

**TO: ALL PARTIES COMMENTING ON THE LABOR DEPARTMENT'S
PROPOSED REGULATIONS CONCERNING THE CONSTRUCTION
AND SAFETY HEALTH COURSE FOR MANUAL EMPLOYEES ON
PUBLIC BUILDING PROJECTS**

On October 30, 2007, the Connecticut Department of Labor (CTDOL) published in the Connecticut Law Journal its Notice of Intent to Adopt regulations concerning the Construction and Safety Health Course for Manual Employees on Public Building Projects. A thirty-day public comment period commenced on that date, and a public hearing was held in CTDOL's Wethersfield office on November 20, 2007. The following parties attended the public hearing and/or provided written or oral comments, or otherwise expressed interest within the thirty-day public comment period in receiving the final version of the proposed regulations:

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The CTDOL has considered the comments received and has made the modifications noted below to the proposed regulations. A copy of the final draft of the regulations is attached. The following is a summary of the comments received and the action taken in response to those comments. The Agency response to each comment appears in bold immediately following the comment.

I. **Comments of the Connecticut Construction Industries Association, Inc. (“CCIA”)**

- (1) §31-53b-3. Verification of Compliance – The statute authorizing the proposed regulation, Conn. Gen. Stat. § 31-53b(a), requires a contractor to “furnish proof to the Labor Commissioner” of course completion. The statute does not provide for the “certification” of such proof by contractors. Accordingly, CCIA contends that the language of the proposed regulation should be identical to the text of the statute, and that the word “certify” should be deleted and substituted with the words “furnish proof” in lieu thereof.

CTDOL Response: Subsection (a) of Section 31-53b of the Connecticut General Statutes provides in relevant part:

Each contract entered into on or after July 1, 2007,... shall contain a provision requiring that, not later than thirty days after the date such contract is awarded, each contractor furnish proof to the Labor Commissioner that all employees performing manual labor on or in such public building... have completed a course of at least ten hours in duration in construction safety and health...

(Emphasis Supplied.)

CTDOL interprets the above statutory language to require each contract awarded to a contractor on a public building to contain a provision requiring such contractor to verify that each employee performing manual labor on a public building project has satisfied the safety training requirement. Because the statutory language specifically allocates the burden of proving compliance on the contractor to whom the contract has been awarded – and not on the individual employee – the CTDOL has determined that in order for the “proof” to have validity, the verification envisioned by the statute requires something more than the mere production of a safety course completion card from a prospective employee. Rather, the statute requires a certification from the contractor to authenticate that the proof provided by the employee, e.g., safety course completion card, is accurate. Accordingly, the language of the proposed regulation is unchanged.

- (2) §31-53b-3. Verification of Compliance – CCIA further contends that a contractor may not know within the initial thirty- (30) day period after being awarded a contract who will be performing manual labor on a given project. It is suggested that the language of the proposed regulation should enable contractors to furnish proof of compliance for employees who have not yet been hired by a contractor in the initial thirty- (30) day period, but who are hired at the time the project actually commences.

CTDOL Response: CTDOL concurs with CCIA that the statutory time frame during which a contractor is required to furnish proof to the Labor Commissioner – not later than thirty (30) days after the date such contract is awarded – imposes a tight deadline on a contractor. Moreover, the agency agrees that such a contractor may not know as of that early date who will be performing manual labor on the project. Nonetheless, the thirty-day period is explicitly provided for in the statute, and its meaning is plain and unambiguous. Accordingly, it is not within the authority of this agency to modify that time period to a date more proximate to the initiation of work on the project.

- (3) § 31-53b-4. Certified Payroll - CCIA reiterates that the authorizing statute, Conn. Gen. Stat. § 31-53b(a), merely requires a contractor to “furnish proof” to the Labor Commissioner” of course completion. Although the “proof” might accompany a certified payroll, CCIA maintains that such proof should not be incorporated into the certified payroll itself.

