

MAY/JUNE 2016

MERIT SHOP

# CONTRACTOR

WISCONSIN

**OSHA UPDATE:  
NEW SILICA RULES**

**ABC'S LEGISLATIVE  
SESSION-IN-REVIEW**

**NEW WORKER'S  
COMPENSATION  
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# Prevailing Wage

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ABC National: [www.abc.org](http://www.abc.org)

President and Publisher: John Mielke  
Managing Editor: Nick Novak  
Art Director: Jayne Laste Design Solutions LLC

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FROM OUR PRESIDENT

# We wouldn't have it any other way



**IN A RECENT CONVERSATION** with a prospective member, I was asked to explain how ABC is different from other construction trade associations. My answer was that “we are tenaciously merit shop.” Our public policy agenda strongly shows that is the case.

We led the charge last session to significantly repeal prevailing wage. ABC proudly supported the passage of right-to-work legislation, and now we are working tirelessly to prohibit government-mandated union-only project labor agreements. There is no other construction trade association that can match our record of defending the merit shop philosophy.

In my opinion, associations have the right – and the responsibility – to educate policymakers about the issues affecting their members. However, our efforts have not just been for their benefit. While it is our members who fund these services by providing dues revenue, the public policy work we do is meant to benefit

the construction industry and Wisconsin as a whole.

Because of this, it may seem like a cost-saving idea to reap the benefits of such public policies without incurring the expense of a membership – and some in the industry may choose to do that. They can be thankful that there is not a law requiring them to join ABC.

That is why we do not take any of our members for granted. We have to prove our worth every single day to attract and retain members. And, candidly, we wouldn't have it any other way.

The prospective member I mentioned at the top decided to join ABC, and we are happy to have them. Now, they will not only benefit from the policies we support, but they will also get to enjoy the many great services available only to members. From our educational services and safety training to our apprenticeship program and government affairs work, it truly pays off to be an ABC of Wisconsin member.

— John Mielke

“  
*ABC PROUDLY SUPPORTED THE PASSAGE OF RIGHT-TO-WORK LEGISLATION, AND NOW WE ARE WORKING TIRELESSLY TO PROHIBIT GOVERNMENT-MANDATED UNION-ONLY PROJECT LABOR AGREEMENTS.*”

# GONE in 2017

## *Experts Discuss the Post-Prevailing Wage Landscape*

By Nick Novak, Managing Editor, Merit Shop Contractor

Whether someone agrees with the policies or not, no one can argue with the fact that Wisconsin has been on a reform streak as of late. In 2011, Gov. Scott Walker sparked a great debate about public-sector collective bargaining, eventually signing the nationally renowned legislation known as Act 10.

A few short years later, legislators kept the ball moving by passing right-to-work, which guarantees no one is forced to join a union and pay union dues as a condition of employment. While the governor was hesitant at first, he ultimately signed the bill, making Wisconsin the 25th state to promise worker freedom.

Legislators were not ready to give up on reforming outdated labor laws, however. During the same session that gave the Badger State right-to-work, the decades-old prevailing wage law was added to legislators' long to-do list.

“

*WHAT STARTED OUT WITH GOOD INTENTIONS FOR WISCONSIN WORKERS,  
HOWEVER, BALLOONED INTO A BUREAUCRATIC MESS.”*

## Wisconsin's Prevailing Wage: A History

In the 1930s, public officials feared that local contractors were losing bids to out-of-state companies that would bring in low-wage labor to propose the cheapest price for a project. To stop this practice, they created the prevailing wage law, which was meant to mimic market wages.

By mandating that contractors pay wages in line with the local market, legislators felt they could guarantee local contractors and workers would win the bids. What started out with good intentions for Wisconsin workers, however, ballooned into a bureaucratic mess that actually made it more difficult for smaller, local firms.

In fact, the prevailing wage law became so cumbersome that the state's Department of Workforce Development (DWD) felt the need to post nearly 75 frequently asked questions on their website about it.

Before the recent legislative session, a Wisconsin Taxpayers Alliance report highlighted two major problems with the law. First, prevailing wages were, on average, much higher than market wages, and wages from county to county were anything but consistent.

For example, the Taxpayer Alliance study found prevailing wages to be 23 percent higher on average than market rates across Wisconsin – 45 percent higher when benefits were accounted for. In addition, some wages were just plain confusing. In 2014, an electrician in Lafayette County would have earned \$21 an hour under prevailing wage, while an unskilled clean-up worker would earn \$37.97 an hour.

It was gross inequities like these that drove Associated Builders and Contractors of Wisconsin, along with other organizations and individuals, to push for the repeal of the law.

*Continued on page 10*

### Prevailing Wage

# Q+A

See page 8

*Paul Farrow,  
Waukesha County Executive*

Paul Farrow is the Waukesha County Executive, an office he was elected to in April 2015. As County Executive, he is responsible for coordinating and directing all administrative and management functions of the County. Prior to becoming County Executive, Farrow was elected to the Wisconsin State Assembly in 2010 and then the State Senate in 2012, where he served as Assistant Senate Majority Leader.

*John Nyhuis,  
Oakfield School Board Member*

John Nyhuis is a third term Board member for the School District of Oakfield. Nyhuis has a BSME from Milwaukee School of Engineering and an MBA from UW-Oshkosh. Nyhuis held several management positions at Giddings and Lewis Machine Tool Company over a 32 year period and is currently Purchasing Manager for the VMS Group at Marchant Schmidt, Inc.

*Mark Rudnicki,  
Stevens Construction CEO*

Mark Rudnicki serves as Chief Executive Officer and Treasurer for Stevens Construction Corp. He is responsible for all business functions and the ultimate performance of Stevens, reporting directly to the Board of Directors. Previously, Rudnicki served as Chief Financial Officer from 2001 to 2008 and Controller from 1999 to 2001 at Stevens Construction.

