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The purpose behind the NWI Union Construction quarterly is to provide industry specific educational content to the participants that work in Northwest Indiana’s construction industry. This includes everyone from presidents of construction contracting firms to first year apprentices. It is my observation that the vast majority of our industry is largely uninformed on issues relating to their own interests. Furthermore, they are rarely offered professional development opportunities to become better construction professionals. So this publication was created to help fill in the knowledge void. It was created to help the Construction Advancement Foundation become a catalyst for positive and sustainable change that our industry desperately needs. My hope is that the content provides construction industry participants with some insight about the issues plaguing our industry. My hope is it gets labor and management focused on developing a 21st century framework that allows the construction industry in Northwest Indiana to thrive and grow our influence within the market. My hope is that it also becomes a clearinghouse on improving leadership, quality, productivity, safety, and professionalism in the construction industry. While I can do my part in educating the union construction by creating avenues to promote positive transformational change, I cannot do it alone. It is vital that everyone in our industry plays role in working to improve our industry. I ask that you please share this publication, or even just an article, with the people within your construction company. Please encourage your project managers, superintendents, and field crews to log onto the CAF website, view our publications, and become informed on a whole host of topics that can help them grow and develop professionally. Our industry will surely be better because of it.

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Cover Photo: Pat Van Waardenburt (left) and John Lopez with Bloomfield Mechancial are installing the HVAC system at the new Portage Township Parks and Recreations Facility located on 700 North in Portage Township. The Ross Group of Portage, IN is the General Contractor on the project and Garry Gadd is the General Superintendent.
Composite Plans:
The Time Has Come

By Todd Mustard
TAUC Senior Director of Government Affairs and Member Services

This article originally appeared in the Fall 2016 issue of The Construction User, the official publication of The Association of Union Constructors (TAUC). For more information, go to www.tauc.org.

On Friday, September 9th, House of Representatives Education and Workforce Committee Chair John Kline (R-MN) released a discussion draft of the “Multiemployer Pension Modernization Act of 2016” that would amend the Employee Retirement Income Security Act of 1974 (ERISA) to allow for the utilization of composite plans. These are “a new retirement option that mirrors the qualities of both defined benefit and defined contribution pension plans,” according to a supplement to the draft. They would “provide retirees an annuitized benefit much like defined benefit pension plans. Composite plans will also provide employers the flexibility and certainty typically associated with defined contribution plans. The trustees of a composite plan will have the ability to act in a manner that provides workers and retirees a stable, secure retirement benefit.”

The Association of Union Constructors (TAUC) has been pushing for this aspect of multiemployer pension reform for the last four years. Composite plans were originally included in the Retirement Security Review Commission’s Solutions Not Bailouts proposal, but did not get included in the final Multiemployer Pension Reform Act passed in December 2014. Composite plan design is critical to all union contractors participating in multiemployer pension plans. Kline’s bill would give trustees the flexibility to allow contractors to significantly reduce their long-term unfunded liability. While the legacy plan and all of the benefits accrued in those plans would be required to be maintained, the new composite plans would not generate additional unfunded liabilities since those plans would have to be at least 120% funded. Transitioning to these plans would also reduce the amount of money union contractors pay in premiums to the Pension Benefit Guarantee Corporation (PBGC). Last but definitely not least, the careful use of composite plans could significantly improve the chance of having new union contractors join the marketplace who had previously declined to do so because of the unfunded liability they would automatically assume by joining existing multiemployer plans that are not fully funded.

So why are organizations such as the American Association for Retired Persons (AARP) so adamantly against this new plan design? They see it as a “Pandora’s box” that, once opened, would eventually eliminate the use of defined benefit (DB) pension plans altogether. AARP and others view DB plans as the best and only way to provide true retirement security. However, the harsh reality is that even the healthiest of DB plans can be brought down by unforeseen economic and regulatory changes – and once a DB plan is in trouble, it’s very difficult to save it by relying on the tools now available to local trustees: increasing employer contributions and betting on high returns in the stock market. There are no magic bullets to instantly save troubled plans, but there are ways to dramatically increase the odds of success by...
freeing up trustees to use more flexible and innovative funding methods.

Failure to authorize the use of composite plans can undermine the very DB plans advocates claim to want to protect. In the current environment, the increasing cost and unfunded liabilities and uncertainty are forcing contributing employers to increasingly move away from DB plans towards defined contribution plans. Composite plans will allow for participants to receive lifetime benefits while providing contributing employers the cost certainty they need to remain in the plan.

