



Council of Industry Newsletter

February 2013

Volume 17

Issue 2

Affordable Care Act Provisions Affecting Employers 2013 and Beyond

From The National Association of Manufacturers

Medicare Tax on Wage Income

What It Is - A 0.9 percent surtax on wage income above \$200,000 for individuals and \$250,000 for couples.

How It Works - The employee portion of the Medicare payroll tax rate for high income earners increases by 0.9 percent, from 1.45 percent to 2.35 percent, effective January 1, 2013. Employers are responsible for collecting the additional withholding.

What It Means to Manufacturers - Although targeted to individuals, small business owners who file as pass-through entities are affected. The tax is not indexed for inflation, so the number of businesses paying the tax will increase each year.

Medicare Tax on Investment Income

What It Is - An additional 3.8 percent Medicare tax on investment income.

How It Works - The new surtax applies to income from capital gains, interest, dividends, annuities, royalties and rent earned by individuals with income above \$200,000 and couples with income above \$250,000.

What It Means to Manufacturers - Another tax targeted at individuals, this will also affect small businesses filing as subchapter S-corporations and other pass-through entities. The tax is not indexed for inflation, so the number of businesses paying the tax will increase each year.

Medical Device Excise Tax

What It Is - A new medical device excise tax on medical device manufacturers in 2013 slated to raise up to \$30 billion.

How It Works - A 2.3 percent medical device excise tax applies to the sale of any taxable medical device by its manufacturer, producer or importer, effective for sales after December 31, 2012. The manufacturer, producer or importer of the taxable medical device must

report and remit the medical device excise tax.

What It Means to Manufacturers - This industry-specific fee will stifle innovation and job growth in the medical device industry by eliminating resources without additional market gains. These fees will translate to higher healthcare costs for all manufacturers.

Employer Retiree Coverage Deduction

What It Is - The elimination of a tax deduction for employers that sponsor retiree health plans covering prescription medicines.

How It Works - The retiree drug subsidy was created when Medicare began covering prescription drugs to encourage employers that sponsor group health plans to continue providing prescription drug benefits to retirees. If employers terminated these retiree prescription drug benefit plans, retirees covered by these plans would turn to Medicare, at a significant cost to taxpayers. Under current law, certain employers receive a subsidy equal to 28 percent of covered prescription drug costs for their retirees. Employers are also entitled to an income tax deduction and are permitted to take into account this deduction when accounting for their retiree prescription drug expenses. The Affordable Care Act retains the retiree drug subsidy but eliminates employers' ability to deduct the subsidy amount from their income.

What It Means to Manufacturers - An employer's income tax liability and the cost of providing prescription drug coverage to retirees increases.



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Training and Education

An immediate and noticeable change in both productivity and the positive attitude every sales professional requires to be successful will be visible. The tools discussed will assist participants in sharpening their consultative and customer relationship selling skills.

Customer Service and Sales Training offered in February

There is still time to register for Customer Service and Sales Training! Taught by Debra Pearlman, President of DP Sales Pro, these classes teach the tools needed to close the deal and keep customers happy.

Customer Service Training — February 21 from 8:30 am- 4:30 pm at a location to be announced. This full day training provides attendees with tools that are easily implemented in order to identify and cultivate their customer relationships. Instructor: Debra Pearlman, DP Sales Pro. Cost: \$195 for a single member, \$180 each for two or more from the same company. Email training @councilofindustry.org for more info.

The training will be broken up in to three components:

- Effectively Transform Irrate Customers
- Empathetic & Effective Listening Skills
- Outstanding Customer Service (for external & internal customers)

To register go to: http://www.councilofindustry.org/training/category_courses.html#custserv
For more information contact the Council of Industry at (845) 565-1355 or training@councilofindustry.org.



Sales Training — February 28 from 8:30 am- 4:30 pm at a location to be announced. This full-day training provides participants with specific tools to be implemented instantaneously. The tools discussed will assist participants in sharpening their consultative and customer relationship selling skills. Instructor: Debra Pearlman, DP Sales Pro. Cost: \$195 for a single member, \$180 each for two or more from the same company. Email training @councilofindustry.org for more info.

This full-day training provides participants with specific tools to be implemented instantaneously. An immediate and noticeable change in both productivity and the positive attitude every sales professional requires to be successful will be visible. The tools discussed will assist participants in sharpening their consultative and customer relationship selling skills.

- Developing Vision & Direction: Goal Setting for Success
- Stop Selling - Consult as a Trusted Partner
- Define Features, Benefits & Values for a compelling Elevator Speech
- Proven Strategies for Face to Face and Social Media Networking



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For more information contact the Council of Industry at (845) 565-1355 or training@councilofindustry.org.



Council News

The Affordable Care Act - What You Need to Know

When: Wednesday, March 6th, 8:30 - 11:00 am

Where: Rose & Kiernan, Fishkill, NY

Cost: None for members

How to register: email abutler@councilofindustry.org or call (845) 565-1355.



This year there are many provisions of the Affordable Care Act that take effect. See the story on the cover of this newsletter to get an idea of the complexity of it all. If you would like more information,

if you have questions that need answers or you just want to get an idea of what other companies are doing, attend this free seminar.

This seminar will feature presentations on the various aspects of the Affordable Care Act and how they will affect your company. Presenters include:

- Legal aspects covered by **Tom McDonough, Jackson Lewis LLP**
- Insurance programs covered by **Dan Colacino, VP of Regulatory Affairs, Rose & Kiernan**
- The financial and accounting perspective covered by **Domenick Del Rosso, CPA, MST from Judelson, Giordano & Siegel, CPA, PC**

To register contact Alison Butler at abutler@councilofindustry.org or call (845) 565-1355.

