

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

DEFENSE DEPARTMENT'S GLOBALIZATION OF SUPPLY CHAIN THREATENS OUR INDUSTRY, NATIONAL SECURITY

"The Department of Defense and its major contractors are now dependent on foreign manufacturers for many of the military's most advanced weapons systems...The defense industry is a shadow of its former self, representing less than 3.5 percent of the U.S. economy, a position that continues to decline as defense budgets reach new lows with no chance of them growing faster than the economy."

Richard McCormack, publisher and producer of Manufacturing & Technology News,

"Wage theft is a crime and in addition to depriving workers of their rightful property, it gives an unfair advantage to businesses that do not abide by the law, pushes commercial activity into the underground economy, and allows perpetrators to avoid paying their fair share of public costs. "

2015 Santa Monica proposal to increase minimum wage.

By Tom Martin
SMAC Executive Director
& Legislative Chairman

, San Diego based manufacturing expert Michele Nash-Hoff reports more than three years ago, in 2012, she wrote an article about the release of the Senate Armed Services Committee report on counterfeit parts in the Department of Defense supply chain. The Committee had found over 1,800 cases of counterfeit parts in just the Air Force C-130J and C-27J cargo plane, as well as assemblies used in the Navy's SH-60B helicopter.

Nash-Hoff, San Diego based manufacturing expert, President of ElectroFab Sales and Chair California chapter of the Coalition for a Prosperous America said that to address weaknesses in the defense supply chain and to promote the adoption of aggressive counterfeit avoidance practices by the Department of Defense and the defense industry, an amendment to the National Defense Authorization Act for Fiscal Year 2012 was adopted in the Senate and signed by President Obama.

Instead of implementing the requirements of the Act, it appears that DOD "has entered a new phase of its centuries-long development, the latest characterized by globalization of supply chains and the inability of U.S. defense contractors and laboratories to drive technological change" according to Richard McCormack,

publisher and producer of the Manufacturing & Technology News, May 20, 2015 edition.

In this issue, McCormack reported on comments made by Bill Lynn, CEO of Finmeccanica North America and former Deputy Secretary of Defense from 2009 until 2011, at a meeting of the Center for Strategic and International Studies in Washington, D.C.

The defense sector and the U.S. military have "moved from being a net exporter of technology to a net importer," Lynn stated, adding "When their R&D budgets are combined to total a scant \$3 billion (or only 1.6 percent of revenue), the five biggest defense contractors -- Boeing, Lockheed, Raytheon, L3 and Northrop -- would not even make the list of the top 20 global companies that invest in R&D."

Lynn told the meeting, "Those are things where the commercial industrial base is stronger than the defense industrial base and in many ways the key to maintaining our future [defense] technology edge is to be able to import those technologies into our defense industrial base... Since many of the underlying technologies now reside outside of the United States, DOD has to figure out how to deal with foreign corporations and state-owned enterprises that hold the keys to its success."

DEPENDENT UPON FOREIGN MANUFACTURERS

McCormack noted, "The Department of Defense and its major contractors are now dependent on foreign manufacturers for many of the military's most advanced weapons systems...The defense industry is a shadow of its former self, representing less than 3.5 percent of the U.S. economy, a position that continues to decline as defense budgets reach new lows with no chance of them growing faster than the economy."

Lynn commented that "DOD is slowly catching up to the structural change caused by globalization of technology and supply chains. It is wrestling with the regulatory and procurement systems it has in place to monitor and conduct business with foreign suppliers, but it has little time to waste."

One of these regulations to which he referred is the Buy American Act that was passed by Congress in 1933. It required the U.S. government to give preferential treatment to American producers in awarding of federal

contracts. The Act restricted the purchase of supplies that are not domestic end products. For manufactured products, the Buy American Act used a two-part test: first, the article must be manufactured in the U.S., and second, the cost of domestic components must exceed 50 percent of the cost of all its components.

