



Subcontractors Association of the Metroplex

PUNCH LIST

The voice of the Subcontractor's Industry

ARE YOU AT RISK OF BEING BLACKLISTED?



Subbie Sam Says.

Our lien laws need fixing, and the proposed legislation does this. Contact your legislators and voice your support for the lien law modernization!

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**Next Month: SAM takes off December, Have a great holiday season.**



In a late-term Executive Order, President Barack Obama issued what is known as the "Fair Pay and Safe Workplaces Executive Order," more commonly known in the industry as the "Blacklisting" Rule.

The Blacklisting Rule is highly controversial, because it requires that any contractors on federally-financed work disclosed adverse findings and decisions related to their compliance with federal and state labor and employment laws, and further, allows federal government agencies to refuse to contract with employers considered unsatisfactory as a result of such disclosures. The Final Rule and the guidance related to complying with it was issued on August 25, 2016, and scheduled to become effective and enforceable as of 25 October, 2016.

Industry observers have found plenty not to like about the blacklisting rule, most of which centers around the reality that many alleged violations of state

and federal labor and employment laws are resolved by agreement, for the simple reason that the cost and disruption of fighting administrative actions can be debilitating for employers; most such alleged violations are proffered and prosecuted by government agencies, meaning that you are fighting against the might and majesty of the United States government and its essentially unlimited prosecution budget.

Enforcement of the blacklisting rule has been challenged in federal court by a coalition of organizations, led by the Associated Builders and Contractors (ABC). Suit was filed in Federal District Court for the Eastern District of Texas, Beaumont division, and on October 24, a preliminary injunction was granted against implementation of most of the worst provisions of the blacklisting rule. Among the justifications for the injunctive relief was that the rule was either preempted by, or violated the explicit provisions of fourteen different federal labor and employment laws, that the rule is arbitrary and capricious because it is contrary to the established body of labor and employment law without reasonable cause and that the final rule violates the Due Process Clause of the Constitution by harming contractors based upon labor law violations for which no hearing or adjudication had been held, and which are not final rulings.

The injunction is, of course, temporary, pending trial on the

merits, but it is an encouraging development in a legal landscape which is increasingly riddled with regulatory landmines for well-meaning employers, especially in the construction industry.

We will keep SAM members informed of any future developments.

**BEWARE-OSHA PENALTIES ARE UP!**

Just a quick reminder-effective September 1, 2016, penalty amounts associated with OSHA citations have increased dramatically, with initial penalties for most "Serious" violations now exceeding \$12,000. Never forget: when OSHA visits the jobsite, they are serious about finding and fixing unsafe conditions, and recent history has taught us that there are often conditions that merit their attention. When you get a citation, it is important to gather information and be prepared to challenge the citation, as to the validity (did you actually violate the standard?), severity (does it justify being called a "serious" violation?), and penalty amount.

Stay safe out there!

*Spike Cutler, of Cutler-Smith, P.C. is SAM's chapter attorney as well as SAM's representative to the National Subcontractors Alliance Attorney's Council. Spike is recognized as the leading Subcontractor attorney in Texas.*





Mario Hernandez, legal counsel to Ruth R. Hughes, commissioner representing employers



New member, Brandon Barber of



Charlie Morris of Morris Drywall, Fresh off a flight at DFW

Sam says:

SAM is your best source of information for the Subcontracting Industry



## CONTRACT LABOR...OR NOT!

SAM programs scored another home run with our October program. Mario Hernandez, legal counsel to Ruth R. Hughes, Commissioner representing employers gave us the ins and outs of how to determine if the people you hire are 1099 employees, or, in the eyes of the Govern-

ment, are really your employees. Mario pointed out that this issue is monitored by the State of Texas, the IRS, and the U.S. Department of Labor.

All of big brothers eyes are on this issue. For those of you that missed it, or want to review it, SAM will soon have the power point presentation

of this program posted in the members-only section of our website.

It behooves us at SAM to know the law as it pertains to 1099 employees, and to support it, as this keeps the competitive field level in our quest for fairness in the bid market.

## SAVE THE DATE—SUBCONTRACTORS WALK ON THE CAPITOL



Save the date of January 31 and February 1 to make a difference in the fate of your company as it is controlled by the laws of the State of Texas. The TCA-PAC is hosting its bi-annual **Roundup and Walk on the Capitol.**

Mid-afternoon Tuesday

starts out with a legislative briefing by the TCA lobbyists. Tuesday evening is the reception for the TCA-PAC contributors to meet with many legislators and fellow PAC supporters. Wednesday, January 1 the TCA members descend on the Capitol to meet with their legislators and their staff.

It is advisable to set up an appointment with the legislators that you wish to visit on January 1, but if you can't do this, the legislator's staff will spend time with you, and you will probably have an introduction to your representative or Senator.

The host hotel is the Doubletree Guest Suites, 303 W. 15th Street and it's a short walk to the Capitol. They are offering rooms for \$219 + tax through Monday, December 31 or until the TCA block is full. Ask for the Texas Construction Association rate at (512) 505-4067.

If the block is full, there is parking at the hotel, and there are many other options for hotels in Austin.

Come join your SAM team in Austin. You will make a difference!

