



Pervious Concrete Colors Christiansburg

By Bob Nablo,
Director of Industry Services

Community Housing Partners in Christiansburg, part of the Community Development Corporation established in 1975 to serve the needs of low-income individuals in the southeast, recently received a \$1 million grant from the U.S. Department of Energy to expand the training capabilities of its New River Center for Energy Research and Training – a weatherization training center. CHPs mission is “to create affordable, green, sustainable housing opportunities and services for the people and communities we serve”. As part of the facilities upgrade, the non-profit organization contracted to have a new pervious concrete drive-thru area placed for staff and client parking in front of an all-new 10,000 sq. ft. training facility.

Somewhat surprisingly, the organization decided to replace existing pervious pavers in the driving lane only, while leaving existing pavers in the parking spaces, but this still generated about 100 cu. yds.. of new, ready-mixed pervious paving. Adding to the surprises, according to George Kuhn of Chandler Concrete, was the last minute request that the pervious have a brown color. This caused a small scramble as Chandler determined what colors were on hand, and a chocolate brown was selected for the next-morning placement.



Above: Formwork is set for the pervious driveway under construction. Middle: A worker cuts interior panels. Left: Snapshot of the completed paving project.

NRCERT was established in 1999 and provides training in state-of-the-art residential energy conservation techniques, home performance testing, and heating and cooling equipment diagnostics, repair and replacement. Since its establishment NRCERT has trained over 20,000 participants from 25 states and Canada. Its expert trainers are certified by RESNET, EarthCraft and the Building Performance Institute. This latest grant was made possible under the American Recovery and Reinvestment Act.

in the mix ...

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VRMCA
Virginia Ready-Mixed Concrete Association

Welcome to VRMCA Online
Welcome to the Virginia Ready-Mixed Concrete Association's web site - your online source for information on ready-mixed concrete for design professionals, homeowners and managers of businesses in the industry.

Our Mission: To become the leading resource for concrete-related information and to assist our members, design professionals and homeowners by making this information easy to use and readily available.

Events
Congratulations to our 2010 Mixer Truck Roadshow winners!
The Virginia Truck Center hosted the 2010 VRMCA Mixer Truck Roadshow on Saturday, April 10. And the winners were...
NOTE: ...
Registration for the VRMCA Spring Convention is now open!
For more details and registration information, Click HERE.
NOTE: ...
2009 Fall Convention Presentations
Presentations from the Fall Convention are available for download.
NOTE: ...
Concrete Workshop Presentations
Presentations from "Building Green with Concrete Workshop", June 4th, 2009, WISD, Gainesville, Virginia
NOTE: ...
VRMCA Spring Convention Presentations
Presentations are available from the 2009 Spring Convention held on May 17 - 19, 2009.
NOTE: ...

News
Newsletter for March 2010
The VRMCA Ready-Mix Newsletter for March is now available for download.
NOTE: ...
New! Printable Membership Roster
The Membership Roster is now available in print format (PDF).
NOTE: ...
Eight Boxley Materials Concrete Plants Receive Green-Star Certification
Boxley Materials recently announced that its eight concrete plants all received green-star certification.
NOTE: ...

ACI & Calendar
ACI Class - Hampton, VA (FULL) 4/20/2010
ACI Class - Hampton, VA (FULL) 4/21/2010
SWCAC Meeting 4/21/2010
ACI Exam - Hampton, VA 4/22/2010
NVCAC - Architectural Conc. w/ Colors and patterns 4/22/2010
Meeting with Va. Tech Bldg. Const. Dept. 4/26/2010
ACI Class - Warrenton, VA 5/4/2010



Visit the Virginia Ready-Mixed Concrete Association Website at www.vrmca.com

Q&A: Getting to Know Your New Board Members



STEPHEN RENDER
Virginia Concrete Company

What is your job title?

Vice President and General Manager with responsibility for Virginia Concrete, in Northern Virginia and Washington DC, and S and G Concrete, in Baltimore, MD.

Where did you grow up?

Vienna, VA

How did you get started in the industry:

I was a Civil Engineer from Virginia Tech. My first job was with Charles Tomkins, a general contractor in Washington DC. I was working in an office, when I felt like I should have been out in the field learning. I was offered a field operations position at Virginia Concrete and I have been there ever since.