After the end of the Cold War and the subsequent Gulf War, the provisions of the "Buy American Act" were eased to allow purchasing off the shelf commercial parts (COTS) from foreign countries by the Defense Department and other government agencies if they met the same fit and function of parts made to strict military specifications. Previously, parts, assemblies, and systems were required to be substantially made in the United States or in a NATO country, such as Great Britain, France, and Germany.

In the early 1990s, most commercial parts were still being made in the United States, with some outsourcing to the Philippines, Hong Kong, and Singapore, so this change was pretty safe. Permitting commercial parts to replace Mil. Spec. parts probably drove out of business the small companies that catered exclusively to the military and that provided traceability per Military Specifications for parts supplied to government agencies, military contractors, and subcontractors. This was all done in the name of cost savings. Now, however, most commercial electronic components and microchips are fabricated in China.

PRESIDENT CAN WAIVE BUY AMERICAN ACT

The President has authority to waive the Act in response to the provision of reciprocal treatment to U.S. producers. Under the 1979 GATT Agreement on Government Procurement, the U.S.-Israel Free Trade Agreement, the U.S.-Canada Free Trade Agreement, the North American Free Trade Agreement, the Central American Free Trade Agreement, and the Korea Free Trade Agreement, access to government procurement by certain U.S. agencies of goods for the other parties to these agreements is granted.

If the Trans-Pacific Partnership Agreement is approved, the procurement chapter would require that all companies operating in any country signing the agreement be provided access equal to domestic firms to U.S. government procurement contracts over a certain dollar threshold. To meet this requirement, the U.S. would have to agree to waive Buy America procurement policies for all companies operating in the 10 other countries.

In fact, it was reported by Reuters in January 2014 that "The Pentagon repeatedly waived laws banning Chinese-built components on U.S. weapons in order to keep the \$392 billion Lockheed Martin Corp F-35 fighter program on track in 2012 and 2013, even as U.S.

officials were voicing concern about China's espionage and military buildup.

Lynn doesn't seem to think that there is anything dangerous in allowing more foreign participation in the defense industry, saying "that changing perceptions about foreign involvement in the defense industry are similar to what happened in the U. S. auto sector...Americans and their representatives in Congress were skeptical about foreign nameplates. But as foreign auto companies started building technologies in the United States and hiring American workers, the tide turned...The politicians care about the jobs, they care less about the nameplate."

Nash-Hoff said "It is incomprehensible to me to compare what happened to the U. S. auto industry to what is happening to the U. S. defense industry. The whole purpose of the defense industry is to protect our national sovereignty and national security. How can anyone in their right mind want to make our defense supply chain vulnerable to the foreign country, namely China, which has a written plan to replace us as the world's super power?"

NO CHINESE DEFENSE PLANTS IN UNITED STATES

Nash-Hoff said "The Chinese are never going to build plants in the U.S. to make parts for our defense supply chain. They have just stolen our technology to build up their own military power as evidenced by the "uncanny" similarity of China's newest stealth fighter, the J-31, as well as the Chengdu J-20 fighter jet, to the F-35 Lightning II advanced fighter jet.

"Does anyone believe that we will get any parts and assemblies needed by our defense industry when China has decided we are so weak that we cannot stop their aggression in Asia? We are not even safe to have parts sourced in Taiwan, South Korea, the Philippines, Malaysia, Indonesia, or Vietnam. These countries would all be targets for takeover by China once they lose their fear and respect for U. S. naval and air power."

Nash-Hoff added that when President Eisenhower warned us about the military-industrial complex, little did he know that the military-industrial would be superseded by the consumer-importer complex, which has led to the virtual demise of the military-industrial complex.

Nash-Hoff, as a manufacturing expert, states Congress must act to strengthen the Buy American Act, not weaken it, eliminate the incentives for offshoring, and provide incentives for bringing manufacturing back to America. We must protect the supply chain for defense and military products and systems, so that Defense Department can fulfill its primary mission of defending our country. If we don't, we are setting ourselves up for eventual defeat by our future enemies.

