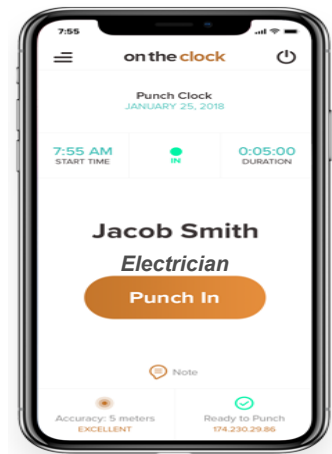


## When Does Work Begin?

We want to make all of our members aware of a recent court case [Carlos Gutierrez vs Brand Energy Services of California](#) and how it may impact some of your jobs going forward.

There has been a longstanding practice in the construction industry in the Bay Area that employee's move on to the jobsite on their time and leave the jobsite on your time. We are not exactly sure when or how this came to be, but that has been the practice. Several years ago in bargaining over the Inside Agreement, Local 302 asked us to memorialize this in the Agreement, and we did so on [page twenty](#), where we added *"When workmen are directed to report to a job, they will enter the jobsite on the employee's time and shall be at their reporting point and prepared to start work at the designated starting time. Workman will leave the reporting point at the end of the shift on the employer's time and be badged out/off the jobsite by quitting time."*

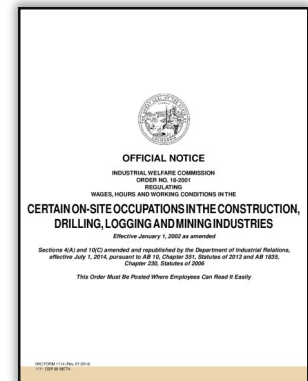


Keep in mind that we have a more diverse set of employers in our area than most NECA/IBEW areas. Every type of job from residential tracts and custom homes to steel mills, power plants and refineries and just about everything in between. Some of these facilities are large and require individual workmen to travel "after the first location where the employees presence is required by the employer." This could be getting on a bus or truck taking the individuals to the actual work site.

**Wage Order 16**, which governs the construction industry in California, was developed in 2001, and allows labor and management to bargain terms and conditions over this particular issue in Section 5D. The Industrial Welfare commission developed Wage Order 16 to specify minimum requirements for wages, hours and working conditions for all employers and employees in the construction industry. What happens if there is something in the relatively new Wage Order that conflicts with a Labor Code Statute passed by the California Legislature?

In the recent case cited above, the individual filed a lawsuit against his employer for not paying at least minimum wage for the pre-work commute at one of our local refineries from the time he badged in at the gate and waited for a bus to take him to his worksite. The Project Labor Agreement he worked under has language very similar to our Inside Agreement. While the trial court found in the employer's favor, the Appeals court ruled differently and remanded the case back to the trial court for further disposition. Based on the arguments presented, the plaintiff may ultimately succeed.

What the Appeals Court basically said, is this: California Wage Order 16, Section 5D, allows bargaining parties like NECA/IBEW to provide that employees covered by a collective bargaining agreement not be paid for otherwise compensable pre-shift employer-mandated travel after the first location required by the employer. But under no circumstances can the employer not compensate the employee at least the minimum wage for that time because the minimum wage law in California is non-waivable for any occupation, and if not for an exception provided in Wage Order 16, that travel time would be compensable under California law.



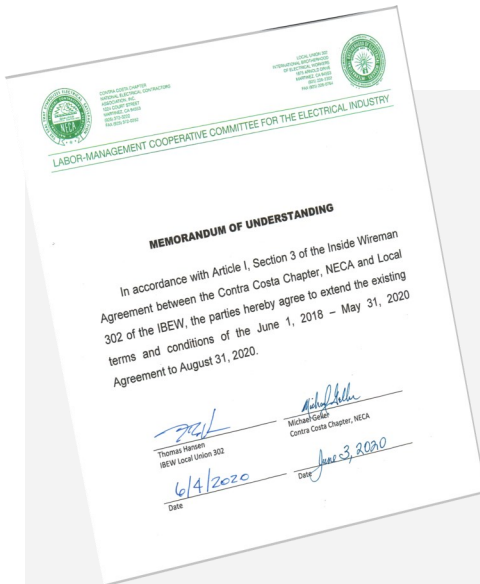
As a result, we recommend that if you require an employee to report to a certain location that requires subsequent travel to a second location that is the actual worksite, the employee's time begins at the reporting site and not the work location, despite what our agreement now says.