What is the most challenging thing about your career:

The most challenging thing about my career is managing the business in these difficult economic conditions. When I started in the industry, we had just begun to recover from the recession and from then through 2006, we experienced year over year growth. I had always heard that managing during the busy times was easy; surviving difficult times was the true test. I absolutely believe this now.

Who is your mentor in the industry?

I have two mentors in the industry—my father, Clarron and Diggs Bishop. Throughout my career at Virginia Concrete, I never worked directly for my father. Yet, watching him interact with colleagues, customers, suppliers and employees reinforced how important the values of integrity and respect are in business and in life. I have worked for Diggs during the majority of my time at Virginia Concrete. As his roles and responsibilities have increased, he has given me the opportunity to experience different parts of our business. He is always close by to provide direction and support. Diggs is a great leader because he too values integrity and respect, and he effectively communicates at all levels, from a driver to the ceo of Vulcan.

Tell us about your family?

My wife Nancy and I will be married 17 years this September, but have dated since the end of high school. We have 4 children - Nicholas (13), Elayna (11), Caroline (9) and Lily (6). We also have a 2 year old dog named Eddie.

What is your favorite vacation spot?

My favorite vacation spot is Duck, NC. I used to go there as a kid, and we continue to spend at least 1 week there each summer.

How do you like to spend your free time?

Coaching my son's little league team, fishing, golfing and reading.

ROBERT O'BRIAN JR.
Lynchburg Ready-Mix

What is your job title?

Marketing & Sales

Where did you grow up?

Lynchburg, VA

How did you get started in the industry:

Because Lynchburg Ready Mix is a family business I guess I could say I have been in it my entire life. I remember going with my father to work on many different Saturdays when I was young. I worked "on the hill" during summers while I was in college. "The hill" consisted of loading the



bins, emptying cement rail cars, and general up keep of the plant. After college I spent 8 months managing one of the plants and then I decided to move to Richmond. I took a job selling for Roanoke Cement for roughly 18 months and then worked as brick salesman for Riverside Brick. In 2008 my wife and I decided to move back to Lynchburg for "greener pastures" and I once again returned to the family business.

What is the most challenging thing about your career?

Keeping all the customers happy and providing good service with the right product in a timely manner...just to name one because there are many!

Who is your mentor in the industry?

My father, Bobby O'Brian

Tell us about your family?

I've been married to my wife Tamara, also from Lynchburg, since 2007. We have twin one-year-old girls, Cullen and Althea. We also have a yellow Labrador, Hatfield and two cats, Michael and Wiccan.

What is your favorite vacation spot?

A cruise in the Caribbean Islands.

How do you like to spend your free time?

Being with my family, playing golf, or playing music.



Annual Workshop Has Attendees Seeing Green

**By Hessam Nabavi,
Director of Industry Services**

"The 3rd Annual Building Green with Concrete Workshop by VRMCA was very well done with good food, great topics and very good speakers. The information covered in the workshop was current and interesting, and the topics kept under an hour so the pace was perfect. I learned about the benefits and longevity of concrete as a paving material and was especially excited to learn that I can decrease the quantity of site lighting needed, thus offsetting any possible up front additional cost of concrete over asphalt while saving energy for the life of the project. I picked up a nice sample of pervious concrete to show my peers at the office, and this is very timely as we have just bid our first project using pervious concrete and have many who don't understand it. Wetland Study and Solutions building was the perfect setting. I didn't know that this building was also tilt-up," said Sandra Hunter, AIA, LEED AP with LC Department of Construction and Waste Management, Loudoun County Government.

NVCAC hosted its 3rd Annual Building Green with Concrete Workshop at the office of Wetland Studies and Solutions Inc. (WSSI) in Gainesville on June 8th. This all day event

offered a unique opportunity to a targeted audience of over eighty architects, engineers, county officials, VDOT engineers, developers, builders and ready-mixed producers to learn about Green Concrete and its various design applications. The workshop covered a variety of topics such as Concrete, Sustainable Solutions for Today & Tomorrow, The Concrete Advantage in Paving, Responsible Building Technology, Tilt-Up Site Cast Concrete, What is Green about ICF and Colored & Textured Concrete "From Bland to Brilliant with Ease".

This year's workshop also offered sponsorship opportunities to contractors, installers, distributors and suppliers. Sponsors were recognized on the event banner, handouts and on the VRMCA website. Representatives of sponsoring companies also had the opportunity to network with a large group of decision makers.

