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ON THE INSIDE

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THE EXPERIENCE MOD CALCULATION



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SUSAN HEFFERNAN, WILKINS MECHANICAL.



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FALL 2022 EXECUTIVE DIRECTOR'S MESSAGE

To many, the fall season signifies change. Change has been a theme at the Syracuse Builders Exchange over the past year, with key employees such as Peggy Thomas, Lori Browne and Ann Marie D'Onofrio retiring. Long-time Executive Assistant and Director of Safety Training & Education Melissa Gould will be leaving at the end of September to pursue new personal and career opportunities in Florida.



With change comes opportunities. Evaluation of corporate goals and objectives, measuring job performance, reallocation of job duties and descriptions and empowering employees with leadership responsibilities are part of identifying how to best optimize opportunities derived from change.

Dimi Wingate will be responsible for the Association's education and safety training programs, beginning October 1, 2022. Dimi's role at the Builders Exchange has gradually increased over the past year, transitioning from the insurance industry via The Exchange Agency, to full-time employee of the Syracuse Builders Exchange. Although Dimi's title is Director of Industry and Public Relations, she has been instrumental in developing a soon to be launched mentorship program and is responsible for education and safety training for Builders Exchange members.

Beth Conrad is the Director of Accounting and has played a key role in working with Syracuse Builders Exchange Treasurer David Bowles, CPA, in revamping the Association's accounting system. Beth is well known among the Builders Exchange members; however, her duties now, unfortunately, remove her from the day-to-day workings with our members and require her supporting the executive leadership team of the Builders Exchange.

Nina Smith is responsible for the cellular phone affinity programs with Verizon and ATT, assisting Beth, and responsible for the Syracuse Builders Exchange's various social media platforms. Her personality and commitment to our members make her the ideal person for this position.

Change is never easy unless one views such as an opportunity to improve. While our members and staff will miss Ann Marie, Peggy, Lori and Melissa, their departure provides opportunities for others and will lead to improved efficiencies.

I would like to recognize the amazing work of the former employees who retired, while simultaneously sharing with the industry the various changes at the Association as a result of their leaving.

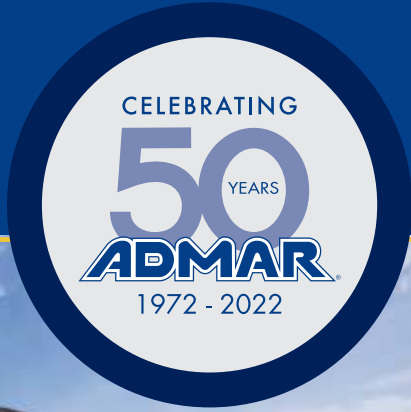
The Builders Exchange has embraced change for over 150 years, and we will continue to do so in an effort to improve the delivery of important services to our member employers, their employees and the construction industry in general.

A handwritten signature in black ink, appearing to read 'Earl R. Hall'.

Earl R. Hall
Executive Director



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WILKINS MECHANICAL: 'I ACCEPT THIS CHALLENGE'

TAMI S. SCOTT



Science III Chiller Upgrades, SUNY Binghamton University

When Susan Heffernan was presented with a chance for change, she grabbed it. It wasn't part of her plan though it certainly served its purpose.

Heffernan had just enrolled at the Whitman School of Business at Syracuse University to further her education. She had been working as an accountant but felt an inner tug to do something different. Earning a master's degree in her field was a sensible, safe route to start.

One phone call changed everything.

She learned through a friend that the owners of Wilkins Mechanical were looking to retire and sell their business. Her friend, who was aware of her current discontent, encouraged her to inquire. And so, she did.

"The broker asked if I'd ever considered owning my own business and I said 'well, not consciously,'" Heffernan said, noting that for years she always worked hand-in-hand with business owners. "I guess you could say in a way, I've always been in training for this very moment, it didn't take long for me to realize that this was the right path to take, so I gladly accepted the challenge and the process began."



Wilkins Mechanical. Syracuse, New York.

On Dec. 30, 2021, Heffernan became a business owner. For 11 months leading up to that moment, she embraced every occasion to learn from the people who built it.

“I worked alongside the previous owners for a few months with the intent of hitting the ground running a little faster upon closing,” Heffernan said. “That experience certainly helped me gain some insight on what challenges they faced and what I might expect.”

Heffernan credits her mom and grandmother — her biggest heroes — for instilling the strength to take challenges and leaps of faith because, “if you don’t you never really know what you are capable of, and without risk, there’s no reward, right?”

Looking back, Heffernan said never once did she feel like she couldn’t do it. “I had the attitude of ‘yes, you can do this.’ The experiences I’ve gained over the years have prepared me for this.”

Heffernan is in the process of working on obtaining her WBE certification, which she hopes to achieve by the end of 2023. “Through research, webinars, and speaking with other certified WBE business owners, I know the process is quite extensive,” she said.

Challenges and rewards

When asked what are the challenges and rewards of this new venture, Heffernan responded by saying that everything is rewarding and challenging all at once.

“They feed each other,” she said. “It’s exciting to be faced with a challenge or obstacle, and finding the solution or resolution to those situations are the reward.”

Before pursuing a shift in her career, Heffernan worked in finance for almost ten years at Martin-Zombek Construction. “We were all encouraged to “think like a business owner,” “think like an entrepreneur,” she said. “At that time, it was practice; now, it’s the real deal.”

Stopping the “I’m an employee” thought process was one of Heffernan’s biggest challenges. Her background at Martin-Zombek, however, prepared her well for the new path she walks today.

“I’m grateful to have had the experience at Martin-Zombek,” she said.