There are a number of potential fixes to this problem, but none will happen overnight. For now, please be aware of 1) Where you are asking your employees to report to work and 2) the amount of time and effort required to get from that point to where they will begin their workday.

# Inside Wireman Agreement

## 2018-2020

**WILL REMAIN IN EFFECT THROUGH AUGUST**



Among all the other changes the COVID-19 virus has brought about in the world, it has also impacted our negotiation process over our Inside Wireman Agreement with Local 302. The Order from the Contra Costa County Health Department, originally issued in March, with several subsequent revisions, prohibits public and private meetings of any kind. The negotiating teams met on March 5th to exchange proposals, but have had to postpone further face-to-face meetings because of the Order. Both sides are currently exchanging proposals and counter-proposals

by email with the hopes of getting to an agreement by the end of July. If not, the Council on Industrial Relations (CIR) will hear our case in August and issue a decision shortly afterward.

The parties agreed to a three month extension to the agreement that would have expired on May 31<sup>st</sup> of this year. For the time being, all terms and conditions (wages, fringe benefits, hours of work, etc.) will remain the same through August 31, 2020.

AnchoRock

## Safety & Compliance Webinar

Anchorock Solutions develops safety and compliance cloud-based software for the construction industry. Their mobile-first solutions include digital tailgate meetings, hazard tracking, pre-task planning and JHA's, OSHA incident reporting, accident investigation, safety inspections, COVID-19 toolkit, certifications and training tracking. [Click here](#) to view AnchoRock's recorded webinar on Safety and Compliance.



## **NECA has partnered with Premier Partners 3M and Graybar to Provide Personal Protective Equipment to NECA Contractors**

*Access to reliable PPE is critical to both contractors and their field employees during this pandemic. At NECA's request, Premier Partners Graybar and 3M are working hard to help provide access to an assortment of masks, gloves, glasses, and disinfectant for NECA contractors and their workers. The initial list will expand based on requests from NECA contractors and will also include a "demand forecast tool" that will help in meeting your needs during this time. To retain the integrity of this supply chain and access to genuine 3M parts, an order site will be available to current NECA member contractors.*

**"How to Order" information is provided below, along with links to the [N-95 Priority Checklist](#) and to the [Product List](#). You will need to be logged into the [NECA website](#) in order to utilize this program.**

**If you do not know your user name and password, please contact Sharon at the Chapter office for assistance.**

Phone: 925-372-3222 x10 Email: [sspare09@sbcglobal.net](mailto:sspare09@sbcglobal.net)

### **How to Order:**

- Evaluate PPE need based on [OSHA's Risk Pyramid for COVID-19](#).
- Evaluate the need of respirators and understand application and requirements.
- Review the [Premier Partner PPE Program for NECA Contractors Product List](#)
- Once the product list has been reviewed and you are ready to place an order, please complete a survey for your PPE needs. Once survey is completed and validated by NECA, Graybar will contact you to fulfill the order. Shipments will be prioritized by factors such as risk category, due date, and receipt time stamp.

Links to Survey Monkey: [PPE JUNE](#) [PPE JULY](#) [PPE AUGUST](#)

**Note: N95 masks, face shields and disinfectants remain on allocation and quantities will be limited. Priority will be given to contractors working in very high/high risk projects.**

# POLITICO ALERT

[www.PoliticoOnline.com](http://www.PoliticoOnline.com) "Connecting you to California"

1127 11<sup>th</sup> St., Suite 747 / Sacramento, CA 95814 / (916) 444-3770 / FAX (916) 442-6437

## **Insurance Commissioner Approves Critical COVID-19 Workers Compensation Rules**

The California Insurance Commissioner has approved the industry supported special regulatory filing to make rule changes to the California Workers' Compensation Uniform Statistical Reporting Plan—1995 (USRP) and the California Workers' Compensation Experience Rating Plan—1995 (ERP). The most significant rule change is the approval of the regulations that would exclude COVID-19 claims from a contractor's experience modification rate (EMR).

