CI NEWSLETTER

The Council of Industry of Southeastern New York

September 2009 **The Manufacturers Association of the Hudson Valley** Volume 13 Issue 8

Inside this issue:

Welcome New Associate Members:

Corporate Fuel Advisors - Financial advisors. Contact: Sam Ticknor. New York, NY.

Valley Courier– Same day courier and delivery service. Contacts: Barbara Gill and Chris Haig. Ulster

The Council of Industry's Annual Golf Outing is a Success

The Council of Industry's Annual Golf Outing took place on August 24 at the Powelton Club in Newburgh, NY and was a great success. Golfers at the event enjoyed fabulous weather and wonderful food. Thank you to **Pepco Energy Services** for sponsoring a delicious lunch and **Ulster Savings Bank and Ulster Insurance Services** for sponsoring the well deserved cocktails. This year the best ball champions were able to actually hoist the newly christened "Council Cup" at the post tournament dinner.

In as close to an upset as it gets at this event, the Kolmar Labs team beat out the returning two time champion Best Ball team from Pawling Corp. Playing from Kolmar were Rob Theroux, Tom Hinkley, Rick Matyus, and Bill Matos. At the dinner they enjoyed a bottle of champagne chilled in the "Council Cup" and received tickets to a Yankee baseball game courtesy of **Ulster Insurance Services.**

The team from Kolmar Labs hoists the "Council Cup" as winners of the best ball competition.

The infamous game of Yellow Ball was won by the Jabil Circuit, Inc. team featuring Brian Hutchins, Tim McMorris, Erik Sloth and Harry Brady. In the individual competition Kolmar Labs cleaned up as well with Bill Matos winning closest to the pin and Tom Hinkley winning the men's longest drive. Amy King captured the longest drive on the women's side. A huge thank you to the prize sponsors, **M&T Bank and Kolmar Labs, Inc.**

We would also like to thank **Verticon Construction Services** for sponsoring the hole- in- one and although no one sank it and won the BMW we did have a few come very close.

The Council of Industry would like to thank our tee sponsors: **Package Pavement Company, Riverside Bank, Rose & Kiernan, Armistead Mechanical, Inc., AMI Services, Inc., Rondout Savings Bank, Jackson Lewis LLP, Sir Speedy, and HRP Associates** as well for their support.

Jabil Circuit, Inc. won the infamous game of Yellow Ball.

This event is a great way for Hudson Valley manufacturers to mix and mingle with each other and it is the sponsors that make it all possible. We hope to see you at next year's event.

Thank You to the following companies for their support of the Golf Outing:

- Lunch Sponsor: **Pepco Energy Services**
- Cocktail Sponsor: **Ulster Savings Bank/Ulster Insurance**
- Hole In One Sponsor: **Verticon Ltd.**
- Prize Sponsors: **M&T Bank, Kolmar Labs, Inc.**
- Tee Sign Sponsors: **Package Pavement Company, Riverside Bank, Rose & Kiernan, Armistead Mechanical, Inc., AMI Services, Inc., Rondout Savings Bank, Jackson Lewis LLP, Sir Speedy,** and **HRP Associates**

Newsletter Sponsored By KeyBank

Training and Education

The Council of Industry is proud to announce the return of our Sales and Customer Service Training Program. For more information see the enclosed fliers or go online to our website at www.councilofindustry.org

Two Regulatory Classes Offered this Fall: RCRA Hazardous Waste and DOT Hazardous Materials Training

RCRA Hazardous Waste Training

Dates: Wednesday, September 30, 2009
Where: TBA
Instructor: HRP Associates, Inc.

Time: 8:30am - 12:30pm
Cost: $115 single member, $100 2 or more from same company

DOT Hazardous Materials Training

Dates: Wednesday October 14, 2009
Where: TBA
Instructor: HRP Associates, Inc.

Time: 8:30am - 12:30pm
Cost: $115 single member, $100 2 or more from same company

CLICK HERE TO REGISTER AND PAY ONLINE

For more information contact Ana Maria Murabito at (845) 565-1355 or anamaria@councilofindustry.org.