TAUC member contractors want to provide retirement security for the union craftworkers who work on their jobsites, but they also want – need – to be competitive in the marketplace; otherwise, there won’t be any jobs for those workers, period. Additionally, TAUC members believe that providing good benefits – not just pensions, but also health and welfare – is critical if we want to convince high-quality men and women to join the unionized building trades. The union construction “elevator pitch” to our customers is that we provide the highest skilled, most productive and safest option for their construction and maintenance needs. The only way we can live up to that bargain is by recruiting the best and brightest to our team. Composite plans will give contractors the edge they need to provide this secure future for craft workers while at the same time eliminate unfunded liability, which will ultimately make the entire industry more competitive. Change is never easy. Sometimes we are forced to make difficult decisions to ensure our long-term survival. This is one of those times. The alternative -- do nothing, keep the status quo -- would be nothing short of a disaster for contractors, the hard-working union trades they employ, and the millions of Americans who rely on us to literally keep the lights on.

Todd Mustard is senior director of member services and government affairs. In this role he is engaged in the recruitment and retention of TAUC’s Governing, Regular, Local Employer Organization, and Affiliate Members. Mustard also coordinates the government affairs activities of the association, working with various coalitions including the Quality Construction Alliance and Campaign for Quality Construction.

It’s Not All About Safety

By Mark Breslin

Okay, So I’m a heretic. Totally out of line. How can anyone in our industry possibly say “It’s not all about safety”? After all, safety is a condition of pre-qualification. It’s the code that everyone must live by.

Yeah. Well, hear me out, because I have other ideas.

Simply put, success for our industry is not just about proactively shaping safety behaviors. It only starts with safety behaviors. It’s really about implementing a “macro-jobsite” version of behavior change to all critical facets of the job – not just safety. And the sooner we start, the better.

Improved safety on the jobsite is a byproduct of successful behavior change. With a degree of engineer-brain mono-focus, our industry has decided to put a singular focus on changing behavior in the area of safety. As a result, we have built an amazing safety infrastructure consisting of training, policies, incentives, consequences, equipment, metrics and more. One highly visible element is the weekly (or daily) safety meeting. Across the country, millions of our workers meet to reinforce...
behaviors over and over again, and they do it hundreds (if not thousands) of times during their careers.

Thanks to this unprecedented investment of time, money, and effort there has been a commensurate reduction in safety incidents, reflected in lower severity. This great and noble effort has created great results.

But here is my problem – and our opportunity: why are we wearing blinders and therefore seeing only the very narrow and singular path before us? Why focus only on safety? Safety is just one slice of the pie. What about personal accountability, decision making, care for self and others? Why no look at the broader spectrum of attitudes and behaviors that, if changed, could provide our industry with the same or perhaps even great benefits? To limit ourselves to this one area of focus when so many other problems need to be fixed is really a failure of imagination and execution on a massive scale.

**Success for our industry is not just about proactively shaping safety behaviors. It only starts with safety.**

When working with my contractor clients, I always ask them to list the driving behaviors that make a job super successful. Here are some of the descriptors I hear, aside from safety:

- Productivity
- Innovation and problem solving
- Goal setting and accomplishment
- Cooperation, coordination, & collaboration
- Ownership % accountability of supervision and field

So the question I follow up with is, “What are you doing to create and reinforce these behaviors on your jobsites daily and weekly?” And I get back blank stares. What’s going on here?

Our industry has created the most amazing and effective information delivery systems available, on that is proven to change behaviors…but only in the area of safety! Why aren’t we using that very same delivery system to influence other critical behaviors at the field level?

Let’s say that your company holds weekly safety meetings. That means you have 52 opportunities each year to deliver behavior change. With the “infrastructure” already in place, doesn’t it seem obvious to consider adding things like:

- Weekly goal setting meeting
- Weekly input & productivity meeting onsite (How do we do this better, faster, smarter, safer?)
- Weekly collaboration meeting for multi-craft / sub planning
- Monthly personnel feedback session mandated for foremen to communicate performance issues to craft workers

My end-user / owner clients – including refineries, energy companies, manufacturers, and others – uniformly report that poor productivity leads to schedule disruption, over-manning of projects and general difficulties with coordination and accountability of field supervision. Is this some big secret? No. Everyone sees it, and we just all truck along figuring, well, that’s just how it is – not much we can do about that! That sounds very familiar to me – because it’s exactly what people used to say about safety performance before we all decided to change the industry for the better.