**Merit Shop Contractor spoke with three parties who bring different perspectives to the prevailing wage discussion. Representing the views of the construction industry, a school board member and local government, their insights can be found in the Q & A's below.**



**Paul Farrow**, *Waukesha County Executive*

**MSC: What changes do you anticipate thanks to the repeal of prevailing wage at the local level?**

**PF:** I think one of the things we are seeing is, hopefully, there is going to be less paperwork that is involved. Some of the redundancies and the paperwork regulations that were in place were detrimental to smaller contractors. And the second thing, it opens up competition. We are in the process now of starting to look at the plans for building a new county courthouse. Over the next five or six years, there are going to be significant changes that will occur on our campus. I think it is a great opportunity for smaller contractors to be able to bid on a county project like this. It opens up that level of competition for them.

**MSC: Do you anticipate seeing savings from the changes in the prevailing wage law?**

**PF:** Yes, I anticipate seeing savings. In Waukesha County and the southeastern region, a lot of our jobs are very close to the prevailing wage rate. But, I think there will be opportunities for some smaller projects – and even large-scale projects like the courthouse. I think eventually, you will see significant savings, somewhere in the area of a couple percentage points. But as we look at the courthouse, that could be hundreds of thousands of dollars that we are saving.

**MSC: Critics say prevailing wage guaranteed a quality contractor. Will you still be able to determine who is a quality contractor without it?**

**PF:** We still will. At the county level, we have a Request for Proposal process that works with not just the departments that are involved, but also our purchasing department, and you always have a county board supervisor that sits on that. They evaluate all the proposals that come in. It has never just been the bottom dollar and the least expensive one that we look at. We look at the whole picture. We look at the quality of the individual and the quality that they are bringing to the job as a key component of the decision making.

**MSC: What do you believe will be the most significant outcome from the repeal of prevailing wage?**

**PF:** If I look at it from Waukesha County's perspective, we've got some opportunities for savings. They will vary because, in the southeastern region, a lot of what we already pay is very close to the prevailing wage, if not a little bit higher at times. But when I look at it, as we look at the courthouse and start that project, there could be savings of hundreds of thousands of dollars. The other thing I look at, too, are the counties surrounding us. There will be opportunities where they can work more effectively with maybe some local, smaller operators where they can get more effective products on a cost basis that is going to work better for them.



**John Nyhuis**, *Oakfield School Board Member*

**MSC: What changes do you anticipate thanks to the repeal of prevailing wage at the local level?**

**JN:** Smaller, local contractors in the carpentry, masonry, plumbing and electrical trades will be willing to bid on smaller projects without being required to pay their skilled workers about \$10 per hour more than what they are currently paying (typically \$20 to \$25 per hour versus large contractor per hour rates of \$30 to \$35). Simply put, smaller contractors usually work in their local area, while larger contractors may work all across the state and country. Because this requires workers to be very mobile, many larger firms cover

the costs of travel, lodging and out-of-pocket living expense with higher wages. This makes it seem like employees at larger contractors are paid more, when in reality they may not be – a key fact missed by the prevailing wage. With the law change, smaller firms will once again be able to compete for projects because they won't be forced to pay a wage they cannot afford.

**MSC: Do you anticipate seeing savings from the changes in the prevailing wage law?**

**JN:** It is simple math. If a summer renovation project with 10,000 hours of labor content – 20 workers, 40-hour weeks for 12 weeks – is pricing out at \$35 per hour



**John Nyhuis, Continued**

rather than \$25 per hour, the bill is going to be about \$100,000 (40 percent) higher for the same content with the higher cost borne by the stakeholders of the district.

**MSC: Do you feel the change in the law will increase competition for bidding?**

**JN:** Absolutely. The smaller contractors are back in the game.

**MSC: What do you believe will be the most significant outcome from the repeal of prevailing wage?**

**JN:** The \$100,000 threshold on school district projects was the real killer complicated by year-to-year pre-

vailing wage labor rates that were all over the map, making project budgeting an absolute nightmare. In addition to being all over the map, the grossly flawed wage rates were biased toward the rates paid by large contractors because they had the most hours to report and were diligent in reporting their hours to keep the prevailing wage rates high. The several small local contractors that I talked to seldom sent in wage data to the state program (no penalties for not reporting) but only to the Bureau of Labor Statistics in Washington (that did assess penalties). The higher prevailing wage labor rates did nothing for smaller projects other than to inflate the cost of the project without adding any value. The law's repeal will go a long way to fix this.

“

**PREVAILING WAGE HAS, IN MY MIND, ABSOLUTELY NOTHING TO DO WITH DETERMINING IF A COMPANY IS A QUALITY CONTRACTOR OR NOT.**

**MARK RUDNICKI**



**Mark Rudnicki, Stevens Construction CEO**

**MSC: Do you plan on bidding on more public projects after January 1, 2017?**

**MR:** In the short term, I don't think it is going to have a significant impact, but there is no question that we will definitely be more open to bidding that type of work. We do mostly private work now, and we do public work to fill capacity gaps when we have it. Obviously, this will make that type of work a lot more desirable to go after and easier without all the bureaucratic hurdles associated with prevailing wage that we would have had to deal with in the past.

**MSC: Critics say prevailing wage guaranteed a quality contractor. Will public officials still be able to determine who is a quality contractor without it?**

**MR:** Prevailing wage has, in my mind, absolutely nothing to do with determining if a company is a quality contractor or not. There are many ways to qualify contractors. And there are some good third party ways – by just requiring bonds and similar requirements – that are really simple and are generally done as part of the qualification process already. The prevailing wage has nothing to do with companies and contractors being quality. There is no logical correlation in my opinion.