Sales and Customer Service Training

Customer Service Training

Dates: Thursday, October 8, 2009
Where: TBA
Instructor: DP Sales Pro

Time: 8:30am - 4:30pm
Cost: $185 single member, $170 2 or more from same company

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 into three key components:

- Effectively Transform Irate Customers
- Empathetic & Effective Listening Skills
- Outstanding Customer Service For External & Internal Customers

Sales Training

Dates: Thursday, October 22, 2009
Where: TBA
Instructor: DP Sales Pro

Time: 8:30am - 4:30pm
Cost: $185 single member, $170 2 or more from same company

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 F2F and Social Media Networking

CLICK HERE TO REGISTER AND PAY ONLINE

For more information contact Ana Maria Murabito at (845) 565-1355 or anamaria@councilofindustry.org.

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Council News

HR Sub-council Meeting: Wellness Programs

When: Friday, Sept. 11, registration/ networking at 8:30, Program begins at 9.
Where: Ulster Savings Bank, 180 Schwenk Drive, Kingston, NY
Cost: None for Members

Presentations will include:

- What is a Wellness Program-
- Various layers of involvement from offering discounts to health clubs, to assessing surcharges to employees that smoke or have other unhealthy habits
- How can it save my company money
- Community rated vs. experienced rated
- Reduced premiums
- Reduced absenteeism
- How do we measure
- How Wellness fits with Federal health reform (if it happens)
- Who can help

Presentations by: **Ulster Insurance Services**, and **Emergency One**.

To register or for more information e-mail abutler@councilofindustry.org or call the Council office (845) 565-1355.

Energy Efficiency Seminar

When: Thurs. Sept 17, 8—10 am
Where: Rose & Kiernan, Fishkill, NY
Cost: $15 for members

This seminar will provide information on:

- How to run your facility more efficiently
- Investments that will reduce energy bills in the long run
- Renewable energy options

To register or for more information e-mail abutler@councilofindustry.org or call the Council office (845) 565-1355.

Reminder- Wage & Benefit Survey Due Sept 30th!

Results will only be shared with those companies that return completed surveys.

Contact the Council office if you need a copy of the survey or have questions (845) 565—1355 or abutler@councilofindustry.org.

EHS Sub-council Meeting: Combustible Dust

When: Friday, Oct. 16, 8:30—10:00 am
Where: Dyno Nobel, Ulster Park, NY
Cost: None for Members

A 2006 Chemical Safety and Hazard Abatement Board (CBS) Study indicated that 281 dust fires and explosions occurred between 1980 and 2005 from combustible dust incidents. These incidents reportedly claimed 119 lives and injured 718 people, as well as occurred in 44 states in many different industries and involved a variety of different materials. In 2008, following a major explosion at a Imperial Sugar refinery, OSHA has implemented a National Emphasis Program that contains policies and procedures for inspecting workplaces that create or handle combustible dusts. If you potential generate or process dusts include, but are not limited to metal dust such as aluminum and magnesium, wood dust, coal and other carbon dusts, plastic dust and additives, etc. your company needs to be aware of this National Emphasis Program.

Jeffrey Sotek, CSP and CIH from **HRP Associates**, will present information on how to identify, prevent and prepare for this occupational hazard. He will cover OSHA's policy on combustible dust and guidances regarding combustible dust.

To register or for more information e-mail abutler@councilofindustry.org or call the Council office (845) 565-1355.

Freight Rail Shipment Seminar

When: Wed Oct. 21, 8:30 —10 am
Where: Rose & Kiernan, Fishkill, NY
Cost: None for members

Presented by **C & S Companies**, the intent of this 2 hour training session is to inform potential freight shippers of the advantages and processes involved in transportation of manufactured goods by railroad.

To register or for more information e-mail abutler@councilofindustry.org or call the Council office (845) 565-1355.

Participation in the Wage & Benefit survey is critical to its usefulness. The more companies that take part, the more valuable and reliable the data will be.