Though Heffernan is the new leader of this female-owned business, she’s mindful of each team member’s purpose within the establishment.

“We all have a very important job to do here and none of us can do it [alone],” she said. “The kind of culture I’m trying to create and build off of [is] the foundation that the Wilkins’ [had] so tirelessly built. We’ve got a solid crew, in the field and in the office.”

Aside from the employee-to-employer transition, Heffernan is also conscientious of continuous learning and the value of networking. The Construction Financial Management Association (CFMA) and the Syracuse Builders Exchange (SBE) — had both served as substantial resources for her in the past. She plans to engage with each again.

“[CFMA] and [SBE] were huge for networking and were resources when I was in my previous position in construction,” she said. “I miss that education because [not only] would I learn something new, but it also validated what I knew [already]. That’s how I can be most



Rehabilitate Exterior Heating System Stanchion Supports, Gouverneur Correctional Facility

helpful to my team, by making sure I'm continually learning and knowing the best way to account for all the hard work my team is doing."

Though it's been less than a year, the rewards so far, she said, are seeing the teams come together and watching the business develop.

A little history

Wilkins Mechanical Inc. was formally incorporated in 1997 and family-owned for 41 years. That's a history that would make anyone who succeeds the founders feel both secure in their acquisition and apprehensive about filling their shoes.

"Many people dislike change," said Heffernan. "There are times when it's even uncomfortable for me. So, I understood there was going to be some apprehension [and] potentially some resistance."

Heffernan noted how oftentimes when a new owner takes over, they decide to build their business from scratch. "It makes sense that there would be some concern," she said, "but that was definitely not my plan."

In fact, the only changes she sees on the horizon are newer technology and more staff. For herself, Heffernan implemented an accounting software program within the first six months to keep organized in job costing and project tracking. Her next focus will be organic expansion — growing the business in a way that makes sense.

"I hope to increase employment over the next few years," she said. "New York State has been a very good customer; we have had success in bidding OGS, DASNY and SUNY projects."

Heffernan looks forward to having internal conversations with employees on exploring other gainful avenues, too.

What should their customers know?

Sometimes change can shake up customers' confidence if they're uncertain about what to expect. At Wilkins Mechanical, Heffernan exudes a commitment to excellence.

"I carry the same values, work ethic, and pride that the former owners had," she said. "I respect that. I want to continue to preserve the reputation that the previous owners worked so hard to build — that's my goal."

Does that mean there won't be any "oh shoot," "oh darn," or "I'm sorry" moments? Of course, there might be, she said, because learning curves are a natural — and

healthy — part of a new process, and show humility. Heffernan advocates for customer conversations to bring her up to speed on current happenings.

"I appreciate our customers and I am thankful for their patience in our growth," Heffernan said. "Our customers have been wonderful to work with. I've very much enjoyed getting to know them."

In essence, Heffernan's view on success for everyone is about collaboration. "We're very prideful in the work that we do because we do a knockout job. We're welders, we're pipefitters and nobody can weld as good as we can," she said. At the same time, feedback is critical, too. "If our client is unhappy with a certain situation, we entertain that. We're open to that conversation."

"I see everything as a team," she added. "Everybody needs support, whether it's on a project from a project manager to the foreman to the client's project manager — we all need to work together and that's the kind of culture and philosophy that I'm trying to build."

Heffernan may not have ever consciously thought about owning a business, but her experience, philosophies, and can-do attitude, together with team-building principles, appears to have put her on the path she had been seeking from the start.



Condensate Repair Manhole #3, Farrell Hall SUNY Delhi



WILKINS MECHANICAL APPRENTICESHIP PROGRAM

The Wilkins Mechanical Apprenticeship Program is accredited through the National Center for Construction Education & Research (NCCER), which is recognized by the New York State Department of Labor.

“We encourage anyone, at any age, to join our organization and learn the plumbing, pipefitting, and steam-fitting trade,” Heffernan said.

The typical program is five years. The work processes that an individual is trained on and the minimum required hours are set by the DOL. A newly hired individual who enters the program will “test in,” which will determine their knowledge and skills to influence their entry level.

WML
WILKINS MECHANICAL

NEW YORK STATE POISED TO ADD REGISTRATION REQUIREMENT TO PUBLIC WORKS CONTRACTING: NYS SENATE BILL S5994C

JOSEPH SCHULER, SHEATS & BAILEY, PLLC

Public works contracting in NYS is subject to various statutes, rules, and regulations under Article 8 of the NY Labor Law. The state is on the brink of adding another onerous registration requirement to the list. The requirement would apply to all contractors on public works projects in NY and is on the way to the Governor's desk after passing the State Senate and Assembly.

The bill is a self-described attempt "to better enforce existing labor laws and regulations in the public works industry." In reality it is a way for NYS to raise revenue and add another unnecessary layer of bureaucratic review for contractors to navigate. The bill requires contractors to register with the DOL's Bureau of Public Works. The registration must be renewed every two years and prior to bidding on any public work. Unregistered contractors may not bid on public contracts. Additionally, registered contractors may not use the bids of unregistered subcontractors. Proof of application is not accepted as proof of registration. All bidders must provide proof of their own registration and that of any underlying subcontractors their bid relies on when submitting their bid.

Noncompliance with any of the registration or proof of registration requirements may, after notice and a hearing, result in a fine of up to one thousand dollars. It may be prudent for contractors to revise their current form subcontracts to include indemnification clauses specifically covering potential fines under this new law. Also, it may be wise to add language permitting claims for lost profits if an unregistered subcontractor causes the prime contract to be terminated. Including subcontract language that subcontractors must maintain and renew their certification at their own cost could mitigate a contractor's risk. Furthermore, requiring proof of registration in advance of bid submission by subcontractors and developing an in-house database of registered subcontractors may reduce the chance of using a bid from a sub that is not registered. The proof of registration terms could be included in RFPs sent to subcontractors.

