



Council of Industry Newsletter

October 2011
Volume 15
Issue 9

Annual Luncheon & Expo Nov. 4th

The Council of Industry will hold its Annual Luncheon and Member /Associate Member Expo on Friday, November 4th starting at 11:30 am at the Powelton Club in Newburgh, NY. This year's keynote speaker will be Robert Ward, Deputy Director of The Rockefeller Institute, presenting on "Manufacturing in New York State – Opportunities and Threats." Seats are available, \$50 per person or \$350 for a table of eight. Members and Associate members may also sign up for an expo table to display their products to the crowd of local manufacturers in attendance.

The Annual Luncheon has brought Hudson Valley Manufacturers together for decades now. This year should be a great time for industry leaders to come out and hear our guest speaker Robert Ward. He heads the Rockefeller Institute's State and Local Government Finance research, and its New York State studies. Mr. Ward has a position of great insight having studied and written about New York State government for more than 25 years in a variety of positions such as newspaper reporter, assistant to the chairman of the Assembly Ways and Means Committee, and director of research for The Public Policy Institute of New York State. He has also served as an independent fiscal advisor to three New York state governors and is the author of New York State Government, the leading text in this field published in 2002 by the Institute. Mr. Ward will discuss the threats and opportunities for Manufacturers in New York State. (See page 11 for an article on New York State's economy from the Rockefeller Institute.)



Keynote speaker Robert Ward, The Rockefeller Institute. See article on page 11.

The Annual Luncheon is when those individuals that have industriously completed the required course work will receive the Certificate in Manufacturing Leadership presented by the Council of Industry and Dutchess Community College.

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Be a part of the Member/ Associate Member Expo. Contact Alison Butler abutler@councilofindustry.org or call (845)565-1355 for more info.



Training and Education

Improve Sales and Customer Retention with Customer Service Training

Date: Thursday, October 13, 2011

Time: 8:30 a.m. - 4:30 pm

Location: TBA

Cost: \$185 per person, \$170 two or more from same company

Instructor: Debra Pearlman, Sales Trainer, Coach and founder of DP Sales Pro

This full day training provides attendees with tools that are easily implemented in order to identify and cultivate their customer relationships. The training will be broken up in to three components:

- Effectively Transform Irate Customers - participants will learn how to turn an irate customer into a loyal one and how to keep their cool when customers get hot. They will also learn how to turn complaints into profits, remain motivated and productive, and how to ask for referrals and earn repeat business.
- Empathetic & Effective Listening Skills - This component teaches participants ways to overcome barriers that interfere with listening and develop awareness of how attitudes affect what other people hear. They will be taught to evaluate examples of poor listening and their result on the customer experience and strategize guidelines to empathetic listening. They will become a problem solver with sharpened critical thinking skills in terms of providing customer alternatives.
- Outstanding Customer Service (for external & internal customers) - participants learn it is not what you say but how you say it in this component. They will also learn how to manage stress so the customer doesn't hear it, the difference between you and I messages and how to say no when and if you must.

To register online: <https://connect.computility.com/form/index.php?id=c4302d5b455a1823ee35d991b125cd4c> or e-mail Training@councilofindustry.org or call (845) 565-1355.

There is still time to sign up for Fall Training.

We have:

Customer Service Training on 10/13

HAZWOPER on 10/13

OSHA 10 Hour Training 10/28 & 29

Still Time to Sign Up for HAZWOPER & OSHA 10 Hour Training

HAZWOPER

The training will consist of four hours of classroom sessions including presentations, question and answer and video presentations, as well as four hours of hands-on training. This training will include: Classroom: Overview of HAZWOPER regulations; Health and physical hazards associated with spill response; Toxicology; Risk Assessments (electrical, confined space, heat, noise, etc.); Fire protection; Hazard identification and communications; Personal protective equipment; Hazard control; and Monitoring and Instrumentation.

Hands-on Training: Dress out Level D, C and B personnel protection; Methods of decontamination; Donning/doffing of respirators and their limitations; One drum scenario (recognize labels, reference materials, spill control, PPE selection, plug patch repair and over pack of drum, label over pack); Decontamination and Critique of scenario training.

10 Hour OSHA General Industry Course

The 10-hour General Industry Outreach Training Program is intended to provide entry level general industry workers broad awareness on recognizing and preventing hazards on a general industry site. The training covers a variety of safety and health hazards which a worker may encounter at a general industry site. OSHA recommends this training as an orientation to occupational safety and health. Workers will receive additional training on hazards specific to their job. Training will emphasize hazard identification, avoidance, control and prevention.

For dates, times, location and cost see Calendar on page 9

To register online go to: http://www.councilofindustry.org/training/category_courses.html#regulatory

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Council News

EHS Sub-council October Meeting on Air Emissions

Topics: The Clean Air Act & Air Emission Regulations

When: October 21, 8:30—10:00 am

Where: Groundwater & Environmental Services, Inc., Patterson, NY

Cost: None for Members

Patrick Flynn, senior project manager and air specialist with **Groundwater & Environmental Services, Inc.**, will present a brief overview of the Clean Air Act as well as state and local-level air quality programs regulating source and facility level operations. Patrick will also briefly provide an update on new regulations that may have impact on the manufacturing sector. There will be information on the EPA's Boiler MACT rule, Utility MACT rule and Cross State Air Pollution regulations among others. See article on page 8 for information on the EPA's Area Source Boiler MACT rule.