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Personnel Matters

American Heart Association's Start! Program Offers Employers Opportunity to Cut Costs and Help Employees

Sedentary living is costing American companies billions of dollars in healthcare costs and lost productivity. A major contributing factor is a corporate culture that promotes inactivity. Through Start!, the American Heart Association is challenging corporate America to make employee health a top priority and promote a culture of physical activity, which can work to reduce mounting healthcare costs.

"Start! is a win-win for companies and employees," said Bob Savage, chairman of the American Heart Association's Dutchess Ulster Region board of directors, and President and CEO of Saint Francis Hospital. "Physical inactivity significantly increases the risk of cardiovascular disease, which is our nation's No. 1 killer. Physical inactivity also has a significant impact on a company's bottom line."

Consider these statistics:

- The typical American now works 47 hours a week — 164 more hours per year than only 20 years ago.
- Preventable illnesses make up 70 percent of the illness costs in the United States.
- Fitness programs have reduced employer healthcare costs by 20 to 55 percent.
- If sedentary, obese employees increase their activity and become moderately active, even without weight loss, their company could save an estimated $500 per person.

Reducing just one health risk increases a person's productivity on the job by nine percent and reduces absenteeism by two percent.

"Those statistics illustrate the power of the program: Start! saves companies money," Savage said. "Start! also makes perfect sense from an employee's point of view. According to a Harvard study, for every one hour of regular exercise, you can gain two hours of life expectancy. Who doesn't want to live a longer, healthier life?"

That's why the American Heart Association has created a number of Start! tools and programs to get your employees walking:

Start! Walking. The Start! Walking Program organizes your employees into walking teams, and gives them the tools to create walking routes around your workplace.

Fit-Friendly. Employers who create a culture of health in the workplace are champions for employees. Becoming one of America's Fit-Friendly Companies gives you access to the American Heart Association's resources for creating a healthy workplace environment.

Start Tracking! Giving your employees an online log to track their activity and food intake is a perfect way to get them started.

Start! *Heart Walk*. As a cornerstone of the Start! movement, the Start! Heart Walk draws employees together for a common cause. Employees can create teams, raise funds and walk together.

"Start! is the country's first real opportunity for corporate America to have a significant impact on employees' health by creating a walk-friendly workplace," Savage said. "And it's free to employers. The American Heart Association will come visit your workplace and walk you through the tools at no cost to you."

To talk to someone directly about how you can get started with any of these Start! tools, contact Andrea Casey (in Dutchess, Putnam and Ulster counties) at 845-905-2134 or Tonya Addy (in Orange, Rockland and Sullivan counties) at 845-342-1115.

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More Personnel Matters

Are Training Departments Scared to Evaluate?

From www.mybusinesschronicle.com

Companies spend an average of $1,202 per employee on training, according to a 2009 report by a leading training analysis firm, Bersin & Associates. But even in today's tough economy, many companies are still handing out smile sheets to evaluate the value of this investment. And this is happening 40 years after Donald Kirkpatrick first published his ideas on evaluation. Are training departments scared to evaluate?

"They should be," says Diane Valenti, President and Founder of Applied Performance Solutions, Inc (http://www.appliedperformancesolutions.com/). "If you rely on evaluation to prove the value of training, it's too late. Who wants to tell senior management that the company just wasted thousands of dollars on training that didn't work?"

Instead, companies should evaluate whether they need training in the first place.

"The old formula was to invest valuable capital in training and then attempt to prove the ROI after the fact through training evaluation--sometimes using slippery metrics that couldn't accurately be attributed to training," Valenti says. "Companies can no longer afford this kind of guesswork. Instead, they need to prove that training is a worthwhile investment before they spend a single dime."

Valenti says that before investing in training, enterprises should seek answers to four questions:

1) **Does the training address an urgent business problem?** Any proposed training should be geared toward boosting the bottom line. If not, the training could be "nice to have" but not mission critical.

