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Case 11-12

DATE: May 4, 2011

TO: MAG Specifications and Details Committee Members

FROM: Peter Kandaris, SRP Representative
Outside of Right-of-Way Working Group

RE: **Modifications to Regulatory Requirements, MAG 107**

Purpose: MAG standards are absent of requirements for Native Arizona Plants. Rules are provided in ARS Title 3, Chapter 7.

Revisions: Reference ARS Title 3, Chapter 7 in MAG 107.1

Additional: MAG 107.1(A) references ARS 23-373. The current state statutes no longer include this statute. A new reference is needed (possibly ARS 23-425 and/or a statute within ARS 34). Agencies should consult their legal departments to determine the most appropriate revised reference.

SECTION 107**LEGAL REGULATIONS AND RESPONSIBILITY TO PUBLIC****107.1 LAWS TO BE OBSERVED:**

The Contractor shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. He shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; and shall protect and indemnify the Contracting Agency and its representatives against any claim or liability arising from or based on the violation of such, whether by himself or his employees.

The attention of the Contractors is directed to the provisions of the following sections, Arizona Revised Statutes.

(A) Arizona Revised Statutes **23-373**. Contracts negotiated between public Contractors and public employers shall contain the following contractual provisions:

In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provision of the nondiscrimination clause.

The Contractor further agrees to insert the foregoing provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

(B) When Federal-aid funds are used on a project, the prevailing basic hourly wage rates and fringe benefit payments, as determined by the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act, shall be the minimum wages paid to the described classes of laborers and mechanics employed to perform the contract.

(C) Arizona Revised Statutes 40-360.22 Excavations: determining location of underground facilities; providing information. This statute requires that no person shall begin excavating before the location and marking are complete or the excavator is notified that marking is unnecessary and requires that upon notification, the owner of the facility shall respond as promptly as practical, but in no event later than two working days. The "Blue Stake Center" (263-1100) was formed to provide a more efficient method of compliance with this statute.

This section is not applicable to an excavation made during an emergency which involves danger to life, health or property if reasonable precautions are taken to protect underground facilities.

(D) Arizona Revised Statutes-40-360.23. Making excavations in careful, prudent manner: liability for negligence. This statute states that obtaining information as required does not excuse any person making any excavation from doing so in a careful and prudent manner nor shall it excuse such persons from liability for any damage or injury resulting from his negligence.

(E) Arizona Revised Statutes-40-360.28 Civil penalty; liability. If the owner or operator fails to locate, or incorrectly locates the underground facility, pursuant to this article, the owner or operator becomes liable for resulting damages, costs and expenses to the injured party.

(F) Arizona Revised Statutes 32-2313. Business license; business name; branch office registration; renewal. No person, partnership, corporation or association shall engage in the business of general pest or weed control without being duly licensed/certified by the Structural Pest Control Board.

(G) Arizona Revised Statutes Title 3, Chapter 7, Native Arizona Plants. Those native plant species which are protected by the State of Arizona must be preserved at all times. When it is necessary to remove any of these protected plant species from the site, use suitable methods in the excavation, handling and transportation to ensure they are not damaged.



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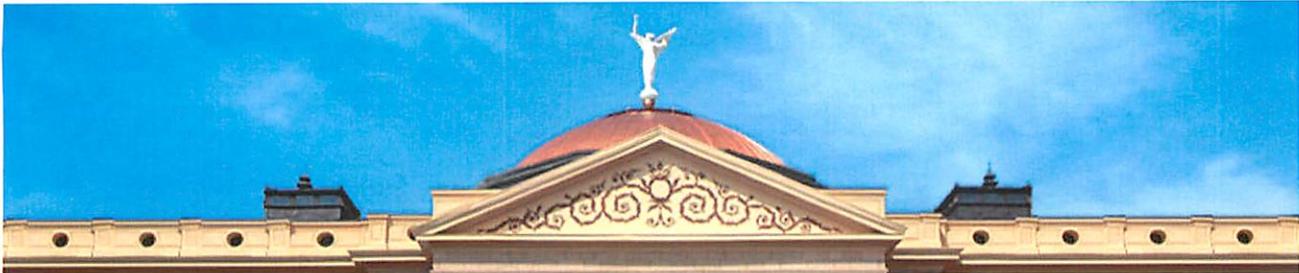
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23-425. Employee discharge or discrimination

A. No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this article or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this article.

B. Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this section may within thirty days after such violation occurs, file a complaint with the commission alleging such discrimination. Upon receipt of such complaint, the commission shall cause such investigation to be made as it deems appropriate. If upon such investigation, the commission determines that the provisions of this section have been violated, it shall bring an action in any appropriate superior court against such person. In any such action the superior court shall have jurisdiction for cause shown to restrain violations of subsection A and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.

C. Within ninety days of the receipt of a complaint filed under this section the commission shall notify the complainant of its determination under subsection B.



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