

MANUFACTURING MATTERS

Best Wishes for the Coming New Year



Randy Wolken
President & CEO

As a New Year begins, we have many things to be thankful for and some items on our to-do list. At the Manufacturers Association, we are grateful for all of our member companies. We are also thankful for real progress at many of our member companies who are growing and thriving, adding to our economic recovery. However, we still have much to do on our wish list such as real reductions in business costs by our leaders in Albany and Washington in order to spur growth in the manufacturing and business sectors. Manufacturers and business leaders need to know that our elected officials are committed to improving our business climate as a part of their overall economic growth agenda. During the upcoming sessions in Albany and Washington we would like to see real reform and a steadfast commitment to manufacturing and technology sector growth.

Digital Transformation

Digital transformation of every industry is occurring rapidly. No industry is exempt. A look at what the BCG (Boston Consulting Group) has concluded about the most successful companies and how they outperform their competition in several critical areas can be helpful. After analyzing more than 1,000 companies that were undergoing digital transformation, across multiple industries and geographic locations, they concluded that the most successful companies outperform their competition by excelling in three fundamental areas:

- **Speed.** How can we move quickly—at digital speed?
- **Scale.** How can we change the way we work across the entire enterprise?
- **Value.** How can we create tangible value for the business—and for customers?

To compete in the fast-moving digital world, companies need to execute along these three dimensions, in parallel.

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Do you want to...

- learn more about MACNY's services and how to better utilize your membership?
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We are excited to be holding Maximize Your Membership sessions on the second Thursday of each month from 9 AM - 10 AM.
Mark your calendars for our next three meetings...

January 12 February 9 March 9

Please contact Cindy Nave at cnave@macny.org or 315-474-4201 ext. 11 to sign up for any of our upcoming sessions!

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MACNY - The Manufacturers Association



Randy Wolken
President & CEO

(continued from front cover)

Speed

To survive, companies need to work and make decisions more rapidly than ever before.

The digital transformation, when done right, is not a monolithic endeavor. Rather, multiple projects run simultaneously on parallel tracks. When selecting initial pilots, teams rally around a business objective and then brainstorm product offerings that will best achieve that objective. Each team has a captain, or product owner, who drives the process forward and tracks outcomes.

Scale

To succeed at scale, companies need to create a culture in which initiatives thrive across varying locations and markets. Any discrete business unit can create an app or launch a pilot—and many do—but scaling up requires a shift in mind-set across the entire enterprise. Senior leaders must provide strong, steady support from the top. Cross-functional teams must extend their digital capabilities and ensure that agile principles and the associated culture become embedded across the organization. Meanwhile, internal business units—such as HR, budgeting, and IT—must receive training and development to encourage the right culture and behaviors. It is also important for teams to think through the end game for each initiative. While

brainstorming potential pilots, they need to ask tough questions: Why does this project matter? Can it create significant value? Does it yield a sustainable advantage?

Value

Above all, a digital transformation must deliver value—not five or 10 years down the road, but now. Thus far, digital hasn't delivered its full potential in many organizations. This is because those companies haven't successfully tackled change management. Once digital projects are underway, project leaders must relentlessly focus on measuring their value in terms of real-world outcomes: customer response, increased revenue, reduced churn, cost savings, time savings, and so forth. Companies must kill initiatives that don't deliver value. Output is irrelevant—and counterproductive in the long run—if it doesn't create value. To succeed, organizations must think creatively about how best to capitalize on their assets.

Digital transformation is occurring on a massive scale. Every company must be actively pursuing its own strategy for successful implementation. For more information, see <https://www.bcgperspectives.com/content/articles/technology-digital-strategy-acting-on-digital-imperative/>

Business Activity Grew Modestly in New York State

Business activity grew modestly in New York State, according to firms responding to the December 2016 Empire State Manufacturing Survey. The headline general business conditions index climbed eight points to 9.0. The new orders index rose to 11.4, and the shipments index was unchanged at 8.5. Labor market

conditions remained weak, with manufacturers reporting declines in employment and hours worked. Inventories continued to fall, and delivery times shortened. The prices paid index rose seven points, pointing to a pickup in input price increases, while the prices received index showed only a slight increase in selling prices.