2) **Is training the right (or the only) solution?** Companies must evaluate whether the metrics they want to shift, or the problems they want to solve, are connected to a skill gap. If the problem is a faulty process, for example, then training is not the answer.

3) **Is it worth it to do training?** It is critical to do a cost-benefit analysis with clear metrics, comparing the anticipated benefit of solving a problem or seizing a business opportunity with the projected cost of the training program.

4) **Is there a solid sponsor who agrees that training is a good investment?** The final step is to ensure that the C-level sponsor is on board with the answers to questions 1 through 3 and agrees that the training is worthwhile.

"If you rely on evaluation to prove the value of training, it's too late. Who wants to tell senior management that the company just wasted thousands of dollars on training that didn't work?"

Consumer Price Index - July 2009

				Point	%	% Increase
Wage Earners & Clerical	July '08	July	June	Increase	Month	Year
1967=100	644.3	627.09	628.42	-1.33	-0.2	-2.7
1982-84= 100	216.3	210.53	210.97	-0.45	-0.2	-2.7
All Urban Consumers						
1967=100	658.92	645.10	646.12	-1.02	-0.2	-2.1
1982-84=100	219.96	215.35	215.69	-0.34	-0.2	-2.1
Hudson Valley Unemployment Rate for July 2009 = 7.6						

Place Your Company's Ad Here

The Council of Industry's monthly newsletter has a mailing circulation of 250 manufacturers and an online circulation of hundreds more.

Contact Alison Butler at

abutler@councilofindustry.org

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

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Legislative Matters

NAM/ACCF Analysis of Waxman-Markey Cap and Trade Legislation Concludes Bill Will Cost 2.4 Million

The National Association of Manufacturers (NAM) and the American Council for Capital Formation (ACCF) earlier this month unveiled a comprehensive study on the impact of The American Clean Energy and Security Act of 2009, also known as the Waxman-Markey Bill (HR 2454). The bill aims to reduce greenhouse gas emissions and to cap the amount of carbon that is emitted by U.S. industry. The legislation does so by mandating a cap and trade program and other provisions governing fuel choices available to businesses and consumers. This bill passed the House of Representatives by a slim margin (219-212) earlier this summer. The Senate is expected to release its version of climate legislation in September.

The study, which was commissioned by the NAM and ACCF and conducted by Science Applications International Corporation (SAIC) using NAM and ACCF input assumptions, assesses the impact of the Waxman-Markey Bill on manufacturing, jobs, energy prices and our overall economy. The NAM and ACCF released national data as well as the analysis for 15 industrial states that would be impacted greatly if this or similar legislation is signed into law. The full report, including the data covering the remaining 35 states will be released in the coming weeks.

Jay Timmons, executive vice president of the NAM said, "Climate change is a very complex issue and I hope Senators will look closely at this study as they consider climate change legislation this fall. This study confirms that the Waxman-Markey Bill is an 'anti-jobs, anti-growth' piece of legislation. Further, leaders of countries such as China and India have made it clear they have no intention of reducing their own emissions. Waxman-Markey would give an edge to overseas competitors, discouraging domestic investment and the creation of American jobs."

The NAM/ACCF study accounts for all federal energy laws and regulations currently in effect. It accounts for increased access to oil and natural gas supplies, new and extended tax credits for renewable generation technologies, increased World Oil Price (WOP) profile, as well as permit allocations for industry and international offsets. Additionally, the provisions of the stimulus package passed in February are included in this study. Key findings include:

- Cumulative Loss in Gross Domestic Product (GDP) up to $3.1 trillion (2012-2030)
- Employment losses up to 2.4 million jobs in 2030
- Residential electricity price increases up to 50 percent by 2030
- Gasoline price increases (per gallon) up 26 percent by 2030

Dr. Margo Thorning, senior vice president and chief economist for ACCF, highlighted the importance of reviewing economic findings while debating the climate change legislation. "Policymakers may have the best of intentions when it comes to the environment, but it's crucial that we compare the economic cost to the legislation's actual impact on global GHG reductions. Considering that developing countries such as China and India have publicly stated that they will not undertake similar emissions policies, there would be almost no global environmental benefits from the bill. Ultimately, this study shows that Waxman-Markey, would significantly decrease employment and increase energy prices at a time when we can least afford it."