Human Resources Sub-council Meeting: NLRB Update for Unionized and Non-union Companies

When: Friday, February 22nd, 8:30 - 10:00 am

Where: The Council of Industry Office, The MSMC Desmond Campus, Newburgh NY

Cost: None for members

How to register: email abutler@councilofindustry.org or call (845) 565-1355.

This presentation by Sanjeev DeSoyza, Bond Schoeneck & King, PLLC, will cover the latest updates both on and from the NLRB and how this information will affect unionized and non-unionized companies.

Facing decades of declining private sector unionization rates, the National Labor Relations Board has continued what many see as an aggressive pro-union campaign to stem the losses, including through the recent issuance of “quickie election” and “notice posting” rules and decisions promoting “micro units”, challenging dues check off provisions, and rejecting social media and “at-will” employment policies. This program will discuss the far-reaching impact of these rules and decisions on both unionized and non-union employers as well as strategies for remaining union-free.



Sanjeev DeSoyza is a Labor and Employment Law attorney at Bond, Schoeneck & King who represents private and public sector clients before federal and state courts and various government agencies in employment discrimination, wage and hour matters, unfair competition and contract disputes. Mr. DeSoyza also has extensive experience in collective bargaining negotiations, labor arbitrations, proceedings before the National Labor Relations Board and management of daily labor relations issues. He frequently counsels clients on all aspects of labor and employment law, including compliance with equal employment opportunity, reasonable accommodation, wage and hour matters, workplace safety laws, handbook and policy development, effective workplace investigations, supervisor training and performance management.

To register contact Alison Butler at abutler@councilofindustry.org or call (845) 565-1355.

Join Us at Manufacturing Days in Albany!

When: March 4 - 5, 2013

Where: The Fort Orange Club, Albany, NY

Cost: \$100 per person

Manufacturing Day will allow our economic sector the opportunity to rally together and relay to Albany our legislative agenda for the upcoming session. The first day will consist of afternoon briefings, guest speakers, and a legislative reception. The second day will consist of a continental breakfast and lobby visits.

Even if you have never visited your legislator before in Albany, it is important to get involved. Go to our website www.councilofindustry.org for more info or email Harold King at hking@councilofindustry.org or call (845) 565-1355.

Personnel Matters

What to Expect in 2013

By Greg Chartier, President, HR Info 4 U, Council of Industry Associate Member

There are a number of issues that have human resource implications for 2013 and beyond both at the federal and state level. Here are some highlights:

Federal Agencies

EEOC Strategic Enforcement Plan

EEOC has issued a Five Year Plan as a way to warn employers and put them on notice. Issued in September 2012, it highlighted several areas:

- Elimination of systemic barriers to hiring
- Protection of immigrants, migrants and others
- Combating harassment
- Investigating disparate pay claims

EEOC guidance on victims of domestic violence

The EEOC issued a non-legislative expansion of the protections of Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act to victims of domestic violence and stalking. This protection will be provided to applicants or employees who experience domestic or dating violence, sexual assault or stalking.

EEOC Guidance on Criminal Background Checks

The EEOC is advising employers that they may be required to conduct “individual assessments” similar in nature to those involving ADA reasonable accommodation assessments. These assessments should consider the accuracy of the criminal records, the “facts” surrounding the record, the nature and number of offenses, age at time of conviction and work history post conviction.

The NLRB and Social Media

The NLRB has continued its review of social media policies and “overly broad” policies, in general.

- The Costco decision. A policy on using “appropriate business decorum” was OK but a prohibition against posting of

messages that “damage the company, defame an individual or damage someone’s reputation” violated Section 8.

- Knaus BMW decision. A policy on “disrespectful” language violated Section 7 of the Act.
- The NLRB questions the HR practice of asking employees involved in investigations not to discuss the investigation with their co-workers. Employers can require confidentiality where it can be demonstrated that a legitimate business need requires it but, otherwise, requiring employees to not talk to other employees may violate Section 8 of the Act.

Federal Legislation

- Paycheck Fairness Act,(proposed) would amend the Equal Pay Act of 1963 and would:
- Bar retaliation against employees who ask about pay disparities.
- Provide grants to train women in how to negotiate salary agreements.
- Allow employees to sue for punitive damages in cases of pay discrimination (under the Lily Ledbetter Act).
- Require employers to justify pay disparities between men and women, in writing.



Working Families Flexibility Act. (proposed) Would allow employees the statutory right to ask for a flexible working schedule to include:

- Work hours
- Required start and end times
- Required worksites
- Regular work schedules

Once a request is received, employers would have to meet with the employee and respond, in writing, within a “reasonable time” the reason for denying a request.

Consumer Financial Protection Bureau, created by the Dodd-Franks Act of 2010. As of 1/1/13, requires all employers to update their credit check notices to reflect the new regulations. This will affect credit checks as part of any pre-employment process.

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 **LENDER**

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More Personnel Matters

The NLRB Reverses 50 Year-Old Precedent and Holds That Dues Checkoff Provisions Survive the Expiration of a Collective Bargaining Agreement

By: Subhash Viswanathan, Bond, Schoeneck & King PLLC, Council of Industry Associate member

The National Labor Relations Board ("NLRB") recently re-examined the issue of whether an employer's obligation to check off union dues from employees' wages terminates upon the expiration of a collective bargaining agreement that contains a dues checkoff provision. This issue was seemingly resolved more than 50 years ago, in the NLRB's Bethlehem Steel decision. However, on December 12, 2012, in its WKYC-TV, Inc. decision, the NLRB reversed its 50 year-old precedent and held that an employer's obligation to check off union dues continues after the expiration of a collective bargaining agreement that establishes such an arrangement.

