# CONSTRUCTION CONTRACTOR

SYRACUSE BUILDERS EXCHANGE - SINCE 1872

SPRING 2023

## THE SCHOFF GROUP OF UBS: READY TO PARTNER WITH YOU

### ON THE INSIDE

MERIT APPRENTICESHIP ALLIANCE: BUILDING THE FOUNDATION FOR A SKILLED WORKFORCE

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**UBS Financial Services Inc.**
400 Linden Oaks
Rochester, NY 14625-2818
585-218-4500 800-462-1233

**Michael T. Valenti**
Senior Institutional Consultant
Retirement Plan Consultant
Senior Vice President, Wealth Management
585-218-4555
michael.valenti@ubs.com

**Samantha Maley**
Institutional Consultant
Retirement Plan Consultant
Vice President, Wealth Management
585-218-4558
samantha.maley@ubs.com

**advisors.ubs.com/ubsinstitutionalconsultingupstatenewyork/**

UBS

# CONSTRUCTION CONTRACTOR

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## ON THE COVER: THE SCHOFF GROUP OF UBS

# SPRING 2023 EXECUTIVE DIRECTOR'S MESSAGE

On February 26, 2023, the construction industry, and Syracuse Builders Exchange lost Robert Henderson, of Henderson-Johnson Co., Inc. Bob was a passionate supporter of SBE, serving on the Board of Directors for over 35 years, served as President in 1993, Treasurer for 15 years and Chairman of numerous committees, including the Joint Finance Committee. Bob remained very active with SBE until the day he died. It would be impossible to calculate the countless hours he volunteered at SBE in his capacity as a Director, past-President and Chairman of different committees.

Bob was a terrific teammate, often sharing his advice, thoughtful insights, and perspectives on items of importance to SBE and the industry. He assisted in developing policies and procedures, crafting annual budgets, hosting events, providing advice on sensitive matters and always shared his favorite jokes he generally learned from his grandchildren.

As Executive Director, I have relied upon people who I know and trust in the industry to help me be the best version of myself that I can be. While my father was instrumental in my personal and professional development, there are few other people more important in my professional development than Bob. He was a wonderful husband, father, grandfather, friend, co-worker and to me – teammate.

The Syracuse Builders Exchange and the regional construction industry are better today because of the impact Bob had on both, but measuring the impact he had on his family, company, his son Todd, and those who had the pleasure of working with him for 35+ years is immeasurable.

Over the decades the Syracuse Builders Exchange has been blessed with many construction industry leaders who have chosen to volunteer to serve on the Board of Directors and various committees. During my 30+ years at the Association, there was no one who volunteered more than Bob. His selfless acts, kind words, thoughtful suggestions and quick wit will be missed and difficult to replace.

May we all find an ability to volunteer our labor, time and/or intellect to an organization or community initiative that will have a lasting impact. But most of all, may those on the receiving end take the time to express gratitude and appreciation to those who serve the greater good of an organization or community.

On behalf of the Syracuse Builders Exchange membership, staff and Board of Directors, I offer my condolences to Bob's wife, Joni, son Todd and daughter Debbi, Bob's grandchildren, friends and employees at Henderson-Johnson Co., Inc.

**Earl R. Hall**
**Executive Director**

Syracuse Builders Exchange
FOUNDED 1872

# THE SCHOFF GROUP OF UBS: READY TO PARTNER WITH YOU

ELIZABETH LANDRY

Back Row: Stephen Wilson, Bill Schoff, Josh Tomko, Oresta Kaznovska, Barbara Fraser, Emily Titus, Alex Wilson, Nick Ward, and Krista Sciera. Front Row: Samantha Maley, Bryan Schoff, Katie Titus, and Michael Valenti

Just over an hour outside of Syracuse, in a nondescript office park nestled in a Rochester suburb,

The Schoff Group of UBS Wealth management is celebrating.

It's mid-January, and Forbes has just released their annual list of Best-In-State Wealth Management Teams to which they were named. Required disclosure, the Forbes rating is compiled by SHOOK Research and awarded annually in January, based on information from a 12 month period ending March of the prior year. Eligibility is based on quantitative factors and is not necessarily related to the quality of the investment advice.

After nearly three years of remote work, the team is finally back together in the office and ready for some celebratory cake.

For over thirty years, The Schoff Group has carved out a distinguished reputation in wealth management by serving high-net worth families, corporate stock plans and not-for-profit organizations. Founded by Managing Director and namesake Bill Schoff, and led with Senior

Vice President Katie Titus, the team is comprised of 13 multi-generational members, and has nearly $3 billion in assets under management as of December 31, 2022. Schoff describes their philosophy as not product-oriented, but solution-oriented, and attributes their success to an ability to recognize and fill gaps in the marketplace.