Think of our industry’s outstanding safety infrastructure as a high performance sedan – say, a Cadillac CTS-V with 556 horsepower. It’s incredibly powerful and gets the job done. Well, how about instead of driving it solo with just safety inside, we add several more passengers? Using the exact same delivery model, let’s add productivity, innovation, planning, goal setting and more to the back seats. It’s a low cost, highly innovative approach that leverages an existing investment and empowers workers to not only change behavior but take greater ownership.

Again, don’t get me wrong – safety is important and we should be proud of what has been accomplished. But let’s not stop there. The foundation has been set for even greater returns across a wide range of behaviors: accountability, ownership, buy-in, collaboration, care and more. Success is waiting for those with the vision to act.

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Payroll Fraud Hurts All Hoosiers

By Kevin Comerford

Just a few months ago I received a phone call from a young man named Tyler from Lafayette, Indiana. Tyler was seeking advice on how to handle a precarious situation. He was working as a framer under the guidance of a non-union contractor when he injured his neck on a construction site. As a result of his injury, he had to seek medical attention. Tyler tried to file a workers’ compensation claim to help cover his cost of his medical bills. That is when Tyler found out that his employer has been misclassifying him as an independent contractor without his knowledge. Technically, Tyler should have been classified as an employee of the contractor under IRS rules. Moreover, Tyler’s boss told him that he didn’t have any more work for him after the injury took place was therefore out of job. I really didn’t have any sound advice for Tyler since the state of Indiana has weak enforcement procedures on worker misclassification. I suggested that he contact the Indiana Department of Labor and file a formal complaint against his employer. I also made a few other suggestions such as contacting his local state representatives to bring the issue to their attention.

Tyler’s situation is not uncommon in Indiana. Over the past few years, I have heard numerous reports of employers in the construction industry labeling their employees as independent contractors. This misclassification is a form of payroll fraud. While payroll fraud is rarely found in the union construction industry due to provisions written in collective bargaining agreements, the practice is widespread in the non-union sector of the construction industry. Employer misclassification hurts responsible contractors and adversely affects their ability to compete on a level playing field. This is because contractors who subscribe to the practice of misclassifying their workers are able to eliminate up to 30% of their payroll costs because they are able to avoid state and local taxes, unemployment insurance, and workers’ compensation premiums. As a result, honest law-abiding companies are going out of business.

Honest law-abiding employers and the workers themselves are not the only parties that suffer as a result of payroll fraud. Taxpayers are also getting hurt by the practice. In a report titled The Economic Costs of Misclassification in the State of Indiana by Michael Kelsay and James Sturgeon, it was estimated that payroll fraud cheats Hoosiers out of more than $350 million in critical income tax revenue every year. This means that there is less money for public safety, transportation and infrastructure, education, parks and recreation, and other public expenditures. This figure doesn’t even include all of the revenue that is lost in payments to unemployment insurance and workers’ compensation premiums. Combined, payroll fraud costs the people of Indiana over $400 million every year.

So what are some solutions to remedy the ongoing problem of payroll fraud in the state of Indiana? Well for starters, we could look at other states to see what they have done to combat the issue. Perhaps the easiest solution to implement would be to develop an anti-payroll fraud taskforce. Many other states such as Tennessee, Michigan, New Hampshire, Florida, Massachusetts, and Maine
are currently using this model. In Indiana, the taskforce could include representatives of the Attorney General, the Indiana Department of Labor, and the Indiana Department of Revenue. The joint taskforce would work together to identify frequent abusers of the system, target particular job sites, and investigate reported tips.

A joint taskforce would need the ability to investigate and enforce the law. This is where Indiana is lagging behind. There are a few different proposals that exist for the operation of the taskforce, but the most compelling suggestions include the ability to stop work on any portions of a project where misclassification of workers is suspected. Then, within a few days, the Indiana Department of Labor would hold a hearing to weigh the evidence in order to determine whether payroll fraud exists. If a contractor is found guilty of fraud, they will be fined up to $5000 per employee misclassified and the stop-work order would remain in effect until penalties are paid in full. The penalties would be put into a fund to pay for the enforcement taskforce. Additionally, repeat offenders could be subjected to criminal charges.