**MSC: Would you say the changes are going to be good for the construction industry and its workers?**

**MR:** I think any time that you allow maximum competition for projects, especially projects that are being done with public tax dollars, I think that is what is best for the taxpayers and ultimately what will be best for the construction industry. It will lead to more projects that municipalities, school boards and other public entities should be able to afford. More projects means more people working and more companies who are getting those projects. So, in general, this is good for all those working professionals and craftsmen and women in the construction industry.

**MSC: What do you believe will be the most significant outcome from the repeal of prevailing wage?**

**MR:** Especially for the smaller projects that had fallen into the prevailing wage threshold before, I think you will have those smaller, local contractors be able to do some of that work that they are the right fit to do. That will be a big impact for those companies and communities. I would also highlight the overall increase in competition as more companies will be doing the work that they have shied away from in the past. It is hard to pick out just one thing. Each of those is a big deal. More competition should lead to reduced costs and this will help to keep everybody's property and other taxes lower while still accomplishing the building needs of communities. That is a good thing not just for the construction industry, but for all citizens and taxpayers of Wisconsin.

*\*Responses edited for space and clarity.*

### Prevailing Wages Repealed for Locals, But When?

The 2015-17 state budget repealed prevailing wage at the local level. That means that public projects for counties, municipalities, school districts or sewerage districts will no longer be subject to the burdensome law come January 1, 2017.

What does January 1, 2017 actually mean, though? Are projects that begin in 2016 exempt from prevailing wage after the new year? What if a referendum is approved in 2016, but a Request for Bids isn't sent until 2017?

According to the new law, some projects can still be subject to the "old" prevailing wage rules, even in 2017 and beyond. If a local government issues a Request for Bids before January 1, 2017 on a project that is subject to bidding, then the entire project will be held to prevailing wage law as it currently stands.

Also, if a project is not subject to bidding, and a local government enters a contract before 2017, the prevailing public wage law still applies for the entirety of the project. However, a project that is approved via referendum in 2016 can avoid the prevailing wage law by waiting until 2017 to issue a Request for Bids (if subject to bidding) or entering a contract (if not subject to bidding).

It should also be noted that this is just for local projects. After January 1, 2017, Wisconsin's prevailing wage law will still apply to state agency and state highway projects, and any federally funded project will still be subject to the Davis-Bacon Act.

### Public Officials, Contractors Prep for 2017

One public official is hoping the prevailing wage law change will make for more room in his budget, likely leading to property tax savings for local residents. Waukesha County Executive Paul Farrow said he anticipates seeing savings on both small and large projects. One specific example Farrow highlighted in an interview was the new Waukesha County Courthouse. He said the change to the law could create dramatic savings for taxpayers.

"I think there will be opportunities for some smaller projects – and even large scale projects like the courthouse. I think eventually, you will see significant savings, somewhere in the area of a couple percentage points," Farrow said. "But as we look at the courthouse, that could be hundreds of thousands of dollars that we are saving."

John Nyhuis, a school board member at the Oakfield School District, was very straightforward about why he thinks there will be savings.



ABC of Wisconsin President John Mielke speaks to WISC3 (the Madison CBS affiliate) during the battle over prevailing wage.

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*The Taxpayer Alliance study found prevailing wages to be*

**23%**

**HIGHER**

*on average than market rates across Wisconsin –*

**45%**

*when benefits were accounted for.*

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"It is simple math," Nyhuis said. "If a summer renovation project with 10,000 hours of labor content – 20 workers, 40-hour weeks for 12 weeks – is pricing out at \$35 per hour rather than \$25 per hour, the bill is going to be about \$100,000 higher for the same content with the higher cost borne by the stakeholders of the district."

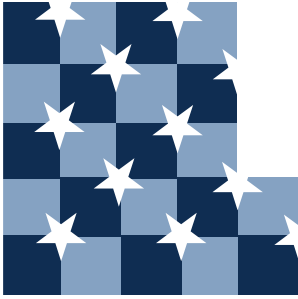
The savings, many claim, will come from increased competition.

"I don't think there is any doubt that will be the case and that there will be more competition overall," Mark Rudnicki, CEO of Stevens Construction, explained. "I think there will be better pricing for the municipalities, or school boards or whoever those public entities are as a result. The more competition you can get, the better the deal should be for the taxpayers in the end."

Rudnicki said that Stevens – which works mostly on private projects – does not plan on dramatically changing its business model just because of a change in the prevailing wage law. However, he did say that certain public projects may prove to be "more desirable" now that the law has changed.

And all the experts agreed that the only real change coming in 2017 is that prevailing wage rates will be replaced with market wage rates. There will still be standards that contractors need to meet when placing a bid, they say. From OSHA to state-specific safety regulations, contractors will still have to be responsible bidders and follow all the rules they previously would have.

In the end, they note, there will not be any major changes to the bid process or construction, the projects will likely just cost less to build. 



# ABC'S LEGISLATIVE SESSION-IN-REVIEW

*Wisconsin's building season is just now in full swing, but the legislative session is already over. By any measure, it was a great year for ABC members. Some of the smaller achievements were: continued funding for the apprentice completion award program; inclusion of the electrical code in the statewide uniform commercial building code; and a two-year freeze on licensing / regulation fee increases. However, even those good accomplishments are overshadowed by some other big legislative wins.*

By John Schulze, Director of Legal and Government Affairs, ABC of Wisconsin

## **SIGNIFICANT PREVAILING WAGE REFORM:**

Other articles in this issue dive deeper into the reforms to Wisconsin prevailing wage law, and ABC of Wisconsin will be providing additional guidance on the changes before the end of the year. In short, the repeal of prevailing wage at the local level is a major win for the construction industry and ABC members.

Come January 1, 2017, contractors will no longer be required to cut through the burdensome red tape created by the prevailing wage law on local government projects. The reforms are good news because approximately 80 percent of public construction projects in the state are done at the local level.