## VETERANS PROGRAMS—WHAT AN EMPLOYER MUST DO TO COMPLY (VETS-4212)



The U.S. Department of Labor Veterans' Employment and Training Service (VETS) and Office of Federal Contractor Compliance Programs (OFCCP) has supported affirmative actions to employ and advance in employment, "covered veterans" since 2008. As legislatively mandated, contractors and subcontractors who enter into, or modify a contract or subcontract

with the federal government (federal contract or subcontract of \$100,000 or more), are required to report annually on their affirmative action efforts in employing veterans. Federal contractors and subcontractors must list most employment openings. Listing jobs with the State workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement.

**The final rule revises the VETS-100A Report and renames it the VETS-4212 Report.**

The VETS-100 Report will no longer be used. The VETS-4212 Report requires contrac-

tors to report specified information on protected veterans in their workforce in the aggregate, rather than for each category of veterans protected under the statute, reducing the required reporting elements by almost half, from 82 to 42. Under VEVRAA, the term "protected veterans" includes: disabled veterans, veterans who served on active duty during a war or campaign for which a campaign badge was authorized, veterans who were awarded an Armed Forces Service Medal and recently separated veterans.

Reference: DOL.gov

# A TIME TO CHANGE



Back in 1991, when I was only 42 years old, Three of us had a vision. Norma Mann, Roy Neu and I believed that the DFW area needed a Subcontractors Association that would be the premier venue for subcontractors to share their knowledge and learn from others, all at a very affordable price. We set out recruiting and soon had a viable group going. Along the way we found a number of leaders to step up and help, among them, charter member Clem Lesch, Long time President, BPI Chair, and interim Executive Director, James Mayhew, as well as a somewhat green (at the time) construction lawyer, Spike Cutler. We lost two of the founders, Roy and Norma along the way, but the rest of us grew up together .

In 2011 I sold Alco Glass, and retired from the Subcontracting business. I saw where SAM needed an Executive Director if we were to grow, and thankfully the board of directors agreed to hire me to do the job. At the time, SAM had about 25 members.

A number of Subcontractor Associations had dropped their affiliation with the American Subcontractors Association, but still felt that they needed to be able to communicate with, and learn from each other. They formed the National Subcontractors Alliance. SAM was approached by their leaders, and after about a year of debating whether to join or not, we agreed to give it a try. It proved to be a great move for us, and a lot of the things we have done to help SAM have come from the feedback of the NSA members.

We were also approached by the Texas Construction Association, a group based in Austin who is a strong advocate for the Subcontracting industry. Once again, it took us a while to realize that they would be a benefit to our members, but we finally agreed to join the TCA in 2013. Once again, this has proven to be a huge benefit to our members. We now have a voice in Austin, where our business fate is held in the hands of a few. Our President, Paul Holden, represents SAM at their quarterly Board meetings, and I have been privileged to attend most of their meetings. The TCA also brings substantial discounts on Texas Mutual workers comp and Office Depot products, and the savings to our members more than pays for their membership in SAM.

Our leadership has matured. (see our board on page 4). In particular, we've recognized the value of presenting programs that educate our members, and Selena Zarate has attacked the job with hard work and common sense. Selena has also set up an OSHA 10 and a safety seminar for our employees at a weekend session. I would encourage all of you to attend the meetings and send your key personnel. What you and they learn from

SAM will make you money.

When I took the ED job, my goal was to move the organization to a point when they could get along without me. I think that a lot of the move to this end has been a result of the initiative of the board members. Carrie Edomm took on the job as SAM treasurer, and does a lot of other work for SAM, and I'm sure that will continue. James Mayhew has maintained the BPI information with aplomb, and Gary Ardis has set us up with a fine website through many hours of hard work. In short, SAM is in good hands.

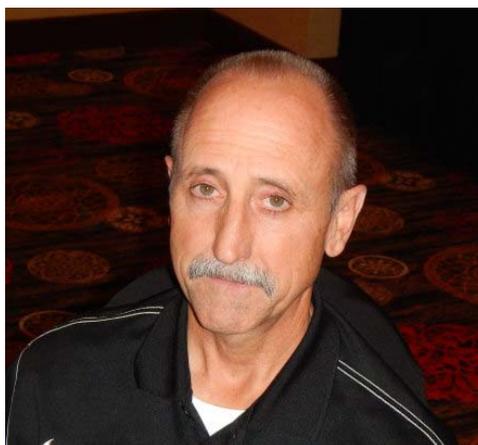
There came a time in my life when I realized that there were a limited number of days to do what I wanted to do while I still had the health (or was still alive) to do them. Sherry and I have lots of plans to spend our time enjoying each other and living out the adventures that we'd hoped for. I will work for SAM through the end of the year, but will hold it in my heart forever. The SAM members have been and will remain dear friends. I will miss you.



SAM Treasurer Carrie Edomm, fresh off a trip to the NSA mid year.



Board member, Tim McSorley of Storage Equipment



Cary Stone of Sunstate Equipment



Jennifer Bertram of Enterprise Fleet Mgmt.



# Subcontractors Association of the Metroplex



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The Subcontractors Association of the Metroplex was founded with the purpose of creating an affordable forum for Subcontractors to exchange information and learn from each other how to be better business men or women.

Sam is a member of the National Subcontractors Alliance, the largest Subcontractors association in the USA, and also a member of the Association of Specialty Contractors where we have a voice in National Legislation. SAM is also a member of the Texas Construction Association, the unifying voice of the trades in the Texas Legislature and as such all SAM members have access to all the benefits of the TCA.

Sam is also allied with the National Federation of Independent Business who has a voice in the Texas Legislature on small business issues.

**Your Source for Subcontractor's information.**



**Visit us at:**  
**<http://www.sam-dfw.org>**



## Our Association Officers

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