KNOW THE LAW

L. A. COUNTY SUPERVISORS ADOPTING \$15.00 PER HOUR MINIMUM WAGE

The Los Angeles County Board of Supervisors have voted 3-2 to instruct county attorneys to draft a law incrementally raising the county minimum wage to \$15.00 per hour by 2020, according to Atkinson, Andelson, Loya, Ruud & Romo attorneys Jonathan Judge and Ryan P. Kennedy,.

The details of the new law are not yet known and the Board of Supervisors will not vote on the wage increase until later this year. However, the county's resolution indicates the minimum wage hike will mimic the Los Angeles City minimum wage increase enacted last month. Specifically, starting in July 2016, the minimum wage will be set at \$10.50 with increases to \$12.00, \$13.25, \$14.25, and \$15.00 to follow annually in July. The county minimum wage will then increase annually based on inflation.

It is also expected that, as with the Los Angeles City ordinance, employers with 25 or fewer employees and non-profit organizations will have an additional one year delay to comply with each of the increases. More than ten million people reside in Los Angeles County. However, the minimum wage law will affect only those working in unincorporated areas of the county. The following County of Los Angeles website provides a list of communities that are in unincorporated areas: (<http://ceo.lacounty.gov/forms/Unincorp%20Alpha%20Web.pdf>).

While the City of Los Angeles and now the county have adopted minimum wage hikes, many other cities within the county have either declined to do so or are taking a wait-and-see approach. As a result, the minimum wage for employees working in the county may vary from city to city.

In the coming years, employers who operate in or have employees who work in multiple areas of the county will have to take special precautions to navigate the varied minimum wage areas and ensure their employees are paid the appropriate minimum wage.

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SANTA MONICA SAYS WAGE THEFT IS MAJOR ISSUE IN RAISING MINIMUM WAGE

With Santa Monica contemplating an ordinance to boost its minimum wage, city officials are exploring ways to enforce it, according to Santa Monica Outlook staff writer Nike Cervantes.

Councilmember Sue Himmelrich said she wants the city -- which is poised to approve a minimum wage of at least \$15.37-an-hour -- to explore ways to crack down on employers skirting the law or engaging in other forms of "wage theft."

The most common forms of wage theft include failing to pay the minimum wage or earned overtime or to provide meal and rest breaks, illegal paycheck deductions, failure to provide a final pay check and misclassification of workers as independent contractors, according to the motion.

"Wage theft is a crime," the motion says, "and in addition to depriving workers of their rightful property, it pushes commercial activity into the underground economy, and allows perpetrators to avoid paying their fair share of public costs."

Mayor Kevin McKeown said, "When we discussed our potential minimum wage law in June, I specifically mentioned wage theft, and plan for our law to offer enhanced protections,"

UNDERGROUND ECONOMY CHALLENGING STAFF

However, it notes that "federal and state enforcement agencies invariably receive insufficient funding to address the problem."

In a recent letter to Los Angeles Mayor Eric Garcetti, California Labor Commissioner Julie Su said that the growth in employers, employees and the underground economy in the state "challenges our staff."

"We have fewer than 60 field investigators to cover the whole state," she said. "In addition to field enforcement and Public Works enforcement, we process more than 30,000 new wage claims, seeking over \$100,000,000 in unpaid wages, every year. "Our Los Angeles office is our busiest by far, with over 5,000 wage claims filed a year."

The letters notes that rather than wait for the state to fund anti-wage theft efforts, many local governments have adopted their own versions they can enforce on their own.

A 2014 report by the University of California, Los Angeles Labor Center found that 655,000 low-wage workers in the county experience at least one violation in a given week. According to the Supervisor's motion, 80 percent of low-wage workers who work overtime are not compensated at the lawful rate of pay.

Another 80 percent of these workers are denied their right to meal and rest breaks. Nearly 1 in 5 low-wage workers in the county works off the clock, it says.