Patrick currently leads GES' air quality management practice. Patrick has a technical background that combines environmental engineering, combustion engineering, fuel science, and the energy and environmental sciences. He has more than eight years of professional environmental consulting experience with an emphasis exclusively on air quality management and has a broad level of experience working in the oil and gas, energy generation, and manufacturing sectors helping numerous facilities manage a wide range of air quality issues across diverse pollution types and sources.

To register contact Alison Butler at abutler@councilofindustry.org or call (845) 565-1355. Register online at our website www.councilofindustry.org.

Welcome New Member:

SunWize Technologies: Solar energy products. Ulster County.
Contact : Richard Martino.

HR Sub-council November Meeting on Labor Board Initiatives

Topics: New Labor Board Initiatives to Promote Unionization: What Employers Need to Know to Protect Themselves

When: November 11, 8:30—11:00 am

Where: Rose & Kiernan, Fishkill, NY

Cost: None for Members



Wage Theft Prevention Act – Presented by **Michael D. Billok, Bond, Schoeneck & King, PLLC**. New dual language notice requirements; new content requirements for employee pay stubs; New record keeping requirements; New employer liability and enhanced penalties for certain violations; New powers granted to the NYS Dept. of Labor; Practical strategies for achieving compliance.

The National Labor Relations Board (NLRB) has launched a series of initiatives to make it easier for unions to successfully organize new members. These changes include the following:

- Effective November 14, 2011, all private sector employers must post an official government notice advising employees of their right to unionize and engage in strikes and other activities.
- Effective immediately, the Labor Board will permit unions to organize employees in small, 'easier-to-organize' bargaining units (e.g. limited to employees in a single job classification).
- The NLRB has ruled both union and non-union employees have the protected right under federal labor laws to disparage their employer and employment conditions on Facebook.
- Recent NLRB decisions expand the right of union organizers to gain access to the workplace for the purpose of signing up new members

The NLRB has proposed a "Quickie Election" that rule would call for union elections within two to three weeks of a union petition. This would limit the employer's opportunity to lawfully communicate to employees about the costs and disadvantages union membership and collective bargaining. See Article on page 5 for more info.

Our presenter is Tom McDonough, Jackson Lewis, LLP.

To register contact Alison Butler at abutler@councilofindustry.org or call (845) 565-1355. Register online at our website www.councilofindustry.org.



Personnel Matters

Notification of Employees Rights under the NLRB

Sources JacksonLewis.com, NAM.org

The notice informs employees of their right to organize, provides contact information for the NLRB, and lists a litany of unlawful employer conduct.

The National Labor Relations Board has issued its final rule on “Notification of Employee Rights under the National Labor Relations Act.” The August 25, 2011, regulation, passed by a 3-1 vote of the Board, will have a significant impact on union-free and partially unionized employers.



The regulation requires that all employers covered by the National Labor Relations Act conspicuously post a notice, where other employment notices are customarily posted, as well as on a company “intranet or internet site if the employer customarily communicates with its employees about personnel rules or policies by such means.” The notice informs employees of their right to organize, provides contact information for the NLRB, and lists a litany of unlawful employer conduct.

Failure to post the notice may constitute an independent unfair labor practice and may be considered evidence of unlawful motive in certain proceedings before the NLRB. A failure to post also may toll the statute of limitations to file unfair labor practice charges for acts allegedly committed during the period in which an employer failed to post the notice.

Employers will be required to post the notice beginning November 14, 2011.

The National Association of Manufacturers (NAM) has filed a lawsuit in the U.S. District Court for the District of Columbia to stop the National Labor Relations Board (NLRB) from moving forward with its “Posting Requirement” rule.

“This rule is just another example of the Board’s aggressive overreach to insert itself into the day-to-day decisions of businesses – exerting powers it doesn’t have,” said NAM President and CEO Jay Timmons. “The growing list of burdensome actions from the NLRB is causing great uncertainty among manufacturers at a time when our economy is struggling to recover. We are committed to fighting this rule in order to rein in the NLRB. We also are encouraging Congress to act soon to stop this rogue agency.”

Proposed Rule

The NLRB issued a Notice of Proposed Rulemaking on this issue in December 2010. During the comment period that closed February 22, 2011, more than 7,000 public responses were submitted. Jackson Lewis prepared comments on behalf of several associations. Concerns raised by the management community included that:

- (1) the regulations and proposed posting exceed the NLRB’s rulemaking authority;
- (2) the proposed remedies were punitive and exceeded the NLRB’s remedial authority;
- (3) the posting is unnecessary and imposes an unneeded burden on employers; and
- (4) the suggested language of the poster did not present a balanced picture of Section 7 rights under the NLRA.

Final Rule Closely Follows Proposal

The final rule contains some modifications. For example, the final rule removes the “requirement that employers distribute the notice via email, voice mail, text messaging or related electronic communications if they customarily communicate with their employees in that manner.”

