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SMAC SMAC Legislative Report

Of CALIFORNIA News from the Small Manufacturers Association of California

A compilation of news and commentary on the recent actions of California Legislators and bureaucrats in Sacramento

MANUFACTURERS WILL INCLUDE 'FACTORYLESS GOODS PRODUCERS' UNDER NEW GOVERNMENT PROPOSAL

"If an establishment doesn't actually manufacture something, why should it be classified as a manufacturer? If a company doesn't have a factory and means of transforming inputs into goods, why should that be classified as manufacturing? If a firm doesn't employ workers to transform inputs into finished goods, why is that manufacturing?"

.Miles Free, Director, Technology and Industry Research, PMPA

"Jeff is a self-made business man. He has a high school diploma. He started his machine shop in his garage and grew it to a company with 65 employees and 25 million annual sales. Through a very brief lapse in judgment, he is going to cause 65 employees to lose their job and he feels an extreme amount of guilt over this."

. John R. Crowley of The Crowley Law Firm PLLC

By Tom Martin
SMAC Executive Director
& Legislative Chairman

The Economic Classification Policy Committee (ECPC) of the Census Bureau is considering changing the definition of manufacturing to include "Factoryless Goods Producers" (FGP) as part of an update to the North American Industry Classification System (NAICS) 2017 according to Miles Free, Director of Technology and Industry Research for Precision Machined Products Association, (PMPA).

The ECPC says "A factoryless Goods Producer (FGP) establishment outsources all of the transformation steps traditionally considered manufacturing (i.e., the actual physical chemical or mechanical transformation of inputs into new outputs), but undertakes all of the entrepreneurial steps and arranges for all required capital, labor, and material inputs required to make a good."

Sara Haimowitz of Coalition for a Prosperous America (CPA) reports more than 26,000 people nationwide have submitted comments in opposition to the administration proposal that would hide the damage from past trade agreements. (The public comment period ended July 21.) The change, initiated by the little-known Economic Classification Policy Committee, is called the Factory-less Goods Production (FGP) and Global Value Chain (GVC) rule.

"Under this deceptive reclassification plan, goods assembled by foreign workers and imported here for sale would no longer be counted as imported goods, but rather as manufacturing "services' imports," said Brian O'Shaughnessy, Chairman of Revere Copper and Chief Co-Chair of the Coalition for a Prosperous America. "The proposal would artificially inflate manufacturing production and wages, distorting U.S. job and trade data by reclassifying U.S. corporations that offshore American jobs as 'factoryless goods' manufacturers.

"The task of fixing destructive trade and economic policies will become more difficult if government statistics mislead Congress and paint a falsely positive picture," continued O'Shaughnessy.

Under the proposal, imported products from foreign contract manufacturers hired by a US company will no longer be a "goods import" but rather a "manufacturing services import". This means that products from Flextronics in Mexico, which makes components in Mexico for US firms that are shipped to the US, would no longer be considered a "goods import" but a "services import". Additionally, Apple iPhones made in China by Foxconn could be considered U.S. exports when sold to other countries.

"The unexpectedly large volume of citizen objections to this rule should surprise the administration and cause them to halt this statistical change. World Trade Organization leadership has shown hostility to classifying goods as made in a particular country, saying they are 'goods of the world'," said Michael Stumo, CEO of CPA. "Some global institutions like the International Monetary Fund (IMF) have already adopted similarly deceptive statistical methods which cover up the damage done by years of bad trade policies."

"The factoryless goods production proposal could undermine Buy America laws and further incentivize the offshoring of our industrial base," continued Stumo. "It could make enforcement of U.S. laws against foreign trade cheating more difficult."

The "factoryless goods" proposal, designed by the administration's Economic Classification Policy Committee (ECPC), would also spur a disingenuous, overnight increase in the reported number of U.S. manufacturing jobs as white-collar employees in firms

like Apple – now rebranded as "factoryless goods producers" – would suddenly be counted as "manufacturing" workers. This shift would create a false increase in U.S. manufacturing wages and output.

