



CENTRAL STATES INSULATION ASSOCIATION'S

INSULATOR

March 2019

**Items to Share
with Your
Employees**
IRS WAIVES
PENALTY

Legally Speaking
THE TREND TO
CONSOLIDATE
UNION LOCALS



Labor and Employment
Marijuana and
Drug Testing
PART 2

Spring Conference Preview

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INSULATOR

Magazine



Rachel Pinkus

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

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

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

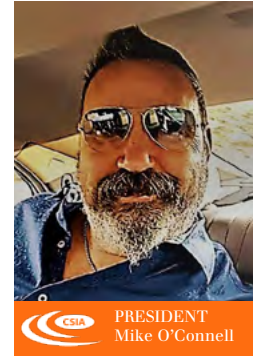
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Presidents Message

Mike O'Connell - Smart Energy Insulation.



CSIA PRESIDENT
Mike O'Connell

2019 is here! I always love the feeling that a New Year can give as a fresh start. Putting the past in the rearview mirror, but wisely. I used to remind all of our kids as they started a new semester in school that they had "Straight A's!".... (until you miss an assignment or didn't study for an exam). Every new beginning brings hope and optimism. Colin Powell said "Optimism is power multiplier." So instilling optimism in your life, your family, your business and community can be powerful.

Our mechanical insulation industry and business has much to be optimistic about. Our recently fragile economy showing signs of growth and getting traction. The economic optimism breeds business growth and expansion. That leads to projects and opportunities for our industry. Is our industry (Union Mechanical Insulation) up for the challenge? Are our companies in shape and prepared to handle the challenge? Are our Union partners preparing with training and manpower to grow Union Insulation industry market share during this time of opportunity? Are we working together - Management & Unions - to seize these opportunities?

Could we better identify challenges together? Could we co-create solutions to better meet the challenges together? Could we break down barriers of the past to REALLY work together as partners? In my recent newsletters, I received some concerns for being too critical, misunderstanding the issue, not appreciating the barriers and taking things out of context. I also received positive comments from many for addressing what we all know to be issues that can no longer be ignored without feeling the eventual consequences. The Roman Philosopher Cicero said "I criticize by creation, not by finding fault." That is very hard to do! Let us all leave blame, fault and complaints behind us. Let us work together with our Union partners.....use this new year for optimism and resolutions. Co-create solutions with our Union partners that have actions. Actions that steer our industry in the right direction.

I call on all contractors and Union officials in the Central States Region to come together and find our overlapping goals

and common vision for a better - stronger industry.

I invite all of you in the Central State Region to meet. Come together. Meet with us April 30-May 1, 2019 at Belterra Resort Florence, IN in the heart of our territory. We invite Union officials, contractors and the International to attend and Come Together!

We will be putting together an agenda of issues and challenges we must address to be a stronger Union Insulation Contracting industry. Co-creating a better industry:

- Growing Man Hours and Market Share in EVERY local of Central States
- Stomping out Non-Union
- Being a force for Organizing
- Assuring the Best In Class Quality and Safety
- Insulation making a difference in America
- Growing trained and ready workforce in EVERY local
- Establishing semi-annual meetings in every Local (not just negotiations)
- Establishing annual meetings and sub-committees with our Union partners

I look forward to see all of you in a few weeks. I sincerely hope we have strong representation from all to move forward.

Optimistically,

Mike O'Connell

Smart Energy Insulation

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SPRING LABOR CONFERENCE & GOLF OUTING

April 30 - May 1, 2019

Belterra Casino, Resort & Spa
777 Belterra Dr. - Florence, IN

*Please print clearly or Register Online at www.csiaonline.org
Use a separate form for each registrant, and duplicate form as necessary.*

Company Name _____

Full Name _____ First Name for Badge _____

Title _____ Email _____

Company Address _____

City _____ State _____ Zip _____ Country _____

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Conference Registration **A**

Member Non-Member

FULL Registration \$475 \$575

Includes Reception, all educational sessions, golf, breakfast, lunches and beverage cart tickets.

Education ONLY Registration \$350 \$375

Includes Reception, all educational sessions and breakfast and lunch.