Continued on page 15



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More Personnel Matters

Keys to a Workplace Culture that Makes Unions Irrelevant

By Gordon McAleer, President, McAleer & Associates

The National Labor Relations Board has introduced new policies that make it considerably easier for unions to gain access to the workforce and mount an organizing campaign. The NLRB is proposing procedures for a shortened time frame of two to three weeks for the union to be able to call for an election. Companies could find themselves faced with an organizing campaign with little time to spare to present their views on the benefits of remaining union free. The implications are that the company has to be ever vigilant and prepared.

Communications

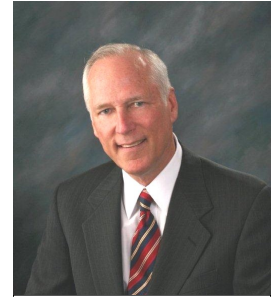
Mutual trust between the employee and the employer is built on open and honest communications. Employees need to know the direction of the company, the objectives, challenges, the “good and the bad.” If employees are kept in the dark, fear and distrust set in, and this leads to seeking outside help from a union. Leaders at all levels have an obligation to engage in open communications with their employees. Communications is a two way proposition, and the leaders need to listen to the employees and foster open feedback without retaliation. Open meetings, email blasts, formal newsletters, and the invaluable one –on-one, spontaneous exchange between the leader and the employee are all effective ways to communicate. The point is the communications have to be frequent and have real substance.

Some well managed firms conduct periodic employee satisfaction surveys to gain a pulse on the workforce. The critical issues of employee satisfaction surveys is to be sure that the feedback is accepted, without retaliation, communicated back to the employees and positive actions taken to resolve those issues that are resolvable. Another technique is to use 360° surveys to provide constructive feedback to leaders on how they are perceived by subordinates and peers, as well as the traditional route of performance reviews by superiors.

Respect and Empowerment

A basic need of employees is to feel accepted and respected. The

synergy of being part of a team will stimulate incredible creativity and commitment to the company. It is essential to demonstrate that the leaders of the company show true respect for the value of the employees. Lack of respect will create distrust and marginal if any commitment to the company. Respect can be demonstrated through a variety of means, including just common courtesy, every day, showing a sincere interest in the employee, and valuing the employee’s input for improving the operation of the department or company. Maintaining a formal program for employee participation is a powerful means for demonstrating respect. Performance reviews should be done a timely basis. One of the most discouraging things to undermine employee morale and trust in management is a practice of late reviews. Top leaders need to have a zero tolerance for managers who do not conduct their reviews on time.



A. Gordon McAleer, President of McAleer & Associates

If employees are kept in the dark, fear and distrust set in, and this leads to seeking outside help from a union.

Employee Recognition

Employee recognition supports the goal of maintaining a positive, engaged workforce. People at all levels need to know that their hard work and creativity are appreciated. An employee recognition program can be put together at little cost but will pay off in goodwill and continued commitment of the workforce. It is important to celebrate the small and large victories and recognize the employees’ contributions to the cause. A program for identifying the top employee of the month, quarter or year is a good start. The program does not require expensive prizes or cash awards to be effective. It is the spirit of recognition that carries the weight.

Salary and Benefits

The company’s salary ranges and benefits need to be in the “ballpark” of the competition but do not need to necessarily lead the pack. Compensation typically ranks below communications and respect and empowerment as issues for employees to seek outside representation. However, it is important to sustain a good position in the labor market as an ongoing, preventive initiative.

In spite of the sympathetic leanings of the state and the NRLB toward organized labor, good, progressive leadership can sustain a workforce environment that is union free.

McAleer & Associates is a member of the Council of Industry and is a professional and executive recruiting firm that has been serving the needs of business for securing top talent for over eighteen years. The firm has the exclusive endorsement of CI. Council of Industry members that use McAleer & Associates are eligible for a 25% discount of recruitment fees. Professionalism, confidentiality, and timely results are assured.

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Legislative Matters

Intellectual Property: Congress Passes Major Patent Reform Bill

From BSK.com



The *America Invents Act*, the most comprehensive and significant patent reform bill in decades, was passed by a Senate vote of 89-9 on September 8, 2011. The bill, which had been approved by the House of Representatives earlier this year, and signed by President Obama on September 16, 2011.

The *Act* will effect far-reaching changes to the current patent system. In addition to several major changes, the *America Invents Act* will result in many smaller modifications, including limiting fee diversion from the Patent and Trademark Office and the creation of three new satellite offices. Below is a brief overview of some of the most significant changes to current patent law.

1. "First-to-File" System

The United States patent system is the only system in the world to currently function under a "first-to-invent" system, meaning that under certain circumstances the first person to invent can be awarded a patent over a second person to invent. With enactment of the *America Invents Act*, the United States will switch to a "first-to-file" system, in which a patent will be awarded to the first inventor to file an application for that invention. Also, interference proceedings, which are currently used to determine who invented the subject of the application first, will be replaced by derivation proceedings, which would ensure that the applicant is actually the inventor and did not derive the invention from someone else.

To enable a "first-to-file" regime, the *Act* will also modify the definition of "prior art." Public use, sales, publications, and other disclosures to the public before the filing date will be considered "prior art" and can bar a patent from issuing, although the inventor will have a one-year grace period for pre-filing activities, limited to "disclosures" by the applicant (for example, publications by the applicant).

The "First-to-File" system will go into effect 18 months after the *America Invents Act* is signed into law.