Indexes for the six-month outlook conveyed a high degree of optimism about future conditions, with the index for future business conditions rising to its highest level in nearly five years.

For more information visit www.newyorkfed.org.



Karyn Burns

VP, Communications & Government Relations

2017 Legislative Priorities

January 2017 brings us the beginning of a new legislative session in Albany, and an opportunity to voice our issues or concern within the manufacturing sector. While admittedly we spend a vast amount of our time working on bills and issues that we are not proposing, the early session and budget allows the opportunity to come up with and introduce policy ideas and areas we proactively would like support in or to see change on during the budget and remaining legislative session.

Below is a brief outline of the legislative priorities for the Statewide manufacturing sector, within the final 2017-2018 New York State budget and legislative session:

Implementation of a new Manufacturing Investment Program for Existing New York State Businesses

Create a new investment program that incentivizes existing manufacturers to continue to increase manufacturing production, retain and grow jobs, as well as to make capital and equipment investments.

Manufacturing Small Business Tax Reform

Adopt business tax reductions for small manufacturing businesses organized as pass thru entities including Sub-S corporations, LLCs and partnerships; increase the business income tax exemption under the personal income tax from five to 10 percent for businesses with a tax liability under \$500,000. Decrease the corporate franchise tax rate from 6.5% to 2.5% for small business with a tax liability less than or equal to \$500,000.

Age Restrictions Lifted for Students on Shop Floors While in Accredited Programs

One of our biggest concerns amongst manufacturers is the age restrictions implemented for students on shop floors. While manufacturers are encouraged to assist in early engagement and career awareness, this restriction stifles their ability to provide hands on education and awareness to the future workforce. We need a solution to this problem, by lifting the age restrictions in certain cases to allow students to engage and interact on shop floors under constant supervision.

Year Two and Geographic Expansion of Manufacturing Apprenticeship Program

The Manufacturers Alliance urges your continued support in implementing the New York State Manufacturers Intermediary Apprenticeship Program in Central New York, adding three additional new regions, and expanding throughout the state over five years at a cost of \$7 million. Our apprenticeship programs are four year programs. Year two funding is requested at \$1,250,000.

18a Phase Out of Remaining Assessments for Manufacturers

The Public Service Law § 18-a(6) Temporary State Energy and Utility Service Conservation Assessment (Temporary Assessment), in effect a gross receipts tax on electric, gas, steam and water sales by public utilities, will be reduced for all utility customers to 1.63% for 2014, 1.00 for 2015, and .73% for 2016. The Executive Budget last year had proposed to reduce this assessment to 0% effective 1/1/14 for utility customers averaging with a monthly peak demand of 1000 kw or greater. We propose a similar proposal.



John M. Fontanella, CPA, CCIFP
The Bonadio Group

Sales Tax: “Amazon Rules”

Internet sales drive State Taxing Authorities to distraction. They hate the idea that you can sell goods to their residents and not have to collect their sales tax. Sales tax is a Destination Tax. The point of delivery, or point at which possession is transferred by the vendor to the purchaser, controls both the tax incidence and the applicable tax rate. When selling tangible personal property in states outside of NY, knowledge of the other states’ tax rules is essential.

The Constitution does not prevent states from charging taxes on internet sales. However, if the seller does not have **nexus** (a constitutionally sufficient connection to the state, requiring a physical presence), then the seller is under no obligation to collect and remit sales tax to that state. So, if you are a NY seller and ship goods to customers in CA, and you do not have nexus in CA, then you do not need to collect and remit CA sales tax (or NY sales tax, for that matter). Who does pay the sales tax? The **consumer** is required to pay the sales tax in the above situation, which often does not happen, and the revenue goes uncollected.