The taskforce could pay for itself by recouping the illegally defrauded funds. Last year, the state of Massachusetts announced the creation of permanent council to regulate and enforce payroll fraud in the state. This decision to create a permanent council was made after a joint taskforce recovered over $20 million in fraudulent employment practices during 2014.

The formation of such a taskforce was recently suggested to a study committee of the Indiana General Assembly looking at the problem of misclassification. The Interim Study Committee on Labor and Employment, created by the 2016 session of the General Assembly held hearings over the summer to consider the extent of this problem and to develop legislative remedies to suggest to the 2017 session of the Legislature. Unfortunately, the study group balked at making any firm recommendations as to how to solve this growing problem. Despite the Committee’s lack of action it is anticipated that bills will be introduced in the 2017 session of the General Assembly to address this issue.

It is evident that the state of Indiana is suffering from a number of negative economic impacts associated with the problem of employer misclassification. The problem is costing the state millions of dollars in lost revenue, hurting the rights of hard working Hoosiers, and negatively affecting thousands of legitimate contractors who face unfair competition from deceitful businesses engaged in the fraudulent practice. The creation of a joint taskforce is essential tool to combat the practice of worker misclassification while simultaneously protecting workers and enforce compliance to stop unlawful business practices.
I am convinced that the quickest and most effective path to top notch performance and productivity is through coaching. Every athlete, professional or amateur, has at least one coach. Many have several. High level corporate executives have coaches. People who want to get better at whatever it is that they do find someone to coach them.

Unfortunately, in the construction industry we have largely ignored the benefits of coaching. It has been said that the superintendent and/or foreman has his or her hand on your wallet. To a great degree, this is where the money in this business is made or lost. And yet, when was the last time we provided coaching to our people to help them expand their skills, knowledge and abilities—to get better!

Take a look at the men and women running your jobs. Where did they come from? If you are like most contractors, you typically find good craftsmen or graduates of good college programs, promote them to a supervisory role, and then fail to teach them the necessary people, organizational, and management skills to function effectively. We may send them to classes to get an education but fail to train them. In reality, the most effective training one can get is in the field, with real situations, real people, and real problems. By using these real time situations, the supervisor can understand the options, internalize the recommendations, and try the techniques immediately, usually producing instant results. It’s a “win-win” situation. Whatever you invest in the coaching engagement will come back to you many times over in productivity, profitability, and overall job satisfaction.

Like most things in life that we would like to get done, we have a couple of choices. We can do it ourselves or hire someone to do it for us. It comes as no surprise that most construction company executives have neither the time nor the experience to provide real time coaching to their people. The answer is to hire someone with coaching experience to work with your supervisory staff. We hire safety advisors, legal advisors, and financial advisors to help us with those specific skill sets. It just makes sense to hire someone to coach and advise our most valuable asset—our people. Done well, coaching can transfer knowledge on a just-in-time basis in our organization, increase individual motivation and morale, and improve overall productivity to deliver outstanding profitable results.

Let’s take a look at what coaching is. The role of a coach might involve being an expert in a particular discipline. It might involve observing how the subject does his or her job and suggesting alternative approaches. It could mean being a motivator whose pep talks and words of encouragement inspire others to greatness. It could mean helping others establish daily, weekly, and longer term goals for themselves and their projects to assist them in setting a direction for their activities and those of their team. Or it could mean just mentoring a rising young
star in the organization. In short, a coach can be a guide, a motivator, a teacher, and a mentor or some combination of any of these.

Here are some of the questions that can be answered with the benefit of coaching:

• How can I get more out of my team?
• How can I balance my work life and my home life better?
• How can I reduce the stress in my job or my life?
• How can I balance productivity with quality and safety?
• What can I do to help my team get along better with each other?
• How can I communicate more effectively with upper management?
• How can I deal better with inspectors, subs, and the public?

I’m asked these types of questions over and over again. Each case is entirely individual and is best dealt with in real time. In my experience, our supervisors all want to do well. They are competitive by nature and want to be as profitable as possible. They often just need a little help with the people skills, the organizational skills, and the planning skills. Those are some things an experienced coach can provide. Sometimes, all they need is a sounding board — and particularly a sounding board that doesn’t have the authority or desire to hire or fire them.

