DC’s First Source Law Under Review

On February 27, Washington, D.C. Council Member Elissa Silverman conducted a day-long public oversight hearing on the District of Columbia’s First Source Hiring Law. More than 35 people representing different businesses, religious institutions, and other entities testified and responded to questions from Council Member Silverman.

Bernie Brill testified representing both the SMACNA Mid-Atlantic Chapter and the Alliance for Construction Excellence (ACE). The purpose of the meeting was to hear and learn from those who are subject to these regulations.

Brill told Silverman of the challenges that subcontractors face when attempting to comply with First Source’s onerous and complex reporting requirements. He also noted the problems of dealing with direct and indirect labor costs, employment plans, disclosure of past compliance, the heavy handiness and the threat of penalties from government along with the stringent hiring laws.

However, the purpose of Brill’s testimony was to offer suggestions that would make First Source less onerous and more workable for contractors. One idea was to reward contractors who are in compliance with favorable tax incentives and/or be placed on a “preferred contractors” list for future work. Another recommendation was to simplify reporting requirements which would streamline the process and result in reduced administrative expenses.

Brill also proposed that the Department of Employment Services (DOES) appoint an ombudsman. As some contractors may be fearful of retribution in voicing complaints, this person would act as a go-between DOES and contractors in resolving problems. The final recommendation was to reduce the percentage from 51 percent of workers to something more reasonable and attainable such as 20 to 25 percent.

Following Brill’s formal five minute presentation, Silverman entered into a question and answer period in which she asked him about the number of D.C. apprentices, location of the training center, and entrance requirements to the program. This opened the door to a brief discussion about the association’s “Choose Bigger” program, plant tours, school visits, etc. which is being undertaken by the association.

Silverman announced that there will be a career fair on April 17th at the Arena Stage from 9 a.m. to 1 p.m.
Employer reporting will sunset on June 30, 2023. MCCR is providing limited guidance about the reporting requirement.

MCCR is charged with publishing the aggregate number of paid sexual harassment settlements reported by employers and making an individual employer responsible for its number of paid sexual harassment settlements and making it available for public inspection upon request. MCCR will further provide the Governor, Senate and House with an executive summary of randomly selected surveys, redacted of any identifying information for specific employers.

Key takeaways for Maryland employers:
1. Educate your leadership, supervisors and employees.
2. Ascertain whether your business is a covered employer (50 employees or more.)
3. Review document retention and collect reportable data on settlements.
4. Submit data using the electronic survey.

Resolving sexual harassment complaints in the workplace presents challenges which are increasingly complex as American societal expectations and laws respond to the #MeToo movement.

Natasha M. Nazareth is Of Counsel to the firm of McMillan Metro, P.C. in Potomac Maryland. She represents businesses and individuals in the areas of employment, corporate, and education law and litigation in Maryland, Washington DC, and North Carolina. Natasha can be reached at nnazareth@mcmillanmetro.com or 301-251-1180.
Choose Bigger Pre-Apprenticeship Launches

Choose Bigger Pre-Apprenticeship has launched! SMACNA Mid-Atlantic leveraged the Maryland Apprenticeship Innovation Fund Grant to create a Choose Bigger Pre-Apprentice orientation program designed to create a stronger pipeline for the Local 100 Apprenticeship program. Since the launch of the program, SMACNA staff has canvassed area high schools to encourage high school seniors to apply for the program. The five week program will begin on April 23rd with a presentation about communication by SMACNA guest speaker Kevin Dougherty. Each student will receive training, test prep, interview skills, sheet metal basics, multiple certifications, honors cords, a scholarship presentation, and more! During the outreach period SMACNA received 22 applications to the program. The selected participants will take the apprentice exam and meet with local contractors for job placement.

SMACNA approved 19 applicants to the Pre-Apprentice program. The 19 students selected represent 5 counties, 6 schools, and multiple high school disciplines. Jesse Long of Chopticon High School said “I’m really looking forward to the program” after being notified of his acceptance. Jesse is from Mechanicsville, MD and will be making the hour long drive to the SMACNA office for 5 weeks to learn about the sheet metal trade. Jesse hopes that his dedication to the program, no matter the distance, demonstrates to area contractors his determination to be a hardworking apprentice within Local 100.

For more information about the pre-apprentice program, please contact the SMACNA Mid-Atlantic office at 301-446-0002.