Americans want the good manufacturing jobs that our trade policies are killing," said O'Shaughnessy, "not to be falsely told that manufacturing production and employment is growing."

NEWLY PRODUCED POLYMER MATERIALS MAY CHANGE, IMPACT MANUFACTURING

IBM Research scientists in San Jose, CA have successfully discovered a new class of polymer materials that can potentially transform manufacturing and fabrication in the fields of transportation, aerospace, and microelectronics.

Through the unique approach of combining high performance computing with synthetic polymer chemistry, these new materials are the first to demonstrate resistance to cracking, strength higher than bone, the ability to reform to their original shape (self-heal), all while being completely recyclable back to their starting material, according to the IBM scientists.

They said these materials can also be transformed into new polymer structures to further bolster their strength by 50% - making them ultra strong and lightweight. This research was published in the peer-reviewed journal, Science, with collaborators including UC Berkeley, Eindhoven University of Technology and King Abdulaziz City for Science and Technology, Saudi Arabia's national science agency and laboratories.

These new experimental polymers could deliver cheaper, lighter, stronger and recyclable materials ideal for electronics, aerospace, airline and automotive industries. Researchers used a novel 'computational chemistry' hybrid approach to accelerate the materials discovery process that couples lab experimentation with the use of high-performance computing, IBM said.

2014 STUDY SAYS INDIA IS UNITED STATES LARGEST DEFENSE MARKET

India is currently the United States' largest defense market jumping 23 places in just one year, according to the *Balance of Trade* study issued in February, 2014 by IHS Inc., the leading global source of critical information and insight.

IHS is a global information company with experts in the pivotal areas shaping today's business landscape: energy, economics, geopolitical risk, sustainability and supply chain management.

"In 2013, we are seeing trade patterns fundamentally change for the dominant players," said Ben Moores, the study's author, senior analyst with IHS Aerospace & Defense Forecasting. "The most notable change is the spectacular level of imports from India. China, Indonesia, Egypt and Taiwan all saw imports increase by around one billion. When we look at India, those figures in 2013 were $5.9 billion. By 2015, our forecasts show that number jumping to about $8.16 billion."

KNOW THE LAW

UNAUTHORIZED WORKERS CAN SUE FOR VIOLATIONS OF CALIF. LABOR LAWS

Atkinson, Andelson, Loya, Ruud & Romo (AALRR) Attorneys, Partner Carol A. Gefis, and Senior Associate Jonathan Judge, report the California Supreme Court has held in *Salas v. Sierra Chemical* that all employees, regardless of immigration status, are entitled to all of the protections, rights and remedies provided under California employment laws. The court also held that California law is not pre-empted by federal immigration law prohibiting employment of unauthorized workers.

Plaintiff Vicente Salas obtained employment with Defendant Sierra Chemical Company in 2003, by providing a fraudulent Social Security number and documentation to the employer.

During his employment, Salas and several of his co-workers received letters from the Social Security Administration stating that the employee's name and Social Security number did not match. Salas alleged that he and his co-workers were told by their production manager at Sierra not to worry about the letter and that as long as they did good work they would not be terminated.

Salas was injured on the job and filed for workers' compensation. Sierra told Salas that he could come back to work only when he received a complete medical release. Salas did not provide the release and Sierra did not hear from him again. Salas later sued for disability discrimination based upon his workers' compensation claim. Just before trial, Sierra learned of Salas's use of false documents in the employment application process

Sierra argued that it would not have hired Salas had it known of the false documentation, and that this evidence should bar his claims.

The trial court denied Sierra's motion, and Sierra appealed. The Court of Appeal concluded that Salas's claims were barred by both the doctrines of "after-acquired evidence" and "unclean hands," reasoning that the doctrine of after-acquired evidence barred Salas's causes of action because he had misrepresented to Sierra his eligibility under federal law to work in the United States. It also held that Salas's claims were subject to the doctrine of unclean hands because he had falsely used another person's Social Security number in seeking employment with Sierra.

