



FEDOT Newsletter

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MARCH 2010

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March 27 FEDOT Meeting

FEDOT's next meeting will be taking place March 27, 2010, at Service Lloyds Insurance Company, 6907 Capital of Texas Highway North in Austin.

J.R. Nerat and Alan Owens of Badger Fire Protection will provide a presentation which will give an overview of key changes to the 2010 edition of NFPA 10, as well as explain how to address and apply the various new high-flow fire extinguisher requirements. They will also cover some equipment recommendations for MRI applications.

Agenda

- 9:00–9:30 a.m.
Registration
- 9:30–10:45 a.m.
Badger presentation
- 10:45 a.m.–12 noon
Sales tax topic
- 1:30–2:15 p.m.
State Fire Marshal's Office presentation
- 2:15–3:00 p.m.
Annual meeting and elections

Extinguisher Training Seminar

Fire Protection Specialist, Inc., is pleased to announce a "Fire Extinguisher Seminar" training opportunity being conducted at the world famous Billy Bob's Texas Club in Fort Worth, Texas on Thursday, April 21, 2010! This seminar addresses essential technical information necessary for properly understanding various fire extinguisher related regulations and how to comply with them.

Get industry related information from one of this industry's most respected and qualified instruc-

tors. Mr. J.R. Nerat is internationally recognized as one of the leading technical subject matter experts having the experience and credentials to provide training on this subject matter.

This training seminar is recognized by NAFED (National Association of Fire Equipment Distributors) for 8 educational credit hours for those attending the full program. For additional seminar information or to register, please call Tracy at 906-863-9578. ■

NAFED Advanced Kitchen Fire Protection Seminar

NAFED's Advanced Kitchen Fire Protection seminar is coming to Texas on March 26, 2010. It will take place from 9 a.m. to 5 p.m. at Service Lloyds Insurance Company in Austin.

This seminar deals with specific areas of NFPA 17A and 96, providing detailed visual and audio presentations on the problems

and solutions faced by the kitchen extinguishing systems technician.

This program is not designed to make the extinguishing system technician an expert in hood and duct construction and cleanliness, nor an expert on kitchen appliances. The purpose is to show obvious areas of concern that could affect the extinguishing

NW Austin/Arboretum Hotels

Holiday Inn
8901 Business Park Dr.
512-343-0888

Renaissance Austin
9721 Arboretum Blvd.
512-343-2626

Embassy Suites Austin
9505 Stonelake Blvd.
512-231-4099

Hampton Inn Austin
3908 West Braker Lane
512-349-9898

Hilton Garden Inn Austin
11617 Research Blvd.
512-241-1600

Homewood Suites Austin
10925 Stonelake Blvd.
512-349-9966

Residence Inn Austin NW
3713 Tudor Blvd.
512-502-8200

Marriott Courtyard Austin NW
9409 Stonelake Blvd.
512-502-8100

Staybridge Suites Austin
10201 Stonelake Blvd.
512-349-0888

Candlewood Suites Austin
9701 Stonelake Blvd.
512-338-1611

system's effectiveness.

This seminar is a valuable training tool for both experienced and newer systems technician and provides an opportunity for 8 Education Credits toward certification renewal.

Visit www.nafed.org to register. Additional fees apply. ■

Message From the President

by Jim Shelton, M. Jacks Fire & Safety Equipment Co.

From time to time in our industry, questions about independent contractors may arise. I found an article, "Independent Contractor or Employee? Some Clarification," in *Texas Business Today* and felt that it would be beneficial to some of us. The following is an excerpt of that article.

Who is an independent contractor? In order to be considered an independent contractor, a worker must meet three separate criteria:

- 1) The worker is free from control or direction in the performance of the work.
- 2) The work is done outside the usual course of the company's business and is done off the premises of the business.
- 3) The worker is customarily engaged in an independent trade, occupation, profession, or business.

Employers often confront these issues when short-term or as-needed workers perform services for them. Any employer using what it considers to be "contract labor" should ask some questions up front.

Q. Is the service provided by the individuals in question essential to, and an integral part of, the service the employer provides to the public?

A. The less able an employer is to offer its primary service without the help of the people whose status is at issue; the more likely it is that they will be considered employees. Consider this: if certain services are so essential to a business that it will stand or fall based upon how well those services are performed, the business will naturally want to exercise enough discretion and control over the services to ensure they are good. That amount of control might qualify such workers as employees.

Q. What opportunity for profit or risk of loss is there for the worker? What kind of investment, other than his or her time, does the worker have in an enterprise?