## Partnership Culture

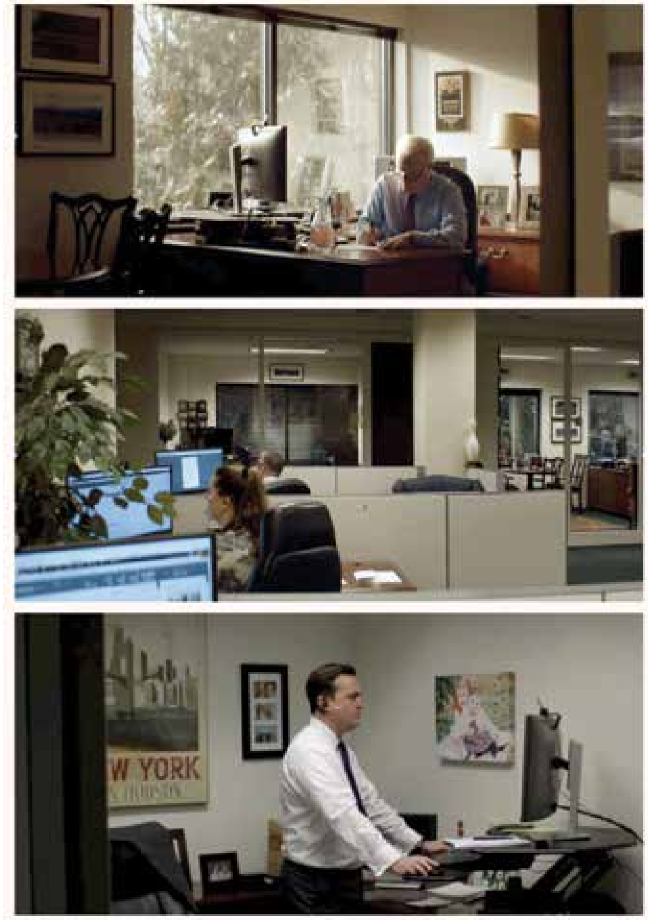
One such recognition was realized in the Fall of 2021 when the group formally added Institutional Consultants Michael Valenti and Samantha Maley. The team had been working with institutional clients of all kinds for years but would often have to outsource business to other specialist teams at the firm. Years of working with corporate stock option plans showed Schoff the value in providing a fully integrated service offering and when the opportunity to add an institutional-specialist team arose, it felt like fate.

“For years, our team had provided high-level wealth management for high and ultra-high net worth families, entrepreneurs, and corporate executives, and we focused on executive stock plans at public companies. The addition of these two top professionals offered us the opportunity to reach a broad array of clients in the institutional marketplace without having to outsource… the synergies there are fantastic. Frankly, I don’t know of another team in the country that offers everything that we offer in a one-stop shop,” says Schoff.

Valenti and Maley were enthusiastic about joining the team. “Our goal is to have true relationships in this business, not just with clients but within our team. It’s not enough to simply work together… the magic happens when everyone feels like they’re rowing in the same direction. It was immediately apparent that The Schoff Group had built their team on the same principles” Valenti said.

“Mike” and “Sam” had spent the majority of their careers working for a Rochester-based money manager where they developed their relationship-centric approach to client interactions. They focused primarily in the Central New York region serving high net worth individuals, endowments and foundations, hospitals, religious organizations, construction trades unions, contractor business owners and everything in between.

Maley looks back at this time with great fondness. “Mike put who knows how many thousands of miles on his car, visiting clients daily…up and down the NYS Thruway…Syracuse, Utica, Binghamton, repeat…pick any town and he can tell you the top three Italian restaurants there! He always insisted on having in-person interactions when he could, and no destination was too far or request too mundane to be there for a client.”



Back in their Rochester-based office, The Schoff Group prefers in-person to virtual communication.

The depth of relationships forged during this time, and the recognition that those clients had a diverse set of needs soon led the Valenti/Maley team to seek out industry partners that could provide the sophisticated solutions required. They were already acting in a consultative capacity for many of their relationships but could only offer a limited set of investments and services.

"Having the ability to problem-solve and design portfolios that were not bound to one investment manager was really attractive to us,” said Valenti.

The move to UBS and Schoff’s team made perfect sense.

## Business Better than Usual

As one of the largest wealth management firms in the world, UBS has all of the resources one expects from that descriptor; teams of research analysts conducting manager due diligence, cutting edge financial planning software and cybersecurity protocols, a staggering array of investment choices.

The combination of world-renowned resources and a boutique firm delivery model set the firm, and this team, apart.

From Left: Bill Schoff, Managing Director- Wealth Management; Katie Titus, Senior Vice President; Bryan Schoff, Senior Vice President; Michael Valenti, CIMA®, Senior Institutional Consultant, Senior Vice President; Samantha Maley, CIMA®, Institutional Consultant, Vice President,

"Our 'product' is our team and our service. Our job is to listen to a client's individual needs and connect them to, not sell them, a solution," Maley says. "Katie calls it 'business better than usual'."

The team represents the best of what the financial services industry has to offer, comparable to teams in cities like Boston, New York, Chicago but focused on the regional community.

"The local aspect of it is very important because our business is based on relationships. We think that in order to have a truly trust-based relationship, you have to feel comfortable and confident that the person knows and understands your situation and is there physically to provide support. So many of our competitors are Zooming in for meetings once a quarter at most, they're not on the ground in the territories they serve. None of the contractors or trade unions we work with could do their jobs virtually, and neither can we," Valenti explained.

One particular area of focus is in educating clients on all of their financial services related options. Years of experience have revealed a desire amongst clients of all types for education. Whether it is helping employees understand their compensation and stock benefits, a small business owner to optimize their retirement plan structure, families wealth plan for generations, or a new plan trustee to understand their fiduciary duties, the team prioritizes learning and growing alongside their clients.

Samantha, Michael, Bryan, Katie, and Bill strategize

Titus likens the team's particular set of investment and financial knowledge to the specialty knowledge and training required in the construction trades. "You get the best welders, electricians, plumbers, etc.… and everyone comes together to produce the best product. What we've done is bring together those same specialists in our various lanes and we can provide a truly comprehensive solution," she said.

## Future-ready: A Multigenerational Team for Multigenerational Clients

The recent additions have not only expanded The Schoff Group's suite of service offerings but strengthened an already flourishing multigenerational dynamic. Senior teammates have an industry average of more than 30 years and bring that experience to bear mentoring colleagues.

"We want clients to feel that they have a relationship with the whole group, not just an individual, Schoff says. "None of our awards or recognition can be credited to one person alone, so developing a deep bench of talent is a huge priority."

In some cases, succession plans have been in the works since the team's inception. Second generation member Bryan Schoff has taken a prominent leadership role and is at the forefront of innovation for client portfolios.

"We know circumstances are constantly changing- in the markets and for clients individually. We've been able to utilize technology not to depersonalize our service, but to make the intensity of it more scalable," he says.

Titus emphasized the importance of succession planning in sustaining a business's success. "Construction businesses are oftentimes family owned and they pass from one generation to the next. Skills are honed over time and passed down, while incorporating new ideas and technology. Our business is the same.

Institutional Consultants Michael Valenti and Samantha Maley joined The Schoff Group in the fall of 2021.

The generational diversity brings breadth and depth to our organization. We have longer-tenured folks like Bill, Steve, Barb, myself who can mentor newer peers, and in turn the newer members bring a fresh perspective and identify with clients in a different way."

That generational connection is key for the group to prepare for one of the largest wealth transfers in history, as baby boomers move out of the workforce and into their later years. Bryan says they are cognizant of what this portends for clients' changing needs. "We're constantly educating ourselves for the next stage, estate planning, cash flow modeling… and using our tech. tools to enhance oversight, efficiency, and most importantly, communication."

Beyond their daily collaboration, the group meets weekly to discuss topical items and strategize, staying ahead of the curve. As she looks toward the future, Titus muses on the possible challenges ahead. Market volatility, ever-changing tax codes, inflation uncertainty… tough conversations broached with clients daily.

"I think the idea of developing a partnership with clients really sprung from a desire to make them feel like we were in it together. To help put them at ease in uncertain conditions… to always answer the phone, be proactive, and really understand every individual circumstance. We have witnessed a yearning in the marketplace for a high-touch model. That should be the industry standard, and we lead by example," Titus says.

Emily, Nick, Krista, and Oresta are always ready to talk with clients

Bolstered by adding Valenti and Maley, The Schoff Group is poised for growth. The group will continue to bring its talents to clients across the country, while contributing to their local community.

"Apart from just growing our business, a big goal of ours is to become an even greater member of the community," said Maley. "We want someone to read our names or see our faces and know they are in excellent hands. There's no reason the talent of our team should be a well-kept secret! We would love to count everyone reading as clients in the near future, and we're ready to start logging miles again."

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# UPDATING PAYMENT RELEASES AND LIEN WAIVERS TO BE EFFECTIVE

JOSEPH SCHULER, SHEATS & BAILEY, PLLC

It is common construction industry practice for projects to be broken down into a monthly payment schedule. Due to the statutory right for subcontractors to place liens on projects they have supplied materials or labor for, monthly payment applications representing work completed are often approved contingent upon the signing of payment release or lien waiver by a subcontractor. In itself, this practice is sensible. Payment for completed work is exchanged for a subcontractor waiving its right to place a lien on the project for the work allegedly completed.