GOLF ONLY Registration \$175 \$225

Includes Reception, golf, lunch and beverage cart tickets.

RECEPTION ONLY Registration \$100 \$150

Includes Reception Only!

Subtotal A \$ _____

Sponsorship Opportunities **B**

Includes Recognition on CSIA Social Media, in Event Program, Signage, Pre and Post-Conference Materials and a Sponsor Ribbon on Name Badge.

Full Page, Full Color Ad in the Conference On-Site Program \$125

An Individual Hole Sponsor \$125

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Golf Beverage Cart Sponsor \$350

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Subtotal B \$ _____

Total Payment Due

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Check to CSIA Visa MC AmEx Discover
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Cancellation Policy

All cancellations must be received in writing. A \$15 processing fee applies to all cancellations. No refunds will be given after April 22, 2019.

All refunds will be processed after the conference.

RETURN TO: CSIA - 2077 Embury Park Rd. - Dayton, Ohio 45414 or FAX TO: 937-278-0317

QUESTIONS? Contact Rachel or Carroll at: 888-294-0084 or rpinkus@assnsoffice.com

2019 CSIA Spring Conference Tentative Schedule of Events



Tuesday April 30, 2019

- 8:00-10:00AM CSIA Board Meeting (Maple Room) (closed meeting)
8:00-10:30AM Registration Open (Ballroom AB Foyer)

BALLROOM AB

- 10:30AM Welcome, Introductions and Conference Overview with CSIA President, Mike O'Connell
11:00AM Growing our Ranks and the Manpower Shortage (Review of Contractor Surveys) with Mike O'Connell
11:30AM The National Union Insulation Contractors Association and Portability with Alec Rexroat and Jim Gribbins
12:00PM LUNCH
12:30PM Quality Issues & Value Engineering
1:00PM The Pros and Cons of JATC's , Training and Licensing
1:45PM BREAK
2:00PM Standard Form Agreement Contract Language
2:45PM The Trend to Consolidate Union Locals. Is this the Demise of City Trade Associations? With Bob Dunlevey of Taft Law
3:30PM Non-Union and Double-Breasted Contractors – a Panel Discussion Moderated by Mike O'Connell
4:30PM BREAK
5:00PM RECEPTION
6:00PM Evening-Dinner on your own

Wednesday May 1, 2019

- 7:30AM BREAKFAST
8:00AM Welcome and Recap with CSIA President, Mike O'Connell
8:15AM CSIA Safety Awards Program: What is It and How to Use It with Gary Auman of Auman, Mahan & Furry
8:30AM Presentation of Safety Awards with John Stevens of Thermal Solutions-Ohio, Inc.
8:45AM Presentation of new CSIA Safety Manual with Gary Auman of Auman, Mahan & Furry
9:00AM Updates by Local Including Local Pension Fund Status
9:30AM Update on National Pension Fund Status with Segal Consulting
10:00AM BREAK
10:15AM Wage Trends and CLRC Services with Carey Peters of the Construction labor Research Council
11:00AM Closing Comments
11:15AM BREAK
12:15PM LUNCH - for Registered Golfers
1:00PM Golf – Shotgun Start

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ROOM RATE: \$119 +12% tax

Check-in time is 4:00 PM and the check-out time is 11:00 AM

Room Block Cut-Off: April 13, 2019. After this date, reservations from the Group will be granted based on a space and rate availability basis.

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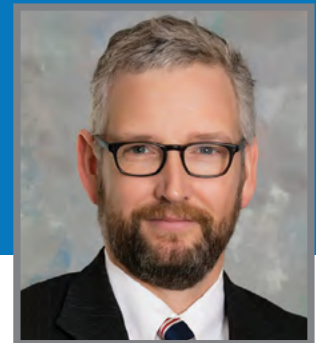


Gary W. Auman

**Auman
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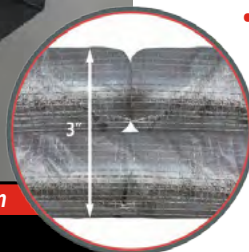
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IRS WAIVES PENALTY

for many whose tax withholding and estimated tax payments fell short in 2018

The Internal Revenue Service announced that it is waiving the estimated tax penalty for many taxpayers whose 2018 federal income tax withholding and estimated tax payments fell short of their total tax liability for the year.

