

# Signage Matters

California Sign Association  
CSA Government Affairs Update



## GOVERNMENT AFFAIRS COMMITTEE

### Committee Members

Chair, Skip Moore, Bill Moore & Assoc.  
Kozell Boren, Signtronix  
Steve Clippinger, Integrated Sign Associates  
Rick Denman, Signs & Services  
Roy Flahive, Pacific Sign Construction  
Mark Gastineau, YESCO  
Joe Hupp, Hupp Neon  
Steve Jones, YESCO  
Terry Long, Ad Art Sign Co.  
Gus Navarro, San Pedro Signs  
Dub Northcutt, Structural Technology Consultants  
Tim Pitts, CenSource  
Gary Quiel, Quiel Bros Electric Sign Co.  
David Schauer, Signtech Electrical Advertising  
Patti Skoglund-Adams, Superior Electrical Advertising  
Ray Smith, Federal Heath Sign Co.  
Jeff Tanielian, Commercial Neon  
Keith Willis, Western Sign Co.  
Sharon Willison, Williams Sign Co.



Please join us!  
In many ways, all CSA members are our grass roots network of ambassadors throughout the state.

Call Jeff Aran, CSA Government Affairs Director or Connie Seitz, CSA Executive Director to participate.



California Sign Association

P.O. Box 276567  
Sacramento, CA 95827-6567  
916-932-0021 • 916-932-2209 Fax  
info@calsign.org • www.calsign.org

## LEGAL QUIPS...

### RECENT LEGAL CASES—SOME HUMOROUS, SOME PATHETIC

By Jeff Aran, CSA Legal Counsel

#### EMPLOYMENT NOTES

**Overtime Tricks Costly.** Employers often establish “alternative work week schedules” (AWS), which provide, for example, longer shifts in exchange for a 4-day work week, i.e., some employees may work four 10-hour days, while others work five 8-hour days. The law is generally that if an employee works more than 8 hours in any one day, overtime is due at 1½ times the regular hourly rate. In *Huntington Memorial Hospital v. Mutuc*, the employer paid overtime to nurses working fewer than 10 hours on 12-hour



shifts, but nurses working more than 10 hours received regular pay. In other words, 12-hour shift nurses who worked their full shift were paid less than 8-hour shift nurses who worked overtime. The Court held this “short-shift differential” was an unlawful means of avoiding overtime pay and violated California’s overtime laws because different rates were paid for the same work based simply on the number of hours worked. In effect, the employer is paying a lower hourly rate for the same type of work whenever the employee works overtime. *Lesson learned:* Unless you have properly established an AWS, you must pay overtime for nonexempt employees.

**Beauty Not Necessarily in the Eye of the Beholder.** The California Supreme Court ruled that L’Oreal wrongfully terminated and retaliated against a supervisor for refusing to fire a sales associate the company deemed not pretty enough for the job, despite outstanding prior performance. L’Oreal argued the employee did not present the image it wanted. The court nevertheless agreed that an appearance standard that is applied to one gender and not the other is sex discrimination unless the different treatment can be justified as a legitimate occupational qualification. The case will now go to trial. Also, now pending before the 9th Circuit Court of Appeal is *Jespersion v. Harrahs*, where a female employee bartender was required to wear makeup as a condition of employment.

**Hi ho, Silver!** The Nova Scotia Court of Appeal has ruled that native Canadian, Dorothy Moore from the Mi’kmaq tribe, was not discriminated against when her boss referred to her

## INSIDE

Issue IV • August 2005

- Capitol Report
- Crane Operator Qualifications and Certification
- CSA Meets with State Architect on ADA Signage Proposals
- News Clips

Continued on page 3



## ...CAPITOLREPORT...

Of the more than 3,000 bills introduced by the California

Legislature by the end of February, only a small percentage relate to signs.

Of those, most are "spot" bills to allow various cities to install community billboards despite Caltrans regulations. For current information, check Signage Matters, our electronic update, at [www.calsign.org](http://www.calsign.org)



## CRANE OPERATOR QUALIFICATIONS AND CERTIFICATION

Effective June 1, 2005

Valid certificate of competency

Certifying entity—accredited by National Commission for Certifying Agencies (NCCA)

Certificates—valid for maximum 5 years

For crane related matters call:  
State of California  
Department of Industrial  
Relations Division of  
Occupational Safety & Health  
Crane Unit  
(714) 939-8478

## CSA MEETS WITH STATE ARCHITECT ON ADA SIGNAGE PROPOSALS

By Jeff Aran, CSA Government Affairs Director, Legal Counsel

You may have read our report regarding the proposed changes to the California Building Standards relating to ADA required signage in the June issue of *Powerline*. On Tuesday, July 26th, Skip Moore and I had the opportunity to meet for two hours with various state and special interest representatives at the State Architect's office in Sacramento to review the pending changes to the ADA regulations, specifically addressing the language pertaining to signage. Attending the meeting were Aaron Noble, Senior Architect (State Architect's office), Linda Huber (Department of General services Code Development Specialist), Jay Salazar (California Building Officials Association), Sharon Toji (H. Toji Companies, ADA consultant for the state) and Gene Lozano (California Council of the Blind). I will refer to these participants collectively as "DSA."

