Occupational Licensing of Tower Climbers

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Abstract

There is a renewed push for occupational licensing in the tower industry; proponents cite improved quality, improved safety and a number of other benefits that would result from licensing. The problem is previous and exhaustive occupational licensing research has proven these "improvements" never materialize.

Introduction

There has been a lot of discussion in the telecommunications industry about licensing tower climbers as method of improving safety and reducing fatalities. Licensing has been proposed before with no real support from the largely independent non-union workforce. An article by Winton W. Wilcox Jr., owner of ComTrain, appearing on WirelessEstimator.com seems to have rekindled the issue.

The purpose of the paper is to address all the unsubstantiated assertions promulgated about the benefits of occupational licensing of tower climbers.

Licensing can be defined "as a process where entry into an occupation requires the permission of the government, and the state requires some demonstration of a minimum degree of competency" (Kleiner, 2000). Licensing is typically a process which involves four requirements, formal education, practical experience, good personal character, and passing a state examination.

Occupational licensing is a function of state government under their "police" powers but the legislative appetite for licensing industries with little or no consumer impact is small. In Georgia for example O.C.G.A. § 43-1A-7 allows for a review of the evidence for unregulated occupations by interested parties who need to justify state intervention. Petitioners need to define the problem and why regulation is necessary, identify any potential harm to the public if the business or profession is not regulated. Petitioners also need to address the extent to which there is a threat to public health and safety and that consumers need the regulation and will benefit from the regulation of individuals engaged in the profession. A detailed explanation of all efforts that have been made to address the problem, voluntary efforts by members of the profession to establish a code of ethics or other administrative avenues to resolve the problem. Have alternative methods of (in our case safety) been considered short of licensing? The clear intent of the Georgia code is to regulation the business or professional employers before the employees; the program or service before the individuals. All those before you even get to the point of establishing criteria for licensing.

Licensing, generally speaking, is layered. There are business licenses, professional licenses and occupational licenses. Business licenses are generally a revenue generating tool for jurisdictions while professional licenses were originally designed for practitioners like doctors, lawyers, dentists and architects they mushroomed to include everyone from the barber to the person doing your finger nails. Professional licenses typically apply to the businesses or business owners. Occupational licenses are generally for those who work in the industry.

When we consider licensing climbers we need to understand where that fits into the overall regulatory structure. In most states General Contractors are the folks who will be awarded the contracts for new site construction. General Contractors are licensed as professionals in all states, the employees who do the actual work, in most cases, are unlicensed. When speaking of upgrades and modifications to existing sites, unlicensed or exempt (professional license) companies may well do all the work running lines, installing the antennas, and sweep testing. What if there are no provisions for professional licensing as in those instances where no license is currently required i.e. running lines and installing antennas. Are these companies going to be required to obtain professional licensure or will they "grandfathered" as long as they hire only licensed climbers?

One of the major issues with occupational licensing historically has been the disparity with which state legislators have developed regulations. It is reasonable to assume that some states will not be interested in licensing while others will vigorously regulate, the remaining states will be somewhere in between the two extremes. As a result climbers seeking to expose themselves to maximum flexibility in employment will have to be licensed in all 50 states. It can be said that the lack of mobility imposed by state licensure restricts interstate trade; at a minimum it may prevent you from working in your chosen profession thereby depriving you of a livelihood. If a company has permanent staffing how will that regulatory disparity between states impact the way in which the conduct business and at what additional cost.

Occupational licensing affects a large part of the workforce, 18 percent (Kleiner, 2000) while Young, (2002) puts that figure at between 20 percent and 25 percent. Licensing proponents point to insuring the general public that practitioners are competent and regulated and do not infringe on the public health and safety. Some of the issues with licensing occupations include qualifying and exam criteria; who sets them and at what level. In some cases why are the barriers to entry so high or change once the proponents of licensing are licensed.

When the state determines regulation is necessary they will establish a Board to establish rules and regulations for administering the law. The Board is usually made up of 5 members from the affected industry but the size can be any odd number for tie breaking reasons. The Board will formulate and promulgate policies related to the amount and type of education and experience a licensee will be required to have prior to licensure. The Board will also tackle issues of discipline, how administrative discipline will be handled, what measures will be taken to preserve an individuals rights from arbitrary and capricious accusations while maintaining the Board's ability to police its ranks.

One of the main arguments for licensing has been improving the quality of services provided customers (Cox, & Foster, 1990; Kleiner, 2000; Lott, 1987; Ruwart, 1999; Young, 2002) and Wilcox, (2007) makes the same argument for licensure of tower climbers. In theory, uniform licensing requirements assure customers that the practitioner has met some minimum standard of education, knowledge, and experience and is of sound moral character; and by passing a test they have clearly demonstrated competence. There has been no evidence in any of the literature that there is a correlation between licensure and quality of service (Cox, & Foster, 1990; Kleiner, 2000; Kleiner, 2006; Young, 2002).

