



# THE READY-MIXER

**NRMCA VISION** | think harder. concrete™

Virginia Ready-Mixed Concrete Association Newsletter

October 2013

## Roanoke Opens New Amphitheater

By Bob Nablo,  
Director of Industry Services

After years of discussion and planning, months of construction and more than 2,000 cubic yards of concrete, one of the major parts of a downtown Roanoke redevelopment plan opened for business this month. The Roanoke Symphony Orchestra and the Southwest Virginia Ballet performed "Peter and the Wolf" as the inaugural event in the new 5,000 seat Elmwood Park Amphitheater. As construction continued nearby on additional parts of the \$7 million park renovation, the centerpiece open-air theater opened to positive reviews and a large, appreciative crowd of families. "A huge sigh of relief," said Steve Buschor, Roanoke's director of parks and recreation. "It is an incredible thing to finally hear the symphony playing in the park. It's something we have waited for a long, long time." Designed by Hill Studio, with general contractor MB Contractors and concrete sub-contractor Martinez Construction, all of Roanoke, the terraced seating design blends perfectly with the rest of the park and connects with Roanoke's Main Library. Mayor David Bowers noted that the reopening of the park and the planned conversion



of nearby Market Square into a pedestrian plaza are key steps in transforming Roanoke into "a walkable city."

Elmwood Park is intended to remain very much a community park. City officials put a greater priority on making the park available for nonprofit orga-

*continued on page 3*

### in the mix ...

\$11,000 Raised for VRMCA PAC.....	3
Framing the Future: 2013 Design DC .....	4
VRMCA 2013 Fall Convention Recap.....	6
2014 ACI Schedule Released.....	7
Never, Ever on a Sunday! .....	8
Keith Beazley 1943-2013 .....	9
Calendar of Upcoming Events .....	9
Five Common Labor & Employment Myths Your Company Can Easily Overcome ....	10

Virginia Ready-Mixed Concrete Association  
**2014 Mixer Truck ROADDEO** ★  
**Monday, May 5, 2014**  
 The Meadow Event Park • Doswell, Virginia

[www.vrmca.com](http://www.vrmca.com)

Visit us online  
[www.VRMCA.com](http://www.VRMCA.com)

## 2013 VRMCA Officers & Directors

### PRESIDENT

**Bob Chandler**  
Chandler Concrete of Virginia Inc.

### VICE PRESIDENT

**Jay McNeely**  
Eagle Corporation

### SECRETARY/TREASURER

**Stephen Render**  
Vulcan Materials

### EXECUTIVE DIRECTOR

**Douglas Easter**  
Easter Associates, Inc.

### PAST PRESIDENT

**Larry Bullock**  
Boxley Materials Company

### DIRECTORS

**Mark Bundy**  
Branscome

**Billy Chenault**  
Luck Stone Corp.

**Morgan Nelson**  
S.B. Cox Ready-Mix

**Robert O'Brian**  
Lynchburg Ready-Mix

**Robert Sells**  
Titan Virginia

**Jim Simons**  
Capital Concrete Inc.

**Jeff Slagle**  
Rowe Materials, LLC

**Genevieve Walker Switzer**  
T&W Block Inc.

**Tony Wilt**  
Superior Concrete

### Virginia Ready-Mixed Concrete Association

250 West Main Street, Suite 100 • Charlottesville, VA 22902  
Phone: (434) 977-3716 • Fax: (434) 979-2439  
easter@easterassociates.com • www.vrmca.com

## 2013 VRMCA Advisory Council Regions

### Jay McNeely

**VRMCA Advisory Council Chairman**  
Eagle Corporation  
Charlottesville, VA  
Phone: (434) 971-2686  
pjm@eagle-corp.com

### BLUE RIDGE

#### Buddy Murtaugh Jr.

Chairman  
Rockingham Redi-Mix  
Harrisonburg, VA  
Phone: (540) 433-9128  
buddy.murtaugh@conmatgroup.com

### Scott Boshart

Secretary/Treasurer  
Superior Concrete  
Harrisonburg, VA  
Phone: (540) 433-2482  
sboshart@superiorconcreteinc.com

### HAMPTON ROADS

#### Barb Nelson

Chairman  
Titan Virginia Ready-Mix  
Norfolk, VA  
Phone: (757) 533-7130  
bnelson@titanamerica.com

### Lee Flemming

Secretary/Treasurer  
Essroc  
Chesapeake, VA  
Phone: (757) 647-9409  
edward.flemming@essroc.com

### NORTHERN VIRGINIA

#### Dave Snider

Chairman  
Vulcan Materials Company  
Springfield, VA  
Phone: (703) 354-7100  
sniderd@vmcmail.com

### Zack Swanson

Secretary/Treasurer  
Grace  
Elkridge, MD  
Phone: (410) 794-6973  
zack.swanson@grace.com

### RICHMOND/CENTRAL VIRGINIA

#### Steve Kerr

Chairman  
GreenRock Materials  
Quinton, VA  
Phone: (804) 966-8601  
skerr@greenrock.net

### Andrew Owens

Secretary/Treasurer  
Advantage Environmental Consultants  
Chester, VA  
Phone: (804) 454-0072  
aowens@aec-env.com

### SOUTHWEST

#### Sam Woolwine

Chairman  
Boxley  
Roanoke, VA  
Phone: (540) 777-7623  
swoolwine@boxley.com

### George Kuhn

Secretary/Treasurer  
Chandler Concrete  
Christiansburg, VA  
Phone: (540) 382-1734  
george.kuhn@chandlerconcrete.com

## WE GRATEFULLY ACKNOWLEDGE OUR 2013 MEETING & CONVENTION SPONSORS



**H.N. Funkhouser & Co.**  
Quality Petroleum Products Since 1932



**Essroc Ready Mix**  
Italcementi Group



**LAFARGE**

**ROANOKE CEMENT™**  
A TITAN AMERICA BUSINESS




**Virginia Truck Center**

## Amphitheater *continued from page 1*


nizations and community events than for commercial attractions, though the facility can accommodate big concerts. The design leaves green space in the downtown area, but allows room for ongoing events like Festival in the Park, Local Colors, the Henry Street Festival, the Strawberry Festival, Blue Ridge Blues and BBQ and the Roanoke Wing Fest. The amphitheater represents a scaling back of four-year old plans that would have swallowed most of the green space in the downtown area, and gives Roanoke a large park with a great performance venue in it.

The stage and seating are built to be scalable, with a built-in, flip-a-switch-and-go sound system for events that

require a single microphone, but can also handle the amplification needed for a 5,000-ticket concert. Sam Woolwine of Boxley noted that the concrete placement went very smoothly, with more than 70% of the concrete being VDOT approved mixes – mostly variations on the standard A3 mix design.

With events already planned for spring 2014, the city now looks forward to learning what types of shows will show off what the facility can do...and what will sell tickets. Cyrus Pace, executive director of the Jefferson Center, thinks the amphitheater's design will reduce promoter's costs and attract events. He says "Let's figure out what the community wants to see." 

### \$11,000 Raised for VRMCA PAC

With two sporting clay shoots and a golf tournament, generous sponsors and 150 participants raised \$11,338 after all expenses were paid. This allowed the association to fund all of its priority contributions to House of Delegates campaigns. A special thank you to the VRMCA Legislative Committee members for their work on this project that raised 25% more than what was budgeted. 



A good time was had by all at the October 22 sporting clays shoot at Old Forge Sporting Clays in Providence.



Event Proceeds to Benefit the VRMCA PAC

### We Would Like to Thank Our PAC Event Sponsors

#### Sporting Clays | September 19th

Event Sponsor

**Vulcan Materials**

Lunch Sponsor

**R.R. Beasley/Chandler Concrete**

Awards Ceremony

**Charles W. Barger & Son**

Shooting Station Sponsors:

Boxley; Lafarge NA; Superior Concrete; Swope & Associates

#### Golf Outing | October 9th

Event Sponsor

**Titan**

Lunch Sponsor

**Allied Concrete**

Beverage Cart Sponsor

**Essroc Cement**

Awards Ceremony

**Lynchburg Ready-Mix**

Golf Hole Sponsors:

Branscome; Carter Machinery; Chandler Concrete of Virginia; Lafarge NA; Roanoke Cement; Wilson Ready Mix

#### Sporting Clays | October 22nd

Event Sponsor

**S.B. Cox Ready-Mix**

Lunch Sponsor

**Capital Concrete**

Awards Ceremony

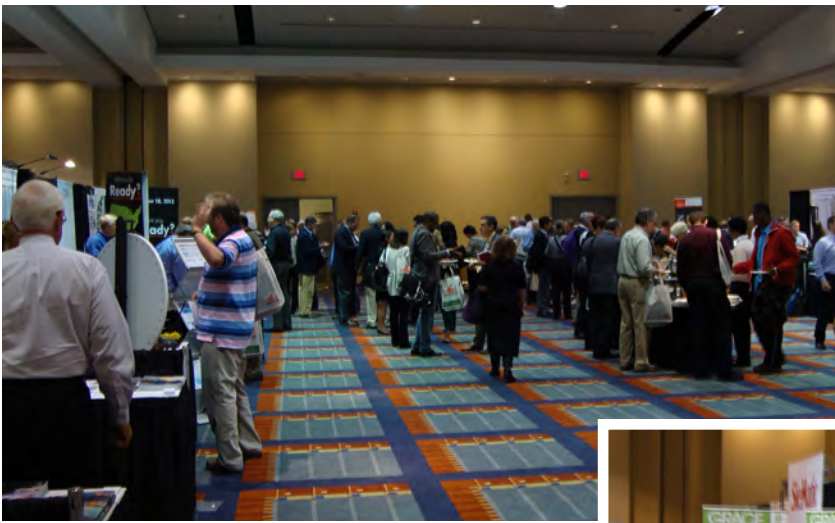
**Luck Stone**

Shooting Station Sponsors:

Capital Concrete; Carter Machinery; Chaney Enterprises; Essex Concrete; Lafarge NA; Rappahannock Concrete; Roanoke Cement; Sterling Transport; Swope & Associates; T&W Block



# Framing the Future: 2013 Design DC



## By Hessam Nabavi, Director of Industry Services

“Framing the Future” was the theme for this year’s Design DC Conference. Leading architects, designers, engineers, contractors and building industry practitioners converged at the Eight Annual Design DC Conference, September 26-29, 2013 at the Walter E. Washington Convention Center in Washington DC. This three-day conference was designed to connect attendees to cutting-edge technology, projects and practitioners, through high impact content and interactive tradeshow, sharing what lies ahead for the industry, the built environment and AEC professionals in the DC-metropolitan area.

Design DC has become the cornerstone event of the architectural industry in Northern Virginia and the Baltimore/Washington Metro Area. “Design DC’s objective from the beginning has been to create an environment where AEC professionals and the general public can see the latest trends and capabilities in the building industry. The Design DC Conference was produced by the Washington, Potomac Valley and Northern Virginia Chapters/ AIA.

Over sixty exhibitors were in attendance. They provided D & C professionals with information and insight into the latest trends, tools and technologies regarding building materials

and designs. VRMCA/NVCAC partnered with MRMCA to represent the concrete industry in the region and to exhibit various applications of concrete, from tilt-up & ICF for building to pervious & conventional concrete for paving. Our newly designed backdrop offered visual information about the diversities and the possibilities that concrete offers as one of the most sustainable and green building materials existing today.

As always, our success depends on our members’ assistance which we appreciate greatly. This year’s success was possible because of the following members and their respective companies. We thank them for assisting VRMCA/NVCAC and MRMCA in Design DC 2013. Michael Robinson with Carolina Stalite Company; Marc Granahan with Lehigh Cement Company; James Murray with Chaney Enterprises; Dave Snider, Kevin Terry, Tony Thompson & Brian Young with Vulcan Materials Company; Joel Woerl, David Acott & Brian Dulaney with Titan Virginia Ready-Mix LLC; Zack Swanson & Dave Barber with Grace Construction Products; Tony Jones & Rachel Leonard with DuBrook Concrete Inc.; and Tom Evans with MRMCA.

Very special thanks to Marie Stovall with Chaney Enterprises for designing a beautiful backdrop and Mindy Green with MRMCA for various coordination in the process. 🚚



PROVIDING HIGH QUALITY  
REFINED POZZOLAN  
TO THE MID-ATLANTIC REGION

MARKETING

MANUFACTURING

TRANSPORTATION

ENGINEERING

[www.sefagroup.com](http://www.sefagroup.com)



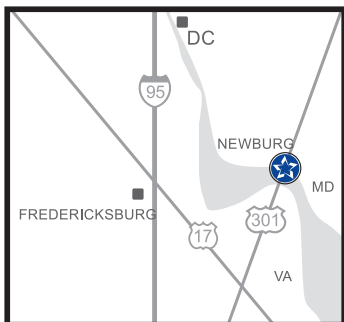
## THE FUTURE OF FLY ASH IS HERE.

Let one of our Technical Sales Representatives show you how STAR® Refined Pozzolan can improve the quality of your concrete.

Hank Keiper, P.E. 804.380.8078

Tom Wahl, P.E. 540.525.9331

MORGANTOWN STAR®  
Newburg, MD



# VRMCA 2013 Fall Convention Recap

The VRMCA Fall Convention took place October 15th and 16th at the Omni Hotel in historic downtown district of Charlottesville, Virginia. Over 85 attendees from 35 members companies came out for the two-day fall event.

Political commentator and Managing Principal of DecideSmart, Bob Holsworth, kicked off the meeting on Tuesday with a 2013 election update. Following lunch, VRMCA was honored to have Delegate Tom Rust speak after lunch. Delegate Rust represents the 86th District and is known for his support of life cycle cost legislation. He was recently named the 2014 Chairman of the House Committee on Transportation. Todd Legge (Essroc), Ken Waegerle (Chandler Concrete), Joyce Kessinger (Boxley) and George Kuhn (Chandler Concrete) all presented updates from their committees. Tuesday evening wrapped up with a reception at the hotel.

Wednesday morning, the group heard from Amanda Hult with NRMCA on MIT Research and from Richard Street, Senior Environmental Engineer with Spotsylvania County, about the Chesapeake Bay Act. Henry Batten, former NRMCA Board Chairman and President of Concrete Supply Company, presented an update on the NRMCA Check-Off Program.

Brian O'Connor, UVA Head Baseball Coach, delivered the keynote address Wednesday morning covering seven keys of successful leadership that he's put into action through his highly successful baseball program.

Presentations from the Fall Convention are available on the VRMCA Website



in the Fall Convention Files section of the Downloads area.

This year's Fall Convention followed a new format in a new location. All members are encouraged to complete the survey that was emailed out on October 22, 2013 to give us your candid feedback on all meeting locations and formats. 🚚

## WE GRATEFULLY ACKNOWLEDGE OUR 2013 FALL CONVENTION SPONSORS



**2014 DATES  
ANNOUNCED!**



# Concrete Field Testing Technician Certification Program

**ONLINE  
REGISTRATION  
AVAILABLE AT  
[www.vrmca.com](http://www.vrmca.com)**

## 2014 ACI TRAINING SEMINAR & EXAM SCHEDULE

**Register Now ... Limited to the first 35 registrants!**

Please periodically check our website for class availability at [www.vrmca.com](http://www.vrmca.com).

Warrenton	<b>January 14, 15, 16</b>
Roanoke	<b>January 28, 29, 30</b>
Virginia Beach	<b>February 11, 12, 13</b>
Richmond	<b>February 25, 26, 27</b>
Harrisonburg	<b>March 11, 12, 13</b>
Fredericksburg	<b>March 25, 26, 27</b>
Roanoke	<b>April 8, 9, 10</b>
Virginia Beach	<b>April 22, 23, 24</b>
Warrenton	<b>April 29, 30, May 1</b>
Richmond	<b>May 27, 28, 29</b>
Bristol	<b>June 10, 11, 12</b>
Harrisonburg	<b>June 24, 25, 26</b>
Virginia Beach	<b>July 8, 9, 10</b>
Roanoke	<b>July 22, 23, 24</b>
Richmond	<b>August 19, 20, 21</b>
Fredericksburg	<b>September 2, 3, 4</b>
Roanoke	<b>September 23, 24, 25</b>
Bristol	<b>October 7, 8, 9</b>
Richmond	<b>October 28, 29, 30</b>
Harrisonburg	<b>November 18, 19, 20</b>
Warrenton	<b>December 2, 3, 4</b>

**Schedule your class soon. Classes fill quickly!**

*Notice: If you have a disability and need assistance to participate in the training or to take the examination, contact VRMCA headquarters at least two weeks prior to the course date.*

Register online or complete a registration form for each attendee and mail with your check to:

**VRMCA**  
250 West Main Street, Suite 100  
Charlottesville, VA 22902

Company \_\_\_\_\_

Attendee's Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_

Fax \_\_\_\_\_

Attendee's Email \_\_\_\_\_

Seminar Date \_\_\_\_\_

Seminar Location \_\_\_\_\_

## COURSE REGISTRATION

Course fee includes 2-day course, ACI workbook, *PCA Design & Control* and examination. Materials will be provided when you arrive for class. This registration is valid for the 2014 classes only. No refunds or credits will be given after December 15, 2014.

- \$525 per person for non-members
- \$465 per person for VDOT
- \$350 per person for VRMCA members

**Exam Retest**—for individuals who have previously taken the ACI class through VRMCA. You must retest within one year of your original test date.

- \$180 retest fee

CO-SPONSORED BY THE VIRGINIA  
READY-MIXED CONCRETE ASSOCIATION  
AND AMERICAN CONCRETE INSTITUTE



## Never, Ever on a Sunday!

By Hank Keiper, P.E.,  
The SEFA Group

We've all had this happen: relaxing at home on Sunday afternoon when the cell phone rings. Tammy Hill, Sales Manager at VRMCA member T&W Block on the Eastern Shore faced this scenario recently. Tammy did not recognize the number, but knew it was a business call. The caller was Rick Hall, owner of Four Corner Plaza LLC, asking for an asphalt referral. Mr. Hall was planning a major renovation of his plaza in Onley, VA which includes the department stores Roses and Dollar General. Like most building owners, he expected to replace the deteriorated asphalt and expand the parking area with new asphalt. All that changed when Tammy chose to answer her phone that Sunday afternoon.

Tammy seized the opportunity to suggest a ready mix concrete solution instead of asphalt and prepared an alternate bid in concert with a top-flight concrete contractor. The figures for initial cost and elimination of future maintenance costs were both attractive to Mr. Hall, and he agreed to do a trial section using ready mix concrete. As a family-owned local business, he was also attracted to contracting with other local, Eastern Shore businesses.

Like an aging sumo wrestler, the back side of most suburban shopping plazas is not the most glamorous part of the facility, but the pavement sees some of the toughest service with trash trucks and loaded tractor-trailers pivoting sharply and repeatedly. The existing asphalt paving was severely distressed and much had been reduced to gravel by time, the traffic, and the elements. Although not the most visible part of the plaza, the rear service pavement badly needed replacement and was selected as a test section for ready mix concrete.

Now with the easy part complete,



**Above: Existing deteriorated asphalt paving side by side with new PCC. At right: Tammy Hill, Sales Manager at T&W Block in Onley, VA.**

convincing the owner to try concrete, it was time for execution. With thousands of more square feet of pavement on the line, T&W and the contractor installed the rear service pavement flawlessly. Even with multiple radius curves, changing widths, and a rainy summer, the pavement is performing well and looks great. The contractor obviously was very skilled at planning his saw cut joints, and a consistent mix allowed for perfect saw timing. Based on a quick visual inspection, there are no drying shrinkage cracks outside of the designed control joints, and the owner is very pleased with the results. This phase of the project flipped 50,000 sf of asphalt to ready mix concrete yielding 610cy of new work.

Some important lessons from this



project: seize an opportunity and be aggressive in promoting concrete paving; use small projects as a springboard to bigger and better work; low-ball prices are not needed to flip pavement if you execute projects flawlessly. And finally, when opportunity calls, you may have to answer your business phone on the weekend, even on a Sunday! 🚚



## Keith Beazley, 1943-2013



The Virginia Ready Mixed Concrete Association is extremely sorry to note the untimely passing of J. Keith Beazley after a lengthy illness. Keith was widely appreciated, and his sense of humor, willingness to help in any endeavor and extensive knowledge of the ready mixed concrete industry will be greatly missed.

Keith joined the VRMCA in 1997 and served as Director of Industry Services – Eastern Region for sixteen years. He worked closely with producer and supplier members throughout the Richmond and Tidewater areas and also had developed strong relationships with the American Concrete Paving Association, the Virginia Department of Transportation and many architectural, engineering and contracting firms throughout the region, serving as advisor to the Central Virginia and Hampton Roads

Concrete Councils. He was instrumental in the promotion of tilt-up construction, ICF construction, pervious concrete installations and the acceptance of architectural concrete. Keith also was deeply involved in VRMCA's ACI Certification Program and participated in more than 200 Grade 1 performance exams during his tenure. Keith was widely known for his vast knowledge of Virginia history, and would regale members with stories of Colonial Virginia, politics and geography at any opportunity.

Born in Richmond, Keith was a member of Wesley United Methodist Church, where he served as a Trustee. He also served on the Colonial Heights City Council from 1978-1990, as a member of the Colonial Heights Historical Society, as a Past President of the Colonial Heights Jaycees and a Boy Scout Leader. He is survived by his wife, Brenda H. Beazley; a son, James K. Beazley III and wife Kelly of Richmond; a daughter, Marian Elizabeth Moody and husband, Steven of Colonial Heights; two grandsons, James Keith Beazley IV and Dawson Clarke Moody; and aunt, Vernelle N. Curtis of Chester; cousins, Daphne Curtis, Marian Perkinson, and Clarence E. Curtis III.

We will miss you, Keith. 🚗



Keith (far right) with friends and colleagues Bob Nablo, Hessam Nabavi and George Boykin.

### On the Horizon Calendar of Upcoming Events

#### NOVEMBER 12, 2013

##### HRCAC Business Meeting

11:30 AM - 1:00 PM  
Surf Rider Restaurant  
Virginia Beach, VA

#### NOVEMBER 12-14, 2013

##### ACI Concrete Field Testing Seminar and Examination\*

Cultural Arts Center-Glen Allen  
2880 Mountain Road  
Glen Allen, VA

\*PRE-REGISTRATION REQUIRED

#### NOVEMBER 13, 2013

##### BRCAC Business Meeting

12:00 PM - 1:30 PM  
Rowe's Family Restaurant  
Staunton, VA

#### NOVEMBER 14, 2013

##### NVCAC Business Meeting

11:00 AM - 2:00 PM  
Manassas, VA

#### NOVEMBER 19, 2013

##### CVCAC Business Meeting

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

#### NOVEMBER 20, 2013

##### SWCAC Business Meeting

8:00 AM - 9:30 AM  
The Roanoker Restaurant  
Roanoke, VA

#### DECEMBER 3-5, 2013

##### ACI Concrete Field Testing Seminar and Examination\*

Harrisonburg VDOT Residency  
3536 North Valley Pike  
Harrisonburg, VA

\*PRE-REGISTRATION REQUIRED

#### MAY 18-20, 2014

##### VRMCA Spring Convention

The Greenbrier Hotel  
White Sulphur Springs, WV

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

[www.VRMCA.com/calendar](http://www.VRMCA.com/calendar)

# Five Common Labor & Employment Myths Your Company Can Easily Overcome

By John G. Kruchko and  
Kevin B. McCoy

Rumors, gossip, and myths spread fast. In fact, for some reason, they tend to spread faster than the truth. That seems to be the case for all types of information; so it will come as no surprise that the same holds true for the law and the various requirements it imposes upon companies. While legal myths abound in the business community on a whole host of topics, today we target some common Labor and Employment law myths – and how your organization can avoid the legal pitfalls those myths can engender.

## **MYTH ONE:** **Salaried Employees are Not Entitled to Overtime**

Perhaps the most pervasive misconception among employers is that their salaried employees are not entitled to receive overtime. Executives and HR Managers are often shocked to learn that paying an employee on a yearly “salary basis” is only part of the equation.

Overtime is governed (generally) by the federal Fair Labor Standards Act (“FLSA”), although some state laws provide for differing overtime pay requirements (California, for example). The FLSA divides employees into “exempt” and “non-exempt” categories. Exempt employees are not entitled to receive overtime pay (i.e., they are “exempt” from the overtime requirement) while non-exempt employees must be paid for any hours worked in excess of forty (40) per work week. In order to be exempt from the overtime requirement, employees must be paid on a salary basis of at least \$455 per week – meaning those employees must be paid the same predetermined salary on consistent intervals (usually weekly or bi-weekly). Here is where the confusion sets in. Employers mistakenly believe that paying on a salary basis is all that is required to exempt employees from overtime under the FLSA. To the contrary, the exemption test requires a second level of analysis, namely whether the employee’s job duties fit within one



of the predetermined job categories of employees who are eligible to be exempt! That’s right; not every employee is eligible to be exempt, no matter how much you pay them in salary.

To be exempt then, employers must be able to not only demonstrate that the employee is paid on the requisite salary basis but that the employee also falls into one of the recognized exempt categories – the most common being executive, administrative, professional, outside sales, computer, and highly compensated employees. There are very specific requirements set out for each exemption by the U.S. Department of Labor (available at [www.dol.gov](http://www.dol.gov)), and if the employees do not fit within one of the exemptions the employees must be paid overtime for hours that they work over forty (40) per work week. This is true even for employees who receive an annual salary.

## **MYTH TWO:** **It is a Good Practice to Instruct Your Employees to Keep Salary or Wage Information Confidential and to Not Discuss it With Fellow Employees**

This is 100% myth; no shred of truth anywhere. Under the National Labor Relations Act (“NLRA”) both unionized and non-unionized employees have the express right to engage in protected, concerted activity. While that phrase can encapsulate many different types of activity, there is uniform agreement that it includes the right of employees to discuss the

terms, privileges, and conditions of their employment, including specifically their wages. In fact, the NLRA gives employees tremendous latitude to communicate with each other about almost anything that impacts (positively or negatively) their collective work environment. This has been the law of the land since the NLRA was enacted back in 1935, yet the practice of instructing employees to keep their salary or wage information confidential still persists today. Break the mold; do not tell your employees to keep such matters to themselves. Otherwise your company may find itself on the other (and likely losing) end of an Unfair Labor Practice Charge filed with the National Labor Relations Board (“NLRB”), the agency charged with enforcing the NLRA. And speaking of the NLRB.....

## **MYTH THREE:** **The NLRA Does Not Apply to My Company Because We Do Not Have a Unionized Workforce**

Once again, this is 100% myth and has always been myth since the NLRA was enacted. The NLRA applies to both unionized and non-unionized employees and protects their right to engage in protected, concerted activity about matters that relate to their work environment. The problem for today’s employers is that the NLRB has taken a renewed interest in enforcing the terms of the NLRA on non-unionized employers. For many decades, the NLRB’s sole focus was regulating the

nation's unionized workforce and the company's that employed them. However, in recent years the percentage of the American workforce that is unionized has declined steadily. Today, between both government and the private sector, only about 7% of our country's workers are unionized. With less unionized workers to manage, the NLRB is branching out its enforcement efforts to non-unionized employers to ferret out policies, agreements, or other restrictions that might run afoul of employees' right to engage in protected, concerted activity. In the past few years, the NLRB has taken it upon itself to investigate handbook policies, employment contracts, confidentiality/non-solicitation agreements, and social media practices of non-unionized employers. If your company has not recently performed an audit of your policies and practices with an eye toward NLRA compliance, now is the time to enlist the assistance of your Labor and Employment counsel.

#### **MYTH FOUR:**

##### **Social Media is a Safe Place for Employers to Gather Information about Job Applicants and Employees**

Social Media undoubtedly provides a tremendous volume of information; it is just not always the type of information an employer should be receiving. First, with respect to job applicants, employers should avoid social media profiles if at all possible, particularly ones that are purely social (i.e., Facebook, YouTube, Flickr, etc.) Most employers today recognize that you cannot ask questions on job application or in an interview relating to an applicant's religion, race, citizenship, national origin, age, etc. However, applicants routinely disclose or discuss such personal information on their social media profiles or updates. Thus, as an employer, even if your job application and interview process is 100% compliant, your discovery

on an applicant's Facebook page that she is Muslim might turn your rejection of her candidacy into a discrimination lawsuit. You laugh....but that is exactly what is happening in courts all around the country.


With respect to current employees, your Company has more flexibility. Simply gaining information is not problematic and can sometimes be useful. So while I don't recommend that managers "friend" all of their subordinates, learning information that your employees are sharing via social media is not typically a problem. The problems arise when employees post information or pictures on their social media sites of which the company disapproves. Take for example, an employee posts on her Facebook page an obscenity laden tirade against her boss for reprimanding her over a cash shortage that the employee feels was not her fault. Other co-workers chime in to offer sympathy and support. Her boss finds out about the post and fires the employee for insubordination or conduct detrimental to the organization. What's the problem? Well, despite the obscenities, the employee's expression of dislike to her coworkers for an event that occurred at work is routinely being viewed by the NLRB as protected, concerted activity under the NLRA. In this case, the fired employee would likely be entitled to reinstatement and back pay. Rule of thumb: tread very carefully when basing your interactions or decisions with respect to employees on their social media content.

#### **MYTH FIVE:**

##### **I can Automatically Deduct from an Employee's Paycheck for Damage to Property or Money Owed to the Company**

This issue is governed exclusively by the law of the state(s) where your company does business. However, as

a general rule, most states (including Virginia, Maryland, and D.C.) consider this practice to be unlawful unless the employee has voluntarily consented in writing to the deduction beforehand. Most jurisdictions view wage deductions for damage to property caused by the employee as simply one of the "costs of doing business" that should be born by the employer. Thus, those types of costs are typically not subject to remuneration by the employee, even with a written agreement. More commonly, employers try to recoup from separated employees, money for such things as company phones or computers, tuition advancement, or personal travel expense put on company credit cards. It is common for employers to simply deduct such monies owed by the employee from the employee's final paycheck. However, as noted above, most states have statutes preventing that exact practice. To comply with most states' laws, the employer has to have the employee sign and agree to in advance that should the employee separate from the company owing such monies, that the employee agrees that such amounts can be taken out of the employee's final paycheck. However, even such an agreement is not foolproof. No written agreement may take the employee's final wages below the federal (or higher state) minimum wage. Thus, employers are not free to take from the employee an amount that renders the amount of the final paycheck less than what the employee would have earned over his final pay period working at minimum wage.

The best recourse for employers when it comes to wage deductions is to first seek the advice of counsel before proceeding. Determining the law(s) that will govern such practices and crafting an agreement that will comply with the law is not a task for the faint of heart. 

Copyright 2013 Kruchko & Fries



WHEN SO MUCH IS RIDING ON  
YOUR CHOICE OF CEMENT,  
MAKE THE **RIGHT** CHOICE

THE **RIGHT** PRODUCT & SERVICE  
IN THE **RIGHT** PLACE  
AT THE **RIGHT** TIME

*Roanoke Cement has supplied ready-mix producers and the construction industry with consistent, dependable, high quality cement for over 50 years.*

*A superior product, backed by excellent customer service, the latest technology, and reliable distribution shows our commitment to serve our customers.*

*When so much depends on your cement, choose Roanoke Cement. Call 800-782-7622 or 540-992-1501 today.*

*The Smart Road bridge, at 175 feet tall, is Virginia's tallest bridge. Approximately 9,647 cubic yards of high-strength concrete were used to construct the 2,000-foot long bridge.*

**ROANOKECEMENT™**

A TITAN AMERICA BUSINESS