Enter the “**Amazon Rules.**” NY reviewed the Amazon practice of placing links to other companies on the Amazon web page. If someone clicked that link, and a sale was made, Amazon was paid a commission. For example, on the Amazon web page there is a link to a NY ski shop. A customer clicks that link and ends up buying skis from that shop. The shop pays Amazon a commission. According to NY, Amazon now has a physical presence in NY – the ski shop! Because Amazon now has nexus in NY, they must

collect and remit NY sales tax on **every sale** it makes to a NY customer. Amazon fought this decision, but the law was upheld by the NY Supreme Court, and very recently, the **United States Supreme Court** refused to hear the case. Needless to say, many other states have jumped on board with “Amazon Rules” of their own.

Amazon rules usually require two factors:

1. The out-of-state seller has an agreement with an in-state business to pay for customer referrals obtained via a link on the web page of the in-state business. Another example: You are a NY seller and you arrange to have a link to your web page placed on the web page of a CA company. Someone clicks your link; you make a sale, and pay the CA host a commission. CA now considers that you have a presence in CA.
2. A certain amount of internet sales are made in the state through the click-through arrangement. In NY, that amount is > \$10k. Thus, sales of > \$10k via the click-through presence = required registration as a NY vendor, and the collection of NY sales tax from all NY customers. In CA, the sales requirement is >\$10k via click-through + >\$1 million in CA sales overall.

NOTE: The sales volume rules can vary from state to state, but the click-through presence is always required.

What’s the take away?

If you sell to customers outside of NY, through the internet, you may unknowingly be required to collect and remit sales tax in those remote states. It is important to know your sales tax requirements. Remember, if you are audited and owe sales tax, it hits your bottom line – it’s much better to collect it from your customers.

Please contact John Fontanella with The Bonadio Group, CPAs, Consultants & More at 1-315-214-2724 if you would like an analysis of your sales and use tax procedures. E-mail: jfontanella@bonadio.com

John M. Fontanella, CPA, CCIFP, is a principal in Bonadio’s Syracuse office. He has more than 30 years of experience offering technical advisory services in taxation and financial negotiations. John’s experience includes federal, multi-state and international income taxes, specializing in tax planning for manufacturers. He is an expert in sales tax, advising manufacturers, contractors, engineers, and dealerships, including public and international companies. He is a member of the Contractors Financial Managers Association and Associated Building Contractors.



Patty Clark
HR Services Manager

Corporate Social Responsibility

What exactly is Corporate Social Responsibility (CSR)? We hear that phrase often in the corporate world but not everyone knows exactly what it means to them or their employer. Corporate Social Responsibility pertains to the way in which a company incorporates positive business practices that benefit not only the company but the society in which it operates. CSR is no longer seen as something a business doesn't have to pay attention to. It is important to their success and how they are seen by those around them, employees and customers. CSR is not seen as a small part of how a business is run, instead it has become how a company does business. Potential employees (especially millennials) and customers are often drawn to companies that give back, companies that have a positive impact on the environment. As written in a recent Business News Daily article titled "What is Corporate Social Responsibility", four of the categories of social responsibility businesses practice are:

- Environment – Businesses take steps necessary to reduce their carbon footprint, their impact on the environment, no matter how big or how small. They could use recycled/reused materials, promote resource conservation, and conserve nonrenewable resources.
- Ethical labor practices – Companies can demonstrate their social responsibility by treating their employees fairly and ethically, and developing safety practices and policies.
- Volunteering - Volunteering without expecting anything in return has a positive reflection on a company. It allows them to support projects and express their concern for any one of many issues.
- Philanthropy – Companies have the resources to donate to large national charities as well as smaller local charities. Those resources benefit charities as well as local community programs.

Corporate Social Responsibility (CSR) is important for people as well as the success of business. Liz Maw, CEO of nonprofit organization Net Impact feels CSR is becoming more mainstream as "companies embed sustainability into the core of their business operations to create shared value for business and society." Susan Hunt Stevens, Founder and CEO of employee engagement platform WeSpire says "CSR represents the policies, practices, and initiatives a company commits to in order to govern themselves with honesty and transparency and have a positive impact on social and environmental wellbeing." Consumers as well as potential employees looking for a place to work are drawn to companies who give back and have a positive impact on the environment. Another positive effect of CSR is bringing employees together to work towards a common goal. Employers struggling with motivating and bringing together a multigenerational workforce, may find discovering a common ground could be a way to begin that process.