Registration, in its simplest form, is completed in three parts. First, there is a registration fee of \$200, which the Commissioner has the discretion to lower for M/WBEs. Second, the registrant must fill out a fairly extensive disclosure form. Finally, the company must show proof of

workers' compensation insurance coverage for all employees.

The form is statutorily required to include the following criteria: (1) company name and address, (2) business entity type, (3) contact information for any individuals with company interest, (4) company tax ID number, unemployment insurance registration number, and workers compensation board employee number, (5) outstanding wage assessments in NY, (6) debarments in the last ten years in NY, (7) debarments in the last ten years outside NY, (8) past violations of NY labor or employment tax law, (9) past OSHA violations, (10) associations with apprenticeship programs, and (11) status as a M/WBE or not.

After paying the fee, filling out the form, and showing proof of workers' compensation insurance, the Commissioner of the Bureau of public works has the broad discretionary power to determine a contractor's fitness. The unelected Commissioner is required to "promulgate regulations to determine under what circumstances a contractor would be unfit to be registered." A bright spot for some, past debarment is not permitted to be the sole determining factor of fitness, unless the debarment is currently still in effect under section 220-b(3) of the Labor Law (five-year debarment for two prevailing wage violations in six years) or 141-b of the Worker Compensation Law (one-year debarment for workers compensation payment violations).

If the Bureau of Public Works Commissioner finds a company unfit the company will have the opportunity to dispute the finding at a hearing. Then the Commissioner will make a final determination. Companies found to be fit at the outset or after a hearing will be issued their certificate of registration. The Bureau is required to establish an online interface for contractors to access their certificates.

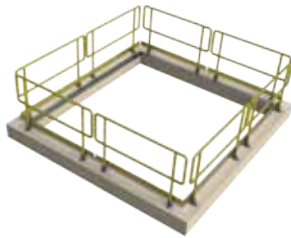
The attorneys at Sheats & Bailey, PLLC are experienced with compliance in the public works bidding process. For more information or assistance with navigating the Public Works Construction landscape contact Sheats & Bailey, PLLC.

The information provided in this article is not intended to serve as specific legal advice for any particular situation. Competent legal and experienced counsel should be consulted.

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WORKERS' COMPENSATION: CHANGING THE EXPERIENCE MOD CALCULATION

PAUL CODERRE, CSP, ARM, VICE PRESIDENT OF RISK MANAGEMENT SERVICES, ONEGROUP

What does it mean for your business?

- It's good and getting better / It's bad and getting worse
- Changes go into effect 10/1/2022
- Intent: Incentivize companies to do better at preventing injuries
- Withdraw from NCCI for multi-state operations

They say, "Change is good"

As you may have heard, the New York State Compensation Insurance Rating Board (NYCIRB) is changing the way they calculate your Experience Modification Factor (aka "mod"). They are also withdrawing from the National Council on Compensation Insurance (NCCI) and eliminating the "Merit Rating" system for small businesses. This would probably be interesting if you are an insurance person (Like me). If you're not an insurance person, you probably just want to know how it's going to affect you in insurance availability and cost.

First: How is Workers' Compensation Premium Calculated?

Your workers' compensation (WC) carrier calculates your organization's premium, using data provided by you, the State of NY, and their own (approved) factors. The calculation follows a standard formula in which the underwriter uses your workers' compensation classification codes, loss cost rates tied to those codes (set by the State) and your payrolls to calculate your manual premium, which is the first step in setting the premium for a guaranteed cost policy.

The manual premium would be the same for any two companies that do the same thing, have the same number of people, and pay their people the same in wages. It does not consider the loss performance of either company. This is where other factors, including the loss cost multiplier (LCM) and the experience modification factor (EMF) come in.

LCM: The loss cost multiplier is a factor that is

developed by the WC carrier, and approved for use by the State. Carriers can have several LCM's approved for use, and reflect the carrier's "feeling" about how your company will perform. Loss cost multipliers can range from 1.10 to over 1.5.

EMF: The experience modification factor is calculated by NYCIRB based on your classification codes (what you do), three years of your payrolls, and three years of your losses (how well you do what you do). This is the thing that is changing as of 10/1/2022.

A key to remember about the LCM and EMF is that they are "multipliers" in the premium formula; meaning the underwriter takes that initial "manual premium" figure and multiplies it by both factors.

Manual Premium X LCM X EMF = Standard Premium

The standard premium is the important premium number. There may be other discounts introduced by the underwriter, but it is the true basis for your annual workers' compensation premium. Needless to say, the lower either "factor" is, the lower the impact on that standard premium number. So, if you want to control your workers' compensation premium, you need to do what you can to control the LCM and the EMF.

Control: Since the LCM is set by the underwriter, you have little control over the number itself. Your opportunity to control the LCM stems from your operations, your overall performance, consistency in performance and the presence and effectiveness of your risk management efforts. It is really a more subjective decision by the underwriter whether you get an LCM of 1.12 or 1.45.

However, the EMF is a controllable factor. It is based on your injury costs over a three year period; if you minimize the frequency and severity of incurred losses, your modification factor will be lower, and will have a more positive impact on your premium. Unlike the LCM, the EMF can actually calculate to be less than one (<1). When the manual premium is multiplied by a modification less than one (called a Credit Mod) it actually reduces the

ultimate premium figure (Yay!). So the bottom line is that in order to control your workers' compensation premium, your best opportunity is to control your EMF.

