safe harbor rate—to pay tax-free reimbursements to employees who use their own vehicles for business.

Business News

Can Using CBD Oil Result in a Failed Drug Test? The Answer May Surprise You...

LEGALLY SPEAKING by Nadia A. Lampton, Taft/Law

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.

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.

Business News



DOL Releases Final Rule to Clarify Joint Employment

The U.S. Department of Labor (DOL) has announced a final rule to revise and update its regulations interpreting joint employer status under the Fair Labor Standards Act (FLSA), which is of particular interest to employers that use staffing agencies, have franchise relationships, and use subcontractors. **The effective date of the new rule is March 16, 2020.**

The FLSA requires that employees be paid at least minimum wage for all hours worked, and that employees receive overtime for any hours worked over 40 in a workweek. This is relatively straightforward when there is only one employer. But if an individual is jointly employed by more than one employer, it is more complicated to ensure that the employee's wages are properly paid. If there is a joint employment relationship, each employer can be held liable for the full amount of the wages owed to the employee.

Employee Working for One Employer, Benefits Another Employer

The final rule highlights two situations when joint employment comes into play. In the first situation, the employee does work for one employer which also benefits another employer. In this case, there is a 4-part test to determine whether a joint employment relationship exists. The test examines whether the potential joint employer:

- Hires or fires the employee;
- Supervises and controls the employee's work schedule or conditions of employment to a substantial degree;
- Determines the employee's rate and method of payment; and
- Maintains the employee's employment records.

(NOTE: The National Labor Relations Board has recently restored the old rule that a joint employer relationship only exists if two or more employer both had the power to do the above).

The rule states that each case needs to be looked at on an individual basis, examining the specific facts and circumstances. How the factors are weighed in each case will depend on the unique aspects of each situation. If additional factors show whether the potential joint employer is exercising significant control over the terms and conditions of the employee's work, then these factors will be considered as well.

The rule also lists a number of factors that will not be considered when making a determination on whether a joint employment relationship exists. According to the final rule, these include:

- The economic dependence of the employee on the potential joint employer.
- Whether the company is operating as a franchisor or entering into a brand and supply agreement, or using a similar business model.
- The presence of contractual agreements the potential joint employer has with the employer that would require the employer to meet legal obligations or standards to protect the health or safety of its employees or the general public.
- The presence of contractual agreements the potential joint employer has with the employer that would require quality control standards ensure the quality of the work product, brand, or business reputation.
- Whether the potential joint employer has a practice of providing the employer with a sample employee handbook, or other forms, allowing the employer to operate a business on its premises (including "store within a store" arrangements), offering an association health plan or association retirement plan to the employer or participating in such a plan with the employer, jointly participating in an apprenticeship program with the employer, or similar business practices.

Are the Employers Sufficiently Associated?

The final rule outlines a second potential situation when a joint employment relationship may exist. According to the rule, if an employee is working for two different employers, and the employers are sufficiently associated in regards to the employee's employment, a joint employment relationship exists and the employers must combine the hours worked for each in order to determine if they are paying the employee properly.

The new rule outlines several factors to determine whether employers are sufficiently associated:

- If there is an arrangement between them to both use the service provided by the employee,
- The employer is acting directly or indirectly in the interest of the other employer in relation to the employee, or
- They share control of the employee, directly or indirectly, because one employer controls, is controlled by, or is under common control with the other employer.

On the other hand, the rule states that in a situation where an employee is working for two different employers, but the employers are acting independently of each other and are disassociated with regards to the employment of the employee, then a joint employment relationship does not exist and each employer may disregard work performed by the employee for the other employer when meeting its obligations under the FLSA.

What to Do Next

There are several types of business relationships that have traditionally had to be very careful when it comes to joint employment. Companies that use staffing agencies to provide additional workers should examine the new rules to ensure they are paying their employees properly. Businesses that are involved in franchise relationships often run into problems with joint employer requirements.

There are also situations where businesses can be held to joint employer relationships with subcontractors. The new rules make it more difficult for employees to hold companies liable for the wage violations of staffing agencies, franchisees and subcontractors, but it is still important for all companies to review the new rules on joint employment, analyze your business relationships with other employers, review your pay policies, and make sure your company is in compliance with the updated joint employer rules.

For assistance, please contact us at 423-764-4127 or by email at sesco@sescomgt.com

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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

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

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