As in sports, coaching in business has a set of fundamental rules. For a coaching engagement to be successful, these fundamentals are critical.

• Coaching is founded on confidentiality and trust. A rapport between the coach and the coachee must start early and be strengthened over time.
• The solutions to the coachee’s issues lie within the coachee.
• The coach must focus on behaviors, not personalities.
• The coach must be able to ask open ended questions.
• A good coach is a good listener.
• A coach offers information, not advice.
• A coach is always positive.

Coaches in the workplace are not counselors, psychotherapists, gurus, teachers, trainers, or consultants — although they may use some of the same skills and tools. They are keen observers and sources of information. They are cheerleaders. And they listen.

Most formal, professional coaching is carried out by qualified people who work with clients to improve their effectiveness and performance, and help them achieve their full potential. Coaches can be hired by coachees, or by their organizations. Coaching on this basis works best when everyone clearly understands the reason for hiring a coach, and when they jointly set the expectations for what they want to achieve through coaching. That said, managers and leaders in the organization can be just as effective as externally hired coaches. The choice is yours.

Hiring a good coach for your supervisory staff, or dedicating someone in your organization for the job, will make you money. Given that studies show that as little as a 5% improvement in productivity will double your bottom line profit, it’s a good bet to invest time, money or both in helping your supervisors be the best they can be. In fact, it may be the best investment you will ever make.

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To hire Jim or find out more about the Falcon Performance Institute, please visit www.fpiteam.com and/or www.jimbainspeaks.com or call 352-854-4015.
Building an Effective Safety Culture

By Mark McDaniel
INSAFE Safety Consultant

Most professionals – managers, team leaders, and business owners – have the best intentions when setting priorities. However, the reality of trying to manage your business often interferes with the priority. Priorities change based on the needs of the organization. To say safety is a priority means that it may change based on the needs or urgencies of the moment, and therefore will not always be the top priority.

A value is defined as a principle, standard, or quality considered worthwhile or desirable. Using this definition, we say safety is important and will not be compromised. As your businesses needs change, so will the needs and focus on safety. Nevertheless, safety will always be present.

Some clients set safety as a priority, but with much less value, which directly conflicts with the direction of safety in the workplace. As you are probably aware, this creates conflict in any industry. As a safety consultant, I’m often asked, “How do I change the organization’s culture?” There are many reasons why a safety program fails. Fear, cost, attitude, workload, lack of trust, intimidation, or consistency could be factors. In my experience, I’ve observed individuals become overconfident and develop the mindset of “that kind of accident will never happen to me.” This kind of attitude triggers certain behaviors in good or bad conduct of an employee.

Simply put, commitment and understanding must come from top management and involve all levels of employment. Your plan needs accountability. The management system should incorporate policy, goals, and a strategy. Remember, Occupational Safety and Health Administration (OSHA) standards only address the minimum rule for any organization. All safety programs must be structured and adapted to the operation. This could require safety practices above and beyond what OSHA requires.

Employer commitment and employee involvement are essential. This element ensures the employer is accountable to the same safe work practices that employees must follow. Remove employee reprisal from correcting all employees in the event of a safety infraction. If your company owner walks into your work area without wearing appropriate personal protection equipment, you should be able to stop the work and correct the situation without fear. Management should hold employees accountable to maintain a safe work environment. Remember, a safety program does no good if it isn’t being enforced.

Conduct a safety cost analysis. Statistics show the average cost of a work-related accident is about $38,000 per incident. A good safety program can limit, reduce, or eliminate accidents in the workplace. Use a cost analysis to sell your safety program to others.

Selling the program to your employees is easy. Empower your employees to take an active role in your safety program. Allow for time, money, and management to reach company goals. Appoint employees to monitor the safety program and conduct training. The employee is given
a sense of credibility and importance to operations. Recognize and award participation.

**Review safety program elements as needed to meet and maintain OSHA compliance.** Elements should be reviewed at least annually. Remember, work processes, practices, and OSHA standards can change. This review can be done through monthly or quarterly safety meetings, which is sometimes a preferred method.

**Conduct a hazard assessment.** Use administrative, engineering, and personal protection equipment as a means of control. Conduct self-audit inspections of all work areas on a monthly or quarterly basis. Capture and correct recognized hazards immediately.