Another argument for licensing has been disciplining of the practitioners. While the regulatory Board has the authority to discipline licensed practitioners whose quality or customer care was substandard such action is neither automatic nor guaranteed (Young, 2002). One only needs to look at the reluctance of state medial boards to discipline doctors and the time from complaint to action to understand the issue is neither simple nor understandable. Shimberg, (1982) found nearly 16 percent of California dental work was so bad it required revisits yet only eight dentists were disciplined.

The primary result of regulation intended or unintended, is the increased cost of services to the public (Cox, & Foster, 1990; Kleiner, 2000; Kleiner, 2006; Rottenburg, 1980). The increased costs to customers may be a result of the cost of the licensing processes itself or it may be because the licensing process limits the number of qualified practitioners in the field thereby limiting the selection options for employers. In any case the limiting effect on the number of people licensed to practice guarantees higher wages and therefore higher costs to the company who in turn passes those costs on to the customer. Kleiner, (2006) found prices increased from between 4 percent to 35 percent as a result of licensing.

From an economic perspective occupational licensing restricts the supply of labor into the occupational field (Kleiner, 2000; Lott, 1987) thereby increasing the amount a licensed practitioner is paid (Kleiner, 2000) and as the cost of labor increases so does the overall cost of the end service provided the customer (Rottenburg, 1980). When occupations go from unregulated to regulated or from moderate regulation to tight regulation the increased regulation increases the cost of services and results in a decrease in the amount of service consumed (Adams III, Jackson, & Ekelund, Jr., 2002; Adams III, Ekelund, Jr., & Jackson, 2003). While it isn't likely the industry will see massive unemployment but there will be a shift in who employs climbers, the small shops will disappear and only the large will survive. Increasing licensing requirements increased wages 16 percent (White, 1978) while Shepard, (1978) found a 12 percent to 15 percent increases. Since occupational licensing restricts the supply of labor into the occupational field it

needs to be stated clearly that all of those currently in the occupation will not qualify for licensing, so of the 9,800 individuals currently earning a living as tower climbers perhaps only 8,500 will be licensed.

Licensing laws may actually do more harm than good, according to Carroll & Gaston, (1981). Their study looked at states with the most stringent licensing requirements for electricians, dentists, and optometrists and found the greatest incidence of accidental electrocutions, poor dental hygiene, and blindness respectively. These finding seem to indicate that as requirements for licensing increase fewer practitioners sought licensure, the result being fewer patients/customers are serviced increasing the likelihood one might be more willing to perform the function themselves (Carroll, & Gaston, 1981).

Certification, unlike licensing, is a voluntary process by which an entity grants recognition to an individual who has met certain prerequisite qualifications specified by that entity and who may assume or use "certified" in the title or designation to perform prescribed occupational tasks. While certification lacks the “statutory authority” of licensure, it is an efficient and cost effective means of validating skill proficiency and skill level information to employers. There are a number of issues with certification which impact safety outcomes; the issues are transparency, quality, standards and training methodology.

One of the problems with the current certification paradigm in this industry is the lack of transparency. There is no one monitoring the certifiers/trainers to make sure there is a uniform structure with consistent measures of competency. There are a dozen or more third party tower safety and rescue course providers but for the most part the attendee has no clue what is being taught, to what level or how well, until the course is over.

The quality of instruction can often be described as mediocre; there appear to be no lesson plans with tasks, conditions and standards. Instructors drone on with stories for hours long after the point of the story has been made and are often not prepared to instruct, starting class late, lacking support material or equipment and supplies and go past the published end of instruction. Questions at the end of chapters frequently do not support learning objectives of the chapter and the objective evaluation of the student is largely un-documented. None of the providers, with the notable exception of Nigel Ellis, have any credentials as trainers or fall prevention conferred by the National Safety Council, National Association of Safety Professionals or by any other nationally or internationally recognized safety association or organization.

An issue yet to be addressed is the certification process itself. To the best of my knowledge Safety One, ComTrain, Ellis, Rescue Response, DBI/Sala, TAG, Asretec, Total Access, Miller, Gravitec, Heightec and the half dozen or more international third party trainers all suffer from the same deficiency, lack of standards. As long as the basis for all of the providers course certificates are OSHA regulations then it should not be that difficult for all to agree on what teaching standards are acceptable the only other question would be how best to objectively evaluate the outcomes. Safety and Rescue certification from ComTrain should be the same as instruction received from any of the other providers.

Training methodology for courses currently offered are typically lecture and demonstration. The lecture method is categorized as the least engaging method of instruction (Burke, Saph, Smity-Crowe, Chan-Serafin, Salvador, & Islam 2006). The most engaging method, behavior modeling, was three times more effective in promoting safety knowledge and skills acquisition (Burke, Saph, Smity-Crowe, Chan-Serafin, Salvador, & Islam 2006). For less complex tasks, however, the least engaging and most engaging methods faired about the same in terms of behavioral outcomes (Burke, Saph, Smity-Crowe, Chan-Serafin, Salvador, & Islam 2006). It may be advantageous in most instances to rewrite lesson plans to include more practical application into the instruction, having never worn a full body harness prior to training I was astonished no such practical application was incorporated. Even for those who had donned the harness a proper fitting period of instruction would have been beneficial. Some harness actually looked loose fitting and baggy on the students, the shock from the abrupt stop of a fall, even in training could have been injurious.

Wilcox, (2007) article asserts certification is irrevocable; however, the granting entity has the authority typically issues certificates in perpetuity or for some specified period of time. In either case the conferee who fails to continually demonstrate mastery under the terms of the conference could have that certification probated or revoked until such time as their behaviors are modified and they can be

recertified. It is important to remember that individual behavior is not a training matter (Laird, 1985). An employer would be required to document safety violations in as much detail as the employer and certifying authority agree is necessary and in such a manner as to protect the employees' right to redress prior to probation or revocation.

There is absolutely no evidence licensure improves safety outcomes of workers. A literature review did indicate mixed results with regard to licensing impact on public safety (Cox, & Foster, 1990; Kleiner, 2000; Young, 2002) but there were no findings with respect to licensure and safety of the practitioner from which conclusions can be drawn.

If the stated goal of licensing is to reduce the number or injuries and fatalities that occur each year then it is fair to conclude that somewhere in the licensing process (formal education, practical experience, good personal character, and passing a state examination) the practitioners safety behaviors will be evaluated and controlled. At issue though is behaviors at time ***x*** (licensing) may not be the same at time ***x+1*** (post licensing). This is a fact born out daily as climbers currently certified in "Tower Climbing Safety & Rescue" by third party trainer's injury themselves, someone else on the crew of fall off of towers and die. It isn't that they don't know and it isn't that they haven't "clearly demonstrated" mastery of safety, they simply get complacent.

Discussion

There were a number of assertions made with respect to licensing, first that licensing would increase safety and reduce fatalities, and second, that licensing would increase quality, and third, that licensing may lead to a reduction in insurance costs (Wilcox, 2007). There has been no explanation of how licensing will advance safety in the workplace, what mechanisms in the licensing process will be able to modify behavior so that the climber is safer. There is no evidence licensing results in any improvement in safety (Cox, & Foster, 1990; Kleiner, 2000; Young, 2002). There is no evidence licensing results in any improvement in quality (Cox, & Foster, 1990; Kleiner, 2000; Young, 2002). With regard to insurance costs, a more likely scenario may be increased costs due to "no fault" insurance for those who are either unlicensed or uninsured. It is too early in the process to be anticipating any positive insurance outcomes but the efforts of licensing on insurance needs to be considered.

ComTrain, LLC by its own admission has trained 11,000 tower climbers and 2,000 instructors (Wilcox, 2007) in an industry with population of approximately 9,800 (wirelessestimator.com). This would seem to indicate the vast majority of active tower climbers (our estimate is 80%) are certified by ComTrain or one of the other third party course providers and yet the number of fatalities annually has not decreased or stabilized with the increased number of certified climbers. There has been an increased emphasis on safety industry wide, tale gate safety meetings every day before starting work, semi annual company wide safety classes, safety policies, practices and procedures and yet there is no impact on the number of deaths.

Conclusion

The preponderance of research shows none of the outcomes proponents cite as reasons for licensing actually occur. Furthermore, the industry provides no services utilized by the general public so there is no public health or safety issue to drive licensure. Proponents have yet to explain what mechanism of licensing results in increased safety awareness or reduction in fatalities.

Employers question how they can evaluate a climber's safety record the answer is a background check. Call the former employers listed on the employment application and ask them if there were any safety policy infractions or code violations. Those who fear litigation need only tell the truth as the truth is not actionable. If background checks are not performed there is no one to blame but yourself for hiring unprofessional and unsafe tower climbers.

Regulatory control of licensees is overstated. Employers have always had the authority to fire an employee for failing to comply with company policies. Pulling a license is another matter, an employer can only file a complaint with the regulating authority that may or may not take action. Terminating an individual's right to earn a living without protecting the employees' right to redress is unlawful and may open the employer and licensing authority to litigation.

Lastly, employers should be document safety violations in as much detail as possible, counsel the climber when rules, policy or OSHA regulations are not followed; this takes time but cumulatively less time than filling out an accident report or dealing with OSHA

inspectors. Guard the employees' right to redress but those rights should never trump safety or the employers' right to protect their employees.

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