A. An employee is paid for her time. She would not be expected to provide her own workplace, materials, tools, and supplies, or otherwise to invest her own money in the business. An employee who makes a costly mistake can be fired, but cannot legally be forced to work without pay. An independent contractor, on the other hand, is an independent businessperson with expenses of his or her own. He will be expected to provide or purchase everything he needs to do the job. If he fails to satisfy the customer, he would be required to redo the work for no additional compensation, or else face the risk of non-payment by the customer. These things create the opportunity for profit or loss.

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Independent Contractors – Bargain or Burden?

by Scott Sloan, Service Lloyds Insurance Co.

Many companies use independent contractors to perform work for them from time to time, but do you ever think about the consequences of doing this? The upside to using independent contractors includes not paying for employee benefits, minimal supervision, and someone to blame if there is a problem. But there can be a large downside as well.

Many times what we call independent contractors are what the Department of Labor, or the IRS, calls employees. I won't go into extensive detail about how to differentiate between the two, but basically if you direct a "contractor's" work, tell them when to show up and leave, or how to do the job, they are probably an employee. The IRS has a "20 Rule Test for Establishing Employment Relationship." A true independent contractor needs little or no supervision and performs the work on their schedule using their expertise. From an insurance standpoint, independent contractor's payroll is not used when calculating workers' compensation premiums, because they are not employees. Most insurance companies use the IRS definitions/rules to determine who is, and who is not, a contractor. So, at audit time you will need to have sufficient documentation to keep their

payroll from counting against your workers' compensation premium.

In the event of a workplace injury, strong documentation of the independent contractor relationship will be needed in order to keep your workers' compensation policy from paying for the "contractor's" injury. The Texas Department of Insurance, Workers' Compensation Division (TDI-DWC) is notoriously liberal with regards to making workers' compensation policies pay for contractors. They often take the viewpoint that insurance is insurance regardless of who is paying the premium and that an injured worker in need of medical assistance is more important than determining who is legally obligated to pay for the injury. This can be bad for your business, especially if it is a large claim. Experience Modifiers are calculated on the last three years of loss experience, not including the current or most recently expired policy period. So, a high cost claim by a contractor on your policy can raise your rates for years. In order to establish this independent contractor relationship, you should have a signed contract or hold harmless agreement. The TDI-DWC also has forms for assisting with this. But keep in mind these are generic forms and may

not work in all cases. (www.tdi.state.tx.us/forms/form20numberic.html)

Another downside can be "reputational damage." This is a risk that is often underestimated until it is too late. Most of your clients are going to view your employees and a subcontractor as the same people. They will not know, or care, about the difference. And if a subcontractor makes your client unhappy or does a poor job, your business may suffer the reputational damage. An unhappy customer, especially one who thinks they have been cheated, can spread a lot of negative publicity about your company before you even know they are unhappy. And the negative publicity bell is very hard to "unring." So keep a close eye on the performance of your subcontractors and especially the way they speak and interact with your customers.

To summarize, the use of independent contractors can save your organization money in the short term. But if they are not properly managed and the relationship not properly documented then there is significant risk of subcontractors costing you more in insurance premiums and customers than they are worth. ■

Message From the President, *continued*

The above points are all general factors, but there are many details that can be helpful in determining whether given workers are independent contractors or employees.

Cash flow: how the money gets from the customer or client to the worker is important. If the client pays the employer in general, and the employer pays the worker either by hour, by salary, or by commission, the worker looks more like an employee. If on the other hand, the employer pays the contract price for work completed, the worker would appear to be an independent contractor. Alternatively, if the client pays the worker and the worker remits an agreed-upon fee or percentage to the employer that would look more like an independent contractor situation. If the worker merely collects the pay from the client, passes it along to the employer as an agent would, and receives a share of it back, he would appear more like an employee than an independent contractor.

“Rent”: closely related to the cash flow issue is that of the compensation the worker gives the employer for use of its facilities or equipment. Keep in mind that the opportunity for profit or loss is an

important hallmark of an independent contractor. An employer normally provides its employees with everything needed to do their work. A business contracting with an independent contractor normally expects the contractor to supply what is needed to accomplish the project. If the worker uses the employer’s facilities and equipment at no cost, he looks like an employee. If the worker must pay some negotiated amount in rent or usage fees regardless of the contract price or of how much he takes in from customers, that looks very much like the kind of profit or loss opportunity any independent business that rents commercial space or equipment would have. It is important to note that this type of compensation does not have to be separately invoiced or structured as “rent” in order to be a factor in the profit or loss equation. The price for the work in the underlying contract can simply be adjusted to reflect the reasonable value of the employer’s assets used by the contractor in performing the work. Any such adjustments should be specifically noted in the contract.