In its 1962 Bethlehem Steel decision, the NLRB considered the issue of whether the employer had violated its obligation to negotiate in good faith by unilaterally refusing to honor the union security clause and the union dues checkoff provisions contained in an expired collective bargaining agreement. Although the NLRB found that both union security and dues checkoff provisions are mandatory subjects of bargaining, the NLRB held in Bethlehem Steel that the employer did not violate the National Labor Relations Act ("NLRA") by unilaterally refusing to honor the union security clause and discontinuing union dues deductions from employees' pay checks. The NLRB determined that the language of Section 8(a)(3) of the NLRA, which permits employers and unions to make an "agreement" to require union membership as a condition of employment, means that parties cannot enforce a union security provision after the collective bargaining agreement containing such a provision has expired. The NLRB further reasoned that dues checkoff provisions are intended to implement union security clauses, and that an employer's obligation to continue deducting union dues from employees' pay checks ceases upon the expiration of the collective bargaining agreement.

According to the three NLRB members who comprised the majority in the WKYC-TV decision, the reasoning contained in the Bethlehem Steel decision is flawed. The three-member majority disagreed with the premise that dues checkoff provisions are intended to implement union secu-

rity clauses, and stated that "union-security and dues-checkoff arrangements can, and often do, exist independently of one another." The three-member majority also found that employees cannot be required to authorize union dues deductions as a condition of employment even if the collective bargaining agreement contains a union security clause that requires them to be a member of the union. Although employees generally choose to sign authorizations allowing the dues deductions as a matter of convenience, employees retain the option of transmitting their union dues directly to the union instead of consenting to automatic deductions. The three-member majority observed that employees who sign dues checkoff authorizations are free to revoke those authorizations upon the expiration of the collective bargaining agreement if they no longer wish to continue those automatic deductions.

For these reasons, the three-member majority reversed the Bethlehem Steel decision and held that employers are required to honor dues checkoff provisions in an expired collective bargaining agreement until the parties have reached a new agreement or until a valid impasse has been reached that permits unilateral action by the employer. This new rule will only be applied prospectively, and will not be applied to any pending cases.

Not surprisingly, Member Hayes wrote a strong dissenting opinion. Member Hayes found no adequate justification for the NLRB to abandon more than 50 years of precedent.

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	This Pay	Year
Gross Pay	388.27	
Pension	0.00	
AVCS	0.00	
Taxable Pay	388.27	
Net Pay	0.00	

The three-member majority also found that employees cannot be required to authorize union dues deductions as a condition of employment even if the collective bargaining agreement contains a union security clause that requires them to be a member of the union.

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Legislative Matters

State of The State and the 2013–2014 NYS Budget

By Karyn Burns, Director of Government Affairs for the Council of Industry

A large portion of the proposals presented by Governor Cuomo had an underlying theme: to pump dollars into certain areas, industries or sectors, as a way to boost "economic vitality and job growth."

In late January, Governor Cuomo released and introduced his 2013–2014 Executive budget. His primary objectives were to keep spending increases below 2%, hold the line on any new tax increases, and close our \$1 billion deficit. Significant components of his proposal included reform for elementary and secondary education, and changes and attention to the upstate tourism industry, with intent on boosting the economic vitality of Upstate. In terms of specific business and industry-related proposals, the Governor unveiled his plan to make changes to the workers compensation program and utility assessment charges, an increase in minimum wage, and a five year adage to the 18A utility charges that were scheduled to expire in 2013.

A large portion of the proposals presented by Governor Cuomo had an underlying theme: to pump dollars into certain areas, industries or sectors, as a way to boost "economic vitality and job growth." This would include his proposals such as \$50M Innovation Venture capital fund, \$165M for NYS Works Economic Development fund program, extend the NY Film Tax Credit an additional five years at \$420M annually, and \$100M towards a 10 year, \$1B commitment towards revitalization of Western New York and the Buffalo region, amongst many other recommendations.

In deciphering this budget, and coming to a unified consensus on what should be in it, we often refer to the "three legged stool" theory. Without all the legs, the stool cannot properly work. The same goes for a complete budget. For example, if Cuomo believes that investing \$100M towards their \$10B commitment to revitalize Western New York and the Buffalo region is a critical component to its eventual rise to prosperity again, this investment can only be coupled with lowering costs of doing business there at the same time. Rather, to reduce the property tax costs on businesses in the region, cut the corporate franchise tax for their industrial businesses, in ADDITION to investing dollars into their revitalization? Now there is a nice sturdy stool one can sit on.

In other words, many of New York's policies as of late have been passed and enacted with good intention, but have been incomplete and therefore not being as ultimately effective as they have the capability to be. For example, a 2% property tax cap was enacted in 2011, but without a significant mandate relief package to go with it. Because these two were not passed together, and the cap only stopped it from increasing, not decreasing the taxes, most businesses are not seeing a significant change in their property taxes, whereas they would have seen more a significant changes if mandate relief was included. I feel the same way about pumping dollars in economic development incentives, and coupling this with reduction in taxes. This is what I consider a complete package and the effective way to move towards progress.