The IRS is generally waiving the penalty for any taxpayer who paid at least 85 percent of their total tax liability during the year through federal income tax withholding, quarterly estimated tax payments or a combination of the two. The usual percentage threshold is 90 percent to avoid a penalty.

The waiver computation announced today will be integrated into commercially-available tax software and reflected in the forthcoming revision of Form 2210 and instructions.

This relief is designed to help taxpayers who were unable to properly adjust their withholding and estimated tax payments to reflect an array of changes under the Tax Cuts and Jobs Act (TCJA), the far-reaching tax reform law enacted in December 2017.

“We realize there were many changes that affected people last year, and this penalty waiver will help taxpayers who inadvertently didn’t have enough tax withheld,” said IRS Commissioner Chuck Rettig. “We urge people to check their withholding again this year to make sure they are having the right amount of tax withheld for 2019.”

The updated federal tax withholding tables, released in early 2018, largely reflected the lower tax rates and the increased standard deduction brought about by the new law. This generally meant taxpayers had less tax withheld in 2018 and saw more in their paychecks.

However, the withholding tables couldn’t fully factor in other changes, such as the

suspension of dependency exemptions and reduced itemized deductions. As a result, some taxpayers could have paid too little tax during the year, if they did not submit a properly-revised W-4 withholding form to their employer or increase their estimated tax payments. The IRS and partner groups conducted an extensive outreach and education campaign throughout 2018 to encourage taxpayers to do a “Paycheck Checkup” to avoid a situation where they had too much or too little tax withheld when they file their tax returns.

Although most 2018 tax filers are still expected to get refunds, some taxpayers will unexpectedly owe additional tax when they file their returns.

Additional Information

Because the U.S. tax system is pay-as-you-go, taxpayers are required, by law, to pay most of their tax obligation during the year, rather than at the end of the year. This can be done by either having tax withheld from paychecks or pension payments, or by making estimated tax payments.

Usually, a penalty applies at tax filing if too little is paid during the year. Normally, the penalty would not apply for 2018 if tax payments during the year met one of the following tests:

- The person’s tax payments were at least 90 percent of the tax liability for 2018 or
- The person’s tax payments were at least 100 percent of the prior year’s tax liability, in this case from 2017. However, the 100 percent threshold is increased to 110 percent if a taxpayer’s adjusted gross income is more than \$150,000, or \$75,000 if married and filing a separate return.

For waiver purposes only, today’s relief lowers the 90 percent threshold to 85 percent. This means that a taxpayer will not owe a penalty if they paid at least 85 percent of their total 2018 tax liability. If the taxpayer paid less than 85 percent, then they are not eligible for the waiver and the penalty will be calculated as it normally would be, using the 90 percent

threshold. For further details, see Notice 2019-11, posted today on IRS.gov.

Like last year, the IRS urges everyone to check their withholding for 2019. This is especially important for anyone now facing an unexpected tax bill when they file. This is also an important step for those who made withholding adjustments in 2018 or had a major life change to ensure the right tax is still being withheld. Those most at risk of having too little tax withheld from their pay include taxpayers who itemized in the past but now take the increased standard deduction, as well as two-wage-earner households, employees with nonwage sources of income and those with complex tax situations.

To help taxpayers get their withholding right in 2019, an updated version of the agency’s online Withholding Calculator is now available on IRS.gov. With tax season starting Jan. 28, the IRS reminds taxpayers it’s never too early to get ready for the tax-filing season ahead. While it’s a good idea any year, starting early in 2019 is particularly important as most tax filers adjust to the revised tax rates, deductions and credits.

Although the IRS won’t begin processing 2018 returns until Jan. 28, software companies and tax professionals will be accepting and preparing returns before that date. Free File is also now available.

The IRS also reminds taxpayers there are two useful resources for anyone interested in learning more about tax reform. They are Publication 5307, Tax Reform: Basics for Individuals and Families, and Publication 5318, Tax Reform What’s New for Your Business. For other tips and resources, visit IRS.gov/taxreform or check out the Get Ready page on IRS.gov .