Where problems often arise is when the scope of the work completed is inconsistent with original contractual obligations, and the payment application and lien waiver process does not coincide with the approval of change orders or construction change directives for the excess work. When a change order has not been properly documented, but an expanded scope of work may have been completed, a payment dispute over the change order can implicate a lien release signed after the extra work was completed.

If a subcontractor feels work outside the original contract scope was completed but has no approved change order in hand, and the general contractor, construction manager, or owner is holding a lien waiver postdating completion of the extra work, a question of whether the lien waiver bars a lien based on the extra work arises.

Traditionally, the legal standard was that a lien waiver was effective against any work completed before the date the lien waiver was signed, and any intent by either the subcontractor or general contractor to resolve extra work payment down the line was irrelevant. However, over the years the legal standards have shifted, and courts have elected to construe the waivers more liberally given the circumstances on each project.

At times, courts have disregarded lien waivers that appear on their face to bar claims to extra work already performed. Courts have more recently construed these waivers to be ineffective against extra work claims in cases where, even after the waiver was signed, the general practice was to pay for some extras performed prior to the waiver. Furthermore, a general contractor simply indicating it was awaiting owner approval to pay for extras can show intent not to enforce a previously signed lien waiver. This may effectively give subcontractors an opening to lien a project based on the extras despite any waiver. In some cases, the waivers have been considered to be no more than a receipt for the payment referenced in the waiver, having little relation to payment for extras.

Ultimately a lien waiver may not provide much protection if it is only effective against work underlying the payment amount referenced in the waiver. This is especially true since the payment released is often limited to an amount contemplated in the original contract for the original scope of work. Those extras outside the original scope that may or may not be properly documented could still be grounds for a subcontractor filing a lien on your project. That lien waiver you have trusted ever since you came into the business may not mean what you think it does anymore. Unfortunately, it is simply unrealistic to complete a project without any changes and with perfect agreement on scope of work completed. So, given the shifting legal landscape, is there anything you can do?

Fortunately, within the last year, courts have indicated what kind of language is clear enough to work around these relatively new legal doctrines. While it can be frustrating to keep up with the law, it is hard to beat the "cheap insurance" of a truly effective lien waiver. Diligence updating your forms for documenting projects can pay dividends down the road, especially those forms securing payment and releasing potential claims.

The attorneys at Sheats & Bailey, PLLC are experienced with drafting, revising, and litigating construction contracting forms. For more information or assistance with navigating the construction payment release and lien waiver landscape contact Sheats & Bailey, PLLC, Tel: (315) 676-7314.

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# MERIT APPRENTICESHIP ALLIANCE: BUILDING THE FOUNDATION FOR A SKILLED WORKFORCE

## ELIZABETH LANDRY

When New York State labor law changed about fifteen years ago and began allowing public owners to require apprenticeship training for all contractors, Penny Hazer saw there was a need for open-shop (non-union) apprentice resourcing within the statewide construction community. In 2007, Hazer created Merit Apprenticeship Alliance, an open-shop, multi-employer, registered apprenticeship program sponsor approved by the NYSDOL for apprenticeship training in the Carpentry, Operating Engineer, Skilled Laborer, Ironworker and Cement Finisher/Mason trades.

Penny Hazer, President

As the President of Merit Alliance, Hazer has over 35 years of experience in occupational training and apprenticeship. She has also worked as a carpenter and as a BOCES instructor of vocational agriculture. The many years she's spent honing her own skills and teaching skills to others instilled in her a passion for helping people gain self-sufficiency through hands-on training.

"I've always believed that teaching people to do things gives them a sense of confidence and sustainability that's really unparalleled. If you teach people to do things, they always have those skills. Nobody can take skills away from you," said Hazer.

In order to recruit apprenticeship candidates who can benefit from new trade skills, Hazer and her team utilize many avenues: pre-apprentice programs, job fairs, career shows, public job postings, social media, and CBOs, or community-based organizations. The Merit Alliance team screens and trains apprentice candidates and then assigns them to work for one of their contractor partners on an as-needed basis. Apprentices then take part in on-the-job training where they learn valuable skills in their trade. When construction work is more difficult to find, typically in the winter months, apprentices participate in Merit Alliance's educational branch, Merit Alliance Construction Training Institute, or MACTI, which provides apprentices with NCCER-accredited educational training. MACTI also provides training to other firms and workers interested in expanding skills, improving safety and productivity.

Many of Merit Alliance's apprentices come from socially and economically disadvantaged communities, and 85% of the apprentices identify as minorities. "Our apprentice population is pretty diverse, and we focus on that. The under-served populations just need an extra hand and they are an untapped resource. They sometimes can't figure out how to get into an apprenticeship program simply because no one has reached out to them to get them started. They just need someone to tell them, 'You can do this'," Hazer explained.

Of course, Merit Alliance's programs not only benefit apprentices – they also provide high value to the organization's contractor partners. By working with the Merit Alliance, contractors get to be a part of the training momentum and start to develop a skilled workforce. Participation with Merit Alliance also takes the burden off of contractors to find apprentices that meet their specific trade needs while also meeting the stringent requirements of New York State to bid on public jobs.

Jason Poole, Resource Developer

Jason Poole, Resource Developer at Merit Alliance, has seen first-hand how the organization's expertise in meeting the NYSDOL's apprenticeship requirements has helped contractors gain access to more bids.

"New York State law allows public owners to require contractors to participate in registered apprenticeship training. A lot of contractors bypass these bids because they don't want to deal with the apprentice requirements. My goal is to educate as many contractors as possible that they don't have to pass on these bids. Our multi-employer apprenticeship program can help them meet the bid requirements and this allows many smaller, newer contractors to consider a wider scope of bids," Poole explained.

In order to ensure that their contractors continuously meet the public owner's strict apprenticeship requirements, Merit Alliance operates with a high level of operational integrity. Hazer emphasized that transparency and integrity is at the heart of everything they do.

"We work with about 130 contractors across New York state and New Jersey. We've got about 50 apprentices currently. Our mission is to make sure our apprentices get the highest level of training possible – in full compliance with NYSDOL regulations, and with the NCCER – our national accreditation agency. In my mind, the most significant piece we do is maintain integrity to the rules. If we manage all elements of the program true to the standards, our contractors can rely on the Alliance 100%. Alliance staff commit to working with apprentices and contractors to ensure that both succeed. Apprentice graduation rates are well above 50% for three trades – this helps our partners be more competitive in the bidding market, and our apprentices secure sustainable careers in construction," said Hazer.

Training Session

"Our goal is not to be the biggest apprenticeship program for open-shop contractors – just the best. We believe our contractors are among the 'best of the best', and an asset to owners," she added.

Clearly, when apprentices are successful, contractors are in turn successful. Perhaps the best way to measure the success of Merit Alliance's programs is to consider how many apprentice's lives have been changed for the better. Both Hazer and Poole had numerous stories to share about apprentices whose journeys demonstrate the value the organization brings to so many people.

"A young woman had spent a significant amount of time in a federal corrections facility. We assigned her to work for various contractors throughout the course of her program. There were times when we struggled, but we ultimately succeeded. The apprentice finally landed with a company in eastern New York and we celebrated her graduation with her and her many family members. She is currently the crew leader for traffic control for one of our very respected contractors. She found her fit and she's happy. She's every bit of rough and tumble but now she's grounded and enjoying life," Hazer recalled.

Looking to the future, although Merit Alliance may not be the biggest apprenticeship sponsor program, it's Hazer's mission that it will continue to be among the best. "Integrity is our mantra," she said. "We'll continue to grow with contractors who are committed to safety and quality, just like we are."

For more information, please visit www.meritalliance.org.

MERIT APPRENTICESHIP ALLIANCE


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# PREVAILING WAGE RETIREMENT PLANS

## The Basics

Prevailing wage is the mandated rate a contractor must pay his or her employees based on job classification. This rate is determined by the state.

There are two components to the prevailing wage:

- Base Pay: amount in paycheck
- Fringe Allocation: Can either be deposited into paycheck or used toward bona fide benefits?

When is that fringe allocation credited to a bona fide benefit?

- If it is part of the benefits generally not subject to payroll taxes or workers' compensation premiums
- In more competitive bids
- When it's part of additional benefit programs for employees

When is fringe allocation included in the paycheck?

- When there are increased payroll taxes
- When there are increased workers' compensation premiums
- In less competitive bids

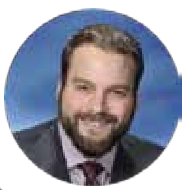
For example: If an employee works on a prevailing wage job and receives $32/hour in base pay and $8/hour in fringe allocation, his or her total compensation for the year would be $80,000. That $8 per hour in fringe equals $16,000, or 20% of the total compensation. This employee's account is then credited with a $16,000 prevailing wage contribution. For safe harbor plans, $16,000 will be credited toward 3% safe harbor contribution. Since 3% of his compensation is only $2,400, the remaining $13,600 could be used as a credit toward profit sharing.

RESULTS:

- Employers can reduce payroll and workers' compensation costs.
- Employers can become more competitive and win more bids.
- Fringe can be used to offset safe harbor or profit-sharing contributions owed to the plan.
- A greater percentage of the profit sharing can be credited to the owner or management.
- Often this can be used to retain and attract potential employees.