In the interest of being a progressive association, and offering suggestions rather than just critiquing issues within the budget, here are few ways the Alliance would propose "completing the package" With a little number crunching and working together, it can feasibly be done, and allow for what is truly needed to get our state back on track: reduce the high cost of running a business and living in New York State.



Karyn Burns is the Director of Government Affairs for the Council of Industry and the Manufacturers Alliance of New York.



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P18A repeal to allow to sunset, as currently scheduled. The 2% assessment was scheduled to step down this year saving electric consumers over two hundred million dollars. Extending the fee will cost all energy consumers (businesses, governments, schools, non-profits and residences) in the State \$236M dollars in 2014 and \$472M a year for the next four years. It's time to let this sunset, otherwise, no matter how you package it, it's an added tax.

Pass Proper mandate relief to allow the 2% Property Tax to Be Effective. As previously mentioned, two years ago a 2% property tax cap was passed. In order to enable local government and school districts to live within the cap while continuing to provide essential services, advancing meaningful mandate relief for businesses, local governments and school districts has to happen. One cannot work effectively without the other.

Reduce the Corporate franchise tax reduction for manufacturers. We strongly encourage the continuation of reductions to the corporate franchise tax rate to manufacturers in the upcoming year's budget, and continue to do so in two annual phases until the 6.5% tax rate is eliminated for applicable manufacturing corporations. In doing so, New York State will be making a solid investment in its economic future by proving the manufacturing sector with incentive to continue doing business, and just as important, grow and expand in New York State. For a region as such as Buffalo, that of which the Governor holds clear concern for its future, this would be an incredibly helpful and appealing incentive for business to grow and move there.

Create and Pass a Stronger and more useful Excelsior program. The complete retool of the program a few years back (from the preexisting Empire Zone program) left much to be desired by the State's manufacturing community, and we believe a second look at the program and significant considerations and changes should be made in order to better accommodate the state's business community. I would encourage Albany to make more changes and improvements, such as addressing the limited resources invested in the program, or the significant lack of regional input. The current cap value of Excelsior is estimated to be less than half of the benefit of the Empire Zones program. Simply put, that is not enough to even put a dent in our business's current costs.

We also caution Albany to treat many of the agenda items in this budget proposal NOT as reform, and rather a path to recovery. For example, New York State workers compensation is one of the most notoriously broken, inflated and expensive programs in the nation. The Governor's proposals in this budget are certainly positive steps and critical steps, but most importantly, STEPS, and not the solution. Passage of this budget and its comp reform cannot be considered a completed reform to the program.

In conclusion, there are multitudes of ways that our state's business community and residents feel that New York State can bolster economic development, and as always, the Manufacturers Alliance is here to deliver that message. I agree with the popular sentiment that it is less important to simply push money into economic development incentives and programs, and rather more important to create a better business climate. However, if you are going to push economic development dollars, then in order to be effective at all, it needs to be coupled with lowering the CURRENT cost of doing business. Currently, our climate consists of heavily regulated businesses, costly mandates, high taxes and fees, and increasing costs in areas including but not limited to workers compensation, Medicaid and tort reform. Therefore, valuable investment dollars in the form of high taxes from our state's manufacturers and businesses are going towards these costs, instead of investing in their companies and regions. Businesses outside of New York State are turning away before we even have an opportunity to pitch the many benefits of being a New York State business, based on preexisting costs alone. And just as bad, businesses are packing up to relocate elsewhere or shut down, because they simply can't take the fiscal burden anymore. No matter how much money you invest into a region, if the cost of doing business is simply too high, a prospective company is going to look elsewhere, based on the math alone. The time is now to be **strategic** about bolstering economic development.

If you are going to push economic development dollars, then in order to be effective at all, it needs to be coupled with lowering the CURRENT cost of doing business.



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EHS Matters

What to Expect from OSHA in President Obama's Second Term

From JacksonLewis.com

As President Barack Obama officially begins his second term in office, it is appropriate to look ahead at what a "second-term" Occupational Safety and Health Administration will mean for employers. To be sure, the future of the Department of Labor is uncertain, with Secretary Hilda Solis stepping down and her successor yet to be named. However, at this time, the leadership at OSHA during the first term of President Obama is still in place. Therefore, at least for now, employers can expect continuity in terms of enforcement and regulatory policy and priorities.

From an enforcement perspective, employers should continue to expect a vigorous OSHA. The agency has committed significant resources to its enforcement program, along with new national and special emphasis programs, and this focus likely will continue in President Obama's second term.

At the same time, employers can expect to see more activity in the regulatory arena. Some specific regulatory initiatives that are primed to move forward and could have significant consequences for employers include:

Injury and Illness Prevention Program (IIPP). OSHA's IIPP rule has been the agency's most significant regulatory priority. Although it has been under development for three years, OSHA has indicated that it is ready to begin the Small Business Regulatory Enforcement Fairness Act (SBREFA) process for the rule, in which the agency solicits input on the rule from affected small business entities. Employers should remain alert to this agency priority; it is likely to have a broad impact when promulgated.

Crystalline Silica. The comprehensive regulation of crystalline silica is a particularly significant rulemaking, given how ubiquitous crystalline silica (a basic component of soil, sand, granite, and many other minerals) is on jobsites. OSHA's draft proposed rule, which was published in 2002, considered lowering the permissible exposure limit for the substance, implementing extensive "housekeeping" requirements, including prohibiting dry sweeping, requiring exposure monitoring and the establishment of regulated areas, and imposing medical surveillance obligations.