Not only will the reforms to prevailing wage create more competition for projects, they will likely lead to big savings for taxpayers – a statement backed up by a Wisconsin Taxpayers Alliance report commissioned by ABC of Wisconsin last year.

**RIGHT-TO-WORK:** Although currently tied up in a lawsuit, public officials and ABC of Wisconsin are confident that the Wisconsin Supreme Court will eventually uphold this law that prohibits employees from being required to join a union, remain in a union or pay union dues as a condition of employment.

It is important to note that during the first six months of 2017, construction union contracts will still be in place as the prevailing wage law is essentially repealed. This is a “sweet spot” for merit shop contractors that are not burdened by the rules and regulations associated with union contractors’ collective bargaining agreements.

The legislation was also a big win for ABC members because we openly support the free enterprise system and the merit shop philosophy. Right-to-work helps to guarantee that each worker is given a choice on whether or not to join a union and that those hired are done so based on merit.

## **SALES TAX EXEMPTION PASS THROUGH FOR CONSTRUCTION MATERIALS:**

Effective January 1, 2016, contractors can directly purchase construction materials on behalf of certain tax-exempt clients without paying the sales and use tax. This change fixes a system that was unnecessarily burdensome, and caused supposedly tax-exempt entities to indirectly bear additional unnecessary costs.

Previously, if a contractor was working on a project for a tax-exempt organization, the organization (not the contractor) would have to purchase all of the building materials to receive the tax exemption. Many contrac-

tors – not wanting to jump through complicated hoops – would instead buy the materials, unfortunately leading to higher costs for tax-exempt entities.

Thanks to the reforms supported by ABC of Wisconsin, contractors can now purchase the materials on behalf of their clients. To find out more about the law and how to comply with the change, ABC has provided an in-depth guidance document with frequently asked questions. To view it, visit [www.abcwi.org/taxexempt](http://www.abcwi.org/taxexempt) or contact the chapter at 608-244-5883.

**REGULATIONS ON UNION-FUNDED GROUPS THAT TARGET MERIT SHOP CONTRACTORS:** Under previous prevailing wage rules, any individual or organization could file a complaint against a contractor for failing to comply with the law's cumbersome regulations. This led to some groups targeting projects that were being built without union workers.

As the cover article in this issue explains, prevailing wage will still be in place for projects that are contracted or have a Request for Bids sent out before 2017. Also, all state agency and state highway projects will still be subject to prevailing wage. To prevent contractors from

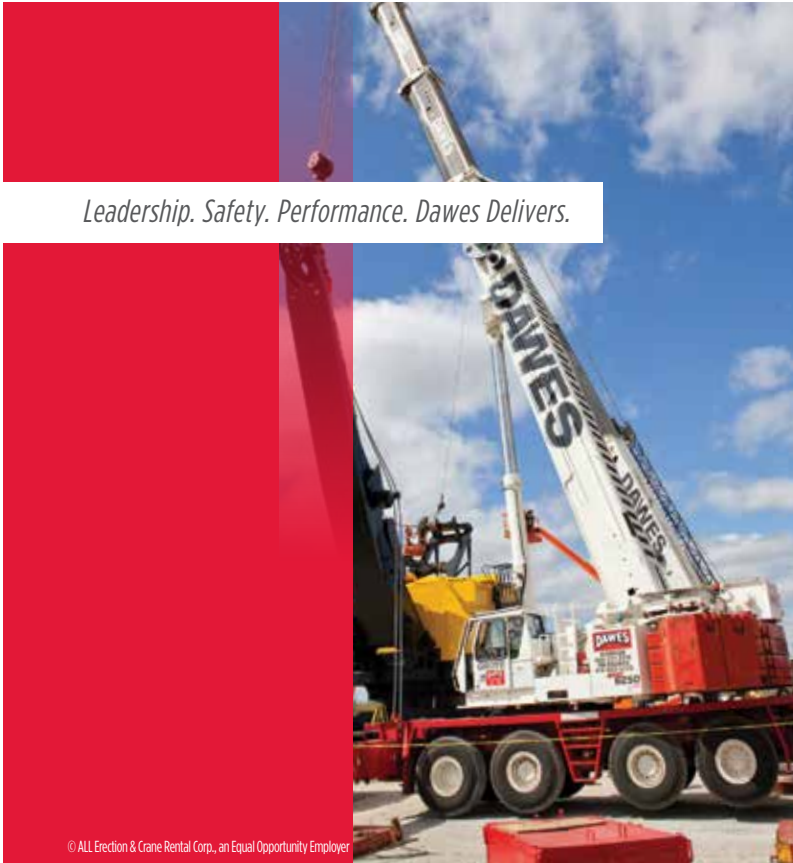
being harassed by these union-funded groups, policy makers made changes to how complaints can be filed.

First, wage investigators must clearly explain in writing that they are not state employees and must disclose their funding source. Also, outside organizations can no longer file prevailing wage complaints directly. Any filing must be done by an employee of the contractors working on the project.

Lastly, liquidated damages and debarment for violating the state's prevailing wage law is eliminated. The result will be greater safeguards for builders and increased transparency for taxpayers and contractors, alike.

**STREAMLINING THE COMMERCIAL PLAN REVIEW:** While this change may have slipped under the radar for many people, it is a crucial law change that will be helpful to many ABC members and contractors. Formerly, commercial plan review for community-based residential facilities and hospices had to be approved by the Department of Health Services (DHS) and the Department of Safety and Professional Services.

This practice practically doubled the amount of work necessary



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to gain approval. Now, the review process will simply go through DHS – which eliminated numerous unneeded steps and even more unnecessary paperwork.

As the Chapter's one in-house, full-time lobbyist, it would be easy to claim credit for these successes. But the fact is that these reforms became law because of members who took the time to contact their legislator and the bravery of those legislators who stood up to enemies of the free market and the merit shop philosophy.