**Conduct and document employee training.** Ensure all employees are competent and comfortable in what they’re doing in the course of their workday. Obtain feedback and follow-up from management and employees. You must know what is working and what isn’t. Work smart, not hard, and be safe. The safety culture will improve. This will reduce, limit, or eliminate injury and illness. Employee turnover will slow, morale will improve, and company profits will increase.

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**Training: An Investment in People**

By Kevin Comerford

In tough times, businesses do whatever they can to survive. One of the natural survival mechanisms for an enterprise during difficult times is to eliminate waste by slashing costs. By cutting out the waste, businesses get leaner and more efficient. This allows them to improve their chances to compete aggressively and survive. For many businesses, one of the areas to typically see cuts during a down cycle is the training budget since it is often viewed as a discretionary cost. However, being that we live in a knowledge economy, the enterprise that views training and continuing education as a cost that can be eliminated instead of an investment that will produce substantive economic value will struggle to compete in an ever-competitive marketplace.

Having the most knowledgeable and highly skilled workforce is without a doubt a huge competitive advantage in any industry. The knowledge and skills of the people within a company are often what separates the leading-edge companies from the average companies. The leading-edge company understands that in order to innovate and grow new business, educated minds are essential. Leading-edge companies are constantly training their employees in emerging technologies, business methods, leadership techniques, and various other skill sets so that they can remain at the forefront of their industry.

Perhaps the greatest impact of training is that it helps employees become more productive. Developing the skills of your employees increases the confidence in their abilities which improves productivity as well. In a study of more than 3,100 U.S. workplaces, the National Center on the Educational Quality of the Workforce (EQW) found that a company may possibly be better off improving production though investing in their workforce rather than investing in equipment. The study found that a 10 percent increase in workforce education level led to an 8.6 percent gain in total productivity. But a 10 percent increase in the value of equipment increased productivity just 3.4 percent.
Studies also have shown that money spent on workplace learning is money wisely spent. In fact, an organization's training investments can have a direct impact on profits. The American Society for Training & Development (ASTD) looked at the training investments of 575 U.S.-based, publicly traded firms during a three year period found that companies which invested the most in training yielded a 36.9% total shareholder return as compared with the 25.5% weighted return for the S&P 500 index for the same period. That’s a return on investment 45 percent higher than the market average. It was also shown that an increase of $680 in a company’s training expenditures per employee generates, on average, a 6 percent improvement in total shareholder return.

41% of employees at companies with poor training planned on leaving within a year vs. 12% planned departures at companies with excellent training.

Training improves employee satisfaction and retention as well. Continuous learning is also one of the best employee benefits. Workers view training as a critical element in their professional development. Most employees value the opportunity to advance their careers to generate more income. Investing in advancing the education of employees also helps increase their engagement and commitment within the organization. In another study done by the ASTD, 41% of employees at companies with poor training planned on leaving within a year vs. 12% planned departures at companies with excellent training. By retaining employees, companies save money on recruitment costs, which can be substantial.

So what methods of training can help enhance your workforce and provide the greatest good to the organization? Unfortunately, there is no one size fits all answer that suits every organization. Each organization needs to weight the costs and benefits of each. One method of training that is particularly effective is the external seminar or conference. Seminars are ideal for organizations that have extensive time commitments. Workers who attend seminars are able to learn a new skill within a few hours or days and then apply those skills immediately. Moreover, the costs associated with training seminars are pretty inexpensive when compared with other types of training.

Companies that have a culture of educating their workforce through seminars and conferences definitely have an advantage over companies that don’t provide any training to their employees. One problem typically seen among companies that embrace continuous learning is deciding which programs to select for their workers. Seminars have a wide variety of subjects ranging from quality control, time management, contract negotiating, business writing, developing leaders, handling negative employees, diversity training, and dealing with various software programs. With such a broad number of seminar offerings from which to choose, trying to decide which ones are worthy of our time and money to can prove difficult.

A primary factor in the value of a particular seminar is the company or organization producing it. Florida based Falcon Performance Institute (FPI), for example, produces and conducts construction-related seminars around the country on a wide variety of subjects including Productivity, Quality Assurance, Stepping Up to Supervisor, and Project Management. FPI also offers real time coaching services for their clients. Jim Bain, President of Falcon, is quick to tell his clients that “education is good, but the combination of education and training – the application of that education – is critical. The return on your training investment can be multiplied many times over by adding in-the-field training/coaching. Whether a company chooses to do it themselves, or outsource it, the training/coaching needs to be done to drive the behavioral changes proposed in the education process.”