If your company decides to go down the path towards corporate social responsibility, it will be important to understand the purpose and the alignment with your mission. It will also be important to follow through with your promises and to allow your employees and customers to see you are taking this task seriously and how you are making a difference.

The HR Council will be hosting an event titled, "Corporate Social Responsibility & Sustainability" on Thursday February 2, 2017 at 8:30am at MACNY. If you would like to attend and learn more about this topic please visit www.macny.org/events/2017-02 to register.

HUMAN RESOURCE SOLUTIONS

Hot Off The Line

Q - A few of my employees would like to purchase uniforms and have the cost deducted from their weekly paycheck. I know there have been changes to what can and cannot be deducted, is this of the allowable deductions?

A - Unfortunately this was one of those deductions that did not change. Uniforms are not an allowable deduction.



HR Stats & Facts

- \$4,129 - The average cost to hire a new employee. *Source: SHRM*
- A lobster's blood is colorless but turns blue when exposed to oxygen. *Source: <http://1000didyouknows.blogspot.com>*
- 76% of resumes are disregarded for an unprofessional email address. *Source: Business2community.com*

Correction from last month: \$9.70 - The Greater New York State minimum wage beginning 12/31/16. Source: NYS DOL

C P I

| Wage/Clerical | Oct. | Sept. | Pt. Chg. (Mo.) | \$ Chg. (Mo.) | % Chg. (Yr.) |
|--|-------|-------|----------------|---------------|--------------|
| 1967=100 | 702.2 | 701.5 | 0.7 | 0.1% | 1.4% |
| 1982-84=100 | 235.7 | 235.5 | 0.2 | 0.1% | 1.4% |
| Urban | | | | | |
| 1967=100 | 724.1 | 723.2 | 0.9 | 0.1% | 1.6% |
| 1982-84=100 | 241.7 | 241.4 | 0.3 | 0.1% | 1.6% |
| Unemployment Rates | | | | | |
| October- Onondaga County: 4.3; Metropolitan Syracuse Area (MSA): 4.6 | | | | | |



David Freund
Chief Leadership Officer

A Better Tomorrow

Have you ever wished that tomorrow would be better? As we enter a New Year are you filled with excitement for new and exciting opportunities? It has been said that success comes when preparation and opportunity meet. Are you preparing for the opportunities? What will this New Year be like for you? The only guarantee that tomorrow will be better are the actions you take today. Here are some actions I will be taking:

1. Reflect on the past year.

One of my mentors always says “Evaluated reflection turns experience into insight.” What a powerful tool to ensure a better tomorrow. I have a practice of reflecting daily, and I record these thoughts in a journal. This allows me to make the most of the experiences I am blessed with every day. As the end of the year approaches I schedule vacation time for the days between Christmas and New Year’s Day. Now I do plan on enjoying time with family, but I also am looking forward to several quiet hours in my home office where I will reflect on the entire year. I will review both my journal and calendar from 2016 and look for answers to the following: 1) What went well? 2) What didn’t go well? 3) What did I learn? 4) What will I change? 5) What were the key highlights of my year?

A key for me in my reflection time is to maintain a positive mindset. Things that didn’t go well are my greatest opportunities. When we realize that adversity is a catalyst for growth, the adversity becomes a blessing rather than a curse. Without the adversity, growth will be minimal if at all.

2. Establish a plan for 2017.

Once I have the answers to my questions, I can begin to plan 2017. I start with acknowledging the people who played a pivotal role in my life. Who were those people that blessed me? Who touched me in a special way or encouraged me to reach beyond my comfort zones. Who poured value into

my life. Perhaps it will be an email I send, a fitting thank you card, or in the case of people close to me, a planned dinner at a nice restaurant.