Anthony J. Palmer
Stakeholder Liaison
Internal Revenue Service

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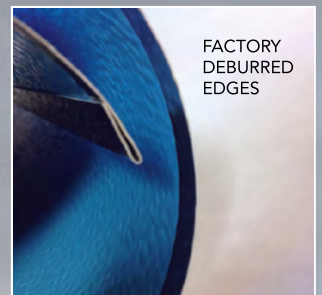
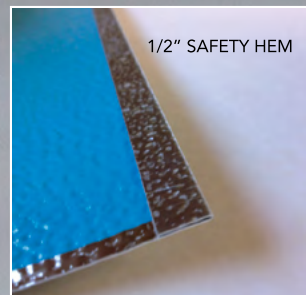
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THE TREND TO CONSOLIDATE UNION LOCALS



By: Bob Dunlevey

The Demise of City Trade Associations?



“contracts for over one-half of a century are being replaced”

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WORKER RIGHTS
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HUMAN RIGHTS

Don't let
them divide
the middle
class.

DANGER
KEEP OUT

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HAVE DIED
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FOR
UNIONS

DANGER
KEEP OUT

UNIONS
MAKE US
STRONG

I AM A PROUD
PUBLIC WORKER

WORKER RIGHTS
are
HUMAN RIGHTS

I AM A PROUD
WORKER

AM
PUB

Many International Unions are consolidating their locals and attempting to create multi-state regional bargaining agreements to reduce their administrative costs, increase their bargaining power and set standard collective bargaining agreement terms and conditions favorable to them. As a result of this movement, city and local area trade associations which have bargained and administered local contracts for over one-half of a century are being replaced by regional associations handpicked and developed by the International Union leaders so that the union can establish a realigned multi-employer bargaining relationship more favorable to it. The very existence of local multi-employer bargaining associations as we have known them is in jeopardy. Unless city associations plan now for this eventual scenario they will suffer even less bargaining power than ever before – they may even become extinct.

City associations must consider possible consolidation or “joint venturing” with other associations to enhance bargaining power, to create a higher level of sophistication in dealing with the unions, and to lower the costs of the association conducting its business – among other things. Obviously, it takes much advance planning, collaborative effort, vision and resolve for members of these local associations to meet these new challenges – even the most successful ones.

Already on the East Coast and in the Midwest unions such as the Carpenters, Millwrights and Ironworkers are making their moves. Is your company and your association prepared to meet these challenges?

Picture this – the Executive Director of your local association who has held the position for 20 years gets a call from the long time local union business manager saying that an International Vice President will be coming from Washington to negotiate a new multi-state contract to replace yours. You have never heard of this International Union official

and you are satisfied with the relationship your multi-employer group has established with the business manager and his business agent over the years – after all, it took some time to build trust. Shortly thereafter, the International Vice President calls your Executive Secretary and says he wants to meet to negotiate and he will be sending a “model” bargaining agreement because the union wants standardization – kinda like Sheet Metals’ Standard Form of Union Agreement but actually handpicked clauses most favorable to the union gathered from his various locals – ouch! He claims regional portability of workers will be good for you but you never work in the other covered locals. He tells your Executive Secretary that a trade association on the East Coast which you have never heard of is going to be an actual “party” to the collective bargaining agreement along with your local association. He explains that the union has a “special relationship” with that organization, that association has a good perspective of the industry and it will somehow be good for the local contractors – loosely translated this means the East Coast association is “in bed” with the International and will facilitate the adoption of the union’s bargaining proposals now and in the future. Then, at the bargaining table all that you fought for in 50 years of negotiations goes “out the window” in favor of the union’s burdensome bargaining agreement with East Coast wages, benefits and working conditions. How will your customers react to these price increases? There goes more jobs taken away by non-union contractors!

If that were not enough, most of your employer contributions to your industry fund will be diverted to the East Coast association whose name is on the front page of your contract. The association officers then recognize that they don’t have enough money to operate the association’s offices and the Executive Director becomes part-time working from home. Lord – how did all of this happen to all of us contractors in just 90 days? My how we long for a good old fashioned fight with our local business manager who was forced to retire because of this. Not liking any of this, your

(continued on pg 20)

association members say they will take a strike before they will agree to all of this. In turn, the International Vice President says he will negotiate your agreement with the East Coast association and “oust” your local association all together.