The California Supreme Court granted review on the issue of the basis of preemption, and whether the federal Immigration Reform and Control Act of 1986 ("IRCA"), which prohibits the employment of unauthorized workers (and requires their termination when discovered), preempts or trumps the application of the antidiscrimination provisions of California's Fair Employment and Housing Act ("FEHA") to workers who are unauthorized aliens.

The Court reviewed the case law and legislation since the enactment of the IRCA and concluded that the FEHA is generally not (emphasis by AALRR attorneys).preempted by federal immigration law.

Since the Court found that preemption did not bar the suit, it next turned to the "after acquired evidence" defense raised by Sierra. The "after acquired evidence defense" refers to an employer's discovery, after an allegedly wrongful termination or refusal to hire, of information that would have justified a lawful termination or refusal to hire.

The Court determined that the defense may result in a reduction in available remedies, and bars an award of lost pay damages for any period of time after an employer's discovery of the employee's ineligibility to work in the United States, but does not act as an absolute defense or bar to the action, the AALRR attorneys said.

UNCLEAN HANDS MAY BE COMPLETE DEFENSE

The Court then turned to the "unclean hands" defense, which applies when a claimant has acted unconscionably or in bad faith in the very matter in which he seeks relief. The Court held that although unclean hands may be a complete defense to some causes of action, it may not (emphasis by AALRR attorneys) be used to defeat a claim based on a public policy, such as a discrimination claim, though it may reduce the damages awarded.

The Court noted that the employer's implied knowledge or suspicion of an employee's illegal status while employed would likely bar or weaken both of these defenses, so as not to encourage employers to turn a blind eye to suspicions that a worker is undocumented while it is of benefit to the employer, then assert the defense in the event of an employee lawsuit. This decision contrasts with the 2002 U.S. Supreme Court decision in *Hoffman Plastic Compounds v. NLRB*, in which the Court ruled that IRCA prevented undocumented workers from obtaining back pay for violations of the National Labor Relations Act.

Employers are not able to use an employee's or former employee's status as an unauthorized worker to entirely defeat that employee's claims under California law, since rights and protections afforded authorized employees will be extended to unauthorized employees.

However, assuming that the employer had no prior knowledge or reason to know of the employee's illegal status, the post termination discovery of the former employee's unauthorized status does effectively cut off damages from that point forward, since the employee would presumably have been terminated at that time.

Employers should also be reminded of the passage of California's so-called, 2013 Unfair Immigration-Related Practices package of laws (SB 666, AB 263, AB 524; which became effective January 1, 2014), and, which, among other provisions, allows for the suspension or revocation of a business license for threatening or retaliating against an employee based on citizenship or immigration status.

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EDD SAYS QUARTERLY WAGES AFFECT HOUSEHOLD EMPLOYER REQUIREMENTS

If you pay wages to people who work in or around your home, you may be considered a household employer. If you pay $750 in total cash wages or more in a calendar quarter, you must register with EDD (Employment Development Department) within 15 days. Register online at EDD's e-Services for Business. For more information, visit the EDD Household Employer page at http://www.edd.ca.gov/pdf_pub_ctr/de8829.pdf

BOEING CONTRACTORS FACE 20 YEAR PRISON SENTENCE FOR KICKBACKS

A 59-year-old Santa Ana, California machine shop owner, William P. Boozer, has pleaded guilty to wire fraud in connection with a bribery/kickback scheme involving Boeing military aircraft parts, U.S. Attorney Richard Callahan said. He is scheduled to be sentenced August 15, 2014.

Former Boeing Procurement Officer Deon Anderson, 47, pleaded guilty to multiple counts of mail and wire fraud in connection with a bribery/kickback scheme involving Boeing military aircraft parts, as well as structuring currency transactions to conceal his receipt of the cash bribes.