Utilizing the fringe allocation to contribute to an employees' benefits program has multiple benefits. If you would like to discuss in greater detail what this may mean for your organization, please contact Brett Findlay at BFindlay@OneGroup.com

Brett Findlay, ARM, CRIS
*Vice President Business Risk Specialist*
315-280-6376
BFindlay@OneGroup.com



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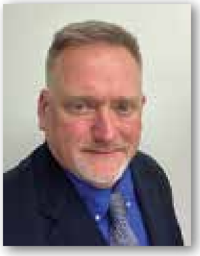

# UNDERSTANDING THE NEW EXPERIENCE RATING FORMULA

STEVEN BELL, VP UNDERWRITING & SALES, LOVELL SAFETY MANAGEMENT CO., LLC

When I started in insurance nearly 33 years ago, I was asked to train 100 colleagues on experience rating. New to the industry, I remember looking at the old formula and wondering how I was going to explain it to a group of non-actuaries. I solved the problem by not explaining the actual formula but the underlying concepts.

Insurance had its start in the Guilds and maritime trade of Europe. Tradesmen in Guilds would pay into a pool to cover loss due to fire, theft, or disablement. Underwriters would buy shares of a ship's cargo, thereby spreading their risk of loss among multiple ships. Workers' compensation insurance attempts to solve a similar risk of loss by spreading the cost of worker injuries over many employers in similar trades or businesses.

In New York State, workers' compensation rating begins with the creation of what is known as a loss cost for 580 classes of businesses such as plumbers, electricians, and office workers. The loss cost is created by taking the total losses for those in a similar class of business and dividing it by the total payroll for those same businesses. The result is the loss cost, which is an average unit of cost that can be charged for each one hundred dollars of payroll exposure.

If we know one thing about averages, it is that they can be unfair, because not everyone is average. The experience rating formula attempts to solve this problem by tailoring the cost of insurance through an additional credit or debit for each employer based on their individual loss experience.

### Effective 10/01/2022 NYCIRB implemented a new simplified Experience Modification Formula

$$= \frac{\text{Actual Primary Losses} + \text{Expected Excess Losses}}{\text{Expected Losses}}$$

### Why was the old experience modification formula changed?

The New York Compensation Rating Board performed a study which revealed that the prior experience rating plan was not equitable. The inequity can be best illustrated in what is known as a quintile test. NYCIRB placed each employer into one of 5 quintiles. The goal of the new plan was to produce, for each quintile, a loss ratio of 100%, meaning for each dollar of loss there should be a dollar of premium.



Based on the study's results, the new plan appears to address the inequities, however, the overall adjustments for those in quintiles 1 and 5 can be quite significant.

### What does the new Experience Rating Formula mean to the average employer?

The new plan will likely result in larger credits and debits depending on your loss experience. In addition to the formula change, the new plan makes all New York businesses eligible for experience rating and it eliminates the Merit Rating Program and the use of interstate ratings. The plan introduces a novel variable split point and claim capping procedure to make sure the new plan doesn't result in too large a swing.

### Claim Capping Procedure

| Number of Claims | Maximum Experience Modification |
|---|---|
| 1 | 1.12 |
| 2 | 1.40 |
| 3 | 1.75 |
| 4 or more | 2 + (.000003 x Expected Losses) |

In year one of implementation, the experience modification will be the lowest of either the new formula, the claim capping procedure, or the old formula plus 30 points. In year two, it will be the lowest of the new formula or claim capping procedure.

There are two core principles that apply to both the old and new formula. First, larger businesses with more employees and higher payrolls are more likely to produce consistent results. Second, the fact that a loss occurred has higher predictive power than the relative cost of a given loss.

### Practical Example

Let's compare three small residential carpentry contractors with the same payroll ($500,000) in each year of the formula.

| Contactor | # Claims | Actual Losses | Primary Losses + | Expected Excess Losses / | Expected Losses = | Calculated Exp. Mod. | Max. Exp. Mod. |
|---|---|---|---|---|---|---|---|
| A | 1 | $50,000 | $11,000 | $35,154 | $45,300 | 1.02 | 1.12 |
| B | 5 | $50,000 | $50,000 | $35,154 | $45,300 | 1.88 | 2.14 |
| C | 0 | $0 | $0 | $35,154 | $45,300 | 0.78 | NA |

The first two examples show the impact of loss frequency. While both A & B have $50,000 in actual losses, B has a much higher experience modification due to 5 claims. Let's assume each of the 5 claims were valued at $10,000, for a total of $50,000. It is conceivable that each of the 5 claims could have been $50,000 for a total of $250,000 in losses. But the severity of claims is less impactful, as the formula caps the amount of losses based upon payroll size.