3. My Not To Do List.

Yes, you read that correctly. Michael Hyatt recommends that we all develop our “Not To Do List.” I will review what activities and actions I engaged in that did not help move me in the direction of my objectives. I will make sure to NOT do them in 2017. This is much harder than you think, but very important.

4. Establish goals for the year.

What achievements will bring me joy and make me smile? What key accomplishments will have the greatest impact in my life, the life of my family and in the lives of those with whom I am working. Each goal will be articulated as a SMART goal. They must be Specific, Measurable, Attainable, Relevant, and Time-Bound. Once I have a draft of each goal, I will share them with my wife to get her feedback on them. Goals need to be set for all the areas in our life that we value. For me, they will relate to my family, my faith, and my professional growth and development. The key is to keep the number of goals small. Too many goals will lead to frustration.

5. Plan the key events on the calendar.

I start with reserving time for my wife and family. If we do not establish this discipline, work will naturally consume the time and the family will be left out. Second, will be adding my professional growth and development events. Without being intentional about my growth it simply won’t happen. Lastly, I add all the other dates and events for the year that I may be aware of.

Now I am ready for 2017 and I can’t wait to see what the year will bring. I plan on being prepared when opportunities come. How about you?



Bruce Hamm
Director of Business Engagement

MACNY Partner Awarded Major U.S. Department of Labor Grant

In June of 2016, the U.S. Department of Labor (USDOL) announced the availability of approximately \$100 million in nationwide funding as part of the America's Promise grant competition. The program aims to expand high quality education and training programs to give workers the skills they need to succeed. The funding will be used to establish and expand innovative partnerships between community colleges and other training providers in the Finger Lakes Region. In the spring of this year, MACNY was one of several partners that helped Monroe Community College (MCC) prepare an application for this grant.

In mid-November the USDOL announced the 23 national winners of the grants. Shortly afterward MCC notified MACNY that it had received the \$6 million four-year award. MACNY has since been in contact with MCC to discuss the subcontract and the services it will provide. MCC is one of only nine community colleges across the country to win this nationwide competition as part of the America's Promise initiative. MACNY congratulates MCC on its great success in winning this highly competitive grant.

"Through this federal grant and public-private partnerships, we will make it possible for hundreds of individuals to achieve high-demand careers that provide family-sustaining wages," President Anne Kress said. "MCC's collaborations with industry, employers and area colleges are critical to closing the skills gaps and bolstering the regional economy."

The grant will support Project Inspire: Advancing Finger Lakes Forward, and is tied in with the Regional Economic Development plan that has identified the sectors of advanced manufacturing, information technology and health care as growth areas for the region. Certificate and degree programs in precision tooling, cybersecurity administration,

and licensed practical nursing will be offered to a target population of over a 1000 eligible students.

Project INSPIRE is also part of the Finger Lakes United for Success Consortium. According to the grant specifications; all regions had to have partnerships including community colleges, workforce development boards, employer associations (including MACNY, MACNY's Alliance partner the Rochester Technology and Manufacturing Association (RTMA)), and other community groups.

The funding is intended to benefit persons in urban and rural areas, veterans, and incumbent workers who need their skill levels increased in order to obtain better paying jobs. The grant emphasizes paid experiential learning including internships and apprenticeships for participants to receive hands on training. Funding is specifically available to support incumbent worker training for persons entering apprenticeships. MACNY and RTMA will focus their efforts on incumbent workers in manufacturing occupations.

MACNY was invited to partner with MCC on this application because of the extensive work they have done with the college as part of the recently concluded \$14.6 million TAACCCT grant in advanced manufacturing which created new curriculum in precision machining, photovoltaics, welding, mechatronics, optics, and plastics. MACNY has also worked with MCC on their Labor Market Measurement Project; an effort to identify regional skills gaps by monitoring real time supply and demand numbers for positions in advanced manufacturing.