SkillsUSA – Regionals

SMACNA Mid-Atlantic participated in SkillsUSA regional competition for Region 5 of Maryland (consisting of Montgomery and Prince George’s counties). The event was hosted at the brand new Thomas Edison High School of Technology on February 28th. SkillsUSA Maryland boasts a statewide membership of 6,000 students. These young men and women have started training for their chosen career paths in high school. The competition challenges these students to compete within their selected trade or career path against other high school students. Region 5 is one of only a few regions in Maryland with a Sheet Metal category. SMACNA Mid-Atlantic was granted access to the competition floor and provided insight to students about career paths within the sheet metal industry. Participating student Emily Rivas noted her intentions to join the Local 100 Sheet Metal Apprenticeship next year, after high school graduation.

Sheet Metal Competition Results

1st– Darrin McCloud
2nd– Emily Rivas
3rd– Milton Veliz

*- All students attend Thomas Edison High School
Please Complete SMACNA’s 2019 Annual Safety Survey

SMACNA’s 2019 Safety Survey is now online and ready for you to complete with your safety numbers. Many SMACNA members have benefited from this valuable program by winning safety awards or using the safety data to improve their safety and health cultures.

Each year, SMACNA conducts this annual Safety Excellence Awards Program (SSEAP) to recognize members for their outstanding safety performance while collecting vital safety and health data. SMACNA also administers a survey program for Canadian member contractors. We now have two dynamic initiatives to recognize member safety excellence in both countries.

All SMACNA members can access the online annual Safety Survey form from SMACNA’s webpage. Select “Browse by Topic” then “Safety & Health.” Choose “Safety Award: Surveys & Statistics.” On the page, choose “2019 SMACNA Safety Survey Now Open.”

All entries must be received by May 10

Your input is critical to the success of the program. Most information needed can be found in your company’s 2018 injury and illness records. Submitting your survey is quick, easy, and confidential.

See SMACNA’s most recent Safety Statistics Profile 2018 on the Surveys and Statistics section of SMACNA’s Safety webpage at www.smacna.org/safety.

For more information, contact Mike McCullion, SMACNA’s director of market sectors and safety (mmccullion@smacna.org / (703) 995-4027).

Upcoming Events

- April 10: Apprenticeship Conference
- April 24: Kevin Dougherty Presents - Field Based Project Management
- May 7-9: CEA: SMACNA’s National Issues Conference - Washington, DC
- May 21: Sexual Harassment & HR Law presentation with Julie Redding
- June 6: SMACNA Mid-Atlantic Chesapeake Bay Fishing Expedition
- Oct 20-23: National Conference - Austin, TX
- Nov 7: Mentoring Apprentices - Nic Bittle

To register or for more information please go to www.smacnaatl.org

CEA National Issues Conference 2019

Be a part of the advocacy effort!

Join your colleagues and peers in Washington, DC for two-and-a-half days of valuable educational sessions, networking, social events, and lobbying meetings focused on key SMACNA and CEA legislative issues.

When:
May 7-9, 2019

Where:
Hyatt Regency Washington on Capitol Hill

Registration:
Please register through SMACNA national at:
https://www.smacna.org/events-education/registration/national-issues-conference
Or by calling (703) 803-2980
Indemnity Provisions: What You Should Know

By Lane F. Kelman, Jonathan A. Cass, and Jackson S. Nichols

Indemnity provisions are common features in construction contracts. They typically require one party, the indemnitor, to provide protection to another party (e.g., “to indemnify”) from liability for losses caused by the indemnitor. Typically, a general contractor or owner will require a subcontractor to indemnify them from responsibility for claims for personal injury or property damage that arise from the project. Many jurisdictions are reluctant to enforce such provisions, however. In D.C., the courts will generally enforce indemnity provisions in construction contracts. Maryland and Virginia, on the other hand, are more reluctant to enforce such provisions in all scenarios.

Say you are a drywall subcontractor on a job for the construction of a building, and you sign a subcontract where you agree to the following:

The subcontractor shall promptly indemnify and save and hold harmless the General Contractor and the Owner from any and all claims, liabilities and expenses for property damage or personal injury; including death, arising out of or resulting from or in connection with the execution of the work provided for in this Agreement.

While working, one of your workers falls through an unmarked hole in the building, sustains serious injuries, and sues the GC and owner. Who is responsible to pay for his injuries? Normally, a GC is responsible for complying with all health and safety regulations and ensuring the safety of a job site. But according to the indemnity provision, you, the subcontractor, have agreed to pay for any liability to the GC or the owner arising from that worker’s injuries, including their attorneys’ fees.

In fact, the same indemnification clause and fact pattern described above were the subjects of a case called WM Schlosser Co., Inc. v. Maryland Drywall Co., Inc., where the D.C. Court of Appeals held the subcontractor responsible because of the above indemnity provision. Maryland and Virginia, however, would likely have reached a different outcome because they have laws restricting the ability of a party to a construction contract from receiving the benefit of an indemnification provision (e.g., be protected) for their own negligence.