GOVERNOR DECLARES NEW STATE OF EMERGENCY IN LOCAL COUNTIES

Employers in Los Angeles, Riverside, San Bernardino, San Diego, Imperial, and Kern, counties

directly affected by the severe July storms may request up to a 60-day extension of time from the EDD to file their state payroll reports and/or deposit state payroll taxes without penalty or interest. This extension may be granted under Section 1111.5 of the California Unemployment Insurance Code (CUIC).

Written request for extension must be received within 60 days from the original delinquent date of the payment or return to file/pay. Visit EDD's "Emergency and Disaster Assistance for Employers" page for more information. If you have any questions, contact EDD's Taxpayer Assistance Center at 1-888-745-3886,

MANY WOMEN EMBEZZLERS FIND SMALL BUSINESSES ARE LUCRATIVE TARGETS

Security Magazine reports nearly 72 percent of U.S. federal actions involving employee theft in 2014 involved small businesses – organizations with fewer than 500 employees, according to the 2015 *Hiscox Embezzlement Watchlist*. Within that group, four of every five victim organizations had fewer than 100 employees, and more than half had fewer than 25 employees.

More than 40 percent of thefts were committed by an employee in the finance or accounting function, and 35 percent of cases involved multiple schemes. Women orchestrated the majority of actions across the data set, but their thefts resulted in a median loss of \$243,447 – nearly 30-percent less than their male counterparts.

The study found that financial services companies such as banks, credit unions and insurance companies are at greatest risk – 21 percent of employee thefts happened in this sector. Other organizations frequently struck by employee theft are non-profits (11 percent), municipalities (10 percent) and labor unions (9 percent).

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PRODUCER OFFERS FREE SAMPLE PACK OF WASHERS TO MANUFACTURERS

Manufacturers can get a free sample pack of washers from long time supplier Boker's Inc.

Boker's sample pack includes a variety of washer sizes and styles, including a D washer, tab washer, special shaped washer, dome shaped washer and notched washer. Samples include both metallic and non-metallic materials. With extensive washer offerings and customization capabilities, the sample pack exhibits Boker's ability to manufacture washers that meet specific application requirements.

Along with the washer sampling, Boker's sample pack includes its Total Service Brochure. Detailing the

company's complete range of products and services, the brochure includes Boker's stampings, secondary operations, quality assurance capabilities and certifications.

To request the 2015 stamping brochure, contact: Boker's Inc., at 800-927-4377 or visit Bokers.com.

'CLEAN-UP' CHANGES TO PAID SICK LEAVE LAW EFFECTIVE IMMEDIATELY

The California Chamber of Commerce reports that the Legislature has already passed "clean up" amendments to the paid sick leave law – the Healthy Workplaces, Healthy Families Act of 2014. These changes came just two weeks after the July 1 implementation date to begin providing the paid sick leave benefit to employees. The governor signed these amendments, and they became effective **immediately**.

AB 304 (Gonzales; D-San Diego) was urgency legislation passed to adjust how the law is implemented. The changes were intended to provide clarification and address some areas where employers expressed concern. Among other things, the amendments:

- Clarify who is a covered worker;
- Exempt retired annuitants;
- Provide alternative accrual methods other than one hour for every 30 hours worked;
- Clarify protections for employers that already provided paid sick leave or paid time off before January 1, 2015 (a grandfather clause);
- Provide alternative methods for paying employees who use paid sick leave;
- Explain the rules regarding reinstatement of benefits to rehired employees;
- Address unlimited sick leave policies; and
- Discuss recordkeeping obligations.

For further information review AB 304 or contact your labor counsel.

Thanks and a tip of the hat to:

*AALRR Attorneys Jonathan Judge, Ryan P. Kennedy
California Chamber of Commerce
Department of Fair Employment and Housing
Michele Nash-Hoff, ElectroFab Sales
Nike Cervantes, Reporter, Santa Monica Outlook
Security Magazine*

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SMAC Newsletter in the subject*