This is why the State's change to the EMF formula are so important to you and your business.

Second: Why is the State Changing?

New York State has been studying the performance of organizations from the standpoint of workers' compensation injuries and costs. Those studies have revealed that companies performing very well (minimizing the frequency and severity of on-the-job accidents) are not realizing the benefit of their performance in their workers' compensation premiums (remember, the EMF is based on performance over a three year period). The State also found that companies performing poorly in workers' compensation outcomes are not being assessed adequately for their poor performance. (Note that the experience rating system is supposed to reward good performers and "incentivize" poor performers to do better) The bottom line is that the State felt it necessary to change the EMF formula to better affect what organizations pay in premium based on their performance.

Discontinue participation in NCCI: The National Council on Compensation Insurance is an organization that provides EMF calculations for companies with operations in multiple states. While they do not cover all states, those companies whose operations are within a state that is a member of NCCI would have a common EMF for all such operations in all such states. Not all states participate in the NCCI system. In a case where a company has operations in both NCCI states and non-NCCI states, premiums will be calculated for NCCI States using the common NCCI mod, and for Non-NCCI states individually using the experience mod calculated for that state on its own merit. Since NY no longer calculates a mod the way that NCCI does, it needed to withdraw from the NCCI program.

Discontinue the merit rating system: Very small companies in New York (WC Premium < \$5,000) have traditionally been treated differently in their workers' compensation premium calculation than larger companies. They fell under a program called "merit rating." With the changes made to the experience rating formula (specifically the variable split point) the State felt it was no longer necessary to have a separate means of premium calculation. Companies who previously qualified for merit rating will now be rated the same way as all other workers' compensation risks in the state. The changes to the EMF calculation are designed to

accommodate small, medium and large risks. (More on the variable split point in a moment).

What Has Changed?

Key elements of the experience rating formula have changed. It is felt by the State that those changes will result in the following:

Organizations that in the past have had a very favorable credit mod will likely see their EMF improve further. Those companies who in the past have struggled with a very poor debit mod will likely see their new mod get even worse. And those companies who have been in the middle (not great but not terrible) will see only minor changes to their newly calculated EMF. That is how the State described the expected outcome of changing the mod formula. Our early observations have shown a little more tendency for mods to move up slightly for those in the middle group.

Variable Split Point: A key change to the formula has been the establishment of a "Variable Split Point." The split point defines what portion of incurred claim costs on a specific claim will be considered primary, and what will be considered secondary. The mod formula leans heavily on costs associated with small to moderately severe claims, and discounts high severity claim costs so they don't over skew the mod.

This was a point in which a smaller company's mod could be overly impacted by a single claim, while a larger company may not feel the impact of several claims as intended by the State. The new method sets the split point value based on the company's payrolls and Expected Losses. A small company may have a split point of \$1,500, while a larger company's split point may be \$60,000. The result is that if each company had a single claim that totaled \$65,000: the small company would have \$1,500 used in the mod calculation while the larger company would have \$60,000 entered into their calculation. While it seems harsh, the larger company's higher expected losses do soften the blow of the higher split point.

Caps and Limits

First Year Cap: During the first year of applying the new calculation (experience mods effective from 10/1/2022 to 9/30/2023), a mod calculated under the new method that generates result greater than 0.30 higher than using the old calculation will be capped at the mod calculated by the old method plus (+) 0.30. This will show up on the experience rating sheet provided by the State (NYCIRB).

Claim Count Limits: There is also a limit on the experience modification for organizations having only 1, 2, 3 or 4 claims in the rating period. This is another way for the State to limit the impact of a single or a very few claims having a severe impact on a smaller company's experience rating; and for a larger company's mod to be limited by a calculated cap (although this cap can still be fairly high).

- For an organization having only 1 claim, their mod cannot exceed 1.12.
- If the organization has only 2 claims, their mod is capped at 1.40.
- If the organization has 3 claims, the cap is 1.75, and
- If the organization has 4 or more claims the mod is capped via formula - $(2 + 0.000003 \times \text{Expected losses})$

The Bottom Line and What Can We Do About It?

The bottom line in the changes made to the experience rating formula is that it is here and it is real. The State (NYCIRB) has begun applying it to those mods effective on 10/1/22 or after. For many, their mod will go up; some slightly, others not so slightly. For others, their mod will go down and they will realize the benefits in their next policy renewal.

What we can do is:

- Work with OneGroup to stay ahead of the game. We can do some prospective calculations of your mod to see (approximately) where it's going to be at renewal time. This will help in making decisions relating to carriers and programs.
- Work with OneGroup Risk Management and Claim professionals to help minimize the occurrence and severity of workers' compensation losses. Remember, the only real option you have in controlling your experience mod is to control the losses driving it.

What Else:

If you want to know more about the details surrounding the change to the mod formula and the potential impacts of those changes:

- Contact your OneGroup representative. We can get into the weeds on the mod formula and its impacts. We are insurance nerds... we love this stuff.
- Go to the NYCIRB website:
www.nycirb.org/experience-rating-transition.php

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Aerial view - Syracuse, 1936



I am optimistic about the future of construction in central New York. Over the past 20 years we have experienced growth every year through the difficulties of the economy. Syracuse never seems to see hyper growth, nor does it ever see the bottom fall out. We are very fortunate in central New York to have the visionaries that lead to entrepreneurship, which in turn leads to growth. Our community continues to bring new life into old buildings and competes with the larger cities by bringing in innovative and creative industries developing new parcels and jobs.

Growth additionally comes in the form of how we treat those of us who are less fortunate. We have found supporting David's Refuge, a not-for-profit organization that provides care for the caregiver an extremely rewarding experience. David's Refuge provides respite, resources and support to parents and guardians of children with special needs or life-threatening medical conditions where they will be refreshed, restored, and renewed in their role as caregivers. Stronger Caregivers lead to Stronger Families. Stronger Families lead to a Stronger Community.

Craig Zinserling, President, Owner



W.F. Saunders & Sons, Inc. old mixer



W.F. Saunders' Coach, Coupe and Livery

The future of construction is people-based, as it always has been, though in varying forms. Advancements in technology, machinery, and communication will continue to refine our product, but we still need people to push the research, operate the equipment, and guide the next generation of design. We complain about being understaffed and having trouble finding young workers to grow into the boots of our retiring baby boomer generation. We trade terms like Great Resignation, turnover, culture, and "kids these days," overlooking the fact that our industry's future is rooted in those we train and motivate today. Companies that commit to revising their recruiting methods now will garner the most effective workforce in the coming years. Creativity, flexibility, and personability have taken over our recruiting efforts of late, and with encouraging results so far this year.



Mike Mattessich, President

THE FUTURE

Syracuse Builders Exchange Career Day



New York State Fairgrounds. Syracuse, New York



SU Bird Library. Under construction.
Syracuse, NY 1971



Greenleaf Funeral Home. Syracuse, NY 1967

The Syracuse Builders Exchange (SBE) has been a pivotal partner to our success. SBE has served our community for over 150 years. Its capable leaders have led us through everything from depressions to pandemics. The current leadership, along with its storybook exchange from father to son has continued this legacy and furthered the mission of serving the construction industry. The leadership continues to be innovative and creative continuously providing new services and programs. We take advantage of the many opportunities available to us including the education & safety training programs, the electronic plan room, as well as the cell phone discount program and the fuel discount program.



Most beneficial are the rewarding relationships we have developed and enjoyed due to our membership with SBE. Being a member and attending the many networking events such as Meet the Generals, golf tournaments and the annual bake has led to many wonderful friendships and business contacts.

Craig Zinserling, CRAL Contracting Inc.

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CASH IS KING

KENNETH C. GARDINER, CPA, CCFP, CDA, DANNIBLE & MCKEE, LLP

With inflation at its highest since the early 1980s, contractors are required to fund higher construction costs to perform the same construction operations. The cost of materials and labor have increased significantly, and cash requirements have never been higher. It takes money to make money, and contractors need cash to mobilize projects, fund payroll and stay afloat.

Here are 10 strategies to help preserve cash flow and reduce construction costs:

1. Negotiate and ask for material escalation provisions - Historically, escalation provisions have been limited to asphalt and a few other commodities. It is becoming much more prevalent to obtain escalation on a wide variety of construction materials and equipment. Many contractors are approaching contract owners and negotiating inflation-oriented contract increases.

2. Manage over- and under-billings - One of the best sources of cash flow is over-billings. Manage bid and pay items to front-load as much profit as reasonably possible into early construction phases. Use the early cash flow to reduce line credit borrowing and fund project costs. Conversely, minimize under-billings; discuss pay items with project engineers to confirm when items can be billed on applications for payment. Strategically time when significant material purchases need to be paid to suppliers to when you can bill the owner for these materials and equipment.

3. Explore new sources of products and materials - Now might be the best time to research new sources of products and materials. Inflation and ownership transition in the construction materials and suppliers' industries may create opportunities to forge new relationships with vendors hungry for new business. We have seen relationships that were once deemed taboo turn into new opportunities for better pricing and/or payment terms. The Internet also may be a great source of new supplier opportunities.

4. Teamwork - Make sure construction teams work together with purchasing personnel to obtain the best price and delivery options. Don't let construction teams purchase goods and services in a silo. Centralize purchasing as much as possible at the home office, or at least make sure large purchases amongst projects are coordinated to maximize volume purchase pricing and related discounts.

5. Contract outside advisors - Stay connected to your outside advisors. Industry professionals such as accountants, legal counsel and construction industry associations can help identify federal, state and local programs to assist contractors with programs, such as was the case with the Paycheck Protection Program (PPP) and Employee Retention Credit (ERC), that can provide substantial government incentives to maintain your workforce and provide much-needed cash flow.

6. Billings, collections and year-end payments - Review your billing and collection policies. Consider emailing invoices, applications for payment and other communications with customers. Provide electronic payment options such as EFT and credit card options. Negotiate better payment terms with vendors. Offer wire transfer payments on a specified due date or use credit card payment services to provide additional cash flow or credit card rewards to extend cash terms or use rewards for future purchases.

7. Subcontractor and supplier buyouts - Despite having quoted prices, consider going back one more time to negotiate or obtain better pricing on significant subcontract or supply contracts. You might be able to hit on a few cost savings that could have an impact on overall job profitability.

8. Review equipment needs - For contractors with significant rolling stock and equipment operations, consider a review of equipment usage on current and future projects. Sell off idle or low-usage equipment for

new purchases. Look at short- or long-term equipment lease options vs. financing purchases. The acquisition of new equipment requires a cash flow analysis, including an increase in cash for potential reductions in repairs and maintenance to replaced equipment and a decrease in cash for interest components of any long-term financing.

9. Evaluate estimated tax payment requirements - Whether you are a regular tax-paying C corporation or a pass-through entity, consider deferring estimated tax payments to assist in short-term cash needs. Most taxpayers believe you must make estimated tax payments equal to your prior-year tax. Evaluate current year profitability and determine if you can adjust estimated payments based on your current year's quarterly taxable income.