Stricter Injury and Illness Reporting Obligations. OSHA has proposed requiring employers to report workplace amputations to the agency within 24 hours, and all in-patient

hospitalizations within eight hours. Existing recordkeeping rules require employers to report in-patient hospitalizations of three or more employees to OSHA within eight hours. Any workplace fatality would continue to be reportable as well. In addition, OSHA's proposed revisions to the recordkeeping rules would change the kinds of establishments that are routinely exempt from recordkeeping obligations.

Workplace Inspections - In addition, OSHA's Plan for 2013 includes at least 1,260 workplace inspections under its site-specific targeting ("SST") program. (Construction companies are excluded from the program.) According to OSHA's Directive Number 13-01 (CPL 02) (effective January 4, 2013), establishments on this "primary" list have above-average injury and illness rates in high-hazard industries. After its compliance officers have completed the "primary" list, OSHA directs them to move to the "secondary inspection list." Beginning 2012, workplaces with at least 20 employees are subject to inspections. The directive also warns that state agencies that oversee workplace safety enforcement could conduct similar programs in their states.

Business establishments with rates exceeding the thresholds set by OSHA will be included in the secondary inspection list. For manufacturers, these are establishments reporting "days away, restricted, or transferred" (DART) rates of 5.0 or greater, or a "days away from work injury and illness" (DAFWII) case rate of 4.0 or greater. For non-manufacturing establishments (not including nursing and personal care facilities), these are establishments reporting DART rates of 7.0 or greater, or DAFWII case rates of 5.0 or greater.

OSHA's SST inspection program is the agency's primary tool for inspecting workplaces across the country. The 2013 inspections are based on data from 2011 that OSHA collected from surveys submitted by employers in 2012. OSHA generally sends letters to employers whose facilities fall within the SST guidelines alerting them to their elevated rates and urging them to investigate possible causes before the inspections begin. OSHA is very active on the enforcement front. Employers exceeding the thresholds should prepare their worksites for an OSHA SST inspection.



Manufacturing Job Opportunities

If you have job openings and positions to fill:

- Post it on the Council of Industry Website www.councilofindustry.org
- Look at resumes from our member recommended **For Hire page**

Contact Alison at
abutler@councilofindustry.org



CI Calendar of Training and Events

Feb 6	<u>Certificate in Manufacturing Leadership: Best Practices & Continuous Improvement</u> — 9:00 am— 4:30pm at Dutchess Community College, Bowne Hall, Poughkeepsie, NY.
Feb 20	<u>Certificate in Manufacturing Leadership: Human Resources Management Issues</u> — 9:00 am— 4:30pm at Dutchess Community College, Bowne Hall, Poughkeepsie, NY.
Feb 21	<u>Customer Service Training</u> -8:30am - 4:30pm, location TBA. Instructor is Debra Pearlman, CEO, DP Sales Pro. Cost:\$195 for a single member, \$180 each for two or more from the same company, \$235 for non members.
Feb 22	<u>Human Resources Sub-council Meeting— NLRB Update:</u> 8:30 –10:00 am at the Council of Industry Office, The Desmond Campus MSMC, Newburgh, NY. No cost for members.
Feb 28	<u>Sales Training-</u> 8:30am - 4:30pm, location TBA. Instructor is Debra Pearlman, CEO, DP Sales Pro. Cost:\$195 for a single member, \$180 each for two or more from the same company, \$235 for non members.
Mar 4,5	<u>Manufacturing Days in Albany</u> — A two day advocacy event at the Fort Orange Club in Albany. Cost \$100 per person. More info at http://www.councilofindustry.org/events.html
Mar 6	<u>Certificate in Manufacturing Leadership: Problem Solving & Decision Making</u> — 9:00 am— 4:30pm at Dutchess Community College, Bowne Hall, Poughkeepsie, NY.
Mar 6	<u>Affordable Care Act Seminar</u> —8:30—11:00 am at Rose & Kiernan in Fishkill, NY. No cost for members.
Mar 13	<u>Certificate in Manufacturing Leadership: Positive Motivation & Discipline</u> — 9:00 am— 4:30pm at Dutchess Community College, Bowne Hall, Poughkeepsie, NY.

***You can find more information on the courses and events listed in our calendar by going to our website—
www.councilofindustry.org or if you are reading our electronic version just press Ctrl and click the course title.***



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More Legislative Matters

Under the law, only the smallest businesses will be exempt from penalties if they don't offer health insurance in 2014. This provision is commonly called the "employer mandate."

Insurance Rule Will Go By Size Of 2013 Staff

By Emily Maltby, The Wall Street Journal

That is the upshot of regulatory guidance issued by the government on Dec. 28, when few small-business owners noticed in the midst of the holidays and the "fiscal cliff" debate.

Small-business owners have been bracing for 2014, when a health-care law provision is scheduled to kick in, potentially subjecting them to penalties if they don't offer health insurance. Many are planning to keep the number of "full-time-equivalent" employees under 50 to avoid being subject to the provisions of the law.

But one critical detail that many business owners might not know is that the government will rely on data about the composition of their companies' workforces this year in order to determine whether a firm will be liable under that provision. That means employers need to adjust or manage the makeup of their staffs now—not in one year's time, as many of them had likely planned.

"Business owners who don't prepare will find themselves paying potentially significant penalties for 2014," says Monique Warren, partner at workplace law firm Jackson Lewis LLP in White Plains, N.Y.

"I don't think there is a high level of awareness" of the law's provisions, says Penny C. Wofford, employment law attorney at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. in Greenville, S.C. "It's such a complex law and most employers don't fully understand it. But they have to get a handle on it this quarter so they have the option to make adjustments."