2. Post-Grant Opposition and Preissuance Submissions

The *America Invents Act* will create several new administrative post-grant review procedures at the Patent and Trademark Office. While *ex parte* reexamination procedures are largely un-

changed, *inter partes* reexamination will be replaced by *inter partes* review, which allows a third party to challenge the validity of a patent after the first year following issuance. A new proceeding called a "post-grant review" will allow challenges to a patent within the first nine months following grant or reissue of the patent.

In addition to *inter partes* review following issuance of a patent, third parties will be allowed to submit "preissuance submissions" -- a patent, published patent application, or other printed publication -- to the Patent and Trademark Office for consideration before the earlier of two events: (i) issuance of a notice of allowance; or (ii) the later of six months after publication or the date of first rejection of any claim by the examiner.

The post-grant review and preissuance submission process will go into effect 12 months after the *America Invents Act* is signed into law.

3. False Patent Marking

Immediately upon enactment, the *America Invents Act* will amend the false patent marking statute such that only (i) U.S. Government or (ii) a competitor who has sustained provable competitive injury can sue for a penalty for false marking. The amendment will apply to any lawsuit currently pending as of the date of enactment. Also significant, the amended section states that legitimate marking with patents that have expired is not a false marking violation.

4. Best Mode Defense Eliminated

The new law will eliminate the "best mode" requirement as a means to invalidate a patent, and will be retroactive for all pending applications and issued patents, except those currently involved in litigation. However, patent applicants will still be required to disclose the best mode in their applications.

The America Invents Act will result in many smaller modifications, including limiting fee diversion from the Patent and Trademark Office and the creation of three new satellite offices.



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More Legislative Matters

IRS Announces New Voluntary Worker Classification Settlement Program; Past Payroll Tax Relief Provided to Employers Who Reclassify Their Workers

From NAM.com

The Internal Revenue Service today launched a new program that will enable many employers to resolve past worker classification issues and achieve certainty under the tax law at a low cost by voluntarily reclassifying their workers.

This new program will allow employers the opportunity to get into compliance by making a minimal payment covering past payroll tax obligations rather than waiting for an IRS audit.

This is part of a larger "Fresh Start" initiative at the IRS to help taxpayers and businesses address their tax responsibilities.

"This settlement program provides certainty and relief to employers in an important area," said IRS Commissioner Doug Shulman. "This is part of a wider effort to help taxpayers and businesses to help give them a fresh start with their tax obligations."

The new Voluntary Classification Settlement Program (VCSP) is designed to increase tax compliance and reduce burden for employers by providing greater certainty for employers, workers and the government. Under the program, eligible employers can obtain substantial relief from federal payroll taxes they may have owed for the past, if they prospectively treat workers as employees. The VCSP is available to many businesses, tax-exempt organizations and government entities that currently erroneously treat their workers or a class or group of workers as nonemployees or independent contractors, and now want to correctly treat these workers as employees.

To be eligible, an applicant must:

- Consistently have treated the workers in the past as nonemployees,
- Have filed all required Forms 1099 for the workers for the previous three years
- Not currently be under audit by the IRS, the Department of Labor or a state agency concerning the classification of these workers

Interested employers can apply for the program by filing Form 8952, Application for Voluntary Classification Settlement Program, at least 60 days before they want to begin treating the workers as employees.

Employers accepted into the program will pay an amount effectively equaling just over one percent of the wages paid to the reclassified workers for the past year. No interest or penalties will be due, and the employers will not be audited on payroll taxes related to these workers for prior years. Participating employers will, for the first three years under the program, be subject to a special six-year statute of limitations, rather than the usual three years that generally applies to payroll taxes.

Full details, including FAQs, will be available on the Employment Tax pages of IRS.gov, and in Announcement 2011-64.



This new program will allow employers the opportunity to get into compliance by making a minimal payment covering past payroll tax obligations rather than waiting for an IRS audit.

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
 for more info.

Compliance Matters

Things You Need to Know About the Boiler MACT

From HRP Associates

If at any time in the future the boiler burns fuel oil outside of a period of natural gas curtailment or for greater than 48 hours per year, the boiler will be considered a new fuel oil boiler under the Area Source Boiler MACT Rule and will be subject to the additional requirement of PM testing every 3 years.

The EPA has recently made several clarifications with regards to the **BOILER MACT FOR AREA SOURCES**.^{*} Please be aware of the following:

1. **Notifications**- Even though the Area Source Rule may have some reconsiderations being reviewed by the EPA, facilities must notify the EPA of their coverage under the rule by September 16, 2011.
2. **Hot Water Heater Exemption Boilers** that heat only hot water, contain less than 120 gallons, operate at pressures less than 160 psig, and operating temperatures do not exceed 210 degrees Fahrenheit are considered hot water heaters and are therefore exempt from the rule.
3. **Natural Gas Exemption** -When utilizing the natural gas exemption for dual-fired boilers you need to consider the fact that the EPA has indicated that they will strictly enforce the requirement that fuel oil may be burned only during periods of natural gas curtailment or for a maximum of 48 hours per year. Therefore, if you have an existing (constructed prior to June 2010) dual-fired boiler (i.e. natural gas and fuel oil) that currently burns natural gas at all times except during periods of curtailment or less than 48 hours per year on fuel oil the boiler is considered natural gas fired and exempt from the rule.