In light of [Executive Order N-62-20](#) which declared that COVID-19-related illness of an employee shall be presumed to have occurred at work (covered by workers' compensation), these proposed regulations were of critical importance in protecting contractors from significant increases in their EMR related to COVID-19 incidents. Below is a summary of all aspects of the approved rules:

### **Exclude COVID-19 Claims from Experience Rating**

Claims arising directly from a diagnosis of COVID-19 with an accident date on or after December 1, 2019, will be excluded from the experience rating calculations of individual employers.

### **Exclude Payments to Employees Who Continue to Be Paid While Not Working**

Payments made to employees who were continue to be paid while not engaged in any work activities will be excluded from reportable payroll. This exclusion will apply during the time California's statewide stay-at-home order is in place, and for up to 30 days thereafter, if the employee continues not to work.

### **Allow Assignment of Classification 8810 for Temporary Change in Duties**

The temporary assignment of Classification 8810, Clerical Office Employees, will be allowed for employees whose job duties meet the definition of a Clerical Office Employee due to increased work from home. This provision applies while California's statewide stay-at-home order is in place, and for up to 60 days thereafter, if the employee continues to meet the definition of a Clerical Office Employee. However, it does not apply to the payroll of employees whose payroll is otherwise assignable to a standard classification that specifically includes Clerical Office Employees.

### **California Issues Statewide Mask Order**

California Department of Public Health has issued updated guidance for the use face coverings. The new rules mandate that face coverings be worn state-wide in the circumstances and with the exceptions outlined below. It is important to note that the rules provide an exemption for persons who are engaged in outdoor work when they are able to maintain a distance of at least six feet from others or are working alone. Specifics of the rules include:

# **POLITICO ALERT CONTINUED**

## **People in California must wear face coverings when they are in the high-risk situations listed below:**

- Inside of, or in line to enter, any indoor public space;
- Obtaining services from the healthcare sector in settings including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank;
- Waiting for or riding on public transportation or paratransit or while in a taxi, private car service, or ride-sharing vehicle;
- Engaged in work, whether at the workplace or performing work off-site, when:
  1. Interacting in-person with any member of the public;
  2. Working in any space visited by members of the public, regardless of whether anyone from the public is present at the time;
  3. Working in any space where food is prepared or packaged for sale or distribution to others;
  4. Working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities;
  5. In any room or enclosed area where other people (except for members of the person's own household or residence) are present when unable to physically distance.
- Driving or operating any public transportation or paratransit vehicle, taxi, or private car service or ride-sharing vehicle when passengers are present. When no passengers are present, face coverings are strongly recommended.
- While outdoors in public spaces when maintaining a physical distance of 6 feet from persons who are not members of the same household or residence is not feasible.

## **The following individuals are exempt from wearing a face covering:**

- Persons age two years or under. These very young children must not wear a face covering because of the risk of suffocation.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
- Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.
- Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service.
- Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided that they are able to maintain a distance of at least six feet away from persons who are not members of the same household or residence.
- Persons who are engaged in outdoor work or recreation such as swimming, walking, hiking, bicycling, or running, when alone or with household members, and when they are able to maintain a distance of at least six feet from others.

## *Coronavirus (COVID-19) Update:*

### ***Insurance Department Excludes COVID-19-Related Workers' Compensation Claims from Employer Experience Rates***

On Wednesday, June 17, 2020, the California Department of Insurance approved new regulations pertaining to the California Workers' Compensation Uniform Statistical Reporting Plan - 1995 and the California Workers' Compensation Experience Rating Plan - 1995.

**The most significant portion of the decision was the approval of the regulations that would exclude COVID-19 claims from a company's experience modification rate (EMR).**

The EMR is the number used by insurance companies to gauge both past cost of injuries and future chances of risk. The lower the EMR of your business, the lower your worker compensation insurance premiums will be.

This decision comes as a relief for employers, who were understandably concerned about how COVID-19 cases would impact their workers' compensation EMRs after Governor Newsom's May executive order that expanded workers' compensation benefits.

[That order](#) provides that if an employee contracts COVID-19, exposure is *presumed* to have arisen in the course and scope of the employee's work, therefore triggering workers' compensation benefits. While employers could conceivably overcome that presumption with sufficient evidence of non-work-related exposure, it is a difficult burden to overcome. As a result, many employers were anticipating a significant hit both to their EMRs and their workers' compensation premiums. Thankfully, the new regulations should help relieve that concern.