Supporting employees who wish to earn a college credits or a professional certification is another training method that is a highly effective. A tuition reimbursement program is a great way to support employees who wish to better themselves. Of course these programs require a great deal of time and money for the worker. However, supporting the worker’s efforts to better themselves and advance within the company is an investment that will surely provide dividends to the company.

Outside of increasing productivity, reducing turnover, improving employee motivation and job satisfaction, and learning new abilities, training programs can also
help workers retain their certifications in certain fields. Architects, engineers, land surveyors, accountants, real estate agents, health professionals along with countless other professions are required to obtain a certain number of continuing education hours every year in order to maintain their certification credentials. Training programs in safety can help reduce work related injuries. A safe work environment boosts employee morale, increases productivity, efficiency, and profit margins. An added benefit to educating your employees is that they become self-reliant. By having employees that can successfully manage their workload can free-up valuable time for management so that they can focus on other, more important areas of the business.

Having a continuing education program is essential for all businesses competing in today’s marketplace. Knowledgeable and competent personnel are the vital components that make up the heart of every successful enterprise. Ben Franklin once said, “An investment in knowledge pays the best interest”. This statement holds true today more than ever. With technology in constant evolution and the economic future uncertain, the effects of having a knowledgeable workforce on business are immeasurable. Companies that invest heavily in training and educating their workforce are the ones who will not only survive, but thrive. These highly skilled, leading-edge companies will be the best equipped to adapt to changes, revolutionize business processes, develop niches, and inevitably, position themselves as leaders within their given industry.

There has been a recent development regarding the Department of Labor (“DOL”) overtime regulations related to certain “White Collar” exemptions under the Fair Labor Standards Act (“FLSA”) which were set to take effect on December 1, 2016 - raising the salary threshold from $455 per week/$23,660 per year to $913 per week/$47,476 per year - and for Highly Compensated employees from $100,000 per year to $134,004 per year. Last week, a federal district court judge in Texas granted a preliminary injunction in a lawsuit challenging the DOL’s authority to change the salary thresholds at the current levels until the court rules on whether the DOL had the authority to make the salary threshold changes and automatic increases every three years via the rulemaking process.

**What does the preliminary injunction mean?** It means that the new salary thresholds, as of now, will not go into effect on December 1, 2016 as originally planned. What this does not mean is that the salary thresholds will NEVER go into effect. The ruling does not end the lawsuit. In fact, it is just beginning. A preliminary injunction, under federal law, is a means to preserve the status quo. In this case, the preliminary injunction keeps the salary thresholds at the current levels until the court rules on whether the DOL had the authority to make the salary threshold changes and automatic increases every three years via the rulemaking process.

**What are the next steps in the lawsuit?** Once the court rules on whether the DOL had the authority to change the salary thresholds through rulemaking; it is almost certain that no matter the outcome, the case will be appealed. Since this is pending in a federal district court in Texas, the appeal will go to the United States Court of Appeals for the 5th Circuit. From the 5th Circuit,
the parties can seek an en banc review and/or petition for certiorari to the United States Supreme Court, which by the time it was to ever make it that far, will likely have a newly appointed Trump Supreme Court Justice. Because this lawsuit deals with rulemaking authority of the DOL going forward as a whole, it is very likely that even if the new rules are otherwise abrogated through other means, judicial or Congressional determinations will have to be made defining the limits of the Department of Labor’s rulemaking authority.

Can the new Trump Administration automatically change the regulations? No. No matter the outcome in the Courts, the new administration cannot take unilateral executive action with respect to Department of Labor rules. While the new administration has the authority to appoint a new Secretary of Labor who will advance the policies and directives of the new administration, the rules at issue were issued pursuant to federal rulemaking procedures under the Administrative Procedure Act (“APA”). Under the APA, in order to enact the rules, which are codified in the Code of Federal Regulations, the DOL was required to provide a notice and comment period. Similarly, in order to repeal or replace final rules, the DOL would be required to provide similar notice and comment periods. Certainly, Congress can also act to define the Department of Labor’s authority as to rulemaking under the Fair Labor Standards Act, which would either confirm or overrule the ultimate decision in this case.

