

John Hester will be guest speaker at Monday meeting January meeting date moved to accommodate schedule of featured speaker

The guest speaker for the January dinner meeting of Ohio Valley NARI will be a familiar visitor with the chapter. John Hester is Hamilton County's chief plan examiner, and it's become an annual Ohio Valley tradition for John to visit NARI to update members on technical and administrative changes in building codes and code administration.

John usually visits in September, but changes in the International Code Council code development schedule made September an unusually busy month for John and every other building official in the U.S. ICC has gone to an 18-month code cycle, which means that the major code hearings, which traditionally were held in March or April, are now in the fall every third year. Last September the first hearings under the new schedule kept building officials busy for about half the month.

Recognizing that John had some other items on his September calendar, the OVNARI board decided to invite him to the January meeting. John accepted the invitation, but his other responsibilities made it necessary to

move the meeting to Monday night.

As usual, John will report on code changes that affect remodelers and alert members to the common problems his department finds when reviewing plans. John will also take your questions about code conformance and plan review issues.

The meeting will be at 6:30 p.m. Monday, January 12, at the Holiday Inn I-275 North, on Hauck Road at I-275 Exit 46 (Route 42). The dinner menu will be London broil, which proved to be very popular when it was served at a meeting last year.

John Hester's visits to NARI always result in some of the most useful and information-packed meetings. Plan now to attend Ohio Valley NARI's first meeting of 2004. Call the NARI office today at 800-498-6274 to make reservations for the meeting.

"Green" remodeling show is in production

Desert Moon Productions has begun filming the first home improvement show with a "green" emphasis. The Public Broadcasting Service (PBS) will air 26 episodes of the 30-minute television show, "Build it Green!" Set to begin running next July, "Build it Green!" will be hosted by contractor Charlie Popeck and architect Jill Burtin and will staff at least three LEED-Accredited Professionals.

Although based in Desert Moon's home state of Arizona, the show will also travel.

"Green building options are intrinsically tied to climate, so we will highlight what innovative people are doing under almost all climate conditions," explained Mick Dalrymple, the show's executive producer.

Call to RSVP

What: January OVNARI Dinner Meeting

When: Monday, January 12

Where: Holiday Inn I-275 North
Hauck Rd., near Rt. 42 & I-275

Time: 6:30 p.m.

RSVP: Ohio Valley NARI at 800-498-6274

Cost: \$25 members/\$30 nonmembers

Ohio Supreme Court decision creates new liability exposure for state's employers

Dayton attorney Bob Dunlevey, a former contractor, reports that the Ohio Supreme Court has just handed down a decision that restricts employers ability to manage employee absenteeism. According to Dunlevey, the Court said:

- An employee receiving workers' compensation temporary total disability benefits (TTD) may not be discharged for absenteeism or inability to work, when the absence or inability to work is related to the allowed workers' compensation condition.
- An employee receiving TTD may not be discharged for failing to complete forms required for a leave of absence, or for failing to notify the employer as to the length of the absence, if the employer is on notice of the employee's condition and status.

The Court found such discharges are in violation of Ohio's public policy. Some employers, as a matter of practice, have terminated employees after an absence of a certain duration, regardless of the reason. This has now been declared illegal as to TTD recipients. This decision exposes employers to broad liability, including potentially large punitive damages awards from employee-friendly juries.

According to Dunlevey this decision has far-reaching implications including:

- An employer cannot terminate an employee for absence while that employee is on TTD. This may be true no matter how long the employee has been off work, no matter what the employer's policy says, no matter how uniform the employer is in applying that policy, and no matter if the TTD is bonafide.
- If the employer is on notice that the employee is off work due to a work related injury, the employer may not be able to terminate the employee for violating the employer's no-call / no-show policy, or for failing to complete leave-related paperwork

required by the employer. For an employer with 50 or more employees, this potentially includes paperwork necessary for the employer to determine whether or not the leave is FMLA-qualifying. The decision intrudes on federal law.

- The decision does not appear to be limited to future terminations, and such claims have a four year statute of limitations. Any employer that in the last four years has terminated an employee while on workers' compensation TTD has potential liability.

According to Dunlevey the decision leaves a number of issues open for future litigation. What if a union contract provides for termination of employees after a period of absence due to work related injury? Does an employer have to reinstate the employee at the conclusion of TTD if there are no openings at the time? If the employer receives a decision denying or terminating the employee's TTD but the employee appeals and does not return to work, can the employer safely terminate the employee at that time or should the employer await exhaustion of all appeals and court proceedings? This could take months or even years.

Dunlevey has the following suggestions for employers who may be impacted by the decision:

- Revise your attendance policies if they require or permit you to terminate an employee because of a workers' compensation related absence. This decision suggests that an employer cannot count such an absence against an employee. If you have a no-fault attendance policy, these absences must be excluded from the policy in the same manner as FMLA absences are excluded.
- Do not terminate or take other adverse action against a workers' compensation claimant without consulting your employment law counsel.

- Improve management of your workers' compensation claims. Questionable claims and TTD applications should be contested vigorously. If granted, TTD should be aggressively monitored to avoid abuse. When appropriate, offer light duty to cut-off TTD.
- Improve workplace safety. Do not tolerate unsafe practices or violations of safety rules by any employee.
- Re-emphasize sound employment practices. Exercise care in hiring. Do not delay in terminating unsatisfactory employees. This is particularly true for employees with a history of absenteeism or employees who disregard workplace safety.
- Alert anyone in your organization that is involved in termination decisions and risk management. They should know of this decision before a mistake is made that causes liability.
- Review insurance and other benefit practices. Consider making benefits conditioned upon attendance or completion of required paperwork.
- Consider performing a liability assessment on any terminations of workers' compensation claimants over the last four years. It may be too late to turn the clock back, but steps can be taken to identify potential problems and preserve evidence. If the employee is still on TTD, consider reinstatement.

Dunlevey said, "By acting now, you can control the potential liability created by this decision. Unfortunately, Judge Alice Resnick's decision and the Court's anti-business philosophies have once again taken a toll on Ohio's employers and their management's rights. The decision overturns almost a century of legal precedent."

Contractors who have questions about this decision are invited to contact Bob Dunlevey directly for more information about the ruling and its implications.

NARI responds to survey ranking remodelers high on complaint list

Last fall a "consumer watchdog" organization published the results of a survey that ranked home improvement contractors in second place on a list of "most complained about industries." The following is a statement issued by the National Association of the Remodeling Industry in response to this adverse publicity.

Recently, the results were released from a consumer complaint survey stating that home improvement companies ranked #2 on the list of most common complaint for consumers to consumer agencies, down from #1 last year.

In another survey, compiled by the Council of Better Business Bureaus (CBBB), remodeling contractors rank much lower on the complaint list, ranking no. 22 on the list.

One important reason why the National Association of the Remodeling Industry (NARI) exists is to hold to the highest customer service standards of any industry. The Voice of the Remodeling Industry, NARI is the only trade association dedicated exclusively to the residential remodeling industry.

NARI represents the professionals in the industry, and requires its members to follow a strict code of ethics. Additionally, we also provide formal grievance resolution process for consumers who have issues with NARI members. Fortunately, most of the complaints we receive from consumers are against non-members.

NARI is dedicated to educating consumers about their rights, what to look for in a contractor, and points a contract should include, in addition to safety and environmental issues. NARI offers a free brochure for consumers entitled "How to Select a Remodeling Professional" to anyone who calls 800-611-NARI, and many of our member contractors hand these brochures out to homeowners when they do a first consultation. Our website,



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NARI responds to survey placing remodelers high on complaint list *(continued from page 3)*

www.remodeltoday.com includes a “homeowners guide” link which outlines everything from points a contract should incorporate to warning signs that they’re dealing with someone suspicious.

There are more than 800,000 businesses and individuals in the U.S. that call themselves home improvement contractors or handymen.

A large portion of these contractors has limited experience in the professional remodeling field and many move in and out of the industry when work in the construction building trades slows.

NARI represents more than 6,300 of the ethical and elite of the industry and sets the industry standard when dealing with the consumer public. Always conscious of helping new, talented contractors who are entering the industry, our education and certification program provides training and certification to beginners studying at the high school level, all the way through to the highest designation.

Consumers looking for assistance with finding a reputable contractor can call 800-611-NARI or visit www.remodeltoday.com.

The mission of Ohio Valley NARI is:

- ✓ To establish and maintain the association’s firm commitment to developing and sustaining programs that expand and unite the remodeling industry as well as to ensure the industry’s growth and security.
- ✓ To encourage ethical conduct, sound business practices, and professionalism in the remodeling industry.
- ✓ To present NARI as the recognized authority in the remodeling industry.

These missions are carried out by:

- ✓ Promoting the common business interests of those engaged in the industry.
- ✓ Sponsoring educational programs and activities for members.
- ✓ Enlightening consumers to the needs and advantages of home remodeling and maintenance, thereby improving the nation’s housing inventory.
- ✓ Recommending legislative and regulatory action that safeguards and preserves the remodeling industry, and stimulates the marketplace.

Goals of chapter to accomplish mission:

- ✓ To provide education to enhance professional and personal competencies.
- ✓ To create and encourage networking.
- ✓ To develop and promote the profession.
- ✓ To serve as a resource center.
- ✓ To provide quality publications to members.
- ✓ To improve membership and membership participation.
- ✓ To improve consumer awareness.
- ✓ To remain proactive on current and pending legislation.

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The *NARI Renovator* is produced by Ohio Valley NARI as a service and benefit to its membership. The organization’s office is located at 136 South Keowee Street, Dayton, Ohio 45402; (800) 498-NARI or fax (937) 222-5794.

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