Companies are strongly still advised to implement a protocol based on [OSHA's guidance](#) for preparing a workplace for coronavirus. Failure to do so may be viewed as a failure to take all reasonable precautions to protect employees from coronavirus exposure, potentially triggering claims of serious and willful misconduct in the event an employee dies from COVID-19 and claims to have contracted the virus at work. The CDC also has issued helpful [guidance](#). You should also check to make sure you are in compliance with your local county's current regulations, as these are frequently changing.

Sweeney Mason LLP continues to monitor the rapidly evolving situation pertaining to the COVID-19 virus and resulting legal issues. We are finding that the laws and orders released by the Federal, State, County and Local governments are, in some cases, ambiguous, vague and/or contradictory, resulting in some confusion among a broad cross-section of our clients. At this juncture, and given the fast-paced changes to the applicable orders and mandates, as well as the ambiguities inherent in the orders there is no "one-size-fits-all" approach to COVID-19-related legal matters. For example, several Bay Area Cities impose their own emergency orders that mirror but in many cases are more stringent than the Statewide or County orders. As a result, contracts, employment issues, ongoing lawsuits and other matters impacted by the COVID-19 outbreak should be analyzed on a case-by-case basis and with the assistance of Sweeney Mason. Sweeney Mason LLP is in daily contact with governmental offices and various trade organizations to monitor the developments surrounding the COVID-19 outbreak. While much of our personnel continues to work remotely, Sweeney Mason is fully operational and will continue to assist our clients and community with their legally related issues and concerns during this uncertain time.



BREAKING NEWS FROM THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

## **Subscribe to NECA's New Email Newsletters**

**NECA is your best resource for industry news, legislative updates, educational opportunities and information you need to stay ahead of the game. Make sure you are subscribed to NECA's email newsletters by doing the following.**

1. Navigate to <https://www.necanet.org/>.
2. Located in the top navigation, click on the NECA [Newsroom](#) webpage.
3. On this page, you will find short descriptions of each email newsletter and frequency of distribution.
4. Click the [Subscribe Now](#) button or the [Subscribe to NECA's Email Updates](#) button to be taken to the sign-up form.
5. Fill out your information and choose which email newsletters you would like to receive.

**SUBSCRIBE NOW**

# One Final Thought for the Halfway Mark in 2020

*For a small amount of perspective at this moment, imagine you were born in 1900. When you are 14, World War I starts, and ends on your 18th birthday with 22 million people killed. Later in the year, a Spanish Flu epidemic hits the planet and runs until you are 20. Fifty million people die from it in those two years. Yes, 50 million.*

*When you're 29, the Great Depression begins. Unemployment hits 25%, global GDP drops 27%. That runs until you are 33. The country nearly collapses along with the world economy. When you turn 39, World War II starts. You aren't even over the hill yet.*

*When you're 41, the United States is fully pulled into WWII. Between your 39th and 45th birthday, 75 million people perish in the war and the Holocaust kills six million. At 52, the Korean War starts and five million perish.*

*At 64 the Vietnam War begins, and it doesn't end for many years. Four million people die in that conflict. Approaching your 62nd birthday you have the Cuban Missile Crisis, a tipping point in the Cold War. Life on our planet, as we know it, could well have ended. Great leaders prevented that from happening.*

*As you turn 75, the Vietnam War finally ends. Think of everyone on the planet born in 1900. How do you survive all of that? A kid in 1985 didn't think their 85 year old grandparent understood how hard school was. Yet those grandparents (and now great grandparents) survived through everything listed above.*

*Perspective is an amazing art. Let's try and keep things in perspective. Let's be smart, help each other out, and we will get through all of this. In the history of the world, there has never been a storm that lasted. This too, shall pass.*

## **SBA and Treasury Announce New EZ and Revised Full Forgiveness Applications for the Paycheck Protection Program**

The U.S. Small Business Administration, in consultation with the Department of the Treasury, posted a revised, borrower-friendly Paycheck Protection Program (PPP) loan forgiveness application implementing the PPP Flexibility Act of 2020, signed into law by President Trump on June 5, 2020

