



The Council of Industry Newsletter

December 2017 Volume 22 Issue 10

We Need Your Help!



Go Make It

After hours of research, beta testing and world class video pre-miers, we are ready to take [Go Make It](#) to the next level – **and we need your help!**

Go Make It is the Council of Industry’s manufacturing careers platform, designed to help students, parents and teachers explore the world of advance manufacturing, and to find the information they need to pursue careers in our exciting industry. This website was designed to help change perception of manufacturing careers.

The interactive website provides a fair and helpful representation of what a manufacturing career might look like, so that young people might see the potential for a challenging and rewarding career.

How can you help?



- Follow us on social media and spread the word...
- We need both leaders and followers (especially on social media).
- Please take a minute to like our [Facebook](#) page
- While you are there share our latest [GoMakeIt](#) video
- Follow us on [Instagram](#) where we are featuring one of our members each Monday
- Share this news with your employees
- Send us ideas and photos – We would love to share your content. Do you have a “Throwback Thursday” photo you’d like us to feature on our social media? Would you like to promote an event, product or employee on our sites? We have plenty of ideas and would love to partner with our members to get the word out. If you have any social media ideas or photos, please email socialmedia@councilofindustry.org

All this will build awareness about Hudson Valley Manufacturing and help drive traffic to the Go make It website.

We are planning for our next feature video and would welcome your help in identifying “up and coming talent.” Over the next 18 months we hope to produce a “day in the life” videos featuring CNC Machinists, Electro Mechanical Technicians, Electrical Engineers, Mechanical Engineers, etc.

If you have a dynamic employee who has an excellent backstory and high prospect future let us know. Email jhansen@councilofindustry.org for more information.



To see the video follow this link: [GoMakeIt](#) video or type www.youtube.com/watch?v=Qdv4nFrpy44 in your browser.

Calling all sponsors!

Another round of applause for [Tompkins Mahopac Bank](#) who recognized the workforce needs of our industry and stepped up to be a part of the solution. We are looking for three to five companies to help sponsor our upcoming videos.

With the creative support and vision of Jenko and Cindel from [Stage 6 Media](#) our [Go Make It videos](#) are top notch and present an excellent opportunity to increase brand awareness and support local jobs. Contact hking@councilofindustry.org for more information. www.gomakeit.org.

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Human Resources Network: Workplace Harassment Prevention

The topic for the January HR Network meeting has been changed to Workplace Harassment Prevention. We will hold the New Challenges For Both Union and Non Union Employers program at a later date.

When: Friday, January 19, 8:30 am - 10:00 am

Where: Council of Industry Office, The Desmond Campus MSMC, 6 Albany Post Road, Newburgh, NY

Presenter: Thomas McDonough, Esq. and Susan Friedfel of Jackson Lewis P.C.

Cost: None for Members

The law regarding sexual harassment in the workplace has not substantially changed in more than 30 years. Nonetheless, claims of sexual harassment in the workplace are grabbing headlines like never before.

While the focus to date has been on celebrities, public figures and business leaders, we believe the prevalence and notoriety of these stories will lead to an increase in internal complaints and/or claims alleging similar misconduct

against individuals and entities that are outside the public eye. As a result, now is an important time for employers to:

1. Review their sexual harassment and other EEO policies;
2. Redistribute such policies to all employees to remind them of the employer's expectations and complaint procedure; and
3. Conduct training for executives, managers and supervisors with respect to these policies.

Employers taking these proactive measures may prevent unlawful harassment in the workplace, thus minimizing the substantial risks and liabilities associated with such conduct.

To register [go online to our website](#) or email abulter@councilofindustry.org or call Alison Butler at (845) 565-1355 ext 120 ☼.



EHS Network: Ergonomics for the Workplace Wrap-up

In November the Environment Health & Safety Network met at Access: Supports for Living to learn more about Ergonomics from Dr. Lori Schneider, PT, Access Physical Therapy and Wellness. The presentation included information on how lost time, lost productivity, and worker's compensation costs associated with a work-related injury can affect profits and the overall health of a business. Dr. Schneider covered ways Safety Officers, Human Resource Officers, Supervisors, and Medical Personnel can play key roles in worker safety such as: (1) developing and executing hiring and return to work policies and procedures, (2) helping to ensure worker safety, (3) addressing the needs of the injured worker, (4) facilitating early return to work, (5) and addressing the needs of the aging workforce.

The presentation by Dr. Schneider also included detailed information on Office Ergonomics, Post-Offer Physical Testing, Early Return to Work, development of company-specific 2 minute stretch breaks, and the needs of the Aging Workforce. The presentation itself included 2 minute stretch breaks with a demonstration of what to do.

After the presentation attendees were treated to a tour of Access: Supports for Living sub-division Access: Business Solutions facility. Access: Supports for Living's mission is to help people live the healthiest and fullest lives possible, and their first priority is those who live with the challenges associated with developmental disabilities and behavioral health issues. Access Business Solutions, formerly New Dynamics Corp., is an AbilityOne agency and is ISO 9001:2008 registered for the manufacture of hearing protection products. Their primary customer is the Department of Defense, to whom they supply literally millions of units. In 2011, they entered into a partnership with 3M to assemble and package several of their hearing protection products, including a full line of ear plugs and ear muffs.

The next EHS Network meeting will be in February and more information should be available soon. ☼



Access: Business Solutions water sample testing bottle line.

Labor and Employment: New York State Releases Paid Family Leave Certification Forms

By: Kerry W. Langan, Bond, Schoeneck & King, PLLC, a Council of Industry Associate Member

The New York State Workers' Compensation Board (WCB) has just released the long-awaited Paid Family Leave (PFL) forms. There is a general application form (PFL-1), as well as various certification forms depending on the type of leave requested:



- To apply for PFL to bond with a newborn or a newly adopted or fostered child, the WCB has developed the PFL-1 form and PFL-2 (a bonding certification form) <https://www.ny.gov/sites/ny.gov/files/atoms/files/bonding.pdf>
- To apply for PFL to care for a family member with a serious health condition, the WCB has developed the PFL-1 form, as well as PFL-3 (a release of personal health information form) and PFL-4 (a health care provider certification form) <https://www.ny.gov/sites/ny.gov/files/atoms/files/careforfamilymember.pdf>
- To apply for PFL for a qualifying exigency arising from service of a family member in the U.S. Armed Forces, the WCB has developed the PFL-1 form and PFL-5 (a form to certify the military qualifying event) <https://www.ny.gov/sites/ny.gov/files/atoms/files/military.pdf>

As we mentioned in the [October 6, 2017 New York Labor and Employment Law Report](#), the WCB has already released the waiver form (PFL-Waiver) and two forms regarding voluntary coverage (PFL-135 and PFL-136). We will continue to provide additional updates on PFL as they become available.

If you have any questions about this Information Memo, please contact [Kerry W. Langan](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact. ✨

The New York State Workers' Compensation Board (WCB) has just released the long-awaited Paid Family Leave (PFL) forms. There is a general application form (PFL-1), as well as various certification forms depending on the type of leave requested:

Send Your Job Postings to jhansen@councilofindustry.org by December 31, 2017.

It's no secret that the current labor market is tight and many Council members are struggling to find qualified, reliable employees. To give the postings a "shot in the arm" and to encourage your participation, we will post any job you send us between today and December 31st free of charge.

We are looking at this as one phase of a process that will eventually lead to a more comprehensive effort to collaboratively recruit people to work in Hudson Valley manufacturing.

Consumer Price Index for October 2017

Wage Earners & Clerical	Oct-16	Oct-17	Sep-17	Point Increase	% Month	Increase Year
1967=100	702.17	716.59	717.68	-1.09	-0.2%	2.1%
82 - 84 =100	235.73	240.57	240.94	-0.37	-0.2%	2.1%
All Urban Consumers						
1967=100	724.11	738.89	739.36	-0.47	-0.1%	2.0%
82 - 84 =100	241.73	246.66	246.82	-0.16	-0.1%	2.0%

Hudson Valley Unemployment for October 2017 was 4.6 %

Congress Faces Busy December

Lawmakers have a busy December as they plunge into several high-stakes legislative fights. Here's what to watch for as Congress prepares for an end-of-the-year sprint.