Speakers for this event included Dr. Erin Ashley, LEED AP, the Senior Director of Sustainable Construction for the National Ready Mixed Concrete Association; Philip Kresge, the Senior Director of National Resources for the National Ready Mixed Concrete Association; Glen Stephens, AIA, LEED AP, President of Stephens Architectural Associates, Inc.; John Hatfield, Civil Engineer, US Rocky Mountain Region Sales Manager for ICF Building Systems and Sammy Davis,



Dr. Erin Ashley, Senior Director of Sustainable Construction for the National Ready Mixed Concrete Association.



Architect Glen Stephens, President of Stephens Architectural Associates.



From left to right: Marc Granahan, Tony Thompson and Sammy Davis.



John Hatfield, US Rocky Mountain Regional Sales Manager for ICF Building Systems and Worship Facilities Specialist.



Phil Kresge, Senior Director of National Resources for the National Ready Mixed Concrete Association.

Specialist for the Engineering and Project Services Group, Grace Construction Products. NVCAC greatly appreciates their contribution to the success of this event.

Operations Manager with Rockingham Redi-Mix Concrete, Jonathan Harris commented, "The attendees from Rockingham Redi-Mix and our guest found the workshop to be both informative and interesting. All of the topics were timely and very relevant to recent changes in the industry. As a concrete producer, I was especially excited to see VRMCA taking the opportunity to educate architects and engineers on the advantages of concrete pavement, ICFs, decorative concrete, and tilt-up construction. The networking opportunities were also significant and very beneficial."

Doug Brookbank, AIA, LEED AP, Senior Associate Architect with MulvannyG2 Architecture, stated that he "thought the event was very well organized and informative. The space was very comfortable and it was a good location to have it at. It covered a nice range of applications for concrete and inspired me to re-look at the way we design some of our projects currently. Overall though, one of the best all-day seminars I have been to. I didn't just feel like I was there getting my



Sammy Davis, Specialist for the Engineering and Project Services Group, Grace Construction.

learning units, but I felt like I was getting current and useful information that I can apply to our work."

NVCAC would like to thank Essroc, Grace, Lafarge North America, Lehigh Cement, Luck Stone, Propex Concrete Systems, Roanoke Cement, Separation Technologies, LLC., The SEFA Group, Wetland Studies and Solutions Inc., and Z.Con, Inc., (Concrete specialist) for sponsoring this workshop. Thanks to Mr. Michael Rolband, president of WSSI for his friendship and partnership in promoting concrete by allowing NVCAC to use WSSI's beautiful facilities, and also offering the assistance of his staff.

A special thank you to the following individuals for their assistance during the event: Art Nettle (Lafarge North America), Brian Dulaney (Separation Technologies), Bill McNamara (Essroc), David Accot (Titan Virginia), Dave Snider (Virginia Concrete), James Murray (Rowe Materials), Jim Proga (Titan Virginia), Lewis Lee (Luck Stone), Marc Granahan (Lehigh Cement), Tom Wahl (The SEFA Group), Tom (Zeke) Zinchiak (Z.Con Inc.), Tony Thompson (Virginia Concrete).

Presentations from the event are available in PDF format for viewing at www.vrmca.com/. 🚚

May Construction Starts Up 16% from April

Reed Construction Data (RCD) has announced that the year-to-date value of construction starts through May, excluding residential contracts, totaled \$105.2 billion, 9.8% more than during the same months in 2009. Individual month of May starts were 16.3% higher than in April. This is a little more than the usual seasonal gain in May. The value of starts has now been about steady for three months after allowing for seasonality. Current starts are 50% above the low point last June but remain 25% below the pre-recession peak. The value of starts is expected to be steady in the coming months and then begin to rise at the end of the year.

The value of construction starts each month is summarized from RCD's database of all active construction projects in the United States, excluding single-family homes. Missing project values are estimated using RSMeans' building cost models. The economic environment for construction is clearly improving. Contractors have kept employment steady in the last three months and buildings funded by the stimulus plan are being started. The long, sharp rise in the commercial vacancy rate is now slowing with scattered reports of rising occupancy rates.