The national and 15 state-by-state economic impacts can be found by visiting: http://www.accf.org/publications/126/accf-nam-study

EFCA Update

While efforts by a handful a Senators to reach a "back room deal" on a new version of card check appear to be on hold until the Senate returns in September, manufacturers can't afford to be silent. Labor groups have mobilized in full force throughout August advocating for health care reform and passage of the card check legislation. Major unions such as the AFL-CIO and SEIU have dispatched local operatives to engage Members of Congress at town hall forums.

In one such event recently, Sen. Specter (D-PA) confirmed that a major sticking point of the "EFCA negotiations" involves the legislation's arbitration provisions and stated that he hopes to work through this with "last best offer" arbitration, also known as "major league baseball style arbitration". Under this proposal a federal arbitrator would require both parties to submit their final proposal for a first contract, and then determine which one was the most "reasonable". This scenario would still allow an arbitrator to set the terms of the first labor agreement which would be binding for a period of time.

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Member Profile

Member Profile: Metallized Carbon Corporation

Year founded: 1945

Location: Ossining, NY

Products: Engineered carbon/ graphite solutions for severe service lubrication.

Website: www.metcar.com

Metallized Carbon Corporation is a company that has been successfully manufacturing here in the Hudson Valley for over sixty years. Back in 1945, Carl Seibert and his son, Preston Seibert, founded the company that has been family owned and operated ever since. In the beginning, Metallized Carbon Corp. manufactured electrical contacts and electric motor brushes. In those early days the company had only five employees and their first customer was Otis Elevator. Over the last half century the company has grown to over 160 employees who manufacture a wide range of mechanical and electrical parts. Metallized Carbon Corp.'s still has their corporate headquarters in Ossining, New York but have expanded to include manufacturing facilities in Mexico as well.

An example of some of parts that Metallized Carbon Corporation manufactures.

Metallized Carbon Corp.'s best known product is Metcar. Metcar is a self-lubricating material containing graphite. Graphite is used because its self lubricating properties can be used to manufacture machine parts that must withstand rubbing in applications where oil or grease lubricants cannot be used. In fact, Metallized Carbon can combine Carbon/ Graphite with materials such as Antimony, Bronze, Babbitt, Copper, Nickel, Silver, Thermoset Polymers and High Temperature additives to offer more than 150 different grades of materials all of which are self-lubricating and dimensionally stable. An example of what these materials might be used for would be for bearings and seal rings for use in high temperature ovens, bearings and seal rings that must run submerged in low viscosity liquids such as water or gasoline. Metallized Carbon Corp. can engineer solutions to difficult bearing and mechanical seal face requirements.

The application of these products covers a wide range. Mainly used for seal rings in mechanical seals for pumps and compressors, the Carbon/ Graphite engineered parts have also been used on critical components for the Joint Strike Fighter and bearings for the SP-2 Engine which will be used in the next generation space shuttle. Metcar is a key supplier to the oil and gas industries as well.

Because of the high quality of their materials that can perform successfully where ordinary self lubricating materials might fail, Metallized Carbon Corp. has a reputation for manufacturing highly engineered self lubricating materials and components that are utilized by industry for the most severe service applications. This company has over sixty years of application engineering experience and offers the field expertise and hard data necessary to back up their slogan "the Solid Choice for Lubrication.™"

Metallized Carbon Corp. has a reputation for manufacturing highly engineered self lubricating materials and components that are utilized by industry for the most severe service applications.

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Financial Matters

Role of an Investment Bank with a Middle Market Company

Submitted by Sam Ticknor, Vice President, Corporate Fuel Advisors

Smaller middle market firms (defined as companies with sales between $10 million and $100 million) have the same investment banking requirements and challenges as their larger counterparts, but often have more difficulty finding appropriate solutions. The reasons for this inefficiency include the fact that there are very few investment banks that specialize in the smaller middle market; transactions that are not big enough for the big investment banks, and many smaller clients are unfamiliar with the investment banking market.