Under the law, only the smallest businesses will be exempt from penalties if they don't offer health insurance in 2014. This provision is commonly called the "employer mandate."

aging the full 12 months of 2013 or a consecutive six-month period during the year.

If a firm falls under the employer mandate and doesn't offer health coverage to their employees or their children up to age 26, and if at least one employee receives federal insurance subsidies, the penalty is \$2,000 per year for each full-time employee in excess of 30 full-time employees. There are no penalties if part-time employees aren't offered coverage.

There are other penalties if coverage is considered "unaffordable" or doesn't provide "minimum value," according to guidelines written in the law.

The basics that companies need to know:

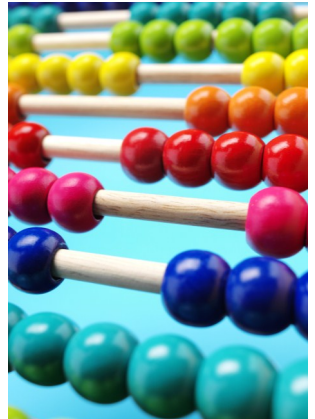
—Employers who averaged 50 or more full-time employees or 50 or more full-time-equivalent employees during 2013 will be subject to the employer mandate.

—A full-time employee is one who is employed (work and paid leave and vacation) an average of at least 30 hours a week, or 130 hours in a month. Seasonal employees may be counted as full-time.

—A full-time equivalent refers to a combination of employees, each of whom individually is not a full-time employee. Part-time or part-time seasonal workers can be lumped together to count as full-time equivalent.

—To calculate the number of full-time equivalents in a given month, add all the hours worked, but not more than 120 hours of service for any employee, and divide the total by 120.

Editors Note: For more information about the Affordable Care Act attend the Council of Industry's free seminar on March 6th, 8:30– 11 am at Rose & Kiernan in Fishkill, NY. See page 3 for more info.



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To determine the size of their firm, and whether it would be subject to the employer mandate, business owners have the choice to calculate their head counts by aver-



More Legislative Matters

Appeals Court Finds 'Recess' Appointments to NLRB Unconstitutional

By Jill Jusko, IndustryWeek

A U.S. appeals court on Friday ruled constitutionally invalid "recess" appointments made by President Barack Obama to the National Labor Relations Board in January 2012, a decision that could have significant ramifications on all decisions made by the board in the past year.

The ruling drew swift reaction from the National Association of Manufacturers and others business organizations, which have argued that the federal labor board has far exceeded its authority in recent years.

"The NLRB's activist and aggressive actions in recent years have raised significant concerns, including challenges to the constitutionality of the board's composition," commented NAM's Joe Trauger, vice president of human resources policy, on the association's Shopfloor blog. "Today's ruling gives strong confirmation to those concerns and is a significant rebuke of what has become an increasingly overreaching NLRB with an intent to ignore its statutory authority."

The National Retail Federation called it "a victory for every American employer."

The U.S. Court of Appeals for the District of Columbia Circuit said the recess appointments were unconstitutional because the Senate in fact was in session when the appointments were made. Thus, Senate approval was required.

Darrell Issa, R-Calif., chairman of the House Committee on Oversight & Government Reform, has been an outspoken critic of the NLRB, citing a "record of rogue action and lack of transparency." He called for the NLRB appointees to step down and said further repercussions were likely.

"Today's ruling will certainly cause other opinions unconstitutionally issued by the board to be invalidated. To avoid further damage to the economy, the NLRB must take the responsible course and cease issuing any further opinions until a constitu-

tionally-sound quorum can be established," he said in a statement.

The federal appeals court decision came in response to a suit brought by a canning company against the NLRB. Noel Canning had petitioned for review of an NLRB finding that the company had violated labor law. Noel Canning argued the decision was invalid because the board lacked a required quorum to issue a decision, as three members were not valid board members.

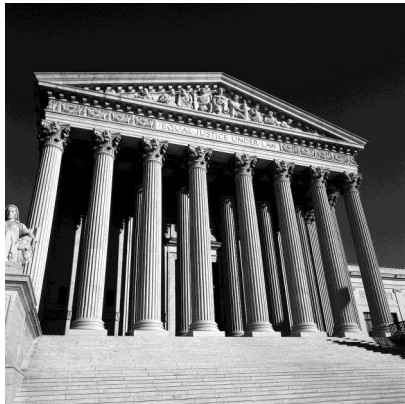
"Because we agree that the appointments were constitutionally invalid and the board therefore lacked a quorum, we grant the petition for review and vacate the board's order," the appeals court panel wrote in its decision.

While business organizations applauded the decision, the United Food and Commercial Workers International Union did not.

"This decision is misguided," said UFCW President Joe Hansen in a statement. "When President Obama made appointments to the NLRB during a congressional recess, he was merely exercising his constitutional authority. The real issue here is the Senate's inability to confirm qualified

nominees. Senate Republicans, aided by a broken rules system, are carrying the water of big business and denying workers and unions a fair shake."

NLRB Chairman Mark Gaston Pearce said the board believes the president's decision will "ultimately be upheld." Meanwhile, "it should be noted that this order applies to only one specific case, Noel Canning, and that similar questions have been raised in more than a dozen cases pending in other courts of appeals," he said in a statement.



"Today's ruling will certainly cause other opinions unconstitutionally issued by the board to be invalidated. To avoid further damage to the economy, the NLRB must take the responsible course and cease issuing any further opinions until a constitutionally-sound quorum can be established," he said in a statement.