The slide in heavy project starts paused in May. Starts rose 20.0% from April in line with the usual seasonal trends and were off 20% from the stimulus-boosted peak last August. The stimulus impact in the heavy market continues to ebb month to month. But no further significant decline is expected as delayed transportation and water/sewer projects replace slipping highway project starts. 🚚

On the Horizon

Calendar of Upcoming Events

JULY 13, 2010

HRCAC Meeting

11:30 AM - 1:00 PM
Holiday Inn Executive Center
5655 Greenwich Road
Virginia Beach, VA

JULY 20, 2010

CVCAC Meeting

11:30 AM - 1:00 PM
Meadowbrook Country Club
3700 Cogbill Road
Richmond, VA

JULY 20-22, 2010

Hampton Roads Training Seminar and Examination-ACI Concrete Technician Certification Program*

8:30 AM - 1:00 PM
Titan America Concrete Plant
Rip Rap Road, Hampton, VA
*PRE-REGISTRATION REQUIRED

JULY 21, 2010

SWCAC Meeting

8:00 AM - 9:30 AM
The Roanoker Restaurant
2522 Colonial Avenue Southwest
Roanoke, VA

JULY 24, 2010

Pervious Concrete Contractors Certification Course*

8:00 AM - 3:00 PM
Tidewater Community College
700 College Crescent
Virginia Beach, VA
Registration Fee \$195.00
*PRE-REGISTRATION REQUIRED

JULY 29, 2010

SW VA Picnic/Baseball Game*

6:00 PM - 9:00 PM
Salem Ball Park,
Salem, VA
*PRE-REGISTRATION REQUIRED

Please visit the online calendar for an up-to-date list of events.

www.VRMCA.com/calendar

Hampton Roads to Host Training

By J. Keith Beazley,
Director of Industry Services

The Hampton Roads Concrete Advisory Council will conduct a special session of the NRMCA Pervious Concrete Training Course in Virginia Beach on July 24th, 2010. This special session has been scheduled for a Saturday to accommodate the very tight schedules of concrete contractors and construction personnel during the summer months. The class will be held at the Virginia Beach Campus of the Tidewater Community College.

The Instructor for the class will be Bill Denison, Value Engineering Specialist, with Titan America. Bill is serving as Advisory Council Chairman for 2010.

The NRMCA has certified Denison as instructor for the Pervious Concrete Contractors Course.

Bill has taught Materials Engineering and Concrete Engineering at the Tidewater Community College for 17 years. Bill is also a NRMCA Certified Concrete Professional in Concrete Technology. The NRMCA has certified Denison as Instructor for the Pervious Concrete Contractors Course. The Examination will be administered by Steve Kerr, P.E., Solite Materials. Bill and Steve are both active members of the Hampton Roads Concrete Advisory Council.


The course will provide information on the Fundamentals of Pervious Concrete, Stormwater Management, Sustain-



Bill Denison of Titan America will instruct the course.

able Development, Pervious Concrete Technology, Pervious Concrete Materials, Design Principles, Construction and Placement, and Troubleshooting. A five year certification will be issued by the NRMCA after successfully passing the 50-question examination offered after the classroom session.

The registration fee is \$195.00. Reservations can be made through William Denison of Titan America. Contact him by email at wdenison@titanamerica.com. Checks should be made payable to Hampton Roads Concrete Advisory Council. Please mail payment to William Denison, Titan America, 2125 Kimball Terrace, Norfolk, VA 23502.

The course is expected to attract Concrete Contractors, Municipal Engineers, Public Works Engineers, and Concrete Industry personnel. The Advisory Council is pleased to offer the special session on Saturday to enable a broader base of individuals to attend during the summer season. 



For coverage in future issues, please send announcements/press releases and accompanying photographs to marci.malinowski@easterassociates.com or mail to:

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Submissions may be edited for length. Inclusion is not guaranteed and may be excluded due to space.

SW Council Co-Sponsors AIA Networking Event

By Bob Nablo,
Director of Industry Services

One of the better events in recent SW Virginia memory, billed as the "2010 Southwest Virginia Construction Networking Event", was held recently at the Vinton War Memorial. Hosted by the AIA Blue Ridge Chapter, about 120 members of various construction associations and groups gathered for refreshments and socializing before listening to a short presentation on the rebuilding efforts in Afghanistan.

