



Empire State  
Chapter

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## Illegal But Protected

### Federal Appeals Court says undocumented aliens enjoy employee status under the National Labor Relations Act

Although Federal law prohibits employers from knowingly hiring workers who cannot prove their legal right to work in the United States, a recent Federal Appeals Court decision requires that employers bargain with a union elected in whole or in part by undocumented workers. In *Agri Processor Co. v. National Labor Relations Board* (D.C.Cir. 2008), a kosher meat products wholesaler in New York unknowingly hired workers who had provided false Social Security numbers. After the company's workers voted to unionize, the company discovered that the majority of the voters in the union election were illegal aliens, so they refused to bargain. The NLRB rejected the notion that workers who should not have been hired in the first place cannot be considered employees under federal law. Agri Processor appealed the NLRB decision, and the Appeals Court upheld the NLRB decision.

With this appeals court decision, employers need to understand that if they hire illegal workers, they may get stuck with a union voted in by those who have no lawful right to be working in the first place. The unions will not hesitate to organize illegal workers, knowing that the results of the election will persist even if those workers' status becomes known. This should be viewed as a clear message about the collateral consequences of hiring undocumented workers.

## NYS Assembly Passes IDA Reform Bill with Prevailing Wage Requirement

In one of its first votes of the 2008 Legislative Session, the NYS Assembly, by a 108-34 vote, approved a bill to reauthorize and reform the IDA system in New York State. This "reform" bill requires the payment of prevailing wages for any construction or building renovation work and requires all employees to be paid no less than the median hourly wage for "all occupations" for the duration of the financial assistance and for five years thereafter. For a copy of the full text of the bill and a listing of how the members of the Assembly voted, visit <http://assembly.state.ny.us/leg/?bn=A8703>.

ABC will be meeting with Senate leadership next week to insure that this bill, with these wage requirement provisions, does not make it through the State Senate. We will keep you posted.

## Feb 1 OSHA Reporting Requirement

If your company had ten (10) or fewer employees at all times during the last calendar year, you do not need to keep OSHA injury and illness records unless OSHA or the BLS informs you in writing that you must keep records under Section 1904.41 or Section 1904.42. However, all employers covered by the OSH Act must report to OSHA any workplace incident that results in a fatality or the hospitalization of three or more employees.

(2) If your company had more than ten (10) employees at any time during the last calendar year, you must keep OSHA injury and illness records. The summary is posted from February 1 to April 30 of each year. Forms can be downloaded from <http://www.osha.gov/recordkeeping/OSHArecordkeepingforms.pdf>

### 2008 ABC Empire State Board of Directors

**Joel DiMarco**, Chairman, DiMarco Constructors/Admar Supply; **Sam Fresina**, Past Chairman, Tersal Construction Services, Inc.; **Jim Collins**, Chair-Elect, Milherst Construction; **Kenneth Gardiner**, Treasurer, Dannible & McKee,LLP ♦ **CNY Reps:** **Peter Donohoe, Jr.**, Demco New York Corp; **Jim Hagan**, Northland Associates.; **John Czebiniak**, Atlas Fence, Inc. ♦ **ENY Reps:** **Steve Ryan**, Frank J. Ryan & Sons; **TBD** ♦ **LI/Metro Reps:** **Ed Tyrrell**, Core Electric; **Todd Panzner**, Panzner Demolition; **Bill Marquardt**, Stout Construction ♦ **Roch. Reps:** **TBD** ♦ **WNY Reps:** **TBD**

## OSHA 10-HOUR TRAINING UPDATE

A new law will take effect in New York State on July 18, 2008 which mandates that every construction worker on a public construction project job site has completed an OSHA 10-Hour training course. **WILL YOU BE IN COMPLIANCE?**

ABC obtained grant funding through the NYS Hazard Abatement Board to offer OSHA 10-Hour training across the state at no charge to ABC members. We've run a number of classes to date, all with the maximum number of students. Due to the demand, we have scheduled 2 additional classes, on February 18 & 19 in Buffalo and February 28 in Rochester. Watch for registration information coming out soon!

In addition to our grant funded classes, ABC can work with ABC member contractors to implement on-site 10-Hour training courses, or can develop additional group courses for groups of ABC member contractors who have a need. These programs would not be eligible for funding under the grant and thus may require the contractor(s) to cover the costs. Call your regional office or ABC's Education affiliate, the Construction Training Centers of NYS, at 888-696-2237 for more information.

## ISN'T IT TIME YOU BECOME AN ACCREDITED QUALITY CONTRACTOR???

Contractors that successfully qualify as "Accredited Quality Contractors" are accredited for one year. Accredited Quality Contractors receive a plaque and other benefits, including:

- Wide recognition within the industry, the business community and the public
- National and local recognition in publications
- Authorization to use AQC language in bid documents
- Permission to use the AQC logo on letterhead, business cards and jobsite signs

In addition, Accredited Quality Contractors are acknowledged in ABC's national membership directory, [www.FindContractors.com](http://www.FindContractors.com), as being AQC certified.



## THE AQC PLEDGE

*As contractors, we want business owners and the public in general to know that we care about our employees and the communities in which we build, and that we are prepared to demonstrate this concern through our actions. We are proud to be contractors and proud to be an integral part of this great industry. We want our many "publics" to know that we are dedicated to the principles of free enterprise and that we are committed to providing our employees, now and in the future, with the skills they need to work safely and productively on the jobsite.*

For more information on becoming an AQC certified contractor, visit [www.abc.org/Business\\_Development/Accredited\\_Quality\\_Contractor.aspx](http://www.abc.org/Business_Development/Accredited_Quality_Contractor.aspx)



## IN NEED OF NEW AND BETTER CONTRACT DOCUMENTS???

Currently there are a variety of construction associations that produce standard form construction contracts. However, standard contracts published by one association are perceived as ultimately favoring that association's membership. There is also a growing industry frustration that heavily modified standard form documents hardly resemble the original text. Sometimes "modifications" are actually longer than the unrecognizable standard form.

ConsensusDOCS is the new choice in contract documents, because all the parties were invited to the drafting table and had a full vote in deciding final contract terms. All parties in a construction project deserve to work under a fair contract—one that they have confidence in because each of their respective associations had a true seat at the drafting table. The ConsensusDOCS drafting process is similar to negotiations for a specific project contract. The drafting mantra was to represent the best interests of the project, rather than a singular party. At all times, the contracts employ best practices and fair risk allocation for all of the parties. Consequently, these contracts focus on yielding better project results and fewer disputes. This unprecedented effort is the most significant industry development in the last 20 years. The diverse buy-in amongst all parties will literally transform the industry.

As an ABC member, you can have access to these cutting edge documents at a greatly reduced price. To find out more, visit [www.abc.org/Membership/Member\\_Discounts2/ConsensusDocs.aspx](http://www.abc.org/Membership/Member_Discounts2/ConsensusDocs.aspx)