

# The Merit Shop Spokesman

ABC Keystone Newsletter



## Members Guide the Chapter through COVID-19

# 5



## The Construction Industry Can Emerge Even Stronger!

# 3

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# The Merit Shop Spokesman

## Contents

3 Message from the Chair

5 Message from the President

6 Advocacy Update

9 Ask an Attorney

11 2020 Graduate Listing

14 New Member & Anniversaries

17 Chapter Calendar

18 Member News

19 OSHA Update

22 Face Mask Delivery

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# A Message from the Chair

BY: ROGER S. BRUBAKER, ABC KEYSTONE 2020 CHAIR OF THE BOARD

## What Just Happened?

*We Will Emerge Even Stronger!*

**W**ow! The end of this month will mark my halfway point serving as Chair at ABC Keystone. January and February started out the same way many of my predecessors had experienced. There was the first Executive Committee meeting, the All Committee Kickoff event, Inaugural, the first Board of Directors meeting, Economic Breakfast, and mixing with members and prospects at our quarterly Wake-up Call events. I thought, "*Gee, I am getting the hang of this Chairman thing! I can do this!*"

Then.... it happened: During our Board of Directors meeting on March 19, the word came in from Governor Wolf that construction was to be shut down (along with other businesses) for at least 14 days in response to the COVID-19 outbreak. None of our lives have been the same since.

Since that March Board meeting, my time spent as the ABC Keystone Chair has been anything but "normal." Our Keystone Chapter team immediately kicked into response mode. What do our members need? How can we help them navigate this crisis? Can the Chapter continue to operate during the shutdown? What does that look like? What about our apprenticeship graduation and upcoming training events? Will there be members who will go out of business because of this shutdown? "*Let's get to work helping our members,*" was the resounding response!

As the 14 days turned into a month and then two months, somewhere between the daily discussions with Chapter President-CEO Dave Sload, political briefings from David Greineder, our government affairs director, conference calls with our ABC PA chapters, Zoom meeting preparations, hammering out strategic plans to provide free training, and fulfilling my role at MVE Group, I finally paused to reflect on what has happened.

In my many years of involvement in our Chapter, serving in numerous roles and attending many events, I knew ABC Keystone was a very special chapter. I had no idea how special until my experience the past two months. The comradery, the perseverance, and the determination shown by our staff, our Board, and our members during this most difficult time has been truly extraordinary. COVID-19 was not in our strategic

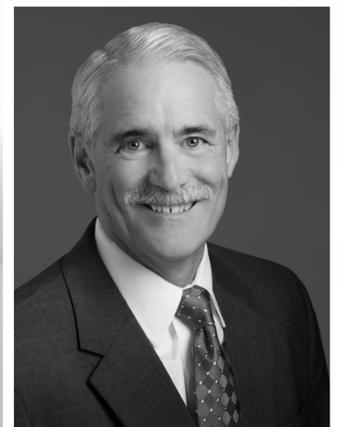
plan, nor was the idea to purchase surgical masks and sell them to our members. But, it was something our members desperately asked for, and we found a way to help. Likewise, we did not pre-plan to provide three months of free training for members, but it was what was needed, so that is what we did.

This period has been like no other time in any of our lives, and we will all be forever changed by the experience. And yes, as Chair, I surely will miss some of the events we were unable to hold during the crisis. But our relationships which have been newly developed or strengthened during this global crisis will certainly endure for a long, long time into the future.

I look forward to our economy rebounding over the second half of the year. There is much to be accomplished in making up for lost time. The Chapter staff and leadership team continue to stand ready and willing to help members "*get it done!*"

Stay healthy and safe,

Roger Brubaker  
2020 Chair of the Board



Roger S. Brubaker  
2020 Chair of the Board  
ABC Keystone  
Director of Construction Services  
Meadow Valley Electric, Inc.  
roger@mvegroup.com  
(717) 397-9600

# Coronavirus Updates & Resources

Stay up to date with the latest information you need to navigate the COVID-19 pandemic:

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# A Message from the President-CEO

BY: G. DAVID SLOAD, ABC KEYSTONE PRESIDENT-CEO

## "Living the Dream" Members Help Guide the Chapter through the COVID-19 Nightmare

**T**hose that know me well are aware that I am a very positive person. If you ask me in the morning how I am doing, I always respond, "I'm living the dream!" I finally realized, after the last two months, that some dreams can be nightmares. But it is because of our members, the staff, and our leadership team that I have been able to remain positive during this recent COVID-19 dream (or nightmare) and take each day as a new challenge.

A little over 20 years ago, two of my peers, Mike Callahan and Kevin Snoke, put a crazy idea in my head. Because of my love of the industry and my passion for ABC, they thought I should probably work for ABC Keystone. So, my dream began. Almost 10 years ago, this dream became a reality. My predecessor, Jack Zimmer, and several members, became my mentors and helped prepare me for the position I hold today.

In talking to Jack a few weeks ago, I told him that he really didn't prepare me very well for this pandemic. Expecting a snappy answer, all I got was, "I'm not sure anyone could have prepared anyone for this." As I reflected on the last two months, I concluded that the answer to responding to this pandemic was to be found not in us, but in the members.

This is what I love about the construction industry. While contractors can get upset with situations, they know how to work the problem. Instead of feeling bad for themselves, they create solutions. It is because of this attitude that ABC Keystone has been able to serve the members in different ways than normal during these unique times.

Your questions, your concerns and your input and ideas have guided the Keystone Chapter during this crisis. The staff has listened, processed, and found ways to respond. The executive team suggested the idea of no-cost training for April and May. As a result, ABC has trained over 800 member employees. A

member suggested an idea that ABC might be able to help with PPE. So, 100,000 masks were sold at-cost to over 100 member firms. Your questions, concerns and ideas led to the development of a COVID-19 Update email campaign that saw open rates nearly double over ordinary times. Member engagement through emails, phone calls, and social media was extremely high during the last two months.

For this, I say "thank you." In true fashion, ABC Keystone members have helped turn this *would-be nightmare* into a survivable and workable reality. When it is over, and we can look back, we will see that the members have contributed to some of the finest work ever done at the Keystone Chapter. Yes, I and the rest of the staff are "living the dream." We get to serve the greatest group of people in the industry that you, and we, all love. The ABC Keystone "IT FACTOR" is still alive!



G. David Sload  
President-CEO  
dave@abckestone.org



# Advocacy Update

BY: DAVID G. GREINER, IOM, ABC KEYSTONE DIRECTOR OF GOVERNMENT AFFAIRS

## The Halfway Point

In January, ABC Pennsylvania's leadership team put forth a strong legislative agenda that included proactive goals to enhance our political influence. As a reminder, those goals were to:

- Support and lead efforts to reform the state apprenticeship system;
- Support efforts to reform the criminal justice system;
- Support pro-business changes to the Construction Workplace Misclassification Act (Act 72);
- Oppose efforts to tax the Marcellus Shale;
- Build relationships with elected officials at all levels of government;
- Build alliances with like-minded organizations;
- Recruit advocates for appointments to governmental committees and boards.

The COVID-19 pandemic has undoubtedly changed our timelines and tactics around these efforts. We are totally committed to the goals and will not lose sight of them in the future, but the future is unclear.

Along with COVID-19 issues, the top priority of elected leaders in Harrisburg is preparing a 2020-21 state budget, an issue that is not likely to go away by the constitutionally mandated June 30 deadline. The challenges are great: state budget negotiators are working with the federal government on how states are to obligate federal stimulus dollars, and the total amount Pennsylvania stands to receive is uncertain. Current estimates suggest deficits are projected to be between \$4-5 billion, and of that, approximately \$2 billion will fall in the July and August timeframe – which is in the next fiscal year – because of the changed tax-filing deadline.

At the time of this writing, options include passing a full-year budget with the unknowns cited above, or a six month “bare-bones placeholder” budget by June 30, with government leaders coming together after the November General Election to re-assess the state's fiscal situation. The Governor prefers the former, while Republican leaders prefer the latter.

### *Now the good news:*

Despite the crisis, ABC Pennsylvania's government affairs program has been active and has made a difference. We strengthened relationships with associations in sharing information, resources, and intelligence. Our grassroots advocacy network has grown by nearly 50 percent. We topped 1,100 calls and emails into the Governor and Legislature on issues of concern.

And last, but not least, we formed a COVID-19 Construction Safety Task Force that developed a comprehensive document to provide guidance, best practices, and standards for construction professionals to incorporate into their COVID-19 safety plans. The task force participants include experienced safety experts across all five ABC Pennsylvania chapters who generously shared their collective resources aimed to protect employees and jobsites from COVID-19. ABC Pennsylvania's safety plan has been used as a model through ABC National and has been shared with government leaders as they prepare guidelines for the construction industry. I want to thank members of the task force for lending their expertise and wisdom on this nationally recognized resource.

While we do not know the fate of our specific legislative priorities, we do know we have had an impact since this crisis began. I would encourage us to look back at the power our voice had over this timeframe. My challenge to all ABC members is to not just match but enhance the “loudness” of our voice when it comes time to advance legislation important to our industry. It does make a difference.

Thank you for your membership.  
Stay safe, stay informed, and  
stay engaged.

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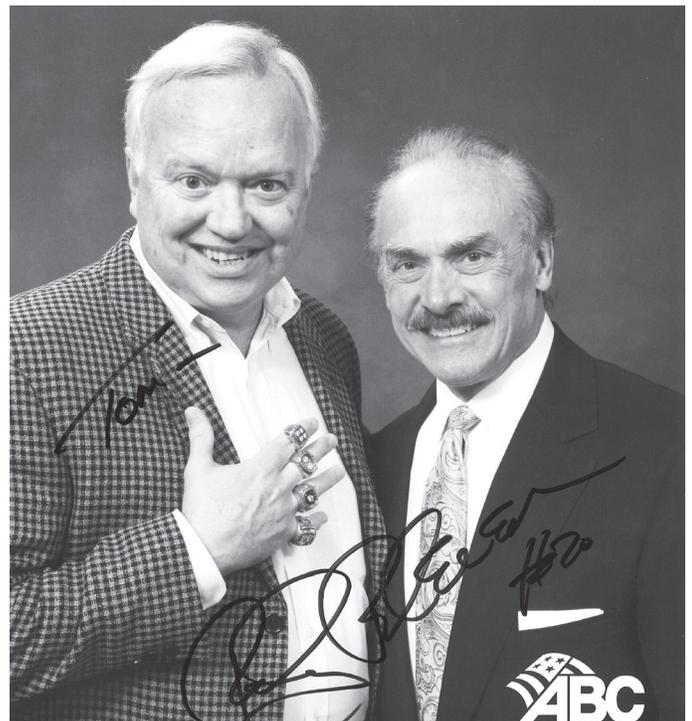


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## Remember When? *ABC Keystone's Archives*

### **Touchdown - ABC Keystone!**

ABC Keystone's Tom R. Davies, Esq., Harmon & Davies, P.C., proudly sports the four Superbowl rings belonging to Pittsburgh Steelers legend Robert Patrick "Rocky" Bleier in this photo dated May 2013. Rocky Bleier is a champion of American football and joined the Steelers team in 1968. Tom Davies is a champion for the merit shop and a long-time member of ABC Keystone since 1978. Thank you, Tom, for your continued dedication to Team Keystone!



# Ask an Attorney

BY: JEFFREY C. BRIGHT, ESQ., SAXTON & STUMP LAWYERS AND CONSULTANTS

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## Types of **Claims** that May Arise from **Construction Project Losses** Related to **COVID-19**

**S**ince March, all contractors and subcontractors have been addressing the impact of COVID-19 on the industry. Contractors/subcontractors have prepared COVID-19 protocols, revised their employment practices to address the Families First Coronavirus Response Act (FFCRA), evaluated financing options under various stimulus and loan packages, and handled multiple issues arising from government orders.

As construction projects move forward, contractors and subcontractors will also begin to evaluate whether contract clauses or potential claims cover any losses arising from the COVID-19 pandemic. Now is a good time to consider the variety of claims that could exist:

### **Schedule Impact Claims**

**Extension of time claims (delay claims)** arise when the duration for the critical path exceeds the schedule through no fault of the contractor or subcontractor. Due to the extension of the schedule, it may cost the contractor/subcontractor more money to complete the project. Damages that are generally sought in an extension of time claim include increased labor costs; increased material costs, idle equipment, and storage costs; increased direct overhead costs for the extended time; and increased indirect home office costs for the extended time. Costs for demobilization and remobilization may also be part of a delay claim.

**Disruption claims (loss of productivity claims)** arise when an interference results in a loss of productivity. Essentially, the contractor is performing the work different from, and less efficient than, originally planned and bid. The actual work may not have changed; it simply takes more time, effort, and burden to complete the work, and the additional time and manpower to complete the work is, therefore, a cost that is sought to be recovered.

Resequencing and modified staffing on the project due to COVID-19 could perhaps fall under this category, depending on the contract and the project.

**Acceleration claims** arise when the owner requires the contractor to accelerate the work by finishing earlier than scheduled. The costs to perform the work more quickly are the amounts sought in an acceleration claim. Typical costs include overtime and additional shifts; additional manpower; and increased costs for expedited procurement of materials.

**Constructive acceleration claims** are a type of acceleration claim where an event occurs that justifies an extension to the schedule (perhaps COVID-19, depending on the circumstances); however, the owner refuses to grant the extension and instructs the contractor to complete the work as originally scheduled. In effect, the contractor (and subcontractors) must complete the work at a faster pace than originally scheduled, because they have not been afforded the justifiable extension.

### **Change Order Claims**

The preferred method for a change order, whether it be changes to the project schedule or compensation due to COVID-19, or any other change, is a written, stipulated change order identifying any modification to time or compensation. COVID-19 is the elephant in the room on all project schedules and costs right now. A best practice is to address the issue and attempt to agree upon the allocation of risk and costs. For some projects, the original contract may already have a clause that addresses the issue.

It is also possible that due to an increased need for expediency or other indirect issues arising from COVID-19, the project design itself might be modified. In modifying the project, the owner must act timely so as not to

interfere, disrupt, or delay the project. And any changes in the design could result in a change order for time or compensation.

Another potential issue is that the COVID-19 pandemic might compound change orders. For example, a project that was supposed to be under roof by fall, or with site work completed before winter, may need to delay the work till next spring. It is important to take account of the compound effect of weather and other potential changes to the project.

Some contracts contain specific “force majeure” clauses that govern changes or additional time and compensation for events arising from “acts of God” such as pandemics. But not all clauses are written the same, and not all use the specific language of “force majeure.” For example, the AIA A201, Article 8 has a section addressing causes outside the contractor’s control, but it does not specifically call itself a “force majeure” clause.

Depending on the contract and circumstances, different rights might be afforded depending on the cause of the interference, delay, or change. Contract terms should be carefully scrutinized, and any notification, change order, or claims process should be followed to preserve claims.

Regardless of the type of claim that may exist, certain principles remain sound and fundamental. Contractors and subcontractors must first identify and document the loss and the cause of the loss. Then, prudent approach is to consult with counsel to review the contract terms and properly notice, preserve, and potentially pursue any claims that cover the loss.

*The author, attorney Jeffrey C. Bright, regularly presents at ABC Keystone’s educational seminars. Jeff focuses his practice on the construction industry, advising on general construction matters, project disputes and litigation, employment law, and real estate development and disputes. He represents contractors, subcontractors, owners, construction managers, and design professionals on the preparation, revision, negotiation, and litigation of construction contracts.*

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If you would like to submit an "Ask an Attorney" or "Ask an Accountant" article for a future *Merit Shop Spokesman*, please contact: [kristi@abckeystone.org](mailto:kristi@abckeystone.org)

# Share Your Safety Successes!

## How are you and your team working safely on the jobsite and in the office?

We know that safety is your top priority, and we would like to feature your team's efforts. If you have safety success stories, tips, or photos of how your team is adapting to COVID-19, please reach out to [kristi@abckeystone.org](mailto:kristi@abckeystone.org) and [kevin@abckeystone.org](mailto:kevin@abckeystone.org).

We look forward to hearing your successes and highlighting your team in a future issue of the *Merit Shop Spokesman* and on our social media channels.



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## Congratulations to the 2020 Graduates!

The ABC Keystone Chapter is proud to celebrate this year's graduating class of apprentices. The COVID-19 pandemic resulted in the necessary cancellation of the in-person ceremony previously scheduled for this past May, but we look forward to celebrating these graduates in alternate ways this summer. Please watch our website, social media channels and our upcoming August Merit Shop Spokesman for graduate features celebrating the class of 2020. This class has worked diligently for this accomplishment, and we look forward to further recognizing their achievements!

### Carpentry

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Steven T. Christman, Wohlsen Construction Company  
Matthew D. Cooper, Benchmark Construction Co., Inc.  
Brandon R. Girard, Wagman Construction, Inc.  
Thaddeus D Hartnett, Paul Risk Construction  
Gerald S. Hassel, Warfel Construction Company  
Douglas E. Heller, Easy Does It Drywall, Inc.  
Miguel A. Hernandez, J.D. Eckman, Inc.  
Ethan J. Hertz, Conewago Enterprises, Inc.  
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Christopher M. Lane, Speedwell Construction, Inc.  
Jordan Laughman, RLS Construction Group  
Saul Magana, J.D. Eckman, Inc.  
Keelan P. Martinez, Benchmark Construction Co., Inc.  
Jacob D. Massicot, Conewago Enterprises, Inc.  
Lora M. Metzler, Wohlsen Construction Company  
Brian Palau, Warfel Construction Company  
Christopher M. Preston, Sr., Wohlsen Construction Company  
Eric Rivera, J.D. Eckman, Inc.  
Brandon M. Thomas, Warfel Construction Company  
Eduardo J. Torres, Warfel Construction Company  
Mason S. Weller, Easy Does It Drywall, Inc.

### Construction Craft Laborer

Adam Blessing, Earle Asphalt Company  
Ryan Fisher, Earle Asphalt Company  
Evan S. Kerstetter, J.D. Eckman, Inc.  
Logan A. Mayer, J.D. Eckman, Inc.  
Justin S. Ritzman, J.D. Eckman, Inc.  
Matthew Rivera, Earle Asphalt Company  
James A. Stuter, J.D. Eckman, Inc.  
Raheem R. Woods, J.D. Eckman, Inc.

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Erick S. Drakoulis, Earle Asphalt Company  
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The ABC member logo is available for members in good standing to incorporate into email signatures and to utilize on member company websites. You are invited to access the files and logo guidelines at this link: <http://bit.ly/ABCKeystoneMemberLogos>

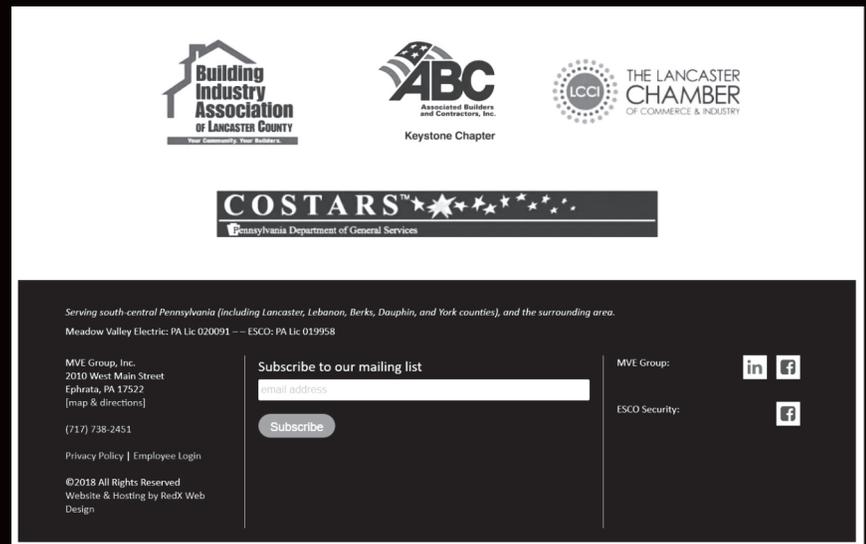
Send us examples of how your company has implemented the ABC member logo to be featured in an upcoming *Merit Shop Spokesman*!

Thank you for your support of the merit shop!

Website footer:  
(Meadow Valley Electric, Inc.)



Email signature:  
( David Spaulding, Esq., Green and Spiegel, LLC)



**David Spaulding, Esq.**  
Business Immigration, Compliance and Regulatory Enforcement Counsel  
*licensed in Pennsylvania*

**GREEN AND SPIEGEL LLC**  
1524 Delancey Street, 4<sup>th</sup> Floor | Philadelphia, PA 19102 | 215.395.8959 (o) | 484.645.4194 (c)  
[dspaulding@GANDS-US.com](mailto:dspaulding@GANDS-US.com) | [www.gands-us.com](http://www.gands-us.com)



# Congratulations, Stephanie Schmidt!

**Stephanie Schmidt, ABC National Secretary & ABC Northeast Region Vice Chair, Named 2020 CPBJ Women of Influence Honoree**

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Poole Anderson Construction, LLC President, Stephanie Schmidt, has been named a 2020 Women of Influence Honoree by the Central Penn Business Journal. The Women of Influence Awards honors women business leaders for their contributions to their companies, industries, and communities.

Stephanie began her construction career working for a large, national construction management firm and Penn State University where she coordinated and controlled the design and construction of a variety of major maintenance projects for academic and administrative units. In her current role as president of Poole Anderson Construction LLC, Stephanie is responsible for formulating the strategic direction and oversight of day-to-day company performance. Under her guidance and commitment to building strong partnerships, Poole Anderson has become one of Pennsylvania's largest and most respected constructors.

Stephanie is a graduate of Pennsylvania State University with a bachelor's degree in architectural engineering.



## Let ABC Pay Your PA One Call Invoice!

### ABC Member Exclusive Benefit:

Did you know that as a member of ABC Keystone, your PA One Call Invoice will be paid as one of your many member benefits? Fax or email your invoice to the Chapter office, and let ABC take care of payment.

**Fax: (717) 653-6431 or email to [kellys@abckeystone.org](mailto:kellys@abckeystone.org)**

# Chapter Calendar - Events, Education & Training

## Save the Date:

Starts 9/23 - Project Management & Leadership

Starts 9/24 - Superintendent Training Program (STP)

**9/24 - ABC Keystone Clay Shoot Presented by OSS Health**

Starts 10/6 - Estimating for Successful Outcomes

**10/7 - ABC Keystone's Tailgate Party**

Starts 10/13 - Leadership Development Series

Starts 11/4 - Excel 2016: Full Series

**11/4 - ABC Keystone's Excellence in Construction Awards Gala**

Discover more  
**events, education  
and training**  
and register online:  
**abckeystone.org**



We continue to monitor the COVID-19 situation and will adjust our calendar events accordingly. We invite you to look ahead and save the date for upcoming events, educational series and more.

## Summer Education & Training:

Some of our regularly scheduled June/July/August education and training events may be converted to a virtual platform. Our team is working on this transition, and more details will be coming soon.

Certain trainings might be held on-site under social distancing guidelines and if health and safety regulations allow us to do so at that time. Please visit the calendar page of our website for updates on these opportunities.



## Our Team is Here for You!

We Strive to Meet Your Training Needs - Contact Us Today!

(717) 653-8106 | Barbara Holtzapfle (Career Development) & Kevin Keith (Safety)

# The Latest **Member News**

## **McConkey Insurance & Benefits Hires Risk Solutions Consultant**

McConkey Insurance & Benefits welcomes Robert D. Foltz, CSP, as their newest Risk Solutions Consultant. Robert is an EHS Professional who has worked for TekSolv for the last several years, a leading safety consulting firm in the region. In this role, he will partner with McConkey's Claims & Risk Solutions team.

Robert will proactively help McConkey clients further develop their safety and risk management programs. Whether providing OSHA-specific training and guidance related to compliance issues or building out internal safety programs, manuals and committees, Robert will be a resource to help clients reduce the frequency and severity of claims. He will also aid in the implementation of loss control recommendations, as well as be a resource for incident investigations.

Additionally, he will work in tandem with Ed Tobin, Esq., McConkey's director of claims, to support clients by advocating for them during insurance company assessments and keeping them informed during claims handling procedures. This is all in an ongoing effort to implement and continuously improve practices and procedures to help clients manage their total cost of risk.

*"We're excited to bring Robert on board. We are confident his experience will be a great value-add for our clients. This will allow them to focus on operating their business while we focus on managing their total cost of risk,"* said Mike Harter, Vice President and Principal, McConkey Insurance & Benefits.

## **Providence Engineering Corp. Announces Promotion of Mark Broomell, P.E. to Vice President of Food Processing Facilities**

With a career spanning more than three decades, Mark has worked with many food industry clients across North America to deliver exceptional building and cold-storage designs. He has earned a reputation for diligently exploring the unique requirements of each food processor and then tailoring design solutions that incorporate food safety into the building itself.

In his former role as Director of Food Processing Facilities, Mark was instrumental in the growth of Providence's Food-Facility Design department. He helped engineer proprietary structural and thermal building details that enable the food industry's highly specialized buildings to operate safely and efficiently. He has also repeatedly delivered successful projects, which has garnered many longstanding client relationships.

In his new role as Vice President of Food Processing Facilities, Mark's depth of experience and continued leadership will help to ensure that constructible, affordable and timely solutions remain the hallmark of the firm.

## **Saxton & Stump Lawyers and Consultants Adds Two Regulatory and Government Affairs Professionals to Launch New Practice**

Attorney and lobbyist Kathleen Duffy Bruder, former Deputy Chief of Staff under Gov. Tom Corbett, joined Saxton & Stump Lawyers and Consultants to lead its newly-formed Regulatory and Government Affairs practice, bringing with her Amanda W. McClellan, who will serve as Government Relations Advisor. Built on the foundation of two former judges and additional Saxton & Stump attorneys engaged in government operations, regulations and following the impacts of new legislation, the team is well-positioned to support a broad client base under Kathy's leadership.

*"I'm pleased to be joining Saxton & Stump alongside Hon. Lawrence F. Stengel (Ret.) and Hon. Robert A. Graci (Ret.),"* said Bruder. *"Their depth of governmental experience at the state and federal levels, combined with my experience in the legislative and executive branches, will bring a unique balance of resources and provide valuable perspective to the businesses and organizations we serve."*



If you have news to share, please send your press release for consideration to:  
Kristi Pronovost, Director of Marketing & Communications: [kristi@abckeystone.org](mailto:kristi@abckeystone.org)

# The **Latest** from **OSHA**

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## Revised Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19)

### **Memorandum dated May 19, 2020:**

This memorandum provides updated interim guidance to Compliance Safety and Health Officers (CSHOs) for enforcing the requirements of 29 CFR Part 1904 with respect to the recording of occupational illnesses, specifically cases of COVID-19. On May 26, 2020, the previous memorandum on this topic will be rescinded, and this new memorandum will go into and remain in effect until further notice. This guidance is intended to be time-limited to the current COVID-19 public health crisis. Please frequently check OSHA's webpage at [www.osha.gov/coronavirus](http://www.osha.gov/coronavirus) for updates.

Under OSHA's recordkeeping requirements, COVID-19 is a recordable illness, and thus employers are responsible for recording cases of COVID-19, if:

1. The case is a confirmed case of COVID-19, as defined by the Centers for Disease Control and Prevention (CDC);
2. The case is work-related, as defined by 29 CFR § 1904.5; and
3. The case involves one or more of the general recording criteria set forth in 29 CFR § 1904.7.

Confirmed cases of COVID-19 have now been found in nearly all parts of the country, and outbreaks among workers in industries other than healthcare, emergency response, or correctional institutions have been identified. As transmission and prevention of infection have become better understood, both the government and the private sector have taken rapid and evolving steps to slow the virus's spread, protect employees, and adapt to new ways of doing business. As the virus's spread now slows in certain areas of the country, states are taking steps to reopen their economies and workers are returning to their workplaces. All these facts—incidence, adaptation, and the return of the workforce—indicate that

employers should be taking action to determine whether employee COVID-19 illnesses are work-related and thus recordable. Given the nature of the disease and ubiquity of community spread, however, in many instances it remains difficult to determine whether a COVID-19 illness is work-related, especially when an employee has experienced potential exposure both in and out of the workplace.

In light of these considerations, OSHA is exercising its enforcement discretion in order to provide certainty to employers and workers. Accordingly, until further notice, OSHA will enforce the recordkeeping requirements of 29 CFR Part 1904 for employee COVID-19 illnesses for all employers according to the guidelines below. Recording a COVID-19 illness does not, of itself, mean that the employer has violated any OSHA standard. And pursuant to existing regulations, employees with 10 or fewer employees and certain employers in low hazard industries have no recording obligations; they need only report work-related COVID-19 illnesses that result in a fatality or an employee's in-patient hospitalization, amputation, or loss of an eye.

...

Because of the difficulty with determining work-relatedness, OSHA is exercising enforcement discretion to assess employers' efforts in making work-related determinations.

In determining whether an employer has complied with this obligation and made a reasonable determination of work-relatedness, CSHOs should apply the following considerations:

*The reasonableness of the employer's investigation into work-relatedness.* Employers, especially small employers, should not be expected to undertake extensive medical inquiries, given employee privacy

concerns and most employers' lack of expertise in this area. It is sufficient in most circumstances for the employer, when it learns of an employee's COVID-19 illness, (1) to ask the employee how he believes he contracted the COVID-19 illness; (2) while respecting employee privacy, discuss with the employee his work and out-of-work activities that may have led to the COVID-19 illness; and (3) review the employee's work environment for potential SARS-CoV-2 exposure. The review in (3) should be informed by any other instances of workers in that environment contracting COVID-19 illness.

*The evidence available to the employer.* The evidence that a COVID-19 illness was work-related should be considered based on the information reasonably available to the employer at the time it made its work-relatedness determination. If the employer later learns more information related to an employee's COVID-19 illness, then that information should be taken into account as well in determining whether an employer made a reasonable work-relatedness determination.

*The evidence that a COVID-19 illness was contracted at work.* CSHOs should take into account all reasonably available evidence, in the manner described above, to determine whether an employer has complied with its recording obligation. This cannot be reduced to a ready formula, but certain types of evidence may weigh in favor of or against work-relatedness. For instance:

- COVID-19 illnesses are likely work-related when several cases develop among workers who work closely together and there is no alternative explanation.
- An employee's COVID-19 illness is likely work-related if it is contracted shortly after lengthy, close exposure to a particular customer or coworker who has a confirmed case of COVID-19 and there is no alternative explanation.
- An employee's COVID-19 illness is likely work-related if his job duties include having frequent, close exposure to the general public in a locality with ongoing community transmission and there is no alternative explanation.
- An employee's COVID-19 illness is likely not work-related if she is the only worker to contract COVID-19 in her vicinity and her job duties do not include having frequent contact with the general public, regardless of

the rate of community spread.

- An employee's COVID-19 illness is likely not work-related if he, outside the workplace, closely and frequently associates with someone (e.g., a family member, significant other, or close friend) who (1) has COVID-19; (2) is not a coworker, and (3) exposes the employee during the period in which the individual is likely infectious.
- CSHOs should give due weight to any evidence of causation, pertaining to the employee illness at issue, provided by medical providers, public health authorities, or the employee herself.

If, after the reasonable and good faith inquiry described above, the employer cannot determine whether it is more likely than not that exposure in the workplace played a causal role with respect to a particular case of COVID-19, the employer does not need to record that COVID-19 illness. In all events, it is important as a matter of worker health and safety, as well as public health, for an employer to examine COVID-19 cases among workers and respond appropriately to protect workers, regardless of whether a case is ultimately determined to be work-related.

CSHOs will generally refer to CPL 02-00-135, *Recordkeeping Policies and Procedures Manual* (Dec. 30, 2004), and CPL 02-00-163, *Field Operations Manual* (Sept. 13, 2019), Chapters 3 and 6, as applicable. The following additional specific enforcement guidance is provided for CSHOs:

- COVID-19 is a respiratory illness and should be coded as such on the OSHA Form 300. Because this is an illness, if an employee voluntarily requests that his or her name not be entered on the log, the employer must comply as specified under 29 CFR § 1904.29(b)(7)(vi).

If you have any questions regarding this policy, please contact Elizabeth Grossman, Director of the Office of Statistical Analysis, at (202) 693-2225.



**Occupational Safety  
and Health Administration**

[www.osha.gov/coronavirus](http://www.osha.gov/coronavirus)



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\*Source: abc.org/spr



# Meeting Member Needs

## Chapter Provides Face Masks At-cost Exclusively to ABC Keystone Members

**W**orking safely during the midst of COVID-19 requires wearing masks on the jobsite and in the office when around others, and the Keystone Chapter was able to acquire a shipment of FDA-approved masks to help members meet this safety requirement. Over 100 member companies took advantage of the exclusive-member benefit, and picked up their masks in May.

Throughout the COVID-19 crisis, ABC Keystone's first goal has been to meet members' needs and respond to requests and questions. Thank you for reaching out and letting us know how we can better serve you during this time. We continue to develop new resources for your use. Thank you for making safety your top priority!



Did You Know?

ABC members have been setting the standard for safety, performance and integrity in construction since 1950.



135 Shellyland Road  
Manheim, PA 17545



## Connect with ABC Keystone on Social Media!

- Get the latest info on education and training
- Discover networking opportunities
- Stay informed on legislative updates
- Follow the apprenticeship happenings
- See members in action



*Visit [abckeystone.org](http://abckeystone.org) for more!*

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