Many middle market firms have not worked with investment banks before, primarily because the transaction often is a one time event such as the sale of the business, a succession plan, an acquisition, a strategic financing, or the resolution of a conflict between shareholders over business direction.

The key criteria in choosing an investment banker is experience. Evaluate and understand the banker's experience working in the middle market.

Obviously, this one time event, which often is the seminal event in the history of the business, is an undertaking that you as the business owner do not take lightly. The transaction's value and structure, as well as the emotional toll exacted on the transaction's participants, require the services of an outside advisor who is experienced in the unique requirements of a smaller middle market company.

In contrast with commercial banks, which takes deposits and make loans, an investment bank acts as an advisor to companies, in helping them raise capital and execute mergers and acquisitions. In essence, an investment bank acts as a consultant and an intermediary. While not relevant to smaller, middle market companies, public investment banks also do public underwriting of securities and manage trading operations for their account as well as for clients.

A few examples where an investment banker plays a key role include:

a. Sale of a Family Business to an Industry Player
A multi-generational family of an electronic connector manufacturing company that they had founded over sixty years ago decided it wanted to sell. The challenges included balancing the multiple objectives of five family members with an entrenched management team. The Company had an outdated manufacturing profile but a solid reputation in some specific sectors. There was a limited universe of potential buyers. The sale process required confidentiality and creativity and focused on strategic buyers, resulting in 4 offers from 28 prospects. A well defined due diligence process yielded a final transaction that was unchanged from the original LOI, and proceeds well in excess of an anticipated value.

b. Multiple Shareholders with Different Liquidity Needs
Two brothers had equal ownership in a $30 million specialty apparel company. One brother wanted to retire while the other wanted liquidity but also desired to continue in the management of the business. The Company had excellent margins and profitability and a good future growth potential.

The investment bank first analyzed the variety of strategic options available to the two brothers, including refinancing the company to provide additional liquidity and fund the buyout of the retiring owner, and the assessment of tax and estate issues underlying these options. When a sale alternative was chosen, the investment bank determined that the optimum strategy would be to focus on private equity (PE) firms who might partner with management. The PE firms were screened for those that target companies of this size and have relevant industry experience. Over 50 private equity firms with an expressed interest in apparel were contacted. Three competitive offers were received and evaluated. The deal was structured as a 70/30 LBO (seller retained 30%) with additional future upside potential for both the existing shareholder as well as the financial investor.

How to choose an investment banker
The key criteria in choosing an investment banker is experience. Evaluate and understand the banker's experience working in the middle market. Do they have experience working specifically with smaller middle market companies? What is the bankers success in closing transactions? Do you trust the banker to represent your interests and effectively articulate the vision of your company?

The investment banker is more than a transaction advisor, he also a business and life adviser. Your ideal investment banker will be able to provide perspectives on key strategic decisions as well as dispassionate advice on the marketplace and the details of the transaction.

Corporate Fuel Advisors, LLC is a New York City-based investment bank that specializes in the lower middle market throughout New York State.

Sam Ticknor, Vice President, Corporate Fuel Advisors, sam@corporatefuelpartners.com, 646-572-0431