Tax reform

Senate Republicans are rushing to pass their tax plan this week after it was voted out of the Senate Finance Committee along party lines.

They have a narrow path to getting the bill through the Senate. If the Senate is able to pass its own bill the first week of the month, Republicans will still need to work out a deal in conference committee and pass the final legislation.

Finding a deal won't be easy, as the House and Senate bills differ in significant ways. The House bill, for example, would scale back the state and local tax deduction, while the Senate bill would end it entirely.

Health care

Tied closely to the tax plan is a renewed fight over health care.

The Senate GOP plan would repeal ObamaCare's individual mandate, which requires most Americans to buy health insurance or pay a penalty. The Trump administration is signaling that it's open to dropping the ObamaCare provision. As part of a trade-off, Senate GOP leaders have signaled they are prepared to pass legislation from Sens. [Lamar Alexander](#) (R-Tenn.) and [Patty Murray](#) (D-Wash.) that would provide two years of funding for ObamaCare's cost-sharing reduction payments.

Democrats, however, are warning that they won't help pass that bill, which would need 60 votes, if Republicans link it to the tax plan.

Lawmakers are also under pressure to reauthorize funding for the Children's Health Insurance Program, which expired at the end of the September. Sen. [John Cornyn](#) (R-Texas) has predicted that funding could end up in the December spending bill.

Government funding



One of the first deadlines lawmakers face is Dec. 8, when government funding will expire.

Speaker [Paul Ryan](#) (R-Wis.) has floated that lawmakers might need to pass a short-term continuing resolution to give appropriators more time to reach a long-term agreement. But Ryan said the stopgap bill would only last a few weeks. He wants to pass a full 2018 fiscal year funding bill by the end of December.

Complicating the timeline for passing a long-term funding bill are the spending caps. Current spending levels are higher than the 2018 caps set by the 2011 Budget Control Act. Without a deal to raise the caps, across-the-board spending cuts would be triggered automatically in late January. Congressional leaders are eyeing a deal to raise budgetary caps by as much as \$200 billion over two years, but the agreement is still being ironed out.

Immigration

The fate of an Obama-era immigration program has emerged as one of the largest hurdles to getting a government funding deal.

The Trump administration is nixing the Deferred Action for Childhood Arrivals (DACA) program, which allows certain undocumented immigrants brought into the country as children to work and go to school without the fear of deportation.

The deadline for deciding what to do about DACA isn't until mid-March, but Democrats are demanding that Congress take action before the end of the year. Trump and Senate Republicans decided during a closed-door meeting last month that immigration would not be part of the spending bill, but House Democrats plan to force the issue. Without Democratic support, it could prove difficult for House Republicans to pass legislation preventing a government shutdown. Several liberal senators are also pledging to oppose a funding bill without a DACA agreement.

Intelligence reforms

Lawmakers face an end-of-the-year deadline to renew a key surveillance program, but they face opposition from privacy hawks.

Both chambers have taken steps toward reauthorizing, and reforming, the National Security Agency's warrantless surveillance program, which is set to expire on Dec. 31.

Flood Insurance

Congress will need to reauthorize the National Flood Insurance Program by early December.

The House passed its bill, the product of months of negotiations between conservatives and Republicans from coastal states, earlier this month. The legislation would renew the program for five years, update federal flood mapping requirements and seek to bolster an emerging private flood insurance market.

But the Senate has yet to take steps toward reauthorizing the program or lay out a path forward for potential legislation. ❁

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NOx and PM Emissions Limits from Non-emergency Engines

From HRP Associates, a Council of Industry Member

**EHS
MATTERS**

As you may be aware, NYSDEC implemented Part 222 on December 1, 2016, which included notifications and NOx and PM emissions limits from non-emergency engines (i.e. economic dispatch sources or source that produces on-site electricity). Due to a lawsuit from industry, Part 222 is now subject to a preliminary injunction, scheduled to be addressed by the Supreme Court of the State of New York County of Albany in January 2018. Until the Court issue a decision on the Part, DEC is not enforcing Part 222.

NYSDEC is addressing industry issues by modifying Part 222. **Please note that the modified version has not been finalized; only a draft was issued on November 3, 2017.** Upon review of the modified Part 222, significant relief is proposed, noted below:

The Part is only applicable to distributed generation located in the NYC metropolitan area with a maximum rating of ≥ 200 HP and the potential to emit less than 25 tons of NOx/yr. Any distributed generation sources located outside of the NYC metropolitan area (Bronx, Kings, Nassau, New York, Queens,

Richmond, Rockland, Suffolk, and Westchester) is no longer affected by Part 222.

NYSDEC has eliminated the economical infeasibility compliance option (i.e. option to request a higher source specific emission limit) using DAR-21.

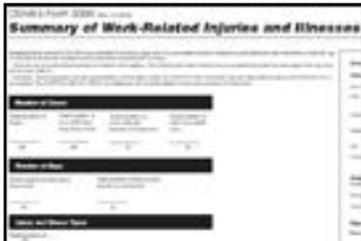
Affected compression ignition sources with engines of model year 2007 and newer certified as Tier 3 or Tier 4 will be considered compliant and will not require emission testing.

The timeline of the compliance deadline has been revised. For example, the first deadline is set on November 1, 2018 to notify the department whether the source will operate as an emergency power generating source or an economic dispatch source.

Please contact HRP to stay abreast of the significant draft revisions to Part 222 and its impact to your operations. - Thomas Seguljic, PE, 518-877-7101 ⚙️

U.S. Department of Labor's OSHA Extends Compliance Date for Electronically Submitting Injury, Illness Reports to December 15, 2017

From OSHA.gov



To allow affected employers additional time to become familiar with a new electronic reporting system launched on August 1, 2017, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has extended the date by which employers must electronically report injury and illness data through the [Injury Tracking Application \(ITA\)](#) to December 15, 2017.

OSHA's final rule to Improve Tracking of Workplace Injuries and Illnesses sets December 15, 2017, as the date for compliance (a two-week extension from the December 1, 2017, compliance date in the proposed rule). The rule requires certain employers to electronically submit injury and illness information they are already required to keep under existing OSHA regulations.

Unless an employer is under federal jurisdiction, the following OSHA-approved State Plans have not yet adopted the requirement to submit injury and illness reports electronically: California, Maryland, Minnesota, South Carolina, Utah, Washington, and Wyoming. Establishments in these states are not currently required to submit their summary data through the ITA. Similarly, state and local government establishments in Illinois, Maine, New Jersey, and New York are not currently required to submit their data through the ITA.

OSHA is currently reviewing the other provisions of its final rule to Improve Tracking of Workplace Injuries and Illnesses, and intends to publish a notice of proposed rulemaking to reconsider, revise, or remove portions of that rule in 2018.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov. ⚙️



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Work Opportunity Tax Credit: What Business Owners Need to Know

From RBT CPAs, a Council of Industry Associate Member



The Work Opportunity tax credit (WOTC) is a federal income tax credit that's available to businesses that hire members of certain "targeted" groups. Here's how your business may be able to benefit from this potentially lucrative tax break.

WOTC at Work

Calculating the Work Opportunity tax credit (WOTC) can be confusing. Here's an example to illustrate how it works.

Suppose that on December 1, 2017, your business hires a qualified veteran who's entitled to compensation for a service-connected disability. He was discharged from active duty on September 30, 2017. Your business pays him \$4,000 of wages in 2017 and \$44,000 of wages for the period from January 1, 2018, to November 30, 2018.

For 2017, your business is entitled to a WOTC of \$1,600 (\$4,000 x 40%). For 2018, your business is entitled to a WOTC of \$3,200 (\$8,000 x 40%).

Important note: The total amount of WOTC-eligible first-year wages is limited to \$12,000. Your business would be eligible for a credit based on \$4,000 of wages paid in 2017, leaving the remaining \$8,000 of WOTC-eligible wages for 2018.