### What can an employer do to impact their experience rating?

The obvious answer is stop having losses. This is easier said than done but should be the primary goal as the cost of an injury is much greater than the impact to your insurance costs. The losses and exposure used in the formula generally consist of 3 years, so if your policy renews on 4/1/23, the three years used in the formula are 4/1/19 through 4/1/22. This means actions taken today won't impact your experience modification for another couple of years.

Creating a culture of safety will pay dividends beyond the reduction of losses. One key strategy involves considering paying for non-reportable injuries as set forth in section 110 of the NYS WC Law. To summarize, if an injury requires two or less first aid treatments, no loss time beyond the work shift, and is not permanent in nature or involves injury to the face, then you as an employer have the option to self-pay. If the injury requires further treatment or loss of time, you can report it at that time noting you initially treated it as a first aid claim.

### What have we learned about the new experience modification formula?

The new formula attempts to correct the imperfections of the old formula by rewarding the top 20% of businesses with lower experience modifiers while punishing the bottom 20% of businesses with higher costs. While the formula itself is simpler, the system is still quite complex. Practically, it means that many employers will see significant swings in their experience modifications. Whether this is good or bad for you as an employer depends on whether the swing is a credit or a debit.

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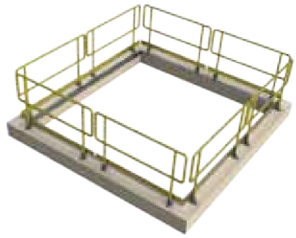

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# MAJOR RETIREMENT PLAN CHANGES IN THE SECURE 2.0 ACT OF 2022

NICHOLAS L. SHIRES, CPA, DANNIBLE & MCKEE LLP

On December 29, 2023, President Biden signed the Consolidated Appropriations Act of 2023, which contained the Setting Every Community Up for Retirement Enhancement (SECURE) 2.0 Act of 2022 (also known as SECURE 2.0). Included in SECURE 2.0 are dozens of retirement-related provisions that are intended to enhance provisions from the original SECURE Act of 2019. This article summarizes a few key provisions.

### Expanding Automatic Enrollment in Retirement Plans

Beginning in 2025, new 401(k) plans must automatically enroll participants when they become eligible. However, the employees may opt out. The initial automatic enrollment contribution amount is at least 3% but no more than 10%. Then, the amount is automatically increased every year by 1% until it reaches 10%. All current 401(k) and 403(b) plans are grandfathered, meaning the requirement does not apply to plans established before the applicable date. There is also an exception for small businesses with 10 or fewer employees, new businesses (i.e., have been in business for less than three years), church plans and governmental plans.

Increasing the Age for Required Minimum Distributions Employer-sponsored qualified retirement plans, traditional IRAs and individual retirement annuities are subject to required minimum distribution (RMD) rules, which require that accumulated benefits begin to be distributed by the Required Beginning Date. SECURE 2.0 increases the required minimum distribution age to 73 starting on January 1, 2023, and boosts it to 75 starting on January 1, 2033. This change allows people to delay taking RMDs and paying tax on them.

The law also relaxes the penalties for failing to take full RMDs, reducing the 50% excise (or penalty) tax to 25%. If the failure is corrected in a "timely" manner, the penalty would drop to 10%.

### Higher Catch-up Contributions

Defined contribution retirement plans under Code Sec. 401(k), Code Sec. 403(b) or Code Sec. 457(b) are permitted, but not required, to allow participants who are age 50 or older to make additional pre-tax elective deferrals, known as "catch-up" contributions. Catch-up contributions are elective deferrals that, among other things, are not subject to the annual elective deferral dollar limit ($22,500 for 2023). The annual dollar limit on catch-up contributions is $7,500 for 2023.

Deferrals under Savings Incentive Match Plan for Employees (SIMPLE) plans are subject to a reduced annual elective deferral dollar limit ($15,500 for 2023). The annual dollar limit on catch-up contributions to SIMPLE plans is $3,500 for 2023.

Beginning January 1, 2025, individuals who are ages 60 to 63 can make catch-up contributions up to the greater of $10,000 ($5,000 for SIMPLE plans) or 50% more than the regular catch-up amount in 2024 (2025 for SIMPLE plans). The statutory dollar amounts are indexed for inflation commencing in 2026.

### Eliminating Unnecessary Plan Requirements Related to Unenrolled Participants

Under both the Codes and ERISA, employees that are eligible to participate in a defined contribution plan must receive numerous intermittent notices and explanations of their rights and options under the plan, such as an explanation of available investment options. These intermittent notice requirements generally apply even where eligible employees have opted not to participate in the plan.