The Southwest Virginia Council agreed to help sponsor the live band and reception and several members attended. The Council also displayed the VRMCA booth, and Chandler Concrete put up a small pervious concrete simulation. The best part of the evening was the opportunity to meet and mingle with many guests from related parts of the construction industry, including ACI, CSI, ASCE, the National Association of Women in Construction, and the local USGBC chapter. In all, twelve national or regional associations were represented.



Guests from twelve national and regional associations meet and mingle.

After the extended reception, AIA member Tom Starbuck spoke on "Rebuilding Afghanistan", describing how the reconstruction efforts had to begin with no usable materials. Practically everything, from concrete and steel to equipment and machinery, needed to be brought into the

country or produced on site. Some attendees commented that a similar situation currently exists in Haiti.

All in all, this developed into an excellent event and continued the fine relationship VRMCA and the SW Council have with AIA Blue Ridge. 🚚

Host School Claims Victory at Concrete Canoe Competition

This is the first win for Cal Poly SLO, and they are the first host school to claim victory in the mentally and physically challenging competition.

The ASCE National Concrete Canoe Competition (NCCC) provides students with a practical application of the engineering principles they learn in the classroom, along with important team and project management skills they will need in their careers. The event challenges the students' knowledge, creativity and stamina, while showcasing the versatility and durability of concrete as a building material.

Each year, the NCCC, which is held in mid-June, is hosted by an ASCE Student Organization. Teams qualify for the NCCC by placing first in one of the 18 conference competitions held throughout the United States during the spring. Teams placing second in a conference competition behind a university that finished in the top five at the previous year's national competition are also invited. To be eligible to compete the entrant school must be a recognized ASCE Student Chapter or ASCE International Student Group.

The winners of the ASCE National Concrete Canoe Competition are determined by compiling the team's total number of points from the academic and race portions of the competition. Academic scholarships totaling \$9,000 are awarded to the winning teams' undergraduate civil engineering program.

Selection of the academic scholarship winner(s) is determined by the local ASCE Student Organization. The scholarship must be used toward satisfying tuition reimbursements only, and can not be used to fund current or future Concrete Canoe competitions. ASCE must be notified in writing of the academic scholarship winner(s) prior to the distribution of funds to the recipients. 🚚

Garbini's Presentation a Highlight at NVCAC Meeting

By Hessam Nabavi,
Director of Industry Services

On Thursday June 10, 2010, NVCAC had its second quarterly meeting in Algonkian Regional Park Golf Course. One of the highlights of this meeting was our featured speaker, Mrs. Julia Garbini. She is the Executive Director, Ready Mixed Concrete (RMC) Research & Education Foundation at NRMCA. In this capacity, Mrs. Garbini manages the Foundation's various research and education projects, including representing the ready mixed concrete industry on the four-person Research Advisory Council for the Concrete Sustainability Hub (CSH) at Massachusetts Institute of Technology (MIT).

Her presentation talked about "Quantifying and Enhancing the Sustainable Nature of Concrete at the Concrete Sustainability Hub in Massachusetts Institute of Technology (MIT).

Some of the topics discussed were: What is the CHS at MIT?, How was MIT identified as the CSH host university,

What are the current research activities of the (CSH) and What is the governance for the CSH?

Following is a brief description of CSH and its mission by Mrs. Garbini:

"The Concrete Sustainability Hub (CSH) is a research center at the Massachusetts Institute of Technology (MIT) that is being co-funded by the Portland Cement Association (PCA) and RMC Research & Education Foundation (RMCREF). Each organization is committing \$1 million a year for the next five years, for a total of \$10 million, with the goal quantifying and enhancing the sustainable nature of concrete. MIT's top researchers in materials and civil engineering, architecture and building technology, and economics and management are working together



Julia Garbini, Executive Director, Ready Mixed Concrete Research & Education Foundation, NRMCA.

through the CSH. The first two projects, 'Green Concrete Science,' and 'The Edge of Concrete: A Life-Cycle Investigation of Concrete and Concrete Structures' are already underway. 'Green Concrete Science' is nanotechnology research aimed at optimizing the sustainability of the cement and concrete manufacturing processes. The life-cycle investigation project is a cradle-to-cradle approach to quantifying the sustainable nature of concrete pavements and structures, and identifying areas of potential improvement. The first deliverables associated with the two work plans are due this August 31, 2010. A Concrete Industry Day at MIT will be held to coincide with that date. Lead investigators for both work plans will be on-hand to present their initial findings, answer questions and hear industry feedback on the future direction of the Concrete Sustainability Hub. NRMCA, state associations like VRMCA, and regional groups like Northern Virginia Concrete Advisory Council, will play a key role in the technology transfer of the findings that come out of MIT. The findings are expected to provide credible evidence to support the industry's promotion and advocacy efforts, while at the same time providing the societal benefit of enhanced sustainability in construction."