Does this scenario sound make believe? I assure you it is not! I have been involved in these new union tactics throughout the Midwest in the last year or so with several unions. If you don't want this, or if you believe that your association isn't postured properly to avoid a “hostile take-over”, you need to start strategizing and planning now. None of this can be accomplished within a few weeks of when your contract expires. Here are some of the things you need to do now:

- Assess whether your International Union is considering the tactics mentioned in this article. Is the International consolidating locals? Is the International trying to effectuate regional or national benefit plans and apprentice programs? Is there a trend to standardization? What are your local union officials saying about all of this?
- Assess whether your association is strong enough to reject this type of union maneuver and how effective your local association has been in dealing with your union. If you are concerned or if you think the union had the advantage at the bargaining table, consider abandoning your current style of negotiations in favor of an alternative bargaining format utilizing more experienced bargaining negotiators and bringing other contractor groups into your multi-employer unit.
- Consider standardizing collective bargaining agreement terms and conditions with your neighboring associations in your region before the union does it for you – united you stand – divided you fall! Also, consider worker portability provisions.
- Strive to strengthen your allegiances with

your fellow contractors and neighboring associations.

- Evaluate the costs of local collective bargaining negotiations and contract administration and determine if it would be beneficial to share these costs with other employers and associations in order to upgrade your bargaining approach.
- Start the “conversation” today among your fellow contractors and associations before it is too late - consider your labor relations goals and strategies as part of your long term business plan.

For further information, contact Bob Dunlevey at Taft/Law (937) 641-1743 or email rdunlevey@taftlaw.com.



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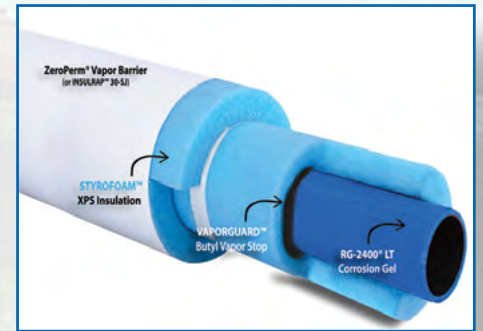
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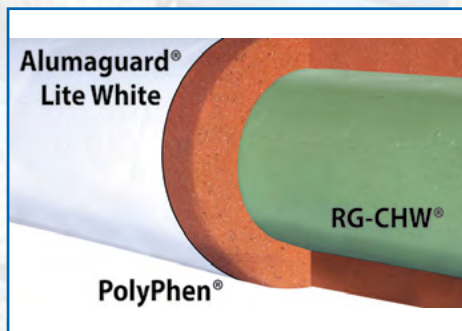
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LEGAL SERVICES PLAN:

This plan provides members with the ability to get back their investment in dues many times over. Every CSIA Member is entitled to one consultation per month with attorney Bob Dunlevey of Taft/. This firm specializes in Labor Law, OSHA, and Construction Contract Law.

BI-MONTHLY NEWSLETTER:

The CSIA Newsletter highlights Association activities and upcoming events. It also brings news of the region, including labor and legal matters, items of general business interest, personnel changes within member companies, and information on new products and technologies available from member supplier firms.

E- BULLETIN:

The E-Bulletin brings industry news to our members in between newsletter issues. It also provides information in a condensed format and a great vehicle to get your message out fast to the membership!

SPRING LABOR SEMINAR:

Spring of each year, CSIA holds its Annual Labor Seminar which covers 16 area agreements and labor trend updates. We also provide the *Labor Management Manual* which is an excellent reference manual for labor statistics and contract issues. This conference combines valuable networking opportunities, education and fun.

FALL CONFERENCE:

Each year, a Fall Conference is conducted at a facility within or near the region. At this business conference, directors and committee chairs are elected and official business is conducted. Guests are welcome at this conference featuring outstanding speakers and workshop presentations. This conference is also a great opportunity for a little relaxation and recreation which is made even more valuable by the added chance to build social relationships with your colleagues from the insulation industry.

FULL TIME ASSOCIATION STAFF:

CSIA Members receive the service of a full time staff; ready to give direct answers to your questions or to find the source with the answer you need. We have members on our staff who are well versed in labor relations, government affairs, construction industry issues, and inter-industry relations. We'll help you get the resources you need to keep your business running smoothly.

WEBSITE—www.csiaonline.org:

The website is a key item in our ongoing program to promote our CSIA Members. This website is not only designed to help the insulation customer find a CSIA Member in their area, it is also designed to help you the contractor stay informed about current issues that affect your business, as well as providing access to contractor services and product suppliers. Enjoy the convenience of online registration and dues renewal too!

ANNUAL SCHOLARSHIP PROGRAM:

Each year, CSIA offers two \$1000.00 college or technical school scholarships to students who are the children of or under the legal guardianship of employees of CSIA member companies. The purpose of this Scholarship Program is to help two college students per year in a field of study that is relevant to the Mechanical Insulation Industry.

WEBINARS:

Each quarter CSIA offers you the best in business management sessions in human resource management, risk management for safety directors, financial management for construction, and more! You tune in from your desk to hear and see the speaker, eliminating the need for costly travel and expanding CSIA's resources to all management personnel!

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SCHOLARSHIP

The Central States Insulation Association offers two \$1,500 college or technical school scholarships to students who are the children of, or under the legal guardianship of, employees of **CSIA** member companies. If you are an employee of a **CSIA** member and have a child or other dependent who is currently a student at a college, university, technical institute, or trade school, or who plans to enroll in such an institution this year, he or she may be eligible to apply for a **CSIA** scholarship. Applications and required supporting material along with a photo of the applying individual must be returned to the **CSIA** Office by July 15th.

**CENTRAL STATES
INSULATION ASSOCIATION**
2077 Embury Park Rd.
Dayton, OH 45414

PH: 937-278-0308
FAX: 937-278-0317
csia@assnsoffice.com
www.csiaonline.org

The purpose of this Scholarship Program is to supplement financially up to two (2) college students per year in a field of study that is relevant to the Mechanical Insulation Industry directly or indirectly. Each scholarship shall be a one-time payment of \$1500 that will be paid on or about September 1st to each recipient. The scholarship will be paid to the student directly for payment of tuition, books, and/or fees.

I. Eligibility will be based on the following criteria:

- a) Student must be the child of or under legal guardianship of a full-time employee (not under a Trade Agreement) of a current **CSIA** member.
- b) Must be currently enrolled or preparing to enroll in undergraduate study at an accredited college, university, technical institute, or trade school.
- c) Not previously awarded a **CSIA** scholarship

II. Scholarship(s) will be awarded based on the following criteria:

- a) A type-written essay of 500-800 words, regarding the importance of mechanical insulation and how it affects the student's life and the lives of others
- b) Field of study being pursued
- c) Past academic achievement and leadership qualities

An independent group shall make selection prior to the CSIA/ESICA Fall Conference. All selections are final. The application form and essay are due by July 15th of each calendar year. CSIA is not obligated to present a scholarship each year. Awards will be presented based on the criteria above.

Additional application forms and essay information can be requested from the **CSIA** Office.

For your convenience, an application form is also posted at www.csiaonline.org.

CSIA SCHOLARSHIP APPLICATION

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E-mail Address _____

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Employer's Name _____

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EDUCATIONAL BACKGROUND

High School Name _____

Address _____

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Telephone Number ____ (____) _____

Office Contact / Guidance Counselor _____

Current Grade Point Average: _____ out of a _____ scale

Extra Activities, sports, clubs, achievements *(use separate sheet if necessary)*

Probable Field of Study _____

Educational Goals *(use separate sheet if necessary)* _____

Selected University, College, Training Institute _____

Date Classes Begin _____ / _____ / _____

Applicant Signature

Print or type name and date

Signature of Corporate Officer

Print or type name and date

Please include your 500-800 word essay and photo with this form when you return it by July 15th to the CSIA Office 2077 Embury Park Rd. Dayton, Ohio 45414

Marijuana and Drug Testing

Getting Into The Weeds, Part 2



By: Steve Watring
Auman, Mahan & Furry

“marijuana use still is illegal under federal law. What is an employer to do?”