Most recently MACNY has been working with MCC and Mohawk Valley Community College (MVCC) on a project to align an associates degree program with registered apprenticeship training. This effort will also tie in with the work MACNY is doing with Jobs for the Future (JFF) on the \$8.5 million, five year United States Department of Labor (USDOL) contract to drive the expansion of Registered Apprenticeship in advanced manufacturing throughout the nation. Reported in last month's newsletter, work on the JFF Contract has already begun to link New York to other efforts around the country.

As noted, MACNY and RTMA will work to expand apprenticeship training in advanced manufacturing for companies in the Finger Lakes Region. Using the intermediary model MACNY has successfully developed in Central New York, they will work with RTMA to replicate similar programs and provide for the upskilling of entry level workers into trained journeypersons. For more information on this or any of MACNY's workforce initiatives contact me at bhamm@macny.org or 315-474-4201.



Joe Vargo
Executive Director
Partners For Education & Business



PEB Provides Sparks for Careers *Helping Students Make Better College and Career Decisions*

In order to create career sparks in students, PEB provides a variety of career awareness/career exploration opportunities for students in the region. Students, teachers, parents, and business representatives can get much of the information at www.cnystem.com or www.macny.org. Examples of career spark activities provided by PEB include:

Enterprise America

Enterprise America, WCNY's new hands-on learning center, allows teachers to utilize the only hands-on learning center of its kind in New York. The program is designed for middle school students and includes several weeks of classroom curriculum aligned to learning standards. Students will be prepared to explore what it takes to make a modern American city work, from local government to business to wellness and media. Then, they will take that knowledge and put it into practice by running the Enterprise America "city" for a day.

PEB and MACNY are coordinating sponsorship of the **Manufacturing-Technology Center**. The goal is to give students a real-life experience that accurately reflects advanced manufacturing and technology in those companies and leads to an increase in students pursuing careers in those sectors.

P-TECH- Syracuse City and Auburn (Pathways in Technology Early College High School)

Over 170 students in the Syracuse City and Auburn School Districts are participating in a new six year program that puts students on the path to getting both their high school diploma and a two year degree in electrical or mechanical technology. The program has key supports to increase student success by matching students with career coaches (mentors) to help guide the students to jobs and a robust work-based learning model that exposes students to careers in advanced manufacturing.



Career Coach Leah Isgar from C.R. Fletcher

CNY STEM Hub/Technology Sector - www.cnystem.com

- Co-Chair of the CNY STEM Hub, along with Dr. Donna DeSiato, Superintendent of the ESM Schools.
- Administrator for the Tech Sector, led by Lisa Mondello of SRC, Inc. The sector is a group of 15 companies that work together to provide STEM career exploration opportunities, coordinated by PEB.
- CNY STEM Scholarships - High school seniors from seven Central New York counties can apply for up to 12 scholarships

in electrical, computer, or mechanical engineering; architecture or technical degrees, offered by six companies: SRC, Inc., C&S Companies, Carrier Corporation, INFICON, King & King Architects, and Schneider Packaging Equipment Company.

- CNY STEM Scholar Connection - A “club” of 500+ college students who applied previously for the CNY STEM Scholarships, PEB coordinates two networking events for them per year with area businesses. For those students in the STEM Scholars Connection who are Juniors or Seniors, PEB works with the Tech Sector businesses to facilitate networking with students leading to internships and now employment.
- CNY STEM Careers Sessions - PEB coordinates a series of seven evening STEM careers sessions in Onondaga and Oswego counties, featuring career presentations by area companies. The events are open to all students, teachers, and parents in the region. Register at www.cnystem.com.
- CNY STEM Job Shadow Day - February 2, 2017 - 300 students will be visiting 20 companies to explore careers
- CNY STEM Summer Camp for Young Women at Le Moyne College

Career Days/Career Fairs

PEB’s goal for career days and career fairs is to provide career awareness/career exploration activities in a variety of methods, and also to provide sector-specific events, such as:

- Advanced Manufacturing – Manufacturing Careers Day
- Technology - STEM Careers Day; Construction Careers Day
- