

SEPTEMBER 2020

inside



CALIFORNIA LANDSCAPE CONTRACTORS ASSOCIATION
EAST BAY CHAPTER

Greener Landscape Practices

Thursday, September 10th | 1pm-2pm

Join us remotely Thursday, September 10, at 1 p.m. as Loren McIrvine, CEO of Allied Landscape, discusses practices that foster landscapes that are safer for people, pets, and the environment. We will review motivators for such landscapes, including health and sustainability, and dive into different ways of implementing a greener approach. Topics include chemical use and integrated pest management, electric equipment, green waste management, and design concepts addressing carbon sequestration, reduced water use, reduced runoff, and reduced maintenance. CLCA Members FREE, Not-yet-members \$25. Register online at <https://conta.cc/3ICWBWQ>.

On the cover: Rubin Residence by Suma Landscaping Inc., winner of the award for Petite Residential Installation at the 2019 CLCA East Bay Chapter Beautification Awards.

Cell Phone Time Keeping Application

Steven Cesare, Ph.D. *The Harvest Group, Landscape Business Consulting*
harvestlandscapeconsulting.com | (760) 685-3800

A landscaper contacted me to talk about tracking non-exempt employees' work time. Given the increased frequency and cost of wage and hour lawsuits due to inaccurate employee time tracking (e.g., start of work shift, end of work shift, start of meal period, end of meal period, unpaid overtime), this issue is of paramount importance to all detail-oriented business owners.

This Company has considered paper time sheets, time clocks, and various GPS products to address this imperfect issue. At the time of our conversation, the Company had decided to track non-exempt employee work time by requiring all non-exempt field employees to install a time keeping application on various electronic devices including Company-issued cell phones and tablets, as well as on employees' personal cell phones. With the application in place, employees would simply have to activate the application at appropriate times (e.g., start/end of work shift, start/end of meal period), to document all work time that would be forwarded easily to the payroll system, thereby ensuring accuracy, expediency, and compliance.

I offered the following points of caution, review, and counsel to the landscaper.

- Verify that tracking employees' work time using this type of technology is legally compliant with existing state law. While intuitively, we think we know the answer, it is always best to be more safe than sorry, when dealing with wage and hour issues.
- Ensure the Company Employee Handbook contains a policy of GPS tracking, employee surveillance, and electronic time keeping to remain transparent to the workforce.
- Since the application was required to be installed on employees' personal cell phones, several nuanced issues become

immediately noteworthy.

- Did the employees sign a formal, written consent form or waiver statement allowing this application to be installed on their personal phones?
- Were the employees informed that the application would also track their time and whereabouts on non-work time?
- Could the application be deactivated at the end of the work day on each employee's personal cell phone to prevent surveillance of them on personal time?
- Which Company managers would have direct access to the employees' GPS time keeping (e.g., location, time, duration) reports, which may also include information about their locations during personal time (e.g., home, night club, friend's residence).
- Much like an employee using a personal vehicle for Company-related business, the use of an employee's personal cell phone for Company-related business must be quantified financially and reimbursed to the employee as non-taxable income on all relevant pay checks. This reimbursement could be done singularly, or as part of a larger BYOD (Bring Your Own Device) Policy in the Employee Handbook.
- What was the anticipated course of action if a non-exempt employee refused to have the time keeping application become resident on his/her personal cell phone, or if the employee did not own a cell phone?

Tracking employee work time is problematic, yet vital to organizational success. While technology often times represents a seemingly pragmatic solution, always consider the marginal legal risks that may initially appear to be trivial, while in fact they can quickly become financially serious.

Social Media Fun Photo Promo Thru September 15th

The CLCA East Bay Chapter Board of Directors wants to promote your talent, hard work and creativity on the chapter's social media accounts! The picture(s) can be of anything on your finished or unfinished installation or maintenance project list and can include you and your hardworking crew! Enter as many categories as you like. Text your image, your company name and a brief caption to our Chapter President-Elect, Paul Wong, @ (925) 518-6331. Choose a fun category for your photo from the list below and we'll post your photos on the chapter's social media sites.

The categories are open to your interpretation. At a later date the chapter will create a video presentation that will include all the images. Have FUN and be creative with your pictures. Enter in any of the categories below:

Color me a rainbow
Dirty work
Edging your bets
Kiss my grass goodbye
Living the outdoor dream
Oopsy daisy
Raking it in
Save the grass, ride a mower
Thank you very mulch
The birds and the bees
Turf sod and sow much more
Wall flower

This is a fun, FREE way for us to share ANY image of your choice while we are required to socially distance during the COVID-19 pandemic. We hope that next year the chapter's Annual Beautification Awards program will take place and we can celebrate your hard work and talent in person again!

Build Your Professional Skills with ReScape Qualification Trainings

Firescaping Qualification Trainings

ReScape's newest training, Resilient Regenerative Firescaping Qualification Training (FQT), educates, aligns and empowers municipalities, public agencies, large private property owners, and landscapers to work collaboratively across departments, agencies, and organizations to implement whole-systems firescaping strategies to protect people, assets and future welfare. The course is based on our 8 Principles for Regenerative Landscapes and prepares communities for safety before, during and after a firestorm.

Upcoming Firescaping Qualification Trainings

October 20 and 21

November 18 and 19

Qualification Renewal Trainings

ReScape Qualified Professionals renew their status to represent their significant commitment to using landscape practices that protect air, water, wildlife and the community. ReScape Qualification Renewal courses showcase cutting-edge climate resilient earthscape practices to expand job skills and enrich competency for competitive career advantage in the professional regenerative landscape marketplace.

Upcoming Qualification Renewal Trainings

- September 29-30 - Landscape Maintenance
- October 29 - Landscape Design
- December 2-3 - Landscape Maintenance

Landscape Professional Qualification Trainings

ReScape Qualification Trainings are offered to professionals in the public and private sector who design, install and maintain commercial, civic and residential

landscapes. Trainings are taught by subject area experts and provide daily group activities, hands-on learning modules, and thoughtful interactive discussions designed to help professionals adopt best practices that bring our principles into the field and support the integrity of our watersheds.

Upcoming Maintenance Qualification Trainings

- September 1, 2, 4, 8, 9 and 11
- November 3, 5, 6, 10, 12, 13

Upcoming Design Qualification Trainings

September 15, 17, 22

Bundle workshop registration and ReScape Qualified Professional Renewal:

- Bundle 2-Year Qualification Renewal with Directory Listing (\$400 value!) - \$265 active RQPs / \$275 lapsed RQPs
- Both Workshops AND 2-Year Qualification Renewal (\$304 value!) - \$220 active RQPs / \$230 lapsed RQPs

Register at rescapeca.org/events

ReScape Advanced Professional Workshops

Using Natural Systems as a Model for Enhancing Biodiversity

Registration: <https://bit.ly/3lp3MSI>

Planting for Success

Wednesday, September 16

8:30 AM - 12:30 PM

- Provide landscape professionals with an understanding of, and techniques for, appropriate plant and tree selection and care
- Outline the importance of site evaluation and analysis for long-term plant health
- Demonstrate best practices for plant and tree selection and maintenance

Using Natural Systems as a Model for Enhancing Biodiversity

Friday, September 18, 8:30am - 12:30pm

- Provide landscape professionals with an understanding of how landscapes can mirror natural systems to reduce waste and create habitat
- Outline the importance of biodiversity and creating habitat
- Discuss how to use native plant communities and natural cycles as models for built landscapes
- Present techniques for reducing waste in the built landscape

Water Conservation & Irrigation

Registration: <https://bit.ly/3hCAfSW>

Water Conservation & Irrigation in the Urban Landscape

Thursday, October 1, 8:30 AM - 12:30 PM

- Understanding of how to evaluate and design an efficient irrigation system.
- Demonstrates different systems and equipment options
- Reviews MWELO and its applications
- Introduces alternative water sources and appropriate applications

Integrated Pest Management in the Urban Landscape

Friday, October 2, 8:30 AM - 12:30 PM

- Reviews how pest management practices impact the watershed and community.
- Introduces relevant IPM regulations and guidelines for controlling pests.
- Presents IPM approaches for addressing a variety of locally relevant pest issues.

Workshop Costs:

- Both Workshops - \$150 member / \$160 not-yet-member
- Single Workshop - \$80 member / \$85 not-yet-member

Protect Workers from Unhealthy Air

Cal/OSHA Mandates Worker Training, Respiratory Protective Equipment

As the air quality goes down as the number of wildfires goes up, the California Landscape Contractors Association encourages all green industry professionals to monitor unhealthy air quality and provide all outdoor workers Cal/OSHA-mandated training and respiratory protection.

Key recommendations:

- Review worker safety and health in wildfire regions guidance from the California Department of Industrial Relations and Cal/OSHA.
- Communicate with your employees.
- Provide N95 respirators.

How Bad Is The Air?

California's protection from wildfire smoke standard applies to workplaces where the Air Quality Index (AQI) for fine particles in the air is 151 or greater and where workers may be exposed to wildfire smoke. To find

your jobsite's AQI, enter its ZIP code or city at airnow.gov.

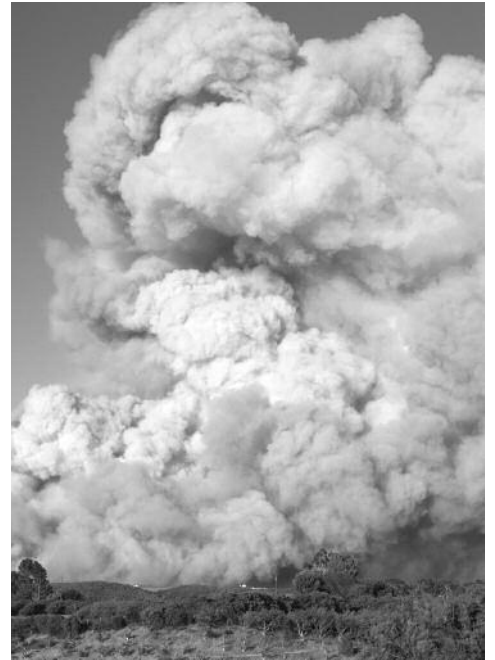
Mandated Communication With Employees

Cal/OSHA mandates that employers inform employees about wildfire smoke hazards in a form readily understandable by all affected employees, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal.

CLCA strongly encourages all employers to review Cal/OSHA's safety order Wildfire Smoke Information to Be Provided to Employees (Mandatory).

Mandated Respiratory Protective Equipment

Although employee use is voluntary, employers are mandated to provide respiratory protective equipment, such as N95 respirators.



According to Safety Order 5141.1 Protection from Wildfire Smoke, "Where the current AQI ... is equal to or greater than 151, but does not exceed 500, the employer shall provide respirators to all employees for voluntary use in accordance with section 5144 and encourage employees to use respirators."



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Member Standings

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 Ken Gerlack (1966)
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 Horizon (1970)
 Ewing Irrigation (1973)
 BrightView Tree Co. (1973)
 SiteOne Landscape Supply (1974)
 Professional LS Mngmt (1980)
 Delta Bluegrass Co. (1980)
 Landscape Care Co. (1985)
 LandPlan's LS Inc. (1982)
 Village Nurseries (1983)
 L.H. Voss Materials (1987)
 P.J. McNamara (1987)
 Suma Landscaping Inc. (1988)
 Berndt Landscape & Garden Maint (1988)
 Trimacs Maint. & LS Const, Inc. (1988)
 Diamond K Supply Ltd. (1990)

Life Members

George Sunayama, Joe Korematsu, Roger Fiske, Paul Schultz, Ken Gerlack, William Roger, Thomas Raeth, Dan Berger, Robert Battinich, Kevin Berndt, Calvin Craig, Stephen Lambert

24 Year Members

George Schandelmier Jr. Landscaping

15 Year Members

Kevin Kohl, Ewing Irrigation

11 Year Members

Susan Friedman Landscape Architecture

10 Year Members

Alison Fleck, Simply Perfect Gardens

9 Year Members

Brian Takehara, New Image LS Co.

8 Year Members

Brian Dutchover, Dutchover & Assoc.

5 Year Members

Lance Perry, CLCA Insurance Solutions

4 Year Members

Paul Colon, Ewing Irrigation

David Manlove, Indian Rock Landscapes

2 Year Members

Joe DeSena, SiteOne Landscape Supply

1 Year Members

Michelle Zepeda, Frank & Grossman LS

Josh Hall, Tri-West Tractor

William Smedley, Tri-West Tractor

The East Bay Chapter Thanks Our 2020 Partners for Success

Gold - \$1500

- Four Dinner Tickets to the Beautification Awards Banquet and sponsorship of a prestigious Judges or Sweepstakes Award plaque.
- Four Tickets to the Baseball Event (includes tailgate party).
- Free Admission to All Dinner Meetings during the year.



Silver - \$1000

- Three Dinner Tickets to the Beautification Awards Banquet and Sponsorship of an Award plaque for one of the award categories.
- Three Tickets to the Baseball Event (includes tailgate party).
- Free Admission to Three Dinner Meetings of your choice during the year.



Bronze - \$750

- Two Dinner Tickets to Beautification Awards Banquet and Sponsorship of an Award plaque for one category.
- Two Tickets to the Baseball Event (includes tailgate party).
- Free Admission to Two Dinner Meetings of your choice during the year.



All Partners Receive

- Company Name recognition in the chapter's monthly newsletter, Inside Scoop and the mid-monthly electronic newsletter E-Scoop. Company

CLCA Member Benefits

Did you know that your CLCA membership entitles you to a plethora of invaluable benefits? Visit www.clca.org >>Member Resources>> Member Benefits for the complete list of benefits.

- Peer Consulting Service
- Professional Development
- Human Resources Hotline
- Credit Card Processing
- Certification / Water Management Group Insurance
- Networking Opportunities
- Attorney on Retainer
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East Bay Chapter Monthly Board Meetings

Board meetings are held on the 1st Thursday of the month at 4:00 p.m. (some exceptions). Check the calendar for locations.

The CLCA East Bay Chapter newsletter is published monthly. Copy and advertising deadlines are the 10th of the month preceding publication. Materials may be mailed to: Jerrie Beard & Associates, PO Box 96, Coloma, CA 95613. Or email to: jsb@beardassociates.com. For information on advertising and rates, contact Jerrie Beard at (530) 621-1701.

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2020 CLCA State Executive Board

clca.org/about/board-of-directors/

Past CLCA State Presidents from the East Bay Chapter

2018	Aaron Huxley
2017	Tim Hendricks
1996	John Redmond Jr.
1986	Roger D. Fiske
1978	Joe Tanouye

East Bay Past Chapter Presidents

2018	Eric Santos
2017	Roxy Wolosenko
2016	Calvin Craig
2014-15	Peter Rosen
2012-13	Tim Hendricks
2011	DeeAnn Schuttish
2009-10	Nate Silin
2007-08	Barry Minor
2006	Gregory Wrenn, Rick Martens, CLT
2005	Dennis Brewer
2003-04	Rick Martens, CLT
2000-02	Gregory Wrenn
1999	Rob Solomon CLT, CLP
1997-98	Dave Wolkenhauer, CLT
1996	Diane McNally
1995	Dan Berger, CLT
1994	Craig Hutchinson
1993	Steve Schlitt
1992	Matt Schiller
1991	Robert Battinich
1990	John Redmond
1989	Jim Kwiat
1988	Thomas Raeth
1986-87	John Nishizawa
1985	Thomas A. Adan
1984	David Burnley
1983	Don Young
1982	David Gutru
1981	Joe Tanouye
1979-80	J. Warren Thurston
1979	Peter Rumore
1978	Pat Nichols
1977	Joe Korematsu
1976	Chuck Rich

East Bay Chapter Life Members

*Congratulations and Thank You to the following
CLCA East Bay Chapter Members for their
continued support for over 25 years.*

Roger Fiske	Ken Gerlack
Jeffrey Jones	Joe Korematsu
George Sunayama	Jack Rydman
Thomas Raeth	Kevin Berndt

CLCA East Bay Chapter Contractor's Honor Code

The CLCA East Bay Chapter exists to support Contractor's AND their employees. To successfully meet this objective, and encourage the involvement of all levels of the landscape industry, the Board of Directors is committed to supporting the following Contractor's Honor Code:

The solicitation, recruitment of, or attempt to hire another Contractor's employees while attending any CLCA function is strictly prohibited.

Sponsor Spotlight: RainBird

RainBird is a privately held company founded in 1933, and is the leading manufacturer and provider of irrigation products and services. Since its beginnings, Rain Bird has offered the industry's broadest range of irrigation products for farms, golf courses, sports arenas, commercial developments and homes in more than 130 countries around the world.

Rain Bird has been awarded more than 450 patents worldwide, including the first in 1935 for the original horizontal action impact drive sprinkler (U.S. Patent #1,997,901), which revolutionized the food production industry and ushered in a new era in irrigation, worldwide. The original impact sprinkler was designated a historic landmark in 1990 by the American Society of Agricultural Engineers. Today, Rain Bird offers over 4,000 irrigation products and services.

In the early 1930s Clem and Mary LaFetra established Rain Bird in the family barn in Glendora, California. The very first product, the original impact sprinkler, was developed to more efficiently irrigate nearby citrus orchards. Today, Rain Bird is a global leader in efficient irrigation, has deep roots in California and the company remains headquartered just a few miles away from where it began.

Rain Bird's guiding philosophy, The Intelligent Use of Water™, continues to influence all aspects of the business. The company has spent the past eight decades developing the industry's most comprehensive line of water-efficient irrigation solutions for everything from homes and schools to parks, sports fields, golf courses and farms. With efficient irrigation products and practices, it is absolutely possible for the average California resident to reduce outdoor water consumption by 25 percent or more without having to give up plants, trees and gardens.

Recently RainBird has applied its world-leading irrigation expertise to the design and manufacture of pump stations. By doing so, the company is the only irrigation manufacturer able to provide totally integrated irrigation solutions, Reservoir to Rotor™.

Rain Bird will continue to develop products and initiatives that will help Californians make informed choices about all use water.

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Labor Law Update:

What You Need To Know About New Ruling on Families First Coronavirus Response Act

Giuliana Gabriel, J.D. of the California Employers Association

On August 5, 2020, a federal district judge ruled that the U.S. Department of Labor exceeded its authority with respect to certain paid-leave eligibility requirements when interpreting the Families First Coronavirus Response Act. Although the decision was issued by a federal district court in New York, employers in California should follow its interpretation until an appellate court reviews the decision or other courts weigh in on the issues.

Employers Must Provide FFCRA Leave Even When There is No Work Available

The court found that if an employee was not working due to a COVID-related reason as defined by the FFCRA, they are still entitled to emergency paid sick leave (ePSL) or emergency family leave (eFMLA) as applicable — even if the employer has no work available — so long as the employee is still employed by the employer. This supersedes the DOL rule which stated that an employer need not provide emergency paid sick and family leave when the employer “does not have work” for the employee. Therefore, employers should:

- Consider whether it makes sense for their business to retain its employees and pay for FFCRA leave, or layoff/terminate employees, when no work is available,
- Consider retroactive payment for eligible FFCRA leaves during any previous business closure or furlough, and
- Proceed with caution and consult counsel, until additional courts weigh in on this.

Employers May Only Ban Intermittent Leave When It Poses a Higher Risk of Infection

The court also struck down the department’s blanket rule requiring employer consent for intermittent leave (i.e.,

leave in separate periods of time, rather than one continuous period). Now, an employer is only permitted to reject an intermittent leave request when it correlates with a “higher risk of viral infection.” Therefore, if an employee requests intermittent leave to care for their child whose school or place of care is unavailable because of COVID-19, the employer must allow it. Employers are permitted to refuse intermittent leave for the other covered reasons under the FFCRA, such as when the employee is subject to a stay-at-home order or experiencing symptoms and seeking a medical diagnosis.

Employers May Not Impose Documentary Requirements as a Precondition to Leave

The court further held that employers may not require employees to submit documentation, such as a doctor’s note or stay-at-home order, prior to taking FFCRA leave. Therefore, employers should revise their FFCRA leave policies to the extent they require documentation as a precondition to leave. Employers should request notice and documentation from the employee “as soon as practicable.”

The Department’s Definition of “Health Care Provider” Too Broad

The FFCRA states that an employer of a “health care provider” or “emergency responder” may elect to exclude such employees from FFCRA benefits. The court struck down the department’s definition of “health care provider,” finding it is too broad. The department conceded that its definition included an “English professor, librarian or cafeteria manager at a university with a medical school.” Because the court did not provide a new definition, health care industry employers should

consult counsel in determining who qualifies as a “health care provider” for purposes of exemption from the FFCRA.

What You Need to Know

For now, employers should follow the court’s interpretation regarding work availability, intermittent leave, documentation requirements, and the definition of a “health care provider.” Employers may refer to DOL guidance regarding all other FFCRA issues.

Questions?

Confused? CLCA’s HR Hotline - an exclusive CLCA member benefit - is here to help you navigate these murky COVID waters. Contact them at clca.org/hr or call us at (800) 399-5331.

Cancelled:

2021 NorCal Landscape and Nursery Show

The COVID-19 pandemic has not only upended the world’s social and economic standards but has turned the business of large events, trade shows, and sports on its head. The Nor Cal Landscape & Nursery Show committee met on July 16th to discuss the upcoming February 25, 2021 Nor Cal Show.

The mounting uncertainty about numerous measures, changing regulations and unexpected hurdles has increased the challenges and risks for producing the best and safest show possible for our exhibitors and attendees.

After much thought, deliberation and discussion the committee has decided to cancel the 2021 show.

The show committee is now focused on the 2022 Nor Cal Landscape & Nursery Show and will be releasing dates for the event within the next few months.

We thank you for your understanding and continue to work toward a time when we can gather together again in safety.

~KURAPIA~

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