10. Lines of credit - While most contractors have a line of credit, the best time to ask for an increase or expansion of your line is when you don't need the money. It might seem counterintuitive, but banks may be hesitant to lend money when you need it, however, tend to be much more willing to increase or provide a line of credit when you demonstrate healthy cash flow management. With inflation and costs dramatically increasing, now

might be the best time to request an increase in bank borrowing availability before it is too late.

It's not likely the impact of materials inflation is going to reverse, and it looks like the "new" costs are here to stay. Additionally, there is no way to reverse labor inflation, so we are all going to have to manage the impact of increased costs. These are just a few suggestions to help you improve cash flow, manage costs and increase profitability.

[Kenneth C. Gardiner, CPA, CCIFP, CDA](#), is an audit consulting partner at [Dannible & McKee, LLP](#), a public accounting firm with offices in Syracuse, Binghamton and Albany. The firm has specialized in providing tax, audit, accounting and advisory services to the construction industry since its inception in 1978. If you would like to discuss any of these topics, you may contact Ken at kgardiner@dmcpas.com.



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UPDATE ON NYS SECURE CHOICE SAVINGS PLAN LAW

BRIAN SCHIEDEL (BURKE GROUP)

AND EARL R. HALL (SYRACUSE BUILDERS EXCHANGE)

On October 21, 2021, Governor Kathy Hochul signed the New York State Secure Choice Savings Plan into effect, in a move to join other states Nationwide which are establishing mandatory state-run retirement plans for private sector workers. When the enrollment window opens (exact date TBD), employers with ten or more employees who do not currently offer a qualified retirement plan must automatically enroll their employees in the NYS plan within nine months. 3% mandatory contributions will be made to Roth (after-tax) Individual Retirement Accounts (IRAs) - investment options and costs are currently unknown.

Background Information – Retirement Reality Check

Employers of all sizes have faced significant challenges when it comes to offering a retirement plan to their employees. In fact, there are an estimated 55 million working Americans who do not have a retirement plan available from their employer. Recent legislative and executive actions have delivered new ways to help employers deliver effective and efficient retirement plan solutions to their employees, enabling them to save for retirement. The challenges these employers face include:

- Plan costs associated with offering a retirement plan
- Fiduciary duties, responsibilities, obligations, and liabilities
- Limited resources to manage the plan daily
- Reduced focus on growing the revenues and profits of the company

The Solution – Multiple Employer Plan (MEP)

Rather than establishing a plan of its own, a business can choose to join with other employers in a Multiple Employer Plan (MEP). The entity that establishes the MEP is its sponsor, which typically designs the basic features of the MEP. These include the provisions that determine any waiting periods that employees must satisfy to participate, which types of contributions can be

made to the MEP, when and in what form participants can take distributions from their account balances, whether other optional features are available, etc. Adopting employers have flexibility with respect to plan design for their participating employees.

The MEP sponsor also generally serves as the official plan administrator—the primary administrative fiduciary for the plan. It is the MEP sponsor that appoints the trustee and other service providers for the plan, communicates with participants regarding plan benefits, ensures compliance with regulatory rules, decides claims disputes and other plan issues, and determines available investment menus, among other duties. Certain fiduciary responsibilities are often delegated to hired professionals.

Costs are lower for participating employers because the MEP sponsor can negotiate lower fees from service providers based on larger participant numbers and account balances. Much of the fiduciary and legal risk is transferred to the MEP sponsor, administrator and hired professionals. Employees who participate in the MEP have access to the same low-cost investment funds that large employers can offer. Smaller employers can more easily compete with larger companies in recruiting and retaining workers.

A “closed MEP” covers employers within the same geographical region who meet certain commonality requirements (i.e., members of an Association). They are treated as a single retirement plan, file a single Form 5500 report annually, undergo a single audit and determine ERISA (Employee Retirement Income Security Act) bonding requirements on aggregate MEP assets.

Stay tuned as the Syracuse Builders Exchange is performing due diligence on a MEP plan solution for our member employers, and your employees, that may be available before the end of 2022.

DAVID'S REFUGE, CRAIG ZINSERLING, AND THE PINEVIEW RUN CELEBRITY CHALLENGE

CHRISTINE CORBETT, DIRECTOR OF PHILANTHROPY, DAVID'S REFUGE

David's Refuge is a growing local non-profit with a unique mission to provide respite, resources and support to parents and guardians of children with special needs or life-threatening illnesses in an effort to combat caregiver burnout. They do this through an array of Respite, Wellness and Community programs which remind caregivers they are not alone, what they do matters, and that God and this community loves them.

In 2021, when planning for a unique event at Pineview Run & Country Club, Pierre Morrisseau, CEO of OneGroup wanted to include a charity component, and reached out to the team at David's Refuge to explore the idea. At that point, The Pineview Run Celebrity Challenge was born, with local friends signing up to be trained on driving the 1.1-mile racetrack, with a light-hearted race day scheduled for 1 month later. During that month, drivers would raise at least \$1,000 to support the mission of David's Refuge. As a competitive advantage, for every \$1,000 that drivers raise, one tenth of a second is taken off their final track time. This means that the slowest drivers still have a great chance of winning the race and claiming bragging rights for the year.

Board Member and recent celebrity driver Craig Zinserling began supporting caregivers after volunteering at a David's Refuge event through his church. Since that day, his desire to come alongside caregivers has only grown. When asked why he chose to drive in the 2022 Pineview Run Celebrity Challenge, Craig shared



"My wife and I have three children, all of whom are healthy, typical kids requiring no special care. Marriage and kids have their own challenges. Like many, I find it hard to imagine adding full-time caregiving to the mix, yet these families do it every day. I am proud to support David's Refuge and play my part in combatting caregiver burnout which is critical here in our community. Fast cars and a racetrack just make it that much more fun." Craig succeeded in raising more than \$6,500 for his race, all while introducing new friends to the mission of David's Refuge.