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EQUAL HOUSING LENDER

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CI Calendar—What's Ahead

Sept 2	Optimizing Your Investment in Lean — 3:00pm—7:00 pm at the Council of Industry Office, The Desmond Campus, Newburgh, NY. Cost: $45 for members, $55 for non-members.
Sept 11	Human Resources Sub-council Meeting: Wellness Programs - 8:30—11:00 am. Ulster Savings Bank, 180 Schwenk Dr, Kingston, NY. No cost for members.
Sept 17	Energy Efficiency and Renewable Energy Seminar– 8:00 am—10:00 am Rose & Kiernan, 60 Merritt Blvd, Suite 202, Fishkill, NY. Cost $15 for members.
Sept 30	**Wage & Benefit Survey Data is due!**
Sept 30	Regulatory Training: RCRA Hazardous Waste Training—8:30 am—12:30 pm. Location: TBA. Cost: $115 single member, $100 ea. For two or more from the same company, $155 for non members.
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Oct 16	EHS Sub-council meeting: Combustible Dust— 8:30— 10:00 am at Dyno Nobel, Ulster Park, NY. No cost for members.
Oct 21	Freight Rail Shipment Seminar— 8:30 am—11:00am at Rose & Kiernan, 60 Merritt Blvd, Suite 202, Fishkill, NY. No cost for members.
Oct 22	Sales Training - 8:30 am— 4:30 pm. Location TBA. Cost for members: $185 for a single participant or $170 each for two or more from the same company.

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(Continued from Page 6 Legislative Matters)

2009 New York Legislative Update for Employers

From JacksonLewis.com

Most years, the legislative session has ended by this time and New York employers would know their new and modified obligations. This year, due to well-publicized issues at the State Senate, the legislative session still has not closed. Nonetheless, to date, the legislature has passed and Governor David Patterson has signed, as recently as July 28, 2009, at least four pieces of legislation relevant to New York employers.

Expanded Obligation to Notify New Hires of Specific Terms and Conditions of Employment, New Obligation to Obtain Acknowledgment

Section 195 of the New York Labor Law currently requires employers to notify new hires of their rate of pay and the regular pay day. For employees hired on or after October 26, 2009, notification must be in writing and include, for non-exempt employees, both the regular hourly rate and the overtime rate. Further, an employer will be required to obtain from each new hire an acknowledgment of receipt of such notice. (The Commissioner of Labor has yet to provide the form of the acknowledgment.) All New York employers should review their offer letters and new-hire paperwork to develop a strategy to comply with this requirement.

Other provisions of Section 195, including those requiring written notification of changes in paydays and time-off policies and termination letters, remain unchanged.

Extended COBRA-like Coverage for Separated New York Employees

Currently, both federal COBRA (which generally applies to employers with 20 or more employees) and the New York "mini-COBRA" law (applicable to smaller employers) mandate a period of up to 18 months of continuation coverage under a group health plan for covered employees, and their dependents, who lose coverage as a result of the employee's termination or reduction in hours of employment. Continued coverage is at the qualified beneficiary's sole expense, unless subsidized, all or in part, by the employer or under the American Recovery and Reinvestment Act of 2009 (ARRA) (see our related articles below for more information on ARRA). An amendment to Section 3221 of the Insurance Law provides an extension of the general continuation covered period from 18 months to 36 months for group policies subject to New York State law. However, the law, which applies retroactively to insurance policies and contracts issued, renewed, modified, altered or amended on or after July 1, 2009, does not apply to self-funded group health plans. Employers, including multi-state employers with New York operations, with plans subject to this change should review and modify their COBRA notices and, if applicable, ensure that their third-party COBRA administrators are set up to apply this new requirement.

Phone: (845) 855-1201
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Domestic Violence Victims Protected from Discrimination under the Human Rights Law

Following the lead of the New York City and Westchester County legislatures, effective July 7th, the State Human Rights Law prohibits employers from discriminating against employees who are "Domestic Violence Victims." A Domestic Violence Victim is an individual subjected to acts constituting a "family offense" under New York's Family Court Act. These include disorderly conduct, harassment, stalking, criminal mischief, menacing, reckless endangerment, assault or attempted assault between spouses or former spouses, between parent and child, or between members of the same family or household.