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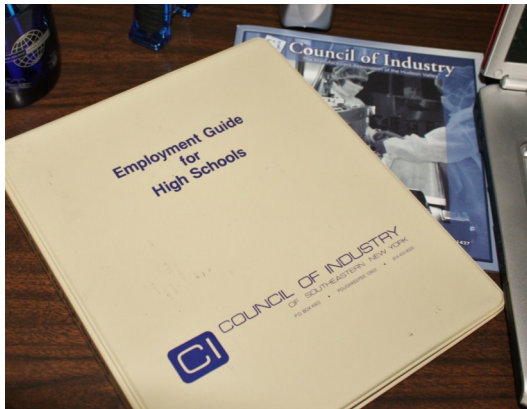
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More Council News

Manufacturing Employment Guide:

Council collecting and compiling data to inform students, educators and others on careers in manufacturing



Nearly 25 years ago the Council of Industry compiled a list of available jobs, their basic requirements and the approximate pay rates from our members. We photocopied them, put them in a three ring binder, and sent them to all the high schools in the Mid-Hudson region. The "Employment Guide For High Schools" was meant to address the concern that, as the introduction to the guide puts it, "...most graduating seniors simply don't know of the existence of many of our companies, and that even many guidance counselors haven't had the opportunity to become aware of them. As a result they are rarely considered

an employment option by new graduates entering the labor market."

The Council of Industry will be re-issuing the "Employment Guide for High Schools" using 21st century resources and technology. In the coming weeks we will be conducting an online survey of our members to assess the employment positions they are presently trying to fill and to identify the skill level required for those positions. We will be marrying that with data we already have such as from our wage and benefit survey to create a resource that students, parents, teachers, guidance counselors and administrators can use to understand the career opportunities available with Hudson Valley manufacturers.

Rather than a three ring binder, the information will be emailed as well as posted on our website and social network pages where it can be easily accessed, downloaded and shared.

This project is being undertaken in part by Jorge Gonzalez, a senior intern from the SUNY New Paltz School of Business. The survey will be sent to our members via email and should only take a few minutes to complete online with questions concerning available jobs, skill level required and compensation ranges for these positions. The Council encourages all of our members to do their part and complete the survey to the best of their ability in an effort to increase public awareness of vital role manufacturing plays in the Hudson Valley economy.

For more information on the survey contact Alison Butler at abutler@councilofindustry.org or call (845) 565-1355.

Meet the new CI Intern



Council intern Jorge Gonzalez is a senior from the SUNY New Paltz School of Business. He has a major in marketing and management and is the president of the student organization for business ethics and research club at New Paltz. Jorge will most likely continue with grad school next year but is hoping to find future internships with companies that will broaden his experience and knowledge of the business world.

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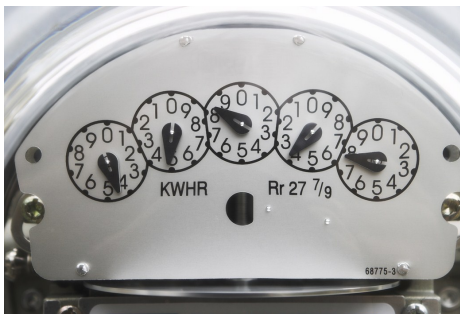
Ulster Adult Career Education Center - Education and Training.
Ulster County. Contact: Mary Jalloh.



Energy Matters

Executive Budget Extends "18-a" Energy Assessment

Section 18-a of the Public Service Law authorizes the state to impose a fee on electric bills from public utilities to fund the operations of energy-related agencies and authorities. For over twenty years, these fees financed the operations of the Department of Public Service and covered some operational costs of the Energy Research and Development Authority.



The assessments were always capped at the lesser of no more than one-third of a percent of a monthly bill, or the operational costs of the agencies. However, in the 2009, then Governor Paterson advanced legislation authorizing the elimination of the operations cap and increased the fee from one-third of a percent to two percent, a six-fold increase, for most ratepayers. The increased revenue from the assessment on all ratepayers is deposited into the State's general fund with other tax revenue.

New Yorkers pay nearly the highest energy costs in the nation. Residential electricity rates alone were 61 percent above the national average and second highest among the 13 most comparable states. Commercial rates were the highest among the same comparable states, and 65 percent above the national average. It is clear that New York's energy policy must take into account that New York's energy rates are high relative to our neighbors and we must take steps that will serve to reduce energy costs, not increase those cost.

The Council of Industry, the Manufacturers Alliance and The Business Council of New York State along with other business associations are requesting to have Part N removed from the Executive's 2013-14 Budget proposal. The Executive is provided an opportunity to amend the Executive Budget within 21 days of its submission to the legislature.

Consumer Price Index for December

				<u>Point</u>	<u>%</u>	<u>% Increase</u>
Wage Earners & Clerical	<u>Nov. '11</u>	<u>Nov. '12</u>	<u>Oct. '12</u>	<u>Increase</u>	<u>Month</u>	<u>Year</u>
1967=100	661.77	672.85	674.96	-2.10	-0.3	1.7
1982-84= 100	222.17	225.89	226.60	-0.71	-0.3	1.7
All Urban Consumers						
1967=100	676.01	689.64	689.64	-1.86	-0.3	1.7
1982-84=100	225.67	229.60	230.22	-0.62	-0.3	1.7
Hudson Valley unemployment rate for December 2012 = 7.3%						

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or call (845) 565-1355 for more information.