However, if at any time in the future the boiler burns fuel oil outside of a period of natural gas curtailment or for greater than 48 hours per year, the boiler will be considered a new fuel oil boiler under the Area Source Boiler MACT Rule and will be subject to the additional requirement of PM testing every 3 years. Situations you need to consider when utilizing the natural gas exemption include:

- Potential fuel oil tank “burn down” to empty the fuel oil tank for tank inspection will trigger coverage if the “burn down” exceeds 48 hours;
- Burning of fuel oil during boiler maintenance, testing, modification that require the boiler to operate more than 48 hours on fuel oil;
- Potential cost hedging in the future which requires the burning of fuel oil.

^{*}Area Source "Boiler MACT" located at non major source of hazardous air pollutants that burn liquid fuels, bio-mass or coal are subject to Boiler MACT which includes notification, recordkeeping, tune-up and potential emission requirements.

The Council of Industry will be holding a presentation on this, The Clean Air Act and other Air Emission regulations on October 21. See page 3 for more information.

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CI Calendar of Training and Events

Oct 13	HAZWOPER —8:30 am—4:30 pm at Dutchess Community College, Poughkeepsie, NY. Cost: \$240 single member, \$220 each for two or more from the same company.
Oct 13	Customer Service Training —8:30 am—4:30 pm at a location to be announced. Cost: \$185 per person, \$170 each for two or more from the same company.
Oct 21	Environment, Health & Safety Sub-council Meeting — Title V Air Emissions— 8:30—10:00 am at Groundwater Environmental Services, Patterson, NY. No cost for members.
Oct. 27 & 28	10 Hour OSHA Training — 8:00 am—1:00 pm at Dutchess Community College, Poughkeepsie, NY. Cost: \$ 120 single member, \$110 each for two or more from the same company.
Nov. 4	Annual Luncheon & Member/ Associate Member Expo — 11:30 am—2:00 pm at the Powelton Club, Newburgh, NY. Cost: \$50 per person, \$350 for a table of eight.
Nov. 11	Human Resources Sub-council Meeting: NLRB Update — 8:30—11:00 am at Rose & Kiernan, Fishkill, NY. Presentation by Jackson Lewis LLP. No cost for members.

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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Energy Matters

Bright Lights, Big Savings

Those who have participated report that the program was easy to implement, resulted in very little if any interruption of operations, produced improved lighting on the floor and reduced their energy bills as advertised.

Council members that are customers of Central Hudson and have not yet implemented this energy efficient lighting program should consider taking advantage while the favorable terms remain in effect. For very little out of pocket expense you can start seeing significant savings on your electricity bills.

For qualified projects, Central Hudson will pay 60% of the cost of new, energy-efficient lighting for your business and provide 0% financing on the balance. That means no up-front costs and lower electric bills!

- FREE ENERGY AUDIT
- NO UP-FRONT COSTS
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- OVER 1,075 PROJECTS HAVE BEEN COMPLETED SO FAR
- AVERAGE ENERGY REDUCTION FOR SMALL BUSINESSES IS 20-30%
- REPLACE T12 LAMPS AND BALLASTS, *WHICH ARE BEING PHASED OUT*



Jeff Melvin, Manufacturing Manger at Wolf-Tec, under his bright new lights.

Many of our members have already taken advantage and are now realizing the savings. Those who have participated report that the program was easy to implement, resulted in very little if any interruption of operations, produced improved lighting on the floor and reduced their energy bills as advertised.

Council of Industry member Wolf-tec, Inc is one of those that have taken advantage of this program. Jeff Melvin, Wolf-tec’s manufacturing manager, had wanted to upgrade the facility’s indoor lighting for a long time but found project quotes of \$30,000 too prohibitive. “It was easier to buy a few lamps and deal with second-hand lighting,” Melvin said. “It’s a shame, because you use more power.”

When Melvin heard about Central Hudson’s energy-efficient commercial lighting program, he knew it was a perfect solution for the company, which manufactures equipment for the food industry. “It’s huge cost savings — the incentive was a no-brainer,” he said.

As part of the program, Central Hudson paid \$22,200 for its lighting partner, alliance Energy solutions, to replace old, poor-quality lights with new, energy efficient bulbs in two Wolf-tec facilities.

Wolf-tec has already seen improvements in the quality of lighting and the company’s electricity bill. “You’re dealing with high-tolerance equipment,” Melvin said. “You need to be able to see the parts you’re making and set up correctly. Before, there was a lot of different lighting attached to different equipment to help workers see better. That’s not necessary anymore.”

“This is definitely a cost-effective program,” he added. “The payback is black and white, and the numbers don’t lie. It’s definitely worthwhile. The lighting itself is just night and day from what it used to be.

Call (845) 486-5221 or visit <http://www.centralhudson.com/savemoney/> to learn more.

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Manufacturing Matters

New York State's Economy Outperforms Nation After Decades-Long Lag

From The Rockefeller Institute

While New York State's economic performance has lagged the nation's for decades, the Empire State has done better than the nation overall during and after the Great Recession, according to a new report from the Rockefeller Institute.



New York State's private-sector employment trends were significantly better than those of the nation for four consecutive years, as measured by annual gains or losses in 2007 through 2010. This is the most sustained period in which the state has outperformed the nation at least since the Great Depression, Institute Deputy Director Robert B. Ward writes in "The Surprise Economy: Why Has New York Been Outperforming the Nation?"

Like almost every other state, New York lost jobs over the period – with gains in 2007 and 2008 more than offset by declines in the two succeeding years. The state ended 2010 with 343,000 more jobs than it would have had, if its private-sector employment gains and losses had matched the national average over the past four years.

"The man-bites-dog story of New York's performance before, during and after the last recession suggests two new questions," Ward writes. "Is it possible to explain why New York has done better? And if so, will those insights help policymakers shape a successful strategy for job growth in the future?"

One factor in New York's above-average employment trends is that the state did not suffer the deep housing-market difficulties that occurred in many regions. Other reasons for the state's relative economic strength are more difficult to identify, the brief says.

New York City fared especially well during the period, with private-sector job growth of 1.1 percent. Every other region of the state lost jobs, but at rates significantly better than the overall U.S. decline of 5.9 percent. For example, private employment declined by 2.7 percent in Western New York, 3.1 percent on Long Island and 3.3 percent in the Capital Region.

Private-sector industries where New York out-

performed the nation include construction, retail trade, professional and business services, and leisure/hospitality. The decline in securities-industry jobs, a key element of the state's economy, was sharper than that nationwide. State government employment declined modestly in New York over the period, while school districts added jobs at a pace well above the national average during the period.

The Rockefeller Institute brief examines the potential impact of taxes and other business-climate issues, immigration and other factors that may influence employment markets. The state's slow population growth in recent years has likely acted as a drag on employment, while longer-term weakness in both jobs and population have reinforced each trend, the report says.

New York did not fare as well during the first half of 2011 as it did in the previous four years, according to the Institute brief. While private-sector employment rose in both the state and the nation during the first half of the year, New York fell marginally below the U.S. average.

"From 2007 through 2010, New York added jobs more rapidly than the nation, and then experienced a less painful rate of job losses," according to the report. "Still, such positive results do not indicate that the state's economy is performing at peak capacity. It's possible that the state could have done even better in recent years, had any number of conditions been different.

"Researchers and policymakers do not fully understand why the state's recent relative performance has been strong," Ward writes. "And that suggests we may not know for sure what the Empire State must do to compete successfully in the future. Improving our understanding of such questions will be essential, if New York is to gain its desired share of national and global economic growth."

For a full copy of the report, visit www.rockinst.org.

The Empire State enjoyed four straight years of above-average employment numbers, but trend may be ending in 2011.

Editors note: Robert Ward, Deputy Director of the Rockefeller Institute, quoted in this article, will be the keynote speaker for the Council's Annual Luncheon on Nov. 11.



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Financial Matters

Manufacturing Is Key To Unlocking Economic Growth

By Chad Moutray, Chief Economist, National Association of Manufacturers

Research activities such as developing new applications for an existing technology, conducting tests to satisfy foreign regulatory requirements, or generating prototypes and first articles of new products for testing and validation can be eligible for R&D tax incentives.

Since December 2009, manufacturers have created 289,000 net new jobs, or over 15 percent of all new U.S. non-farm payroll jobs. With manufacturing accounting for around 9 percent of total employment, this speaks to the outsized role the sector has played in the recovery. Yet, with manufacturing activity stalling more recently, future economic growth will depend on increased production and sales for manufacturers in the coming months.

Real GDP grew 3 percent in 2010, but growth has been much slower in 2011. First quarter 2011 real GDP was revised from an earlier 1.9 percent growth to just 0.4 percent. Advanced estimates of second-quarter real GDP indicate 1.3 percent growth. There are many reasons behind the slide in growth so far this year, including supply chain disruptions stemming from the Japanese disaster, rising energy and raw materials prices, falling business and consumer confidence, and a still-weak housing market.

Digging deeper into the GDP numbers, it is not hard to see the large contributions manufacturers are making, even in weaker economic times. The goods-producing sector accounted for 0.99 percent, or approximately one-third, of the growth in real GDP in 2010.

For much of the past year and a half, that growth has been led by the durable goods sector. Excluding the second quarter of this year (which has seen most of the repercussions of the supply chain issues in the transportation sector and elsewhere), spending on durable goods contributed 0.79 percent to the nation's economic growth. Consumption of nondurables and services added 0.49 and 0.67 percent, respectively, to real GDP



contribution to real GDP of exports of goods and services over the past six quarters has been 0.84 and 0.17 percentage points, respectively. Manufactured goods exports have grown 13 percent over the past year—a testament to importance of new global markets for American

businesses.

Sales of our manufactured products—both domestically and internationally—are leading to greater employment opportunities in the United States. As noted earlier, manufacturers are hiring workers again to respond to the additional demand, and since December 2009, the industry has recouped 12.65 percent of the 2.28 million jobs lost in 2008 and 2009. Much of that employment growth has come from the durable goods sector, which, not coincidentally, also witnessed the most losses during the recession. Among the strongest sectors to recover over the past 19 months are primary metals, motor vehicles and parts, fabricated metal products, computer and peripheral equipment, and machinery.

Moving forward, a number of headwinds stand in the way of economic growth. Anxieties persist, especially in light of America's downgraded debt rating by Standard and Poor's and continued financial challenges in Europe. Manufacturers worry about reduced new orders, the tax and regulatory environment, the depressed housing market and policy uncertainties related to solving the nation's current deficit trajectory.

Yet, manufacturers continue to be more optimistic about future production than present conditions might indicate. In numerous surveys, they expect increased sales, production, capital spending and employment over the next six months. Economic events might derail this view, and their levels of optimism have certainly diminished over the past few months with more bad news. It is also clear that manufacturers are the key to our current and future economic growth, and policymakers would be wise to do what they can to ensure the sector thrives.

over the same time period.

Of course, these numbers look only at the contributions of spending by Americans; manufacturers also benefit from sales overseas. The average



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Member Benefits

New UPS Freight Association Discount Program for All CI Members

The Council of industry is delighted to announce a new benefit for our members through the UPS Freight Association Program. By using the buying power of the Council of Industry as the manufacturers association of the Hudson Valley, even members that are small companies will be able to get large discounts that they would have otherwise not be eligible for. Below are some discount examples:

- 1 skid moving 500 miles weighing 500 lbs @ 70% discount = \$247.17 savings
- 1 skid moving 500 miles weighing 500 lbs @ 75% discount = \$302.97 savings
- 1 skid moving 500 miles weighing 500 lbs @ 80% discount = \$332.05 savings

UPS Freight will move your shipment with a local call and short notice and all shipments are guaranteed or it's free. There are no minimum requirements or commitments to qualify for the savings plan and receive the Council of Industry discount. The discount applies to and from all fifty U.S. states and all Provinces of Canada. For larger volume shippers/purchasers UPS Freight will customize discounts up to 84% and even the smallest members UPS Freight will establish a minimum discount of 70%.

Discounts applies to:

- Shipping – all shipments that CI members ship prepaid will receive their customized discount.
- Purchased Material – all shipments that are Collect to a CI member will receive their customized discount.
- Drop Shipping (Third Party Billing) – all materials shipped directly to customers that a CI member pays the freight charges will receive their customized discount.
- Heavy Weight LTL Shipments – 150lbs – 20,000lbs.
- Shipments are Guaranteed!!

Watch your e-mail and the Council of Industry website www.councilofindustry.org for enrollment information.

Consumer Price Index for August 2011

				<u>Point</u>	<u>%</u>	<u>% Increase</u>
Wage Earners & Cler-	<u>Aug '10</u>	<u>Aug '11</u>	<u>July '11</u>	<u>Increase</u>	<u>Month</u>	<u>Year</u>
1967=100	638.05	665.22	663.31	1.91	0.3	4.3
1982-84= 100	214.21	223.33	222.69	0.64	0.3	4.3
All Urban Consumers						
1967=100	653.97	678.63	676.76	1.87	0.3	3.8
1982-84=100	218.31	226.55	225.92	0.62	0.3	3.8

Hudson Valley unemployment rate for August 2011 = 6.8%

For larger volume shippers/purchasers UPS Freight will customize discounts up to 84% and even the smallest members UPS Freight will establish a minimum discount of 70%.

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More Personnel Matters

Wage Theft Act, Worker Misclassification Presentation Full of Important Info

From Bond, Schoeneck & King at BSK.com



The Human Resource sub-council met on Friday, September 16th for a presentation on the Wage Theft Act and Worker Misclassification by Michael Billock and Frank Mayer, Bond Schoeneck & King, PLLC. The meeting was well attended and members received a plethora of information. Below is information on the Wage Theft Act and there is an article on Worker Misclassification on page 7.

On December 13, 2010, former New York Governor David Paterson signed into law the Wage Theft Prevention Act (the "Act"), which imposes new notification and recordkeeping requirements on employers, significantly expands the Department of Labor's enforcement powers, and increases employers' potential liability for violations of the Labor Law. The Act went effect on April 9, 2011.

Written Notice Requirements

The Labor Law has long required employers to provide employees with certain information about their pay, but the Act expands the scope of this requirement. Under the Act, each employee must be given -- at time of hire and annually on or before February 1 of each year -- written notice of the employee's wage rate, regular pay dates, overtime rate (if applicable), the basis of the employee's wage rate (per shift, per hour, salary, etc.), the existence of any minimum wage allowances (e.g., tip, meal or lodging), the employer's name (and any d/b/a name), telephone number, and physical and mailing address. Importantly, the statutory language gives the Agency significant latitude to add further requirements to the written notice. The Commissioner of Labor is authorized under the Act to require an employer to provide any other information that the Agency deems "material and necessary." At this point, the Agency has not issued any regulations imposing additional requirements. In addition, a new written notice must be provided to an employee at least seven days in advance of any change by an employer, unless the change is reflected on the employee's paystub. The written notice must be provided in English "and in the Em-

ployee's primary language."

Written Acknowledgment

Every time a written notice is provided to an employee, the employer must obtain the employee's signed and dated written acknowledgment, which must be maintained for at least six years. The written acknowledgment also must contain certain required information, including an affirmation by the employee that he or she accurately identified his or her primary language to the employer and that the notice provided by the employer was in the primary language identified. The acknowledgment must also adhere to any "requirements" established by the Agency as to "content and form." At this time, the Agency has not published any additional requirements. This acknowledgment must be in English and the employee's primary language. The Department of Labor has sample dual-language "templates" that may be used to satisfy the notice and acknowledgment requirements.

