



**December 3<sup>rd</sup>** – Annual Membership Meeting. Contractor members, join us at the APMC office for the annual meeting. Election of officers for the 2010 – 2011 term will be held and bylaws changes will be approved. Meeting starts at noon. Lunch will be provided.

**December 11<sup>th</sup>** – BIG CHEESE, CSUS Alumni Center, 11:30 a.m. – 2 p.m. Invitations have been mailed. Please be sure to RSVP by Friday, December 4<sup>th</sup>.

**January 7<sup>th</sup>** – Membership Meeting. Location & program to be announced.

**February 11<sup>th</sup>** – APMC/SMACNA Joint Installation Dinner.

### OSHA Reports

*On Top 10 Safety Violations For 2009*

On October 27, 2009, the Occupational Safety and Health Administration (OSHA) revealed the preliminary top 10 most-frequent workplace safety violations for 2009 as part of a presentation at the NSC's annual Congress & Expo. The number of top 10 violations has increased almost 30 percent over the same time period in 2008, reported the agency.



**The workplace violations are:**

**Scaffolding:** 9,093 violations. Scaffold accidents most often result from the planking or support giving way, or to the employee slipping or being struck by a falling object.

**Fall Protection:** 6,771 violations. Any time a worker is at a height of four feet or more, the worker is at risk and needs to be protected. Fall protection must be provided at four feet in general industry, five feet in maritime and six feet in construction.

**Hazard Communication:** 6,378 violations. Chemical manufacturers and importers are required to evaluate the hazards of the chemicals they produce or import, and prepare labels and safety data sheets to convey the hazard information to their downstream customers.

**Respiratory Protection:** 3,803 violations. Respirators protect workers against insufficient oxygen environments, harmful dusts, fogs, smokes, mists, gases, vapors and sprays. These hazards may cause cancer, lung impairment, other diseases or death.

**Lockout-Tag out:** 3,321 violations. "Lockout-Tag out" refers to specific practices and procedures to safeguard employees from the unexpected startup of machinery and equipment, or the release of hazardous energy during service or maintenance activities.

**Electrical (Wiring):** 3,079 violations and Electrical: 2,556 violations. Working with electricity can be dangerous. Engineers, electricians and other professionals work with electricity directly, including working on overhead lines, cable harnesses, and circuit assemblies. Others, such as office workers and sales people, work with electricity indirectly and may also be exposed to electrical hazards.

**Ladders:** 3,072 violations. Occupational fatalities caused by falls remain a serious public health problem. The US Department of Labor (DOL) lists falls as one of the leading causes of traumatic occupational death, accounting for eight percent of all occupational fatalities from trauma.

**Powered Industrial Trucks:** 2,993 violations. Each year, tens of thousands of injuries related to powered industrial trucks (PIT), or forklifts, occur in US workplaces. Many employees are injured when lift trucks are inadvertently driven off loading docks, lifts fall between docks and an unsecured trailer, they are struck by a lift truck, or when they fall while on elevated pallets and tines.

**Machine Guarding:** 2,364 violations. Any machine part, function, or process that may cause injury must be safeguarded. When the operation of a machine or accidental contact injures the operator or others in the vicinity, the hazards must be eliminated or controlled.

*Source: National Safety Council*

## Bonus And Overtime Calculations

Many companies may offer employees some sort of bonus this month. Do you count this as income when calculating an hourly or non-exempt employee's "regular rate" for determining overtime pay for hours worked over 40 in the workweek?



The Fair Labor Standards Act (FLSA) spells out what types of payments may or may not be excluded in computing an employee's regular rate. In general, discretionary bonuses, gifts, and employer payments to certain profit-sharing, thrift and savings plans may be excluded.

A bonus is discretionary when it is an unexpected, one-time payment that is not part of a defined bonus plan with specific criteria. For example, if your General Manager comes to you on December 21st and says, "As a reward for your hard work this year, here's \$500," this would be a truly discretionary bonus.

A bonus is non-discretionary when it is part of an announced bonus plan. For example, if your company says that employees will receive a \$500 bonus if the company makes a \$50,000 profit this year, this would be non-discretionary.

Awards for Performance. Section 778.331 of the FLSA describes how to handle awards for performance on the job. It states that "where a prize is awarded for the quality, quantity or efficiency of work done by the employee during his customary working hours at his normal assigned tasks, it is obviously paid as additional remuneration for employment. Thus prizes paid for cooperation, courtesy, efficiency, highest production, best attendance, best quality of work, greatest number of overtime hours worked, etc., are part of the regular rate of pay."

As such, nondiscretionary bonuses like attendance bonuses, pay-for-performance bonuses, and bonuses given in lieu of an annual pay increase must normally be added to the employee's regular pay in order to properly calculate the regular rate and the overtime rate.

One exception is for bonuses that are paid as a percentage of total earnings, which provide for the simultaneous payment of overtime due on the bonus.