The last two years have featured 24 amazing local "celebrities" in total and generated more than \$75,000 in support of caregivers.

The 2023 Pineview Run Celebrity Challenge will take place in the Spring, if you are interested in joining as a celebrity driver, please contact Christine Corbett, Director of Philanthropy at David's Refuge, at christinecorbett@davidrefuge.org.

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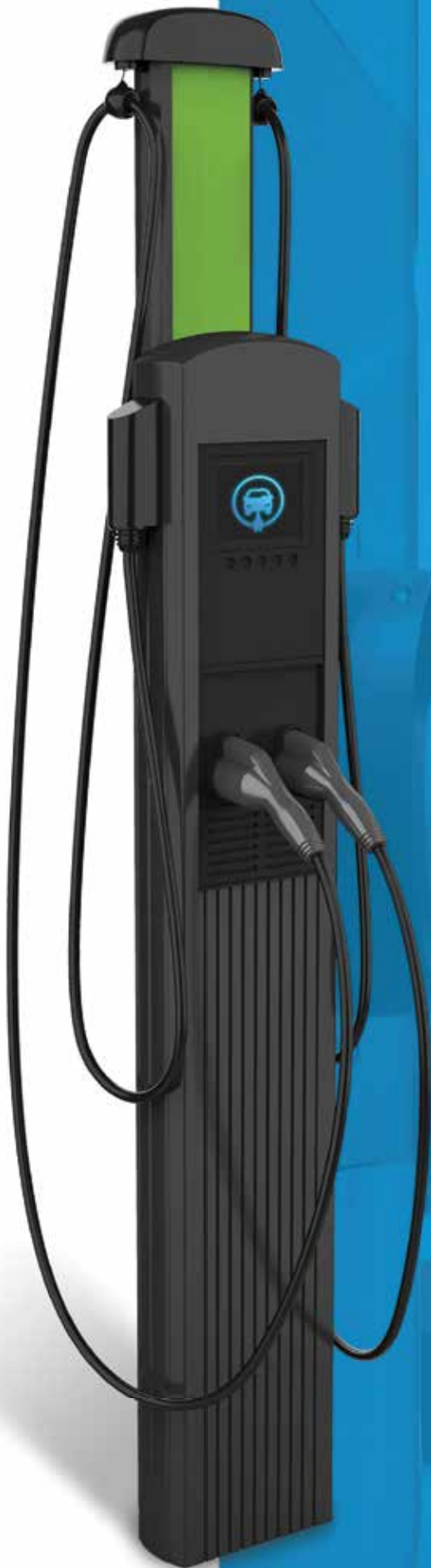
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LEGISLATIVE SESSION 2022

LEGISLATIVE ACTION REGARDING WORKERS' COMPENSATION

ANNETTE MALPICA, VICE PRESIDENT, DIRECTOR OF CLAIMS & LEGAL COUNSEL, LOVELL SAFETY MANAGEMENT CO., LLC

The following workers' compensation bills were passed by the NYS Senate and Assembly in the 2022 legislative session. These bills must be presented to Governor Hochul before the end of the year either for veto or signature into law. If enacted, these bills will increase benefits by millions of dollars, resulting in higher costs for all NYS employers. Further, these bills will decrease the incentives to return to work, and radically change the landscape of the workers' compensation law.

Bill A1118/S.768 – Amends WCL §15(2) to define temporary total disability as:

“[t]he injured employee’s inability to perform his or her pre-injury employment duties or any modified employment offered by the employer that is consistent with the employee’s disability”

The bill's Sponsor states that A1118/S.768 will encourage employers to establish return to work programs and will ensure that permanently disabled workers with serious injuries are given the opportunity to return to work. In addition, the sponsor states that current wage replacement for workers receiving temporary benefits is insufficient. This legislation would mark a fundamental shift in the definition of disability and the way in which wage replacement amounts are determined in New York State.

» The bill upends the case law definition of a temporary total disability by allowing for unlimited awards at the temporary total rate for employees with mild or moderate partial disabilities. A1118/S.768 eliminates the long standing tenet of the WCL that defines temporary total disability based on medical standards and creates a new legal standard. Under the current system, when a doctor finds that an employee has partially recovered from an injury, that employee must either seek out work that is commensurate with their degree of disability, or risk losing their indemnity benefits. The language of A1118/S.768 would make it so that if the injured employees could not return to their pre-injury employment or to a modified job, they would automatically receive benefits at the higher total

disability rate. This change shifts the burden to the employer-carrier to either provide a light duty program or face paying lifetime total disability awards until such time the employee returns to work. The majority of employers don't have the financial or practical ability to accommodate light duty. Since the inception of the WCL, the responsibility was placed on the partially disabled employee to seek work within the medical restrictions in any occupation to receive benefits at the partial rate.

» This bill would eliminate the labor market attachment requirements for employees with partial disabilities. Longstanding court precedents require that a partially disabled employee demonstrate attachment to the labor market by seeking work within his/her physical restrictions in order to receive ongoing indemnity benefits. Employees who are deemed to have a temporary total disability are naturally precluded from the requirement due to their designated “total” disability. Additionally, a yet unknown consequence presented by this bill is whether the employer-carrier would be mandated to continue total disability payments when a partially disabled employee, who is separated from employment, decides not to search for other employment within their physical restrictions.