The Basics

The WOTC encourages businesses to hire from certain categories of workers who face significant barriers to employment. The allowable credit amount is based on a portion of wages paid to an eligible worker during the first year of employment or, in some cases, during the first two years.

Businesses can claim the credit for eligible workers whose employment begins before January 1, 2020. But there are numerous rules and restrictions, including the following provisions:

Minimum hours of work. No credit is available unless the worker completes at least 120 hours of work. The credit is reduced if the individual works at least 120 hours but less than 400 hours.

Rehired workers. The credit is available only for new hires. Wages paid to an individual who was previously employed by

your business and is rehired don't qualify.

Related parties. Wages paid to certain individuals who are related to the employer or business owner don't qualify.

In addition, a business can't claim a compensation deduction for any portion of wages claimed as a WOTC. For instance, if the allowable credit for an employee is \$2,400, you can't deduct that amount of wages as a business expense. Wages above \$2,400 can be deducted as employee compensation expense, however.

10 Targeted Groups

Current law provides the following categories of WOTC-eligible workers:

1. Qualified IV-A Temporary Assistance for Needy Families (TANF) recipients,
2. Unemployed veterans, including disabled veterans,
3. Ex-felons,
4. Designated community residents living in empowerment zones or rural renewal counties,
5. Vocational rehabilitation referrals,
6. Summer youth employees living in empowerment zones,
7. Supplemental Nutrition Assistance Program (SNAP) recipients,
8. Supplemental Security Income (SSI) recipients,
9. Long-term family assistance recipients, and
10. Qualified long-term unemployment recipients.

The last targeted group was added to the list under the Protecting Americans from Tax Hikes (PATH) Act of 2015. Since January 1, 2016, the WOTC has been available for hiring long-term unemployment recipients, defined as those who have been unemployed for a period of at least 27 weeks and who received state or federal unemployment benefits during all or part of that time.

Certifying Eligible Employees

Individuals who are members of a targeted group generally must be certified by a designated local agency by the day the individual begins work or shortly thereafter. In addition, employers should complete a prescreening notice with the applicable local agency on or before the day an individual is offered employment to maintain eligibility for the WOTC if a new hire isn't certified on or before the day he or she begins work.

The employer also must submit additional forms to the Department of Labor. The paperwork can be a little overwhelming, so it's important to consult your tax professional for assistance.

Calculating the Credit

How much can you save with the WOTC? In most cases, the credit equals 40% of eligible wages paid to an employee during the first year of employment, up to a maximum of \$6,000 of wages. That translates into a maximum credit of \$2,400 per employee. However, there are several exceptions to this general rule.

The credit for a qualified summer youth employee equals 40%

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of eligible first-year wages, up to a maximum of \$3,000 of wages. This translates into a maximum credit of \$1,200 per employee. The employee's period of service must be between May 1 and September 15.

The WOTC for a long-term family assistance recipient equals 40% of eligible first-year wages up to a maximum of \$10,000 (for a maximum first-year credit of \$4,000) plus 50% of eligible second-year wages up to a maximum of \$10,000 (for a maximum second-year credit of \$5,000).

In addition, the WOTC can be based on more than \$6,000 of first-year wages for several categories of qualified veterans. First-year wages means eligible wages paid for services rendered during the one-year period beginning on the day the individual starts work for the employer. The increased first-year wage amounts for qualified veterans are as follows:

- \$12,000 for a qualified veteran who's certified as being entitled to compensation for a service-connected disability and who is hired not more than one year after being discharged or released from active duty in the U.S. Armed Forces. This translates into a maximum credit of \$4,800 per employee.
- \$14,000 for a qualified veteran who's certified as being unemployed for at least six months during the one-year period ending on the hiring date. This translates into a maximum credit of \$5,600 per employee.
- \$24,000 for a qualified veteran who's certified as being entitled to compensation for a service-connected disability and who was unemployed for at least six months during the one-year period ending on the hiring date. This translates into a maximum credit of \$9,600 per employee.

Save Taxes by Helping Others

When businesses hire veterans and people who are down on their luck, they help their local communities and engender goodwill. As an added bonus, they might qualify for the WOTC. Contact your tax professional if you have questions or need help with the forms required to claim this potentially lucrative credit. ❁

The WOTC encourages businesses to hire from certain categories of workers who face significant barriers to employment. The allowable credit amount is based on a portion of wages paid to an eligible worker during the first year of employment or, in some cases, during the first two years.

WOTC at Work

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EVENTS

Tom McLaughlin Discusses Industry 4.0 and the Future of Manufacturing at Annual Luncheon & Expo

The Council of Industry's Annual Luncheon & Member/ Associate Member Expo once again had record attendance and an amazing keynote speaker. This year the event was held at The Grandview on the Hudson River in Poughkeepsie and had almost 300 people in attendance. The Expo was a tremendous success with 25 members and associate member companies displaying their various products and services. The Council also awarded the Certificate in Manufacturing Leadership for the 20th year to its largest class ever. The Council debuted a video featuring Mike, an Engineering Technician for eMagin, as he shows you what his day of work is like-building high tech microscreens used in everything from Virtual Reality headsets to weapon sights. Speaker Thomas McLoughlin, Managing Director and CIO Fundamental Research and Wealth Management UBS Financial Services Inc., gave an engaging speech on how technology and innovation are already dramatically shaping manufacturing and how they will continue to do so.

McLoughlin discussed the increasingly rapid adoption of technology and how non-routine jobs will continue to be filled by people, while routine jobs may soon be filled by machines. He gave startling statistics comparing the adoption of technology by 50 million users of the telephone (75 years), television (13 years) and even Facebook (3.5 years) to the adoption of the cell phone gaming app of Angry Birds in just 35 days. He also compared the number of employees and market cap from the Big Three Auto makers from 1990 (1.2 million and \$36 billion) to the Big

Three Tech firms today (155,000 and \$1.69 trillion) demonstrating the increase in company value with the decrease in personnel across these industries and time. One of McLaughlin's messages was that today and going forward, economic value relies on intellectual property, customer self service and automation.



Keynote speaker Tom McLaughlin addresses the crowd on Industry 4.0

Thanks to the dynamic speaker, the dozens of companies participating in the Expo, and the certificate recipients and their companies that made this event a fabulous success. Of course, it was all made possible by our very generous sponsors: Major Sponsor – **Bleakley Platt & Schmidt, LLP** and Supporting Sponsors – **The Chazen Companies, Direct Energy Business, Elna Magnetics, Lakeland Bank, Mass Mutual, and UBS Financial Services**. We appreciate all of those that came out to support Hudson Valley Manufacturing and the Council of Industry and we hope to see you again next year. ✨

TRAINING

Registration is Open for the Certificate in Manufacturing Leadership *Register and pay by December 23 to receive a substantial discount on this outstanding supervisor training.*

For over 20 years the Council of Industry has been providing members with superior supervisor training through the Certificate in Manufacturing Leadership at Dutchess Community College. Experienced, well trained supervisors are essential to a successful manufacturing company. The Certificate in Manufacturing Leadership is a comprehensive group of courses that prepares supervisors for their challenging positions at manufacturing facilities.

The program is designed to offer particular skill sets through concentration of courses. Participants who complete the required courses are presented with the Certificate in Manufacturing Leadership by the Council of Industry and Dutchess Community College.



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All courses are full-day classes (from 9am to 4:30pm) and are held at Dutchess Community College, Poughkeepsie, NY with morning coffee and lunch included on site. Though participants are encouraged to complete the course series for the most comprehensive supervisory education, the Council welcomes individual course registration as well.

Register [online on our website](#) or email training@councilofindustry.org or call Alison Butler at (845) 565-1355 ext 120

New York Department of Labor Proposes Scheduling Regulations

By Jeffrey W. Brecher, Richard I. Greenberg, Daniel J. Jacobs, Jonathan M. Kozak, Noel P. Tripp and Sarah K. Hook, Jackson Lewis, PC, a Council of Industry Associate Member

Big changes may be in store for employers in New York who require employees to be “on call” or who are accustomed to making quick changes to employee schedules, including canceling shifts when customer or client demand changes.

On November 10, 2017, the New York State Department of Labor (NYDOL) released the text of anticipated proposed regulations to the wage order covering miscellaneous industries and occupations (which encompasses most employers other than restaurants and hotels). The proposed regulations address employer scheduling practices, including schedule changes and “on-call” time.

The proposed regulations would revise the Miscellaneous Industries Wage Order’s call-in pay requirements. They also would impose the following new requirements on employers:

1. An employee who reports to work for a shift not scheduled 14 days in advance must be paid an additional two hours of call-in pay.
2. An employee whose shift is canceled within 72 hours of the scheduled start time must be paid at least four hours of call-in pay. The four hours of call-in pay may be reduced to the lesser number of hours that the employee normally works for the particular shift, as long as the employee’s total hours worked, or scheduled to work, for that shift do not change from week to week.
3. An employee who is required to be available to report to work (“on-call”) must be paid at least four hours of call-in pay.
4. An employee who is required to contact the employer and confirm whether to report to work within 72 hours of the shift start time must be paid at least four hours of call-in pay.

The proposed regulations explain that an employee must be paid his or her regular rate or overtime rate of pay, whichever is applicable, for time of “actual attendance.” For other hours of call-in pay, however, payment is calculated at the basic minimum hourly rate with no allowances. These payments are not hours worked for purposes of overtime pay.

Further, contrary to prior NYDOL guidance interpreting the current regulations, employers can no longer offset payments to employees in excess of the minimum wage against these obligations.

Exceptions to the Proposed Regulations

The proposal provides four exceptions.

First, the proposed regulations provide for exceptions to the new call-in pay requirements during workweeks where the employee earns wages that exceed 40 times the applicable basic hourly minimum wage rate. For example, in 2018, the minimum wage for employers outside of New York City, Long Island, and Westchester will be \$10.40 per hour. Accordingly, an employee earning more than \$416.00 per week and working outside of those regions would be excluded from most of the new regulations, but not the basic requirement to pay four hours of call-in pay for any employee who actually reports to work and is sent home (unless the employee’s normal schedule is less than four hours). This threshold for exclusion will be higher in the downstate regions, where the 2018 minimum wage will be higher.

Second, the additional call-in pay required for a shift not scheduled 14 days in advance does not apply “to any new employee during the first two weeks of employment or to any regularly scheduled employee who volunteers to cover: (i) a new and additional shift during the first two weeks that the shift is worked; or (ii) a shift that had been scheduled at least fourteen days in advance to be worked by another employee.”

Third, the call-in pay required for cancellation of a work shift within 72 hours of the shift (#3 above) does not apply in the following situations:

On November 10, 2017, the New York State Department of Labor (NYDOL) released the text of anticipated proposed regulations to the wage order covering miscellaneous industries and occupations (which encompasses most employers other than restaurants and hotels).

Continued on page 11

The CI Calendar of Training & Events

Date Class/Event

Dec 23 **Deadline for Early Bird registration discount on Certificate in Manufacturing Leadership**

Jan 17, 24 **Fundamentals Of Leadership** - Two day course, 9:00 am—4:30 p.m. at Bowne Hall, SUNY Dutchess, Poughkeepsie, NY. Instructor: Rebecca Mazin, Recruit Right. Cost: \$400 single Council members, \$350 each for two or more from the same company, \$700 non-members.

Jan 19 **HR Sub-council meeting: Workplace Harassment Prevention**- 8:30 - 10:00 am at Council of Industry Office, Newburgh, NY Free for members. Register online here or by email abutler@councilofindustry.org to register or call (845) 565 -1355

Feb 7 **Best Practices & Continuous Improvement** - 9:00 am—4:30 p.m. at Bowne Hall, SUNY Dutchess, Poughkeepsie, NY. Instructor: Joseph Guarneri. Cost: \$200 single Council members, \$175 each for two or more from the same company, \$375 non-members.