**Continued from front page****Affordable Care Act**

How much an employer's tax liability will increase depends on the total subsidy amount and the employer's applicable corporate tax rate. In addition, if the cost of providing this benefit becomes too expensive for employers, additional burdens will be placed on Medicare and taxpayers, who will have to assume the cost of providing coverage to retirees.

Flexible Spending Account (FSA) Funding Limits

What It Is - A cap on the amount an individual can contribute to a tax-favored FSA.

How It Works - The 2010 healthcare law limited the maximum annual contribution that an employee can make to a health FSA to \$2,500. The \$2,500 limit will be indexed for cost-of-living adjustments for plan years beginning after December 31, 2013.

What It Means to Manufacturers - To reduce employees' medical costs, many employers provide FSAs that allow employees to pay for medical expenses not covered by insurance with pre-tax dollars. This helps curb increases in healthcare costs. Limiting the amount employees can contribute to FSAs will increase their healthcare costs.

thorizes states to establish a "transitional reinsurance program" with a goal of stabilizing premiums in the individual market during the first three years that the state health insurance exchanges are operational. As is the case with other facets of the law, if a state chooses not to establish a reinsurance program, HHS will do so.

The law states that fund contributions should total \$25 billion over three years: \$12 billion for 2014, \$8 billion for 2015 and \$5 billion for 2016. However, it is not clear this reinsurance program will require that amount of funds to administer the reinsurance program, and thus, as a result, there may be an opportunity to decrease that amount.

What It Means to Manufacturers - HHS is not expected to announce the final assessment amount until later this fall, but preliminary projections estimate the annual fee could be at least \$60

or more per covered life. This means that for a company with 400 employees, there will be an assessment of \$24,000.

Affordability Tax Credit

What It Is - A health insurance premium tax credit for individuals and families who cannot obtain affordable health insurance through their employers or certain government-sponsored plans.

How It Works - According to the Affordable Care Act, employer-provided health coverage is not considered affordable if the employee's required contribution to the plan exceeds 9.5 percent of the applicable taxpayer's household income for the year.

The IRS has stated that the affordability would be determined by payments for self-only coverage, even if the individual would be purchasing family coverage or other coverage for multiple individuals. This, however, is only guaranteed until the end of 2014; thus, the IRS reserves the right to readdress this calculation.

What It Means to Manufacturers - There was significant concern that the law would require employers to collect "household income" to determine if insurance was affordable. This would mean an employer would need to collect salary information from other household members, as well as information from other employers, if a person in the household has multiple jobs. This is a significant logistical burden that may also violate an employee's privacy rights.

Instead, HHS chose to base the affordability on the data available, allowing affordability to be calculated based on self-only coverage. HHS also has reserved the right to modify this to become more compliant with the statute.

Editors Note: For more information about the Affordable Care Act attend the Council of Industry's free seminar on March 6th, 8:30- 11 am at Rose & Kiernan in Fishkill, NY. See page 3 of this newsletter for more info.

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Continued from page 4 Personnel Matters

USCIS, part of Homeland Security. They will be producing a new Form I-9. It is not clear when the new form will be available but, once it is available, no old forms may be used. The new regulations include:

- Forms and instructions expanded from 5 pages to 9 pages
- New requirement that the form be completed "no later than the first day of work for pay."
- The list of acceptable documents will be updated
- The form will ask for the email address and telephone number of the employee
- Post office boxes will no longer be accepted as an address.

What to Expect from the Obama Administration

The Affordable Care Act is here to stay. Regulations are coming from the IRS, Health & Human Services and the DOL.

- A pro-employee agenda from the NLRB.
- Comprehensive immigration reform
 - * A "path to citizenship" for illegal aliens
- Heightened activity from OSHA
 - * Emphasis on injury and illness prevention programs
 - * New reporting requirements

- EEOC activity
 - * Protections for the lesbian/gay/bisexual/trans-gender community
- Supreme Court appointments
 - * Possibility of as many as 3 appointments in the next 4 years

New York State

Wage Deductions Amendments to Labor Law Section 193. The DOL has not provided its Guidance, but it expands the number of items that may be deducted from employee pay, including:

- Charitable purchases
- Discounted parking or mass transit
- Gym memberships
- Pharmacy purchases
- School and child care expenses.

Anticipated NYS Developments:

- Potential repeal of the Annual Notice of the Wage Theft Protection Act
- Health Workplace Bill. Would require employers to establish policies and procedures to prevent workplace bullying, verbal abuse and "offensive" conduct of any kind.
- Paid Family Leave. Would amend the workers comp laws to allow payments to individuals while caring for sick family members.
- Increased minimum wage.

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Continued from page 5 Personnel Matters

Member Hayes stated that a union security clause operates as a powerful inducement for employees to authorize union dues deductions, and "it is unreasonable to think that employees generally would wish to continue having dues deducted from their pay once their employment no longer depends on it." Member Hayes also responded to the majority's view that employees can simply revoke their authorizations, stating that "it is unlikely that employees will recall the revocation language in their authorizations, and less likely still that they will understand that their obligation to pay dues as a condition of employment terminated as a matter of law once the contract expired." Member Hayes also recognized that an employer's ability to cease collecting union dues from employees upon the expiration of a collective bargaining agreement is "a legitimate economic weapon in bargaining for a successor agreement" and accused the three-member majority of deliberately stripping employers of this weapon to provide more leverage to unions in negotiating for successor agreements.

It is not clear at this point whether the NLRB's recent WKYC-TV decision will be appealed.



Council of Industry

The Manufacturers Association of the Hudson Valley

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