The Act amends the Code and ERISA to provide that defined contribution plans are exempt from intermittent notification requirements concerning eligible participants that elect not to participate, who have already received a summary plan description and any other notices related to initial eligibility to participate in the plan (unenrolled participants). Intermittent notifications include disclosures, notices and plan documents. However, an unenrolled participant must still receive: (a) an annual reminder notice of their eligibility to participate in the plan, as well as any applicable plan deadlines; and (b) any document they request that they would be entitled to receive under existing law absent this Act provision. This provision applies to plan years beginning after December 31, 2022.

### Conclusion

SECURE 2.0 is one of the broadest pieces of retirement plan legislation in decades and will have lasting impacts on all types of retirement plans. It is important for employers to review existing retirement plan documents to ensure compliance with the above rules and other rules included in SECURE 2.0. There may be required amendments needed to bring retirement plans into compliance on the various compliance dates.

Nicholas L. Shires, CPA, is the partner-in-charge of tax services at Dannible & McKee, LLP, a public accounting firm with offices in Syracuse, Auburn, Binghamton and Schenectady, New York. The firm has specialized in providing tax, audit, accounting and advisory services since its inception in 1978. For more information on this topic, you may contact Nick at (315) 472-9127 or visit online at www.dmcpas.com.

# THE STATE OF THE REGIONAL CONSTRUCTION INDUSTRY

EARL HALL, EXECUTIVE DIRECTOR, SYRACUSE BUILDERS EXCHANGE

**2022** proved to be a good, but challenging year for construction industry employers. Buoyed by both private and public sector investments throughout central New York, the industry enjoyed an abundance of work but saw tighter margins as competition remained strong. Employers endured supply chain issues, a thin labor market with labor shortages and sky-rocketing inflation that impacted material costs. In the end, 2022 was a good year for most contractors, but of course their attention has quickly shifted to future opportunities and challenges.

## Opportunities

Over the next 1-3 years, central New York will enjoy an extraordinary amount of capital investment by both public and private sectors; however, many of the private sector projects will be subsidized by various governmental entities. While the normal, routine, and periodic construction work in higher education, public education, hospitals and medical facilities, manufacturing facilities and the service industry will continue, new projects of significance will draw most of the attention of the general public and many contractors.

Besides the well-publicized Micron Corporation's 20-year investment in their Clay, NY facility, expected to break ground in 2024, contractors will be focused on Onondaga County's new $90 million aquarium in the Inner Harbor; a $100 million STEAM school in downtown Syracuse; the $2.3 billion Route 81 reconstruction project in and around the city of Syracuse: the $108 million investment in and around Onondaga Lake/Inner Harbor; and $1 billion for development of a new Syracuse neighborhood near Route 81 in the city of Syracuse. This anticipated construction, in addition to the Davis-Bacon federal infrastructure projects such as sewer and water treatment plants, and highway and bridges reconstruction, will provide employers with an abundance of building and heavy/highway bidding opportunities over the next 3 years.

## Challenges

Labor shortages and lack of skilled labor remains a huge problem with no immediate solution. Many of the new craftspeople entering the commercial, industrial, and institutional sectors of the construction industry are not skilled or trained to be productive for employers competing in those markets. In many cases, contractors are being very selective on the projects they bid and occasionally choosing not to bid on projects for fear of a lack of a skilled, productive work force. While employers and unions alike are investing in future training facilities, such will take time to properly attract and train the next generation construction worker.

Inflation continues to adversely impact contractors' material costs, as uncertainty remains when bidding on projects. Anticipating the cost of materials 6-9 months prior to the project starting remains a challenge for estimators and project owners alike.

Wages will increase significantly over the next 3 years. One of the many features which attracted Micron to central New York is the relatively low cost of labor. With labor shortages already at historically low levels, demand for skilled labor will increase wages. Many employers are already experiencing such today, often paying premiums above those wages negotiated in collective bargaining agreements. Although many of the New York State prevailing wage rates for construction are derived from the Construction Employers Association of Central New York's collective bargaining agreements, many believe employers will continue to pay above those rates to not only attract new employees, but to retain their current workforce.

## Conclusion

Although contractors across the country are experiencing many of the above-noted opportunities and challenges, central New York is well positioned to take advantage of the capital, institutional and governmental investments in our region of New York. These opportunities do not come without challenges, but what history has shown is that construction industry employers throughout upstate New York are innovative, resilient, and determined. This region of New York state enjoys some of the best specialty subcontractors, suppliers, general contractors, and construction managers in the United States. Project owners are fortunate to have access to such contractors as the on-time, on-budget deliverer of construction goods and services will continue despite any challenges the future may hold. Contractors relish in challenges as opportunities and solutions are often created when challenges are presented.


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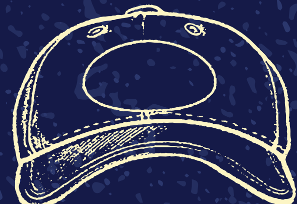

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