Feb 21 **Human Resources Management Issues**- 9:00 am—4:30 p.m. at Bowne Hall, SUNY Dutchess, Poughkeepsie, NY. Instructor: Thomas P. McDonough, Jackson Lewis , P.C. Cost: \$200 single Council members, \$175 each for two or more from the same company, \$375 non-members.

March 7 **Problem Solving & Decision Making** - 9:00 am—4:30 p.m. at Bowne Hall, SUNY Dutchess, Poughkeepsie, NY. Instructor: Glenn Tanzman, Tanzco Management Consulting, LLC. Cost: \$200 single Council members, \$175 each for two or more from the same company, \$375 non-members.

March 21 **Environmental Safety & Health Essentials** - 9:00 am—4:30 p.m. at Bowne Hall, SUNY Dutchess, Poughkeepsie, NY. Instructor: HRP Associates. Cost: \$200 single Council members, \$175 each for two or more from the same company, \$375 non-members.

To register for these and other Council of Industry classes and events go to our website www.councilofindustry.org and select the calendar page. All entries are links to more information and registration forms. You may also e-mail us at training@councilofindustry.org or call (845) 565-1355 for questions or more information.

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- When an employer cancels a shift due to an employee's request for time off.
- When operations at the workplace cannot begin or continue due to an act of God or other cause not within the employer's control, including, but not limited to, a state of emergency declared by federal, state, or local government.
- Where operations can begin or continue but staffing needs are reduced due to an act of God or other cause not within the employer's control, the 72-hour period is reduced to 24 hours for regularly scheduled employees.

The proposed regulations define a "regularly scheduled employee" as one "who is scheduled at least fourteen days in advance for shifts consistent with a written good faith estimate of hours provided by the employer at the time of hiring (or at the time this section takes effect, whichever is later), which may be amended at the employee's request."

Last, the proposed regulations will not apply to employees who are covered by a valid collective bargaining agreement that expressly provides for call-in pay.

Comment Period

The proposed regulations will appear in the November 22, 2017, issue of the State Register, and will be subject to a 45-day comment period after publication.

New York City Fair Workweek Law

The proposed regulations follow statements from the Cuomo Administration question-

ing the utility of the Fair Workweek Law in New York City. (For details on the Law, see our articles, [New York City Issues Proposed Rules for Fast Food, Retail Workers Scheduling Law](#) and [Mayor Signs Major Workplace Reforms for Fast Food & Retail Workers](#).) As the state's proposed regulations do not appear to affect the fast food industry, fast food industry employers must continue to prepare for the New York City legislation.

It is also unclear at this time whether the state's proposed regulations are intended to preempt the portions of the Law applicable to certain retail employers. The Law prohibits retail employers from requiring their employees to be on-call, from canceling a shift within 72 hours, and from requiring an employee to work an additional shift within 72 hours of the beginning of the shift without written consent. Additional guidance regarding this issue may be issued by the New York State Department of Labor, the New York City Department of Consumer Affairs, or another agency. Pending such guidance, retail employers in New York City must prepare for compliance with both the Law and the New York State regulations, when they are finalized.

A hearing regarding the proposed regulations to implement the New York City Law was scheduled for November 17, 2017.

Please contact Jackson Lewis with any questions about the proposed regulations or compliance obligations. •

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Changes Ahead for the CI Newsletter

As we enter 2018 the Council of Industry has decided to reevaluate the distribution processes for the CI Newsletter. We are considering going to an all or mostly digital format. If you prefer to receive a hard copy in your mail please contact Alison Butler and confirm your correct mailing address via email at abutler@councilofindustry.org or call (845) 565-1355 or cut out this page (your mailing address should be on the other side - please check that it is accurate) and mail it back to Council of Industry, 6 Albany Post Road, Newburgh, NY 12550.

If we do go to an all digital version please make sure we have your correct email address for our distribution list if you wish to continue to receive the Constant Contact email that announces each new issue. The current issue can also be found on our website in the Members Only section under Newsletter and on our Newsletter page: <http://www.councilofindustry.org/newsletter/>.

As always we welcome any feedback on this from our members and we will keep you posted on any changes that will occur.



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