While ABC members can begin to reap of the benefit of these new laws, the legislators are not out of the woods. The same special interests that tried to kill each and every one of the aforementioned laws have targeted our legislative champions for defeat in the November elections. That is why it is important to stand behind these

public servants that continue to defend the ideals supported by the ABC membership.

Opponents of the merit shop philosophy may have deeper pockets, but it is imperative that ABC members do everything they can to help public officials that protect and preserve the free market system. This is the only way to continue to make Wisconsin an even better place for merit shop contractors. 



For information about the most recent legislative session, contact John Schulze, Director of Legal and Government Affairs, ABC of Wisconsin, 608-244-5883 or email [jschulze@abcwi.org](mailto:jschulze@abcwi.org)



**JULY 22, 2016**

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# ***OSHA Update:*** New Silica Rule Means Big Changes for the Construction Industry

By Michael Hahn, Attorney – Axley Brynelson, LLP

A new OSHA standard for silica dust exposure takes effect on June 23, 2016, and will affect every construction company in Wisconsin. It is critical that construction companies know what the new rule requires and when they need to be in compliance.

OSHA's new rule drastically cuts the permissible exposure limit (PEL) for the construction industry and imposes a host of new engineering and work practice controls on companies. In order to comply with the new standard, companies will have to invest significant resources to update their equipment and safety programs.

The current PEL for silica dust is set at

approximately 250 micrograms per cubic meter of air ( $\mu\text{g}/\text{m}^3$ ) and has been in effect since 1971. OSHA has determined that silica dust is a carcinogen and is linked to lung and other cancers, as well as non-malignant respiratory diseases, and that exposure to silica dust at the current PEL creates a "significant risk" of adverse health effects for employees.

As a result of OSHA's analysis, the agency has set a new PEL for all industries of  $50 \mu\text{g}/\text{m}^3$ . The new standard is 80 percent lower than the current standard for the construction industry.

The new rule also lays out very specific criteria on how companies can comply. There

are basically two options: (1) follow the requirements for testing, monitoring, and implementing site or employer-specific controls; or (2) implementing general "Specified Exposure Control Methods" that apply regardless of actual employee exposure. OSHA assumes that most companies will take the second option, which is why the construction industry has just one year, until June 23, 2017, to comply with all of the necessary changes in the rule. This is the shortest amount of time for any industry to comply with the new rule.

This means that companies will need to work quickly—faster than any other industry—in order to be in compliance.

So, what does the rule require? The first option available to construction companies is to follow the Specified

Exposure Control Methods identified in Table 1 of the new rule. Table 1 identifies 18 different construction activities that have the potential to expose an employee to silica dust and provides specific controls that will reduce exposure. These controls include local exhaust vacuums that capture and filter out the harmful particles; water delivery systems that supply water to the point of impact; and upgraded

cabs/booths that provide better seals, air conditioning, and HEPA filters. Table 1 also specifies when an employee must use a respirator and which type must be used. If a company implements these controls, then it is considered to be in compliance with the rule.

However, if a company does work that is not covered by Table 1, or if the company chooses not to implement Table 1, then the first step is to conduct initial monitoring of any employee “who may reasonably be expected to be exposed” to respirable silica dust. If employees are exposed to respirable silica dust above 50 µg/m<sup>3</sup>, then the company must install engineering controls. If the engineering controls are insufficient to reduce employee exposure below the PEL, then the rule requires work practice controls that alter how employees perform their jobs in order to reduce exposure.

Only if both engineering and work practice controls are not enough to reduce

exposure below the PEL does OSHA require employees to use respirators. If respirators are needed, then the company must comply with OSHA’s respiratory protection standard. However, if the company follows Table 1, then it is already in compliance. No matter what, if an employee is required to wear a respirator more than 30 days per year, then the company must provide medical surveillance to the employee—at no cost to the employee.


In addition to the specific control methods required, the rule also requires companies to adopt housekeeping measures that eliminate dry sweeping or using compressed air, unless no alternative is feasible.

Finally, the new rule requires each company to develop a written exposure control plan that describes:

- any work activity that leads to respirable silica dust exposure;
- the engineering controls, work methods, and respiratory protection required for each activity;
- the housekeeping methods required; and

• procedures that will restrict access to areas where respirable silica dust is present.

The exposure control plan must be reviewed annually and must be available to employees. The plan must also be implemented by a designated “competent person” who will make regular inspections of the jobsites in order to ensure compliance.

This is just a very brief overview of OSHA’s new requirements. Companies need to make sure that they read and review the new rule carefully to make sure they are in compliance. There is a lot for the construction industry to do, and only one year to do it. Don’t be caught off guard! 



Michael Hahn

For assistance with OSHA’s new silica rules, please contact Attorney Michael Hahn at [mhahn@axley.com](mailto:mhahn@axley.com), Attorney Buck Sweeney at [csweeney@axley.com](mailto:csweeney@axley.com) or Attorney Mitch Olson at [molson@axley.com](mailto:molson@axley.com).

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<sup>1</sup>Figures based on 2014 STEP data compared to 2013 Bureau of Labor Statistics industry averages. <sup>2</sup>Incidence Rate represents the number of OSHA recordable incidents per 100 employees per year. <sup>3</sup>Experience Modification Rate (EMR) (MOD Factor) measures a company’s safety performance against similar businesses over the past three years and is one of the factors used to determine workers’ compensation rates. <sup>4</sup>DART Rate represents the number of OSHA recordable incidents that involve “Days Away, Restrictions and Transfers” per 100 employees per year.



STATE SEN.  
JULIE LASSA  
(D-STEVENS POINT)

“

*I HOPE NEXT SESSION WE WILL BE ABLE TO FIND A WAY TO MAKE OUR INFRASTRUCTURE SAFER, MORE MODERNIZED, AND MORE COMPETITIVE.”*

## ***Early End of Session Left Important Work Undone***

Now that the Republican leadership in both houses of the Legislature has indicated that they don't intend to come back into session for the rest of the year, it's time to take stock of what was and wasn't accomplished by state lawmakers. While there are some new laws that should benefit those in the construction industry, some of the larger issues confronting the industry – and the state as a whole – were left in limbo.