[EZ FORGIVENESS APPLICATION](#)

[FULL FORGIVENESS APPLICATION](#)



### **SYNERGY** eLinks

[Safety and Health Guidance “COVID-19 Infection Prevention in Construction”](#)

[COVID-19 INDUSTRY GUIDANCE: Office Workspaces](#)

[Guidance for the Use of Face Coverings](#)

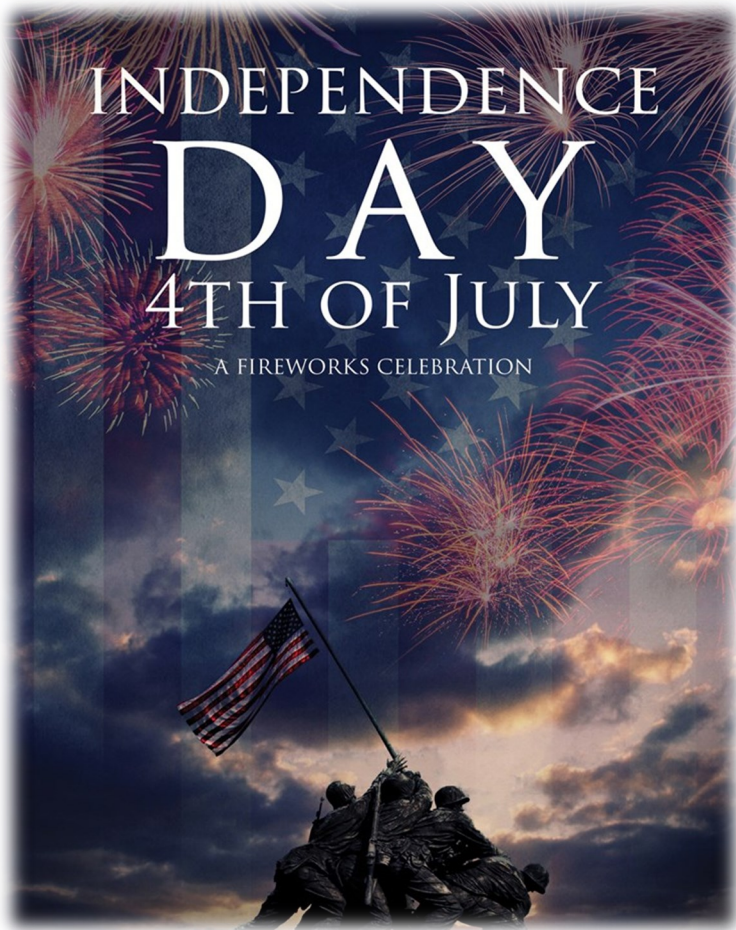
[COVID-19 INDUSTRY GUIDANCE: Construction](#)

### **Contra Costa County Updated Social Distancing Order**

*Date of Order: 6/16/2020*

#### **Click below to read the following documents:**

- [Full Health Order|Spanish](#)
- [Press Release](#)
- [Appendix A – Social Distancing Protocol \(updated 6/16/2020\)|Spanish](#)
- [Appendix B-1 – Small Construction Project Safety Protocol|Spanish](#)
- [Appendix B-2 – Large Construction Project Safety Protocol \(updated 6/16/20\)|Spanish](#)
- [Appendix C-1 – Additional Businesses \(updated 6/16/2020\)|Spanish](#)
- [Appendix C-2 – Additional Activities \(updated 6/5/2020\)|SpanishInterim](#)
- [Guidance for Modified Childcare During COVID-19 Pandemic|Spanish](#)
- [Safer Social Interactions|Spanish](#)
- [Frequently Asked Questions](#)



*July 2020*

**CONTRA COSTA CHAPTER**

1024 Court Street, Martinez, CA 94553  
 (925) 372-3222  
[www.ccneca.org](http://www.ccneca.org)

*\* Per the Inside Wireman Agreement : When a holiday falls on a Saturday, the previous Friday will be observed in lieu there of.*

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thur</i>	<i>Fri</i>	<i>Sat</i>
	1	2	1	2	3 4th of July Holiday Observed *	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
		<b>JATT</b> On-Line 1:00 p.m.				
19	20	21	22	23	24	25
26	27	28	29	30	31	