Because indemnity provisions can carry serious financial consequences for a company, it is vital to understand the risks involved before agreeing to them. Insurance requirements, subrogation clauses, and workers compensation laws all interrelate with indemnity provisions. These rights can differ from state to state, and it is recommended to have legal counsel review any such provisions to understand your risk.

Lane F. Kelman is a partner in the Construction Group at Cohen Seglias Pallas Greenhall & Furman PC. He has an active and diverse construction litigation practice, representing developers, general contractors and trades in complex construction matters throughout the United States and internationally. Lane can be reached at lkelman@cohenseglias.com or 267.238.4728.

Jonathan A. Cass is a partner at Cohen Seglias Pallas Greenhall & Furman PC. As Chair of the firm’s Insurance Coverage & Risk Management Group, Jonathan helps his clients evaluate and manage their insured and uninsured business risks. Jonathan can be reached at jcass@cohenseglias.com or 267.238.4736.

Jackson S. Nichols is an associate in the Construction Group at Cohen Seglias Pallas Greenhall & Furman PC. In his practice, Jackson advises general contractors, subcontractors, sureties, owners, and other construction industry entities in navigating complex commercial disputes that arise during projects. He can be reached at jnichols@cohenseglias.com or 202.587.4756.
**Big Changes Coming to D.C.’s Paid Family Leave Law**

In December 2016, the District of Columbia City Council passed the D.C. Universal Paid Leave Amendment Act of 2016 (UPLAA).

It will guarantee certain periods of paid family and medical leave to private-sector employees starting on July 1, 2020. Payments will be funded by an additional 0.62% employer payroll tax that the city will collect from private-sector employees starting on July 1, 2019.

**Expanded Rights**

The new UPLAA leave entitlement will apply to more private-sector employees—and in more circumstances—than the DCFMLA.

First, new employees will be entitled to take paid family or medical leave in circumstances in which they currently have no entitlement to take even unpaid leave.

Currently, to qualify for unpaid leave, an employee must have worked for the employer for at least one year preceding the leave request. No such conditions apply to the UPLAA. To be eligible under the UPLAA, an individual must have been a covered employee "during some or all of the 52 calendar weeks immediately preceding the qualifying event."

So once the new law takes effect, for example, a new employee could start a job and shortly thereafter go out on paid UPLAA leave for six weeks to care for a seriously ill family member. Intermittent days of paid leave are also an option, meaning that the paid leave need not be taken on consecutive workdays.

Second, the UPLAA provides paid-leave rights to part-time employees, as long as they worked for the employer at some point in the prior year. In contrast, the current local law only provides a right to unpaid leave to employees who have worked at least 1,000 hours during the 12-month period prior to the request for family or medical leave—the federal FLMA threshold is 1,250 hours in a 12-month period.

Third, the UPLAA applies to all private-sector employers regardless of size, except for those that are exempt from taxes in the District of Columbia by federal law or treaty. The UPLAA for the first time gives employees of small businesses with fewer than 20 employees the right to take leave for qualifying family and medical reasons.

A clause in the law suggests that employees who work for an employee with fewer than 20 employees are not entitled to "job protection" (i.e., restoration of their job) when they return.

**For Workers**

On July 1, 2020, the District of Columbia will begin administering paid leave benefits to eligible workers. In the meantime, the Office of Paid Family Leave is working to define how the benefit will be implemented.

In reviewing the draft rules, it seems that only Maryland contractors whose employees are spending more than 50% of their time in the District of Columbia will be required to pay the 0.62% tax for Uniform Paid Medical Leave:

“Covered employee” – means an employee of a covered employer:

(a) Who spends more than 50% of his or her work time for that employer working in the District of Columbia; or

(b) Whose employment for the covered employer is based in the District of Columbia and who regularly spends his or her work time for the covered employer in the District of Columbia, and not more than 50% of his or her work time for that covered employer in another jurisdiction. Work time spent at another work site outside of the District of Columbia is incidental in nature; is temporary or transitory in nature; or consists of isolated transactions.

“Covered employer” – means:

(a) Any individual, partnership, general contractor, subcontractor, association, corporation, business trust, or any group of persons who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of an employee and is required to pay unemployment insurance on behalf of its employees by section 3 of the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 947; D.C. Official Code § 51-103); provided, that the term “covered employer” shall not include the United States, the District of Columbia, or any employer that the District of Columbia is not authorized to tax under federal law or treaty.

Please check with your attorney for further details and compliance requirements. For more information please go to https://does.dc.gov/page/district-columbia-paid-family-leave