Wage Statements

The new law requires detailed information about how the wages were calculated, including any allowances, the rate and basis of the pay, and the dates of work covered by the payment. For employees who are eligible for overtime, additional information must be included on each pay stub, including a statement of the regular and overtime rate of pay, and the number of hours worked at each rate. Piece rate workers must be notified on the pay stub of the applicable piece rate and the number of pieces completed at the applicable rate.

Expanded Remedies

There is a significant increase in potential liability for Labor Law violations under the Act. Employees have the right under the Act to bring a civil action in court for violations of the requirements to provide an employee with written notice of wages and with a compliant pay stub. An employee may recover statutory damages, attorney's fees and costs in connection with such a claim. Additionally, the Department of Labor is authorized to bring a civil or administrative action against an employer and assess penalties of either

\$50 or \$100 per week (depending on the violation), with no cap on the penalty amount that may be assessed. Employers and certain "officers and agents" may additionally face criminal liability for failing to maintain payroll records. This criminal liability is extended by the new law to include LLCs and partnerships.

The new law also greatly expands the remedies available where an employer fails to pay wages and benefits to employees. Previously, an employee who prevailed in a court action alleging a failure to pay wages received the total amount of the underpayment, costs, attorney's fees, and, in some instances, liquidated damages equal to 25% of the underpayment. Under the new law, an employee can recover, in addition to the foregoing, prejudgment interest and liquidated damages equal to the 100% of the total wages owed.

The Act also permits the Department of Labor to require an employer who has been found to have violated the law to post in the workplace (on 8 1/2 x 11 inch paper) a notice of the various violations committed by the employer. Such a posting must be affixed for up to one year in an area visible to employees. Additionally, where the Agency determines that an employer willfully failed to pay wages to an employee, the employer may be required to post a notice "visible to the general public" regarding the violations.

Anti-Retaliation Protection

Several key changes to the Labor Law's anti-retaliation protections have been made, such as requiring "any person" found to have engaged in unlawful retaliation to pay liquidated damages of up to \$10,000, along with costs and attorney's fees. Additional forms of damages may now be awarded, including front pay in lieu of reinstatement to employment. An employee can also pursue a civil action in court to assert unlawful retaliation. Retaliation is now listed as a class B misdemeanor.

Employers should review their payroll practices to be sure they have made the changes needed to comply with the law's various requirements.



Continued from page 1- Annual Luncheon

This year we have eight graduates from the program: Tim Navitsky, Balchem; Edward Lotz, Schriener Medipharm; John Pearson, Paragon Aquatics; Jesse Croft, MPI; and four from Alcoa Fastening Systems: Dave, Blair, Ron Chambers, Nick Gougoutris, Linda Hanley. The Council of Industry is proud of this latest group of certificate recipients and wishes them all the best in the years ahead.

One of the best parts of the Annual Luncheon is the Member/Associate Member Expo. This is when local manufacturers and their associate industries can show their wares so to speak. Participants receive an 8 foot table to display products and information about their company and services. An expo table is free for members and associate members but we do ask that participants purchase two seats at the luncheon. Space is limited so sign up early.

It is the sponsors that make the Annual Luncheon possible and we would like to thank our Supporting Sponsors so far: The Chazen Companies, Verticon, Ltd., There is still time to become either a Major sponsor (\$2,500) or Supporting Sponsor (\$1,500) both of which include a table for eight at the Luncheon among other benefits.

To reserve a seat, or for more information on the expo and sponsorships, contact Alison Butler at abutler@councilofindustry.org, or call (845) 565-1355. There are links on our website for purchasing seats online, go to www.councilofindustry.org.

Continued from page 4- Personnel Matters


Additionally, in response to comments by Jackson Lewis on behalf of one association, the Board modified the posting from proposed language that indicated that a union may not “threaten you that you will lose your job” to read “threaten or coerce you in order to gain your support for the union.” As to foreign language requirements, the final rule provides that “[w]here 20 percent or more of an employer’s workforce is not proficient in English and speaks a language other than English, the employer must provide notice...in the language the employees speak. If an employer’s workforce includes two or more groups constituting at least 20 percent of the workforce who speak different languages, the employer must provide the notice in each such language.” The NLRB also has offered to translate the notice to employees who “do not understand or speak English well.” Nevertheless, the final rule closely follows the Board’s proposal.

Next Steps for Employers

Employers should prepare prior to the November 14, 2011, implementation date. For example, employers should train supervisors now regarding the meaning of the notice, the company’s position on unionization, the significance of authorization cards, and how and when to communicate lawfully about these subjects.

Employers’ labor relations programs should be reviewed. This should include performing a bargaining unit analysis, and the pros/cons of posting their own notice (or otherwise communicating with employees) to help their staff understand the Board’s new posting and the employer’s position on the issue.

The Council of Industry’s Human Resources Sub-council meeting on November 11th, (8:30– 11:00 am at Rose Kiernan, Fishkill NY) will have a presentation by Jackson Lewis LLP’s, Tom McDounough which will cover this topic in more depth. To register contact Alison Butler abutler@councilofindustry.org or (845) 565-1355.



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