What should employers do if changes have already been implemented in the workplace? For employees who have already been given a raise, employers can either honor the new raise or determine if it makes sense to make changes going forward. Keep in mind that rolling back a raise already given to an employee could certainly create a negative reaction or otherwise cause morale issues in the workplace. Legally, employers have the right to set wages; albeit in accordance with federal and state laws and any contractual obligations. For current exempt employees who have otherwise been told their classification will change to non-exempt because they will no longer meet the salary threshold; employers can keep them as exempt if, and only if, their duties satisfy the requirements under a “White Collar” exemption. The FLSA exemptions require the satisfaction of the salary basis and duties tests, not one or the other.

What should employers and organizations do next? To the extent as part of a FLSA audit, your organization has determined that some employees had been misclassified because their duties did not align with the requirements for one of the “White Collar” exemption, it is still time well spent as the duties tests have not changed since 2004 and were not otherwise affected by this lawsuit and/or the new DOL rules regulating salary thresholds. Therefore, those misclassified employees still need to be properly classified going forward. If handbook policies and/or workplace procedures needed to be updated regarding overtime, recording time or time-keeping, and other wage and hour pay practices, now is still the time to make these revisions. FLSA lawsuits and claims have been and are poised to remain one of the most litigated employment-based claims and having up to date wage and hour policies and procedures can only assist employers facing such claims. If you have already made changes to your workplace policies and procedures, continue to roll them out and monitor workforce compliance with them. Employment laws and regulations are ever changing, and we can certainly expect that the new administration will usher in changes in the months and years to come. We anticipate developing a new seminar for the first quarter of 2017 identifying what employers can likely expect under the new Trump Administration, and hope that you will join us at one of our seminars.

Shelbie J. Byers is an Associate with Drewry Simmons Vorhein, LLP, and she focuses her legal practice in the areas of labor and employment law and litigation law. Shelbie has experience with a wide array of business, commercial, and employment-related litigation and administrative matters and has assisted clients in state and federal courts as well as the EEOC, Department of Labor, OSHA, and other administrative agencies. Shelbie Byers can be reached by phone at 219-769-3300 or you can email her at sbyers@dsvlaw.com
In September, Pangere Corporation completed Fire Station No. 3 project for the city of Portage, Indiana. The new fire station is located at 6300 Central Avenue and has a price tag of approximately $4.6 million. Construction on the 13,593 square foot building began in September of 2015. The building was constructed of structural steel framing, 8” thick precast concrete 2nd floor deck, exterior block & brick walls, EPDM roof system, elevator, 2nd floor patio, fire fighter living space, administrative office space, weight room, kitchen area, stained concrete interior floor system, Red Four Fold apparatus bay doors in the front of the building is what really makes this building stand out aesthetically from other fire stations. It was great working with the City of Portage & Chief Tom Feiffer who had the vision of what they wanted long before we started this project.”

This new Portage Fire Station utilized a project labor agreement which assured that the building would be constructed using local professional labor and the most highly trained and skilled construction workforce in this area. According to Vermillion, Pangere also used all local contractors which really helped to increase the responsiveness. Moreover, the having local skilled workers and contractors really afforded Pangere the ability to complete the project before the owners scheduled move-in date.

said Jim Vermillion, Project Manager for Pangere Corporation. “You just don’t see Fire Stations built like this anymore. The four red apparatus bay doors in the front of the building is what really makes this building stand out aesthetically from other fire stations. It was great working with the City of Portage & Chief Tom Feiffer who had the vision of what they wanted long before we started this project.”

“The was an honor to be the General Contractor for this project and to be part of the process in building one of the most unique and state of the art Fire Stations in this area”

**Project Details**

**General Contractor:**
- The Pangere Corporation
- Project Manager = Jim Vermillion
- Site Superintendent = Bill Batchelor

**Major Subcontractors:**
- Surveying - DLZ Industrial
- Excavation & Utilities - Illiana Remedial
- Asphalt Paving - Town & Country Paving
- Precast - StresCore
- Concrete - Midstates
- Masonry - Adams Masonry
- Steel - Wilson Iron Works
- Roofing - Korellis Roofing
- Glazing - Trout Glass
- Painting - Stan’s Painting
- Flooring - Master Tile
- Fire Sprinkler System - Valley Fire Protection
- HVAC - Bloomfield Mechanical
- Plumbing & Piping - Circle R Mechanical
- Electrical - Sweney Electric