We reviewed the history of the proposed amendments and our concerns pertaining to scope, applicability, contrast, permitting and inspection. As previously reported to the CSA Board, my initial review of the proposed changes was that they did not impose a significantly greater burden on the California sign industry or its customers than currently exists and is required by law.

However, after hearing the concerns of ISA and the SEGD "Best Practices Advisory Committee on Signage (BPACS)" reviewing ISA's proposed position paper on this issue, and given ISA's desire to retain a lobbyist, I re-examined the proposed regulations and held several investigatory phone conferences with CSA members, the State Architect's Office, the Building Standards Commission and the Building Officials group in order understand why they believed the regulation needed amendment and whether the proposed changes

were onerous. There were also several prior teleconferences with ISA and BPACS.

After Skip and I met with DSA, we have come to the conclusion that the Proposed regulations are fairly innocuous and that the changes will not materially change current practices. The three areas with the greatest concern are:

1. **Applicability.** Does the proposal apply to all signs or just signs identifying "permanent rooms and spaces" (current language)? As we thought initially, the unanimous answer from DSA was that the proposals ONLY apply to ADA signage for permanent rooms and spaces and IS NOT intended to apply to commercial, retail or other interior or exterior signage, i.e., marketing signs, advertising, business identification signage, etc.

We asked them to add clarifying language. They pointed out this is the current law and has never been interpreted contrary, and it is not the intent of the proposal to do otherwise. Nonetheless, we stressed our concern that a vigilante code enforcement officer or building inspector would see things differently. Because there are no proposed changes to the scoping language, DSA was disinclined to add this clarification; however, they did point out that various interpretative manuals published by the Federal government indicate the limitations on scope. I have asked for a copy of those documents. In addition, Mr. Lozano noted that it was never the intent by any of these regulations (current or proposed) to impose any burden on creative sign making, marketing or identification signs, except to assure that signs identifying permanent rooms and meeting spaces fulfilled the minimum Federal guidelines.

*Continued on page 4*

## NEWS CLIPS

**One Small Sign for Man, One Giant Sign for San Anselmo...**An ongoing battle between resident Ford Greene and the city of San Anselmo over Greene's outspoken political commentary posted on the wall of his office building continues to play out at City Hall and in the Courts. The latest salvo is that the City amended its ordinance to make it illegal when a bunch of small signs form one large sign. Green originally filed suit in Federal court claiming his right to free speech was violated. The judge ruled the town could limit the size but not the number of signs. That caused Greene to post more than a dozen smaller signs, which appear as one large sign.

**Electronic Message Center Bill Stalled...**AB 801 (Jones, Sacramento) would have allowed an EMC for the Florin Auto Dealers along Hwy 99. The bill sailed thru the Assembly, as have many similar bills exempting such signs from Caltrans prohibitions, but the Senate has killed it for now—and wants to re-examine all such exemptions.

**High School Project Unplugged...**In Paradise, high school student Dolores Christensen's senior project for an electronic message board for Paradise High School was derailed when the town advised her message centers were prohibited. Many schools have circumvented such ordinances, however, under provisions of the Education Code which preclude cities from interfering with schools construction plans.

**Rethinking Tahoe's Sign Ordinance...**Merchants in South Lake Tahoe are up in arms again over the City's restrictive ordinance, in particular regarding banners and temporary signs. The local newspaper is calling for revisions to help promote local merchants.

**Council Members Conflicted...**In Milpitas, the City sought an opin-

ion from the Fair Political Practices Commission as to whether two of its council members can vote on the City's new sign ordinance because both are real estate agents. The FPPC ruled there was no conflict.

**Bits 'N Pieces...**Value Meal: Los Osos residents are up in arms over a combo EMC, cell tower and flag pole...Highland's Mayor has called for a "war" on illegal signs and is urging all residents to take any down that are illegally posted...Tall buildings in Foster City are reaping extra signage for major tenants...Giant video boards on Sunset Strip and along I-5 near the Citadel shopping center in Commerce are under

attack as distracting to drivers...El Cerrito is spending \$250K on gateway signage to "aesthetically improve" the town, according to The Journal newspaper...San Francisco supes are looking at offering builder incentives to put housing atop supermarkets, including greater flexibility on signage...Palo Alto approved signage along Highway 101 to allow its auto dealers 50' signs so they can compete with neighboring cities...and in Santa Clarita, the battle still rages as the Santa Clarita Athletic Club continues its fight to retain its aging EMC and Marriott is seeking to keep its pole signs. ▼

### RECENT LEGAL CASES—SOME HUMOROUS, SOME PATHETIC

*Continued from page 1*

as "Kimosabe," which was Tonto's nickname from *The Lone Ranger* TV show.

**Power of Prayer.** A Michigan social worker was not wrongly terminated when she was fired for trying to perform an exorcism instead of calling 911 after a client suffered a seizure.

**Right to Sex Not an Unemployment Benefit.** A German auto mechanic's unemployment claim for reimbursement for weekly visits to a brothel, to the tune of \$3000/mo (based on his need to ensure "health and bodily well-being"), was rejected by the Court.

**Ouch! Unlicensed Contractor Denied Payment.** The California Supreme Court ruled in July that unlicensed contractors, including those whose licenses had lapsed unintentionally, were not entitled to payment during the period when work was performed without the license. The law currently provides that no person may sue to recover compensation for any work requir-

ing a contractor's license unless the license is in place at all times during the contract performance. (B&P Code Sec. 7031). In *MW Erectors v. Niederhauser*, the subcontractor (MW), which put \$1 million worth of steel into the Disneyland Grand Californian Hotel, won't get fully paid because it was unlicensed for the first 18 days of the project's 268 workdays. The Court's ruling was intended to deter contractors who lack worker's comp insurance, fail to pay withholding and violate state safety rules. *Bottom Line:* Keep your license current! ▼

**CSA MEETS WITH STATE ARCHITECT  
ON ADA SIGNAGE PROPOSALS**

*Continued from page 2*

**2. Contrast.** The SEGD folks were concerned with reflectivity and the proposal's minimum contrast requirement of 70% was arbitrary, impractical and troublesome, and would generate litigation. The DSA explained that this contrast requirement was already in place via federal requirements. They showed us the calculation was easy to accomplish using paint manufacturer's Light Reflection Value (LRV) values and that one did not need a spectrometer to figure it out. We recommended that DSA consider identifying a range, in lieu of a minimum standard, especially given the use of some materials, like marble or stainless steel, for which LRV would be difficult to gauge. DSA's response was that no materials would be prohibited. The portion(s) of the sign identifying the room is the only part that needs to contrast is the actual number or word, which can be set against a distinguishing background. It was concluded that the contrast requirements present little or no restraint on creative design or use of materials.

**3. Plan check and inspection.** ISA and SEGD raised concerns that plan check and inspection left open to the whim of building officials the right to destroy a project by refusing a certificate of occupancy. The representative from CALBO was asked

how field check and inspection is undertaken, and whether increased training requirements might be needed. He shared with us that the new reg would make their jobs easier and would not increase the burden on inspection because it eliminates the potential discretion regarding contrast. He stated that CALBO did not foresee any new or increased specialized training requirement because these changes were minor as to signs and merely codify existing practice. As to plan check, ADA signage is required to be shown on plans now. The reg merely codifies existing practices. Skip also confirmed this as the usual practice on the stores he does for their clients. There is nothing different in the proposed regs that require anything more than is currently in place. It only codifies it, giving Building Officials greater authority to cite non-compliant signage.

In sum, we do not believe the new regulations (as currently drafted) pose an onerous problem for the sign industry or its customers. ISA/SEG D has indicated in some written communications that this will generate more litigation and that other states will soon follow suit. We raised this issue with DSA. According to DSA, California's regulations are NOT in keeping with the Federal regs on these issues and the amendments merely bring us in par with current practice elsewhere in the country. We will nonetheless submit

a letter to DSA emphasizing our concerns that the new regulations should not impose a new or greater burden on business or on the sign industry and that the regulations should include clarification as to the scope of signs covered.

If one looks at the proposed regulations objectively, they may actually reinforce the market share of the ADA signage professional, allowing local jurisdictions to identify and cite sign suppliers that do not follow Title 24 regulations. If an ADA signage professional is designing, manufacturing and installing required tactile and contrast wayfinding signage in accordance with existing regulations, they have nothing to fear.

Eventually, the California Building Standards Commissioners will receive a "Commission Action Monograph" which will include recently received staff and public comments/responses. The next actual BSC meeting with the commissioners is Sept 21. According to Mike Nearman, BSC Senior Code Analyst, these proposed regulation changes won't even be coming down the pipe until approximately March 2006. ▼



**CaliforniaSignAssociation**

P.O. Box 276567  
Sacramento, CA 95827-6567