This is an update on an article I wrote last year, in light of the changing legal environment.

Marijuana use is now legal to some extent under the laws of most states and in some municipalities. But marijuana use still is illegal under federal law. What is an employer to do?

In general, an employer can still consider marijuana use, even prescribed marijuana use, to be a violation of its policy. This means that in most states, an employer can refuse to hire or terminate someone for medical marijuana use. Marijuana is a Schedule I controlled substance, meaning that it has no legal uses under federal law. The Americans with Disabilities Act does not protect the current illegal use of drugs. Most state medical marijuana laws do not expressly prohibit an employer from discharging or taking any other adverse action against an employee for using medical marijuana. While almost every adverse employment action carries a degree of risk, the risks here appear to be relatively low in most states.

The United States Department of Transportation and the Department of Health and Human Services have long been the standard bearers in the area of drug testing and have long included marijuana as a mandatory substance to be tested. Even if your company is not directly subject to these regulations, many state and federal laws incorporate by reference DoT and DHHS procedures and requirements.

Said another way, DoT and DHHS regulations often are woven into the fabric of other drug testing laws and regulations. For example, if your company wants to bid or perform on any state or federal government projects that require a drug policy or drug testing, your safest course of action is to include marijuana as a part of your policy and as one of the tested substances. Compliance with drug policies and drug testing may be a condition to participation in any number of government programs, and those programs generally mandate inclusion of marijuana as a covered substance.

The DoT has repeatedly driven a bulldozer through the idea that users of medical marijuana should get a pass when tested positive. In fact, as recently as June 20, 2017, the DoT updated and re-issued a “Medical Marijuana Notice” reaffirming that use of medical marijuana under state law cannot be considered a valid medical explanation for a positive DoT drug test.

Therefore, if your company is directly covered by DoT regulations, you should not exempt marijuana use under your policy, even if that use is legal under state law. In my opinion, the same thing is true if you are indirectly made subject to those regulations because of other government laws.

If your drug policy is not subject to government regulations, you can choose to exempt marijuana use from your policy. For most employers, I believe that the better approach is to cover marijuana use. If your policy is worded correctly, you still should have multiple options for how to deal with an employee who tests positive. But if you would rather not treat it as a violation, that is your right.

For DoT testing, any positive result for marijuana must be reported as a positive. For non-DoT testing, once you decide how you want to handle marijuana use under your policy, the next step is to interface with your drug screening company or Medical Review Officer. Otherwise, you are leaving the decision up to them. For example, some drug testing professionals have a policy of reporting a positive medical marijuana test as a negative result absent contrary instructions from the employer. Even worse, you probably won't even know that the employee actually tested positive. The drug testing professional should honor your requests in this regard, at least with respect to medical marijuana. If they won't honor your preferences, find someone who will.

Despite all of the above, it is important that employers understand how quickly the law is changing. There is a growing list of states and cities that to some extent prohibit employers from

continued pg.28

terminating employees for marijuana use that is legal under state law. Perhaps worse, some state laws are poorly written and ambiguous on the topic.

It is difficult to keep track of these developments without a score card. It has become a whole new area of the law. In fact, I recently heard speakers from the “Cannabis Practice Group” from the lawyers in the San Francisco and Los Angeles offices of a large national law firm. Just this year, the marijuana laws have changed significantly in Arkansas, Missouri, Michigan, and Utah. Like it or not, this is only the beginning.

When we lawyers write articles like this, we usually add some kind of disclaimer saying that the article is for general information and should not be used for legal advice. This usually is just to cover ourselves. This time, please take it to heart. I am going to share some generalities with you to help guide you through this. That is no substitute for sound legal advice based upon the current laws in the states or cities where you have employees. The laws of every state are different, and most are subject to differing interpretations.

In some states, an employer still can treat any marijuana use as a terminable offense even if that use is legal under state law. Even in states where this is not true, you usually don’t have to permit employees to use marijuana at work, and you can fire them if they do. In these states, it probably is going to work a lot like consuming alcohol at work. You can fire the employee—but you need to be able to prove it.