These are the main factors the Texas Workforce Commission will consider when determining whether certain workers are employees or independent con-

tractors. No one factor will determine the entire case. The bottom line in any case in this area will be whether the facts show that the worker in question is in effect an independent business entity in a position to make a profit or loss based upon how he manages his own enterprise.

I hope that you found some of these points to be beneficial. You can find the entire article in the Fall 2009 Texas Business Today. To subscribe to this free publication write to: Commissioner Representing Employers 101 East 15th Street, Room 630 Austin, Texas 78778-0001 Website: www.texasworkforce.org

NAFED Conference News

NAFED is off to an exciting year. Dates are set for three conferences. Registrations for the Las Vegas, Nevada, conference exceeded expectations. The conference program delivered valuable information to both managers and technicians as well as networking opportunities with the vendors. It is not too late to sign up for NAFED’s Atlantic City or St. Louis conferences. Visit www.nafed.org for more details and online registration.

Special Executive Pre-Conference

- 2009 Compensation & Benefits Trends
- Reviewing Your Insurance Coverage When Offering a New Product or Service

Day One

- Keynote Address: Winning Business. Together!
- How to Start a Relationship with Your Local AHJ
- Exhibit Hall and Lunch
- The Future of Clean Agent Suppression
- Matching Extinguishers to Hazards
- Social Networking -- Grow Your Influence & Revenue
- Town Hall Meeting
- Exhibit Hall and Reception

Day Two

- Even Cowards Can Cold Call
- The Proper Inspection, Testing, and Maintenance of Pre-Engineered Systems
- Defibrillators Sales & Service
- Proper Servicing of Wheeled Unit Extinguishers
- NFPA Updates

Treasurer’s Report

Beginning Balance: \$23,212.05

Deposits:

December 2009	\$250.00
January 2010	\$3,400.00
February 2010	\$2,000.00

Total Deposits: \$6,650.00

Total Available-Checking: \$29,862.05

Saving Account Balance: \$4779.42

President’s Report

UNBELIEVABLE!!! It has been four years serving as President of FEDOT, and the time has definitely flown by. I would like to thank everyone for their support and let you know that it has been a privilege serving as your President.

I would like to give a special thank you to Larry Angle for his time and effort over these past four years. He really kept everything going and without him my job as President would have been very difficult.

Our annual meeting is coming up. It will be held March 27, 2010, in Austin, Texas. We will be electing a new President and Secretary and I encourage everyone to attend.

Jim Shelton



**FIRE
EQUIPMENT
DISTRIBUTORS
of TEXAS**

P.O. Box 179 Palestine, TX 75802

**FEDOT Meeting
March 27, 2010
9:00 AM to 3:00 PM**

**Service Lloyds
Insurance Company
6907 Capital of
Texas Hwy North
Austin, TX 78731
(800) 299-6977**

**Featuring J.R. Nerat
and Alan Owens of
Badger Fire
Protection**

See you there!

FEDOT OBJECTIVES

1. To cooperate with local fire chiefs and other interested governmental officials in order to secure the adoption of uniform standards and ordinances governing fire equipment and uniform interpretations thereof.

2. To recommend to the fire equipment industry such trade policies and practices as will stabilize the industry and protect the public interest, to gather and disseminate information and ideas which will improve Texans' protection against losses from fire, and to increase the professionalism of the Texas fire equipment industry. Each member of FEDOT acknowledges the ongoing responsibility implied in the sale and maintenance of fire protection equipment, and pledges to perform services

with a high standard of honesty, skills, and integrity that will foster the profession of fire equipment distributors.

3. To further the joint interest of, and build good-will between, distributors, dealers, and manufacturers of the fire equipment industry.

4. To gather information, statistics, and data that pertains to the fire equipment industry, and to share such information with members, governmental agencies, and interested persons.

5. To cooperate with insurance companies, governmental officials, manufacturers of fire equipment, and others who may be of assistance in furthering the purposes of FEDOT.

6. To provide a forum for the exchange of business information. (Certain information will be restricted to members.)

7. To sponsor research studies and in other ways assist members in the pursuit of increased awareness and utilization of our services.

8. To promote fellowship and cooperation among fire equipment distributors in Texas.

The objectives are also embodied within the FEDOT Code of Ethics. If you have any questions about the objectives and purposes of FEDOT, please contact us.