» We are also concerned that this new definition of temporary total would undermine the durational caps of the 2007 reform legislation. The historic 2007 reform capped indemnity benefits under WCL §15 3(w) to a maximum of 525 weeks for employees who sustained partial loss of earning capacity based on the medical evidence and determinations of other industrial factors. Should this bill be signed, the door is opened for those employees who have medical evidence of a partial disability and are capable of gainful employment to continue to receive lifetime, tax-free, total disability awards. Ending durational limits on payment of partial disability benefits would result in very significant cost increases.

» This bill could increase the protracted healing periods for employees with partial disabilities subject to schedule loss of use awards. The statute provides for additional weeks of compensation when the number of weeks of

total disability exceeds the statute's protracted healing period noted in WCL 15(4-a). Therefore, a partially disabled employee, who is unable to be accommodated in a light duty position will continue to receive total disability benefits, which in many instances will exceed the normal healing periods resulting in additional weeks of compensation added to the schedule award.

If signed into law, this bill would be effective immediately. The New York Compensation Insurance Rating Board has not yet calculated the cost of A1118/S.768. We did a random sample of 25 recent claims that featured temporary partial benefits. When we recalculated the cost of these claims at the temporary total rate, claims costs increased by 39%

Bill A2020-A/S.6373-B – Amends WCL §10(3)(b) to eliminate the case law requirement that mental stress injuries be based on work-related stress that is materially and substantially greater than that experienced by similarly situated workers.

“Where a worker files a claim for mental injury premised upon extraordinary work-related stress incurred at work, the board may not disallow the claim upon a factual finding that the stress was not greater than that which usually occurs in the normal work environment.”

Bill A2020-A/S.6373-B would expand the statutory carve out that applies to police officers, firefighters, and emergency medical technicians who filed a claim for mental injury premised upon extraordinary work-related stress to include all employees. The 2017 legislature, in recognition of the high standard required by the statute for mental stress claims, and the occupational hazards/exposure experienced by first responders during emergencies, removed the restriction that a mental stress claim had to be greater than the stress sustained by a similar worker. This bill will permit all employees who allege an extraordinary work-related stress to file a mental stress claim irrespective of a work-related emergency. The onus to determine what qualifies as “extraordinary,” a standard that is not defined by statute, will be placed on Law Judges. If passed, this bill will result in extensive litigation on the issue of what constitutes “extraordinary” stress, increase administrative expenses (IMEs, witness, and medical testimony) and result in compensability determinations on minor/transient stress events. If signed into law, this bill would be effective January 1, 2023. The New York Compensation Insurance Rating Board has not calculated the financial impact of this bill. We believe that in addition to increasing the cost of litigation, this bill would transfer the cost of treatment and disability for psychological conditions that are now not considered work-related to the workers' compensation system. Given the fact that close to half of all Americans in surveys complain of stress, the cost could be substantial.

Bill A7178-A/S.8271A – Amends WCL §15 (6) by increasing the minimum amount of compensation from \$150 to not less than 1/5 of SAWW or employee's full wages if equal to or less than 1/5 of SAWW.

“[C]ompensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after the effective date...of two thousand twenty-two ...shall not be less than one-fifth of the New York state average weekly wage except that if the employee's weekly wages are equal to or less than one-fifth of the New York state average weekly wage, the employee shall receive his or her full wages.”

This bill would establish a new minimum weekly indemnity benefit for employees who sustained new accidents (on or after the date the bill is signed) and index future weekly minimum indemnity to the State Average Weekly Wage (“SAWW”). According to the sponsor's justification memo, the “legislation would provide equity and fairness to low-wage workers injured on the job and ensure that future benefits are adjusted automatically with inflation.”

The current minimum weekly indemnity rate for employees who earn more than \$150/ week is \$150. This bill would establish an increased minimum weekly benefit rate for new injuries at 1/5 of the SAWW. Effective July 1, 2022, the SAWW will increase to \$1,688.19 for injuries occurring on or after 7/1/2022 – 6/30/2023. Employees who sustain accidents after June 30, 2022, would be entitled to weekly indemnity benefits of no less than \$337.64 (1/5 of \$1,688.19) an increase of almost double the current minimum indemnity rate of \$150/week. Employees with wages less than or, equal to \$337.64/week would receive full salaries.

The impact of this bill will be felt by employers who hire large populations of low-wage earners, part-time, or seasonal employees. The significant increase in the minimum weekly indemnity rate, which is tax-free, may deter certain employees from returning to work. The increase in the minimum rate will also have an impact on the cost of workers' compensation costs/premiums. The New York Compensation Insurance Rating Board has not yet priced the cost of this bill.

As of the date of this writing the legislation has not been delivered to the Governor for signature or veto. Those members interested in opposing the 2022 workers' compensation legislation should immediately contact their legislative representatives or Lovell Safety Management at 1-800-5-Lovell.



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The Syracuse Builders Exchange was founded on April 30, 1872, and was known as the Builders Board of Trade. In 1900, the organization changed its name to the Syracuse Builders Exchange. The Syracuse Builders Exchange is the largest Builders Exchange in New York State, serving 985 diverse member firms, and is affiliated with the Building Industry Employers of New York State. As the oldest Builders Exchange in the United States, the Syracuse Builders Exchange has evolved over the past 145 years to become the regional industry leader in gathering and disseminating of important construction information to construction industry employers.

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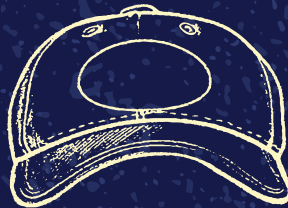
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