Also, most state laws make clear that you don’t have to permit employees to be “under the influence” of marijuana at work. The problem is that, unlike with alcohol, there is no reliable drug test that will prove an employee is under the influence of marijuana at a specific period of time. If your state law says that you still can terminate someone for being under the influence of marijuana, be careful. You better have some good evidence that the employee actually was under the influence based upon observation. A drug test alone won’t do it.

Finally, as you read this, there is an ongoing effort to create legal precedent that an employer has the obligation to accommodate medical marijuana under disability discrimination laws. In my view, this largely is an attempt to parse and twist statutory language to arrive at a result that was never intended. But that is what lawyers get paid do. While I do not think this will work in most states, it already has worked in a few.

So what’s an employer supposed to do? Believe it or not, my best practical advice in most situations has not changed. When an employer calls me

most state laws make clear that you don’t have to permit employees to be “under the influence” of marijuana at work

about an employee that may be using drugs, my starting point is to see if it would be better to address the situation as a performance issue rather than a drug use issue. If you have enough basis to terminate an employee for performance reasons, why muddy the waters? While there are situations where it makes sense to go down the suspicion of drug use route, there are more situations where going down that road is exactly the wrong thing to do. With the uncertainty of the law, this is true now more than ever.

If you think you need to go down that road, you need to check for detours, delays, roadblocks and alternative routes before you start. This means you need to find out what the law is, and get good legal advice on how to proceed. The law is just too unsettled and changing too rapidly to do anything else.

Steve Watring (saw@amfd Dayton.com) is a partner in the labor and employment law group of Auman, Mahan & Furry. He has counseled employers in workplace issues since the 1980’s. Steve is a Certified Specialist in Labor and Employment Law. He holds a Preeminent rating from Martindale-Hubbell, and has been recognized as a Super Lawyer.

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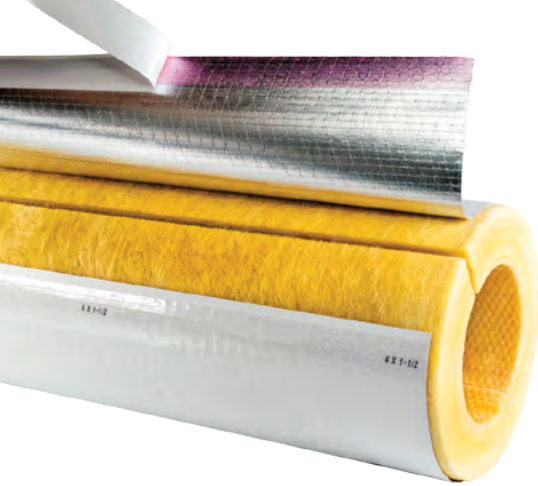


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LEGAL SERVICES PLAN



WHAT IS IT?

The Central States Insulation Association has entered into an agreement with Bob Dunlevey and the Taft/ law firm to provide CSIA membership with this unique service. Taft/ represents numerous businesses and associations throughout the Midwest, including CSIA.

WHAT TYPES OF LAW?

Taft/ emphasizes services for your business – corporate, construction, and labor and employment law including OSHA, workers' compensation, construction claims and contracts, litigation, wage-hour, discrimination, government contracting, pensions, fringe benefits, collective bargaining, taxation, real estate, and securities.

WHAT IF I NEED ADDITIONAL HELP?

Additional legal services will be offered to members on a preferred hourly rate.

WHAT DOES IT COVER?

The primary purpose of this service is to provide CSIA members the opportunity to discuss and identify legal problems, and to resolve general questions and concerns quickly through convenient access to specialized and qualified legal counsel.

Each CSIA member is entitled to one 30 minute consultation per month either by telephone, email, or office conference, at no charge. It is understood that these consultations and conferences will be based on existing knowledge of the attorney without further research and analysis. When calling Taft/, please ask for Bob Dunlevey and identify yourself as a CSIA Member calling under the Legal Services Plan.

HOW DO I CONTACT BOB DUNLEVEY?



40 North Main Street Suite 1700
Dayton, OH 45423-1029
(937) 641-1723
rdunlevey@taftlaw.com

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