NVCAC is very thankful to Mrs. Garbini for taking the time to participate in the NOVA Council Meeting and for her informative presentation.

To view this presentation please visit www.vrmca.com/.

Period of Growth Expected Late 2010

Expected increases in public construction activities will pave the way for improved cement consumption in 2010 and beyond, according the most recent economic forecast from the Portland Cement Association (PCA).

In 2010, PCA anticipates a modest five percent increase in consumption over severely depressed 2009 levels. The three to five million metric tons gain in cement use will materialize during the second half of the year. A 13.3 percent jump is predicted for 2011, followed by an 18.7 percent increase in 2012.

"The 2010 recovery in cement consumption lays largely on expectations for public construction activity," Edward Sullivan, PCA chief economist said. "Spending from the stimulus bill will more than double to \$12 billion and that spending is expected to reflect an increased share of major highway construction and bridge projects—high cement-intensive projects."

Although nonresidential sectors like oil and farm construction contribute to the 2010 cement consumption increase, consumption accrued to commercial building will decline 29 percent on top of a 38-year low reached in 2009. The residential sector is expected to become a modest contributor to growth during 2010 – something that has not materialized since 2005.

"The economy is recovering and improving its core fundamentals. However, recovery for the construction markets will be slowed by the continuation of tight lending conditions, high foreclosure rates and weak job markets," Sullivan said. 🚧

VRMCA Spring Convention



May 16-18, 2010

The Homestead Resort—Hot Springs, VA



Above: Vice President Larry Bullock, Boxley Materials, (left) congratulates VRMCA President Morgan Nelson, S.B. Cox Ready-Mix on a great two years as President of the Association. At left: Bullock presents retiring Board Member Dan Joyner, Vulcan Materials with a gift of appreciation for his many years of service on the Board of Directors.



Above: VRMCA members networking at the reception on Monday night. At right: Members enjoyed the sounds of blue grass during the cookout dinner on Monday night.



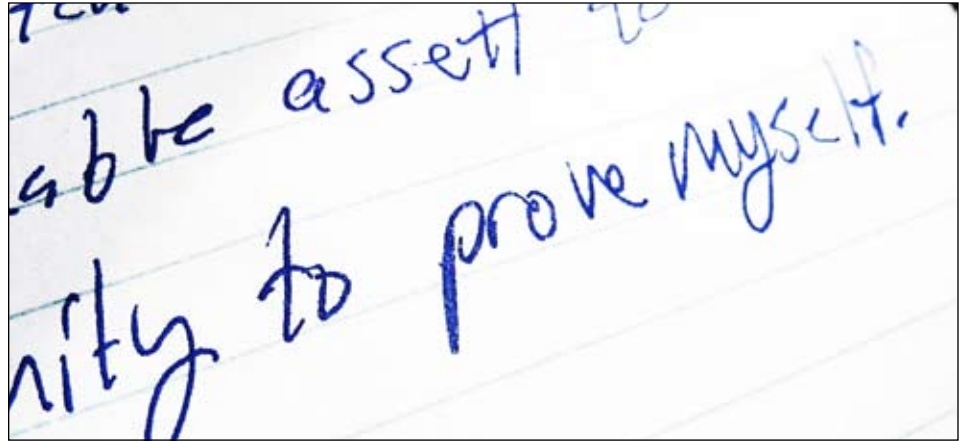
VRMCA Executive Director Doug Easter (right), Terry Crispell, LeHigh Cement (center) and Mel Howard, Dubrook Concrete (left) at the reception on Monday night.



New Legislation and Department of Labor Changes May Affect Hiring Decisions

By John G. Kruchko
and Christin L. Eberst*

You want to hire a new employee, but are still unsure if that is a smart business decision in such a fragile economy. Debates and discussions continue between management and human resources: To hire a new employee or not? A full-time or part-time employee? How about hiring an unpaid intern for the summer? Recent changes and updates to the law may make these decisions even more difficult.