One beneficial proposal was Senate Bill 227, which went into effect the first of this year. The new law creates a sales and use tax exemption for sales of building supplies to a construction contractor when they are doing projects for various tax-exempt entities. Previously, if contractors were doing work for a county, municipality, school district, or non-profit agency, those tax-exempt entities were compelled to purchase the material themselves in order to get the tax exemption, or resort to complicated work-arounds.


The new law simplifies this procedure greatly and allows contractors to purchase materials directly while preserving the sales tax exemption for non-profits and government entities. To qualify for the exemption, the facility must be a building, shelter, parking lot or garage, athletic field or park, storm sewer, water supply system, or sewerage and waste water treatment facility. The law doesn't apply to road projects. I was pleased to be able to cosponsor this legislation, which will help both builders and tax-exempt entities save time and money and cut through unneeded red tape.

A number of good proposals failed to make it through both houses for one reason or another. One example was SB 696, known as the “Second Start” bill. This bill would have helped address one of most pressing problems facing the construction industry, and many other industries in Wisconsin – namely, finding qualified employees. The bill

would have allowed the University of Wisconsin System to work with the Department of Workforce Development to contact former UW students who leave school without a degree.

DWD would send those students a packet of information on other employment opportunities available to them. Private organizations – such as ABC of Wisconsin – could pay to participate in these mailings to make former students aware of openings in training and apprenticeship programs. The bill's proponents said the proposal would help industries find well-qualified employees for entry-level positions, while giving individuals who either could not or chose not to complete college, a “second chance” at a rewarding career. I voted in favor of the measure when it came before the Senate Committee on Economic Development and Commerce; but the bill was introduced in February, and was one of many worthwhile proposals that didn't make it to the floor during the shortened session Republican leaders decided on.

Unfortunately, the early end of the 2015-16 session left some of the most important issues facing our state unaddressed. This includes one of the biggest issues, both for the construction industry and all Wisconsinites, namely our desperate need to invest in our infrastructure. Our roads and bridges are crumbling, our aging schools and public buildings are badly in need of repair or replacement, and broadband access is woefully lacking, especially in rural areas of Wisconsin.

Largely for political reasons, the majority Republicans couldn't manage to prioritize these important investments in our state. I hope next session we will be able to take a hard look at all of the options on the table and find a way to make our infrastructure safer, more modernized, and more competitive, both for Wisconsin business and industry and for our residents. 



# Republican Legislature Keeps Wisconsin Moving Forward

The Associated Builders and Contractors of Wisconsin has been instrumental during this session of the legislature. With the 2015-16 legislative session coming to a close, I believe it is a great time to share with you some of the legislative victories we accomplished with your help.

This session the Legislature took on the large task of repealing prevailing wage. Wisconsin's prevailing wage has been in place for 80 years. A Wisconsin Taxpayers Alliance study found that if market wages were used instead of prevailing wages for state and municipal projects, taxpayers could have saved between \$200 million and \$300 million in 2014 alone. Wisconsin Act 55 repealed the state prevailing wage law for local governmental units such as villages, towns, cities, school districts and left a modified version in place for state projects. This is especially good for small businesses and taxpayers. It will reduce the paperwork for contractors and streamline the bidding process.

In Act 55, we were also able to restore private property rights that were being unfairly restricted. Many property owners were often caught in a web of complex rules and statutes that lead to non-conforming structures, fewer economic investments, and lower property values. Under the changes, property owners and regulators will have certainty that non-conforming structures may be repaired and rebuilt so long as they are not expanded beyond their existing footprint.


Wisconsin was the first state in the nation to introduce a workers compensation program. Wisconsin adopted the Workmen's Compensation Act in 1911. Before the act, injured workers were forced to sue their employers. Act 55 moved the administration of the program from the Division of Workforce Development to the Office of the Commissioner of Insurance. This will lead to greater efficiencies in settling claims and shouldn't affect the program. Separate legislation made changes to the program including employer liability reductions, compensation rates for permanent

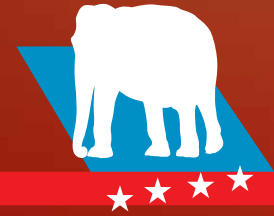
partial disability, supplemental benefits, medical records, and prescription drug costs.

Unfortunately, the REINs Act that aimed to make state agencies more accountable to the public did not pass. This bill would have required state agencies to hold a preliminary public hearing before moving forward with any administrative rules. Assembly Bill 251 would have slowed down the administrative rule making process and allowed greater public input. If an economic impact study on an administrative rule would have found a \$10 million cost to small businesses and units of government, the REINs Act would have required the agency proposing the rule to modify or withdraw the rule. We should welcome the opportunity to shine a bright light on administrative rules that have the force of law. I hope the author, Sen. Devin LeMahieu (R-Oostburg), will renew his efforts in the next session of the legislature to advance this important legislation.

I believe next session will be just as successful for the construction industry. A goal that I have is to streamline permitting processes. I believe we need to give more flexibility to the construction industry in order to reduce permitting time. I want to thank all of the builders and contractors in the state that work to make Wisconsin an attractive location for industry. Over the last six years we have moved Wisconsin forward.

ABC of Wisconsin has been a strong partner in the state's growth. Together, we made Wisconsin number one in the Midwest and fifth nationally for the rate of month-over-month private sector jobs growth in March 2016.

Additionally, February 2016 to March 2016 saw Wisconsin's construction industry add 11,500 jobs and 51,200 over the year; Wisconsin's 6.1 percent year-over-year growth rate in construction ranked third-highest in the Midwest; and 2016 initial Unemployment Insurance claims are trending at their lowest level since 1990. 



**STATE SEN.  
TOM TIFFANY  
(R-HAZELHURST)**

“  
*WE SHOULD WELCOME THE OPPORTUNITY TO SHINE A BRIGHT LIGHT ON ADMINISTRATIVE RULES THAT HAVE THE FORCE OF LAW.*”



# New Wisconsin Worker's Compensation Law Changes Impact Human Resource Management

By Charles B. Palmer, Partner – Michael Best & Friedrich LLP  
cbpalmer@michaelbest.com

The Wisconsin worker's compensation law has historically undergone adjustments through a negotiation process involving a group of leaders representing business and organized labor, known as the Worker's Compensation Advisory Council. Because of the give and take necessary to reach an agreement, most changes are minor and impact the pricing for worker's compensation and the benefits received by employees. Changes made by the Council do not typically impact how employers manage employees. However, the law passed by the Wisconsin State Legislature on February 16, 2016, contains some sweeping changes that will impact how human resource and safety professionals manage worker's compensation cases. In order to take advantage of these changes, employers will need to review and possibly revise their safety, health and employment policies.

“

*NOW IS A GOOD TIME FOR EMPLOYERS TO UPGRADE THEIR SAFETY PROCEDURES AND POLICIES, DRUG AND ALCOHOL TESTING RULES AND NEW EMPLOYEE SCREENING.*

#### **Loss of Worker's Compensation Benefits for Violations of Employer Drug and Alcohol Policies**

The new law provides that if an employee violates an employer policy against drug or alcohol use, and that violation causes the employee's injury, then neither the employee nor the employee's dependents may receive any compensation under the law. This provision does not eliminate the duty of the employer's worker's compensation

insurer to pay for the medical cost of treating the employee's injury, but the employee cannot collect any benefits for temporary or permanent disability. Prior to this change, benefits could be reduced by 15% for drug and alcohol policy violations that led to injury, though this seldom was enforced.

In light of the more significant consequence of drug and alcohol policy violations and the corresponding reduction in the amounts payable to the employee, denial of benefits for such violations is likely to be enforced more often than in the past. Employers and their insurers should expect challenges that the employer policy was unclear, the employee did not violate it or that the drugs and/or alcohol did not cause the injury. The most difficult aspect of the employer's proof will be establishing that drugs or alcohol caused the injury. This will require documentation of the employee's behavior leading up to and after the ac-

cident. Employers should have their policies and procedures concerning drug and alcohol use and testing reviewed by legal counsel.

### **Employees Suspended or Terminated for Misconduct or Substantial Fault May Lose Benefits**

If an injured employee is suspended or terminated from employment due to "misconduct" or "substantial fault," the employee's worker's compensation temporary disability benefits may now be denied. In the past, employers who wanted to terminate an injured employee due to misconduct were faced with the reality that termination would drive up worker's compensation costs because the terminated employee would get paid disability benefits while not working. Now, these benefits may be denied if the employee's termination is found to arise from misconduct or substantial fault.

The most likely cases in which employers and insurers will choose to deny benefits for misconduct or substantial fault include safety violations or ignoring specific directives of the employer. A positive drug test may also meet this definition, even if the employee was not injured due to the use of illegal substances. A post-accident positive drug test may be basis for denying temporary disability benefits after termination or suspension. Employers should have their disciplinary rules and procedures reviewed by legal counsel to make certain the procedures that call for termination or suspension meet the definitions of misconduct and substantial fault.

### **Apportionment of Permanent Disability: Denying Benefits Due to a Pre-existing Condition**

In the past, an employer was responsible for an entire injury or disease suffered by an employee, even if the employee suffered from a pre-existing condition. The prior rule was that, so long as the employer's work "precipitated, aggravated and accelerated the condition beyond its normal progres-


sion," the employer would be responsible for the entire injury, including the pre-existing conditions. The only exception to that rule was if the employee had previously been assessed to have a specific percentage of permanent disability associated with the pre-existing condition, before the workplace injury or exposure. However, doctors rarely assess the level of impairment when treating a non-work related injury, so there is rarely such evidence available.

The law has now been changed to allow the Department of Workforce Development to accept evidence that an employee's permanent disability was only caused partially by an accidental injury sustained in the course of employment with the employer against whom compensation is claimed. If the doctor concludes that a percentage of that disability was caused by other factors, whether occurring before or after the time of the work injury, the Department can reduce the employees benefit award proportional to the percentage caused by those other factors.

This change will provide an incentive for employers to engage in more thorough screening regarding employee pre-existing conditions. While the American's with Disabilities Act prohibits pre-employment medical inquiries, the law allows post-job offer

screening prior to an employee commencing employment. In order to take advantage of this change in the law, employers should screen for pre-existing conditions consistent with the law. This will then allow the employer to make information available to doctors so that an apportionment decision can be made early in the case, before the full benefits are paid. Occupational health experts and legal counsel should be contacted for assistance in designing such screening.

### **Conclusion**

Now is a good time for employers to upgrade their safety procedures and policies, drug and alcohol testing rules and new employee screening. The employer will need to notify its insurance carrier whenever an injury may have been caused by a violation of employer safety rules, employee misconduct, or drug/alcohol use in violation of company policy, or may involve a pre-existing condition. 



Charles Palmer

For further information or assistance with the policy revisions discussed, please contact Charles B. Palmer at [cbpalmer@michaelbest.com](mailto:cbpalmer@michaelbest.com) or 262.956.6518.

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# NEW MEMBERS

For membership information contact **Deanna Regel**,  
Membership Coordinator – Associated Builders & Contractors of WI – 608-244-5883

## FEBRUARY 2016 NEW MEMBERS

### • FASTENAL

*Greg Konle*  
5129 N124th St.  
Butler, WI 53122  
**Phone:** (414) 349-5704  
**Description:** Facility Maintenance & Industrial Supplier  
**Sponsor:** Eric Bauer, Brickl Bros., Inc.  
Beam Club Members-to-date: 12

### • WATER TAMER PLUMBING, LLC

*Andrew Meetz*  
925 Elm Grove Rd.  
Elm Grove, WI 53122  
**Phone:** (414) 712-5736  
**Description:** Plumbing Contractor  
**Sponsor:** Jay Zahn, R&R Insurance Services  
Beam Club Members-to-date: 19

## MARCH 2016 NEW MEMBERS



### • BRI-AN PHC LLC

*Dean Walencyzk*  
S27 W29310 Jennie Court  
Waukesha, WI 53188  
**Phone:** (262) 442-4024  
**Description:** Bri-An PHC LLC is a full service Plumbing, Heating and Cooling Company for

the Residential, Commercial, Industrial, and Institutional Customers. "Excellence with Cost Effective Solutions"

**Sponsor:** Troy Carlson, McClone  
Beam Club Members-to-date: 4



### • CED

*Mick Lewis*  
N24 W23750 Watertown Rd. #G  
Waukesha, WI 53188  
**Phone:** (262) 409-7867  
**Description:** Wisconsin's premiere electrical distributor.  
**Sponsor:** Robb Steiner, Steiner Electric, Inc.  
Beam Club Members-to-date: 7

### • CGC, INC.

*Eric Neuhauser*  
3011 Perry St  
Madison, WI 53713  
**Phone:** (608) 288-4100  
**Description:** Construction QA/QC Testing  
**Sponsor:** Ross Kraemer, Kraemer Brothers  
Beam Club Members-to-date: 2

### • FIRE PROTECTION SPECIALISTS

*Tom Anderson*  
1906 Commercial Street  
Bangor, WI 54614  
**Phone:** (608) 486-1120  
**Description:** Supplier  
**Sponsor:** Brian Wieser, Wieser Brothers  
General Contractor, Inc.  
Beam Club Members-to-date: 37.5

### • MCKEEFRY & SONS, INC.

*Kelly McKeefry*  
1051 State Hwy 32, Pulaski, WI 54162  
**Phone:** 920-822-5275  
**Description:** Site Work Contractor  
**Sponsor:** Bill Monfre, Quality Insulators Inc.  
Beam Club Members-to-date: 8

### • MIDWESTERN ROOFING & CONSTRUCTION

*Trais Haire*  
7384 N. 60th St.  
Milwaukee, WI 53223  
**Phone:** (414) 444-3209  
**Description:** Roofing Contractor  
**Sponsor:** Cheryl Sment, Interstate Sealant & Concrete Inc.



### • NEWCAP, INC.

*Deb Barlament*  
1201 Main St.  
Oconto, WI 54153  
**Phone:** (920) 834-4621  
**Description:** The mission of NEWCAP is to empower and assist individuals with limited income to attain the skills, motivation and opportunities necessary for them to become self-sufficient and independent.  
**Sponsor:** Bill Monfre, Quality Insulators Inc.  
Beam Club Members-to-date: 9



### • RESULTS4YOU, LLC

*Ken Collins*  
6680 Cheddar Crest Dr.  
Sun Prairie, WI 53590  
**Phone:** (608) 512-9375  
**Description:** Results4you is a "people first" career coach / business consultant accountability partner to assist with turning your ideas into action. I am passionate about maximizing the potential of your career or business through enhanced leadership development.  
**Sponsor:** Heath Luedtke, Faith Technologies Inc.  
Beam Club Members-to-date: 1



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*Madison*  
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5 pm – 8 pm

## **CONSTRUCTION COMMUNICATION - CRITICAL SKILLS**

*Menomonie*  
May 6, 2016  
1 pm – 4 pm

## **CONFINED SPACE TRAINING**

*Green Bay*  
May 10, 2016  
9 am – 3:30 pm

## **ELECTRICAL EXAM PREP PART 2 (JOURNEYMAN)**

*Madison*  
May 10 & 17, 2016  
5 pm – 8pm

## **CONSTRUCTION COMMUNICATION - CRITICAL SKILLS**

*WI Dells*  
May 13, 2016  
1 pm – 4 pm

## **APPRENTICESHIP GRADUATION BANQUET**

*WI Dells*  
May 13, 2016  
4 pm – 8:30 pm

## **NETWORKING SOCIAL**

*Stevens Point*  
May 18, 2016  
5 pm – 6:30 pm

## **10 HR. OSHA CONSTRUCTION TRAINING**

*Green Bay*  
5/19 & 26/16  
7 am – 12:30 pm

## **ARC FLASH TRAINING**

*Appleton*  
5/24/16  
8 am – 2:30 pm

## **ELECTRICAL EXAM PRACTICE**

*Milwaukee*  
May 26, 2016  
4 pm – 8 pm

## **ELECTRICAL EXAM PRACTICE**

*Madison*  
June 2, 2016  
4pm-8pm

## **CONFINED SPACE TRAINING**

*Madison*  
June 2, 2016  
9am-3:30pm

## **CONFINED SPACE TRAINING**

*Milwaukee*  
June 3, 2016  
9 am – 3:30 pm

## **FA/CPR TRAINING**

*Appleton*  
June 6, 2016  
12:30 pm – 4:30 pm

## **FA/CPR TRAINING**

*Eau Claire*  
June 8, 2016  
12:30pm-4:30pm

## **GOLF SCRAMBLE @ THE OAKS**

*Cottage Grove*  
June 15, 2016  
12 pm – 6:30 pm

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July 7, 2016  
9:30 am – 4 pm

## **CONFINED SPACE TRAINING**

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July 12, 2016  
9:30 am – 4 pm

## **BREWER'S OUTING**

*Milwaukee*  
July 22, 2016  
5 pm – 9:30 pm

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