Boeing Company Defense Space and Security Division is a defense contractor providing military style aircraft to the United States Department of Defense and the United States armed services with offices and procurement operations located in St. Louis. Deon Anderson was a Procurement Officer for Boeing, based in the St. Louis area.

Globe Dynamics International, Inc., in Santa Ana, California, owned by Boozer, is a leader in producing small to large, close tolerance precision machined parts and the assembly of complex components. Globe Dynamics was a sub-contractor to Boeing on numerous United States government contracts.

Boozer, of Hacienda Heights, CA, owner and operator of Globe Dynamics, directed the day to day operations of the company, including the submission of contract bids. Boozer pled guilty to wire fraud in connection with a bribery/kickback scheme involving Boeing military aircraft parts during November 2009 through February 2013.

Inland Empire and Associates, Inc., Las Vegas, Nevada, is engaged in consulting to defense aircraft manufacturers and parts suppliers, including consulting for J. L. Manufacturing. Robert Diaz, Jr. 54, of Alta Loma was the owner and operator of Inland Empire, and personally consulted to J. L. Manufacturing and Jeffrey Lavelle relative to numerous Boeing sub-contracts.

J. L. Manufacturing of Everett, Washington, is an aerospace job machine shop specializing in hard metals, with the capability of producing small to medium sized complex parts of ferrous and non-ferrous materials, and was a sub-contractor to Boeing on numerous United States government contracts. Jeffrey Lavelle, owner and operator of J. L. Manufacturing, directed the day to day operations of the company, and oversaw all financial aspects of the company.

"PRICE CHECK ON AISLE 5"

According to an FBI press release, court documents and statements made in court, between November 2009 and February 2013 show Boozer requested the Procurement Officer for Boeing, Anderson, to provide him with non-public competitor bid information and historical price information in connection with Boeing military aircraft part purchase order requests for quotes. They communicated by telephone and e-mail between California and St. Louis in code on a regular basis, Boozer frequently requesting "Isle 5", a coded reference to a "price check on aisle 5", understood by Anderson to be a request for historical price information and competitor bid information.

Anderson gave the information to Boozer to be used in preparing and submitting bids on behalf of Globe Dynamics in response to approximately sixteen different Boeing requests for quotes relative to those various purchase orders, in exchange for cash payments. Of the sixteen bids Globe Dynamics was awarded seven purchase orders to supply United States military aircraft parts to Boeing totaling in excess of $1,500,000. The net benefit to Globe Dynamics on those seven purchase orders was approximately $116,339

Beginning in May 2011 and continuing through April 2013, Anderson provided J.L. Manufacturing, through Lavelle and Diaz, non-public competitor bid information and historical price information in connection with one and more Boeing military aircraft part purchase order requests for quotes.

Boozer paid Anderson in cash, and more than once they met in Huntington Beach, CA. for payments, the indictment said.

Lavelle used that information in preparing and submitting bids on behalf of J.L. Manufacturing to Boeing for approximately nine different Boeing requests for quotes relative to those various purchase orders. Of the those nine, J.L. Manufacturing was awarded seven purchase orders to supply United States military aircraft parts to Boeing totaling in excess of orders totaled approximately $2,052,746. (John R. Crowley of The Crowley Law Firm PLLC, counsel to Lavelle, said that prosecutors found after an in-depth investigation that Lavelle defrauded Boeing by approximately $100,000 to $200,000, as opposed to the $2 million first alleged.) In exchange for that information they made cash payments to Anderson in St. Louis and in California.

Anderson's sentencing has been set for October 15, 2014. Boozer, and Diaz, also pleaded guilty to related charges and are scheduled for sentencing August 15, 2014, and September 2, 2014, respectively. Attorneys for Co-defendant Jeffrey Lavelle, 52, Mukilteo, WA, the owner and operator of Everett, Washington-based JLM, said that Lavelle will plead guilty to a single count as part of the settlement. Each count of mail and wire fraud carries a maximum penalty of 20 years in prison and/or fines up to $250,000.

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