Hiring an Unpaid Intern? Use Caution!

Unpaid internships may appear to be a good way to acquire additional hands in the workplace without spending large amounts of funds. In fact, many college interns are hired under the belief that if they receive college credit then no additional compensation is necessary. However, this belief is misguided and wrong.

The Department of Labor ("DOL") has recently renewed its efforts to take action against employers who offer unpaid internships. Historically, the DOL has been flexible when deciding whether unpaid internships are subject to the Fair Labor Standards Act ("FLSA"), which requires an intern to be paid in accordance with overtime and minimum compensation standards. Recently, the DOL has abandoned that flexible approach.

The FLSA requires an employer to follow all minimum wage and overtime compensation laws for those individuals who are "employ[ed]." Case law and the DOL's statutory interpretations have defined "employ" to include those individuals the employer "suffers or permits to work." This is a broad definition and only those internships that satisfy a set of six factors established by the DOL may be exempt from the FLSA requirements.

All six of the following factors must

be met:

1. The training an intern receives is similar to that given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. Regular employees are not displaced by the addition of the intern; rather the intern works closely under a supervisor;
4. The employer's business gains no immediate advantage from the intern's training, and actually may be impeded at times;
5. The intern is not guaranteed a job at the conclusion of the internship; and
6. Both the employer and the intern understand that the intern is not entitled to wages for the time spent during the internship.

If these six factors are met, the intern may be considered a "trainee" (and not subject to the FLSA), as opposed to an "employee" (who must be paid). In addition, interns are more likely to be considered "trainees" if they learn skills and traits that may later be used at multiple employers, as opposed to learning and performing work beneficial specifically to that employer (such as clerical work). In other words, if the employer would have hired an additional employee to perform the functions that the intern is conducting,

as opposed to "job shadowing," then the intern will most likely be considered an "employee" subject to the FLSA.

Remember, when deciding whether to hire an intern, start an unpaid internship program, or conduct a training program at your company, be sure to carefully tailor those programs to ensure compliance with the DOL's new stance on unpaid internships.

Tax Benefits for New Hires

While the DOL is making it harder to hire unpaid interns, a new law governing small businesses was created to provide hiring incentives. On March 18, 2010, President Obama signed the Hiring Incentives to Restore Employment ("HIRE") Act into law. This Act provides tax benefits to businesses which hire certain unemployed workers. Additionally, the sooner a company hires a qualified worker, the more benefits a business may be entitled to.

The HIRE Act provides two main tax incentives. First, employers may receive a payroll tax incentive, which in effect exempts them from their share of Social Security taxes on wages paid to qualified workers hired after March 18, 2010 through December 31, 2010. This exemption does not affect the employee's future Social Security benefits and the employer is still required to withhold the

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employee's share of Social Security and income taxes. The second business tax incentive the Act provides is a credit of up to \$1,000 per qualified worker who is retained for at least a year.

New hires are considered "qualified workers" if the following criteria is met: (1) they were hired by the employer between February 3, 2010 and January 1, 2011; (2) they certify by signed affidavit that they were unemployed or worked less than forty (40) hours during the sixty (60) days prior to starting work; (3) they are not a family member or relative of the employer or anyone who owns more than 50% of the outstanding stock or capital and profits interest of the company; and (4) the individual is filling a newly created position or an existing position that is vacant because the previous employee voluntarily resigned or was fired for cause. The Internal Revenue Service has created Form W-11, which may be used by the employer to certify that a new employee is a "qualified worker."

Also, only "qualified employers" may be eligible for the tax incentives. Fortunately, the Act was written fairly broadly to define "qualified employers" as "any employer other than the United States, any State, or any political subdivision thereof..." Thus, private businesses, agricultural employers, tax-exempt organizations, and public colleges and universities are all probably "qualified employers" that may receive tax benefits.

In short, there is no right answer to what approach an employer should take when making hiring decisions. However, it is clear that the DOL is taking a closer look at those employees hired as "trainees" and receiving no compensation. On the other hand, employers planning to hire new employees before December 31, 2010 may be entitled to tax incentives. Either way, the nature of the new employee's job duties and employment history should be evaluated to ensure compliance with the FLSA and to recover tax benefits where due. As these are new changes in the law, we strongly recommend you consult with your Labor and Employment counsel to assist in determining what laws apply to any new personnel you bring into your business.



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