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Civil Penalties for Violation of State Human Rights Law

Prior to July 6th, damages and relief available from employers found to have committed discrimination in violation of the Human Rights Law were limited to: (1) compensatory damages for out-of-pocket losses and/or pain and suffering, (2) injunctive orders requiring the employer to cease and desist from unlawful discriminatory practices, to hire, reinstate or upgrade employees, with or without backpay, or to train employees, and (3) disgorgement of profits received as a result of the unlawful discrimination. Effective July 6th, the Human Rights Law allows imposition of civil penalties of up to $50,000 (increased to $100,000 if maliciousness is proven), payable to the New York State's General Fund. For employers with fewer than 50 employees, penalties may be paid in "reasonable installments." The New York State Division of Human Rights is developing guidelines for determining the amount of penalties to be imposed in each case.

Jackson Lewis attorneys are available to discuss in detail these enactments. As further clarity regarding these new laws is provided through regulation or other legislation, Jackson Lewis will provide updates.

Manufacturing Matters

Is your Company a “Next Generation” Manufacturer?

In stressful economic times it may seem out of place to focus on the future of manufacturing when survival is the priority of the day. While recession challenges the resiliency of American manufacturers, the impending recovery will test the preparedness of U.S. firms to win in a rapidly growing, highly competitive, global economy. We face a real possibility of surviving the downturn but losing the economic future – if competitors elsewhere in the world are better positioned to capture the next decade’s dynamic market growth. Manufacturers that excel – Next Generation Manufacturing (NGM) firms – will execute new strategies, be led by people with different skills and backgrounds, and engage employees, suppliers and local service organizations in fundamentally different ways. The future of America’s manufacturing industry will hinge on its ability to execute Next Generation Manufacturing strategies.

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A national study released by the American Small Manufacturers Coalition (ASMC) identifies critical threats to the ability of U.S. manufacturers to compete and win in a fast-changing 21st century global economy. More than 2,500 manufacturing firms across the nation participated in the Next Generation Manufacturing Study, a research effort coordinated by ASMC and member Manufacturing Extension Partnership (MEP) centers. The study is the first step in a long-term effort to help U.S. manufacturers survive the recession and renew America’s manufacturing leadership over the next decade.

Next Generation Manufacturing refers to a framework of six strategies essential for global competitiveness today and in the future. The strategies are *customer-focused innovation, systemic continuous improvement, advanced talent management, global engagement, extended enterprise management, and sustainable products and processes*. The study included a 61-question web-based survey that asked manufacturers to rank their progress in these areas.

Among the key findings:

- A serious gap exists between the strategies U.S. manufacturers believe are critical to their future success and their actual progress in implementing those strategies. More than a quarter of American manufacturers – representing over 90,000 firms – are at risk because they are not at or near world-class in any of the six strategies. These firms are already competitively compromised.
- Small and midsize manufacturers are less likely than larger firms to be at or near world-class status in each of the next generation strategies. Even worse, one third of respondents with less than $10 million in annual revenue are not at or near world-class in any strategy in contrast to 14 percent of respondents with over $100 million in revenue reporting this size gap. In a country where 282,000 small and midsize firms comprise the backbone of the industry, this is a significant threat to U.S. competitiveness and the viability of these companies.
- Green/Sustainability ranks low among the strategic priorities for U.S. manufacturers despite increasing government regulation, growing consumer demand, and new requirements from large downstream manufacturers in their supply chains. Only 16% of respondents rank green/sustainability as highly important to their success over the next five years. Surprisingly, another 16% said it was not important.
- Only 28% of respondents believe global engagement is highly important despite a near-term future in which markets, talent, competitors and partner opportunities are growing faster outside the U.S. than within its borders.
- In an increasingly networked world, trusted partnerships are a key competitive advantage, but today effective partnerships with employees, suppliers and regional support organizations are the exception rather than the norm. For example, the majority of respondents engaged less than half of their employees in their organizations’ continuous improvement initiatives. Less than one-quarter of respondents engage their suppliers in their operations, product development or continuous improvement efforts.
- Leadership loss represents a significant threat – or opportunity. One quarter of respondents say a planned leadership succession will occur within the next five years – potentially impacting 80,000 U.S. manufacturing firms. Another 29 percent think a succession may occur. This transition represents an opportunity to inject new ideas, energy and skill sets into the firms but also represents a significant risk where a succession plan is not place.

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