CTDOL Response: CTDOL reiterates and incorporates in its entirety the response provided to Comment #1. CTDOL concurs with CCIA that each employee’s course completion card may be affixed to the certified payroll, but, as stated above to Comment #1, the agency disagrees that the card, in and of itself, constitutes the “proof” that is contemplated by the statute. Rather, it is the view of the Department that the intent of the statute is effectuated when the proof provided by the employee

is authenticated by means of certification from the contractor. Accordingly, for the same reasons previously stated, CTDOL declines to make the modification requested by CCIA.

II. Comments of Paul Costello/IEBW

- (1) The statute authorizing the proposed regulations, Conn. Gen. Stat. § 31-53b, should be expanded from its present form to cover both public work building projects and private projects.

CTDOL Response: Subsection (a) of Section 31-53b of the Connecticut General Statutes expressly restricts its application to “the construction, remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any *public building project...*” (Emphasis supplied.) In light of this express limitation on jurisdiction, which is clear and unambiguous, the CTDOL cannot expand the application of the statute to cover private projects.

- (2) § 31-53b-1(8). Manual Labor - The definition of manual labor in the proposed regulations is unduly restrictive because it does not include “work in any specialized trade performed by an individual for which an occupational license is required.”

CTDOL Response: The legislative history of the bill clearly indicates the intention of the legislature to exclude individuals working in the licensed trades from the definition of manual labor covered by the statute. In remarking on the bill, Speaker of the House of Representatives, James Amann stated:

...it’s my interpretation that none of the licensed trades would be considered manual labor. Basically, from what was said, I think the only people that I believe may be covered are some of the people who work directly with the general contractor, cleaning and sweeping up the buildings because under what I just heard, it sounds like everybody else is a skilled person and not manual labor.

Remarks of Representative James A. Amann, Commenting on P.A. 06-175, 2006 House Proceedings, at 4158 (April 28, 2006).

Representative Kevin Ryan (139th Assembly District) corroborated the sentiments of Speaker Amann by offering the following rationale for the exclusion of employees of the licensed trades:

...And I think the reason we don’t cover the licensed folks is because of the fact that as part of their licensing, as part of their continuing ed credits, they would be taking these types of courses on a regular basis.

It's the folks that probably don't get any kind of continuing ed that we're concerned about...

Remarks of Representative Kevin Ryan (139th Assembly District), Commenting on P.A. 06-175, 2006 House Proceedings, at 4159 (April 28, 2006).

Accordingly, in light of the clearly expressed intention of the legislature to exclude the licensed trades from the coverage requirements of Conn. Gen. Stat. § 31-53b, the CTDOL is without authority to contravene that mandate.

- (3) § 31-53b-2(c). Five-Year Safety Card Duration – The proposed regulation does not provide for a precise expiration date for the safety course completion cards issued by the federal Occupational Safety and Health Administration Training Institute, and also fails to provide guidance with respect for retraining requirements after the expiration of such cards.

CTDOL Response: The CTDOL acknowledges the validity of the comments made. However, in the absence of a statutory change, the agency is not able to institute any substantive modifications to the statute as written. The authorizing statute, Conn. Gen. Stat. § 31-53b, makes a single reference to the effective date of safety course completion cards in subsection (c). By implication, this subsection invalidates a card older than “five years before the commencement date of such public works project,” but it does not expressly provide conditions for renewal or address retraining requirements for employees with such expired cards. Although CTDOL recognizes the need for further clarification of this issue, the agency is not empowered to make changes of this nature at this time.

III. Comments of Brian W. Canny

- (1) § 31-53b-1(8). Manual Labor – The definition of manual labor in the proposed regulations should include individuals engaged in the licensed trades because all of the vocational and technical schools in Connecticut are offering the type of training contemplated by Conn. Gen. Stat. 31-53b.

CTDOL Response: CTDOL reiterates and incorporates in its entirety the response provided to Paul Costello/IEBW in Comment II(2) above. The legislative history, particularly the remarks of Representative Kevin Ryan above, reveals that the legislature made the deliberate decision to exclude licensed trade employees for the precise reason stated in the comment, which is, that licensed trade employees receive this type of safety training in school or in continuing education classes. Thus, because they receive such education as part of their respective trades, they did not need to be included in the statute's coverage. Given this clearly stated rationale, the CTDOL declines to make any change to the proposed regulations.

IV. Comments of Michael J. Riley/Motor Transportation Association of Connecticut (“MTC”) as expressed at public hearing by Matthew Hallisey, Esq.¹

- (1) § 31-53b-1(8). Manual Labor – The definition of manual labor should not include the function of making a “delivery” of product to a construction site, and should be deleted from the definition of manual labor. According to the MTC, the dropping off and picking up of material to a construction site is an incidental aspect of construction for which the drivers of vehicles engaged in such activity should not be required to meet the requirements of Conn. Gen. Stat. § 31-53b.

CTDOL Response: The authorizing statute, § 31-53b, defines “public building” as “a structure... within a roof and within exterior walls or fire walls...” See Conn. Gen. Stat. § 31-53b(d). In light of the fact that the delivery function to construction sites customarily entails the dropping off and/or picking up of materials at a central location outside the “public building,” the CTDOL agrees with the comment that the delivery of materials is merely incidental to the construction project, and as such, is not implicated by § 31-53b. However, the function performed by drivers and helpers may exceed the scope of “delivery” and morph into the classification of on-site laborer when the product is delivered to multiple locations within the construction site at the request of the general contractor. To the extent that drivers of vehicles are engaged in the delivery of materials to a single, centralized location outside the “public building,” they are not performing “manual labor,” and they do not need to meet the requirements of this statute. Accordingly, the term “delivery” is deleted from the definition of manual labor in § 31-53b-1(8) of the proposed regulations.

¹ At the public hearing, Attorney Hallisey indicated at the conclusion of his remarks on the record that Mr. Riley, President of the MTC, was unable to attend the hearing. Attorney Hallisey requested and received permission to make a statement on behalf of Mr. Riley and the MTC.

REGULATIONS OF CONNECTICUT STATE AGENCIES
DEPARTMENT OF LABOR
CONSTRUCTION SAFETY

Section 1. The Regulations of Connecticut State Agencies are amended by adding sections 31-53b-1 to 31-53b-6, inclusive, as follows:

(NEW) §31-53b-1. Definitions.

As used in sections 31-53b-1 through 31-53b-6, inclusive, of the Regulations of Connecticut State Agencies:

- (1) "Certified payroll" means records maintained pursuant to section 31-53(f) of the Connecticut General Statutes;
- (2) "Construction safety and health course" means a ten-hour Outreach Course conducted in accordance with federal OSHA Training Institute standards, and, for telecommunications workers, a ten-hour training course conducted in accordance with federal OSHA standard, 29 CFR 1910.268;
- (3) "Contract" means a written contract, or amendment to any such contract, entered into on or after July 1, 2007, between the State of Connecticut or any of its agents, or by any political subdivision of the state or any of its agents for the construction, remodeling, refurbishing, rehabilitation, alteration or repair of a public building, the total cost of which is at least one hundred thousand dollars;
- (4) "Department" means the Connecticut Department of Labor, whose address is 200 Folly Brook Boulevard, Wethersfield, CT 06109;
- (5) "Employee" means "employee" as defined in section 31-71a(2) of the Connecticut General Statutes;
- (6) "Employer" means "employer" as defined in section 31-71a(1) of the Connecticut General Statutes;
- (7) "Labor Commissioner" means the commissioner of the Connecticut Department of Labor;
- (8) "Manual labor" means work performed by hand for any duration by any individual, including an apprentice, on a public building, including, but not limited to, the installation, construction, maintenance or repair of ceiling tiles, concrete, flooring, sheet rocking, painting, steel frames, hardware, glazing, masonry, carpentry, roofing and sheet metal work, except heating, ventilating and air conditioning. The term

specifically does not include work in any specialized trade performed by an individual for which an occupational license is required;

- (9) "OSHA" means the Occupational Safety and Health Act of 1988, 29 U.S.C.A. §§651-678;
- (10) "Public building" means "public building" as defined in section 31-53b of the Connecticut General Statutes;
- (11) "Public building project" means the construction work described in any contract subject to section 31-53b of the Connecticut General Statutes.

(NEW) §31-53b-2. Construction Safety Course

(a) Any employee performing manual labor on or in a public building shall be required, as a condition of performing such work, to demonstrate compliance with section 31-53b of the Connecticut General Statutes by having completed a construction safety and health course.

(b) Proof of course completion may be demonstrated through either presentation of a bona fide student course completion card issued by the federal Occupational Safety and Health Administration Training Institute, or by presentation of documentation provided to the employee by the trainer certified by the Institute subsequent to the course completion and prior to the actual issuance of the completion card.

(c) For purposes of these regulations, any card with an issuance date more than five years prior to the commencement date of such public building project shall not constitute proof of compliance with section 31-53b of the Connecticut General Statutes and this section.

(NEW) §31-53b-3. Verification of Compliance

Within thirty days of the award of any contract, the contractor to whom such contract is awarded shall certify on a form prescribed by the Labor Commissioner that all employees performing manual labor on a public building project have completed a construction safety and health course.

(NEW) §31-53b-4. Certified Payroll.

- (a) (1) For each employee who performs manual labor on a public building project subject to section 31-53(f) of the Connecticut General Statutes, the employer shall affix a copy of the construction safety course completion card or other documentation provided by the trainer certified by the Occupational Safety and Health Administration Training Institute to the certified payroll submitted to the contracting agency on which such person's name appears.

- (2) Each employer subject to this subsection shall certify to the following statement on the certified payroll submitted monthly to the contracting agency in accordance with section 31-53(f) of the Connecticut General Statutes:

I hereby certify that each employee performing manual labor on a public building construction project worksite has successfully completed a course in construction safety and health approved by the federal Occupational Safety and Health Administration Training Institute, or in accordance with 29 CFR 1910.268 for telecommunication workers, that is at least ten (10) hours in duration as of the time the employee begins work on a public building construction contract, and that documentation establishing the successful completion of such a course is affixed to this certified payroll.

- (b) For those public building projects not subject to section 31-53(f) of the Connecticut General Statutes, each employer shall certify to the following statement, on a form prescribed by the Labor Commissioner:

I hereby certify that each employee performing manual labor on a public building construction project worksite has successfully completed a course in construction safety and health approved by the federal Occupational Safety and Health Administration Training Institute, or in accordance with 29 CFR 1910.268 for telecommunication workers, that is at least ten (10) hours in duration as of the time the employee begins work on a public building construction project contract, and that documentation establishing the successful completion of such a course is affixed to this form.

(NEW) §31-53b-5. Investigation.

For purposes of determining compliance with Section 31-53b of the Connecticut General Statutes, the Labor Commissioner or any authorized representative of the commissioner shall have authority to require any employer subject to these regulations to provide full and correct statements in writing with respect to the training status of each employee who performs manual labor on any public building project.

(NEW) §31-53b-6. Penalty.

(a) Any employee performing manual labor on a public building project without proof of course completion as provided in section 31-53b-2 of these regulations shall be subject to removal from the worksite if such employee does not provide such proof to the Labor Commissioner by the fifteenth day after the date the employee is determined to be in noncompliance with these regulations. Any such employee who is determined to be in noncompliance with these regulations may continue to work on a public building project for a maximum of fourteen consecutive calendar days while bringing his status into compliance.

(b) The Labor Commissioner may make complaint to the prosecuting authorities regarding any employer or his agent, or officer or agent of the corporation, who files a false certified payroll pursuant to section 31-53b-4 of the regulations of Connecticut State Agencies.

STATEMENT OF PURPOSE: These proposed amendments to the Regulations of Connecticut State Agencies are intended to implement the provisions of Conn. Gen. Stat. §31-53b. The regulations are designed to outline the required safety and health course required to be completed by individuals performing manual labor on or in a public building, as defined by statute, and the penalties associated with non-compliance with the statute, e.g. the employee's removal from the worksite. The regulations are new, and will not change existing regulations – but do underscore the statutory requirement, under Conn. Gen. Stat.31-53b, for completion of the OSHA training course for any individual who performs manual labor on a public works project which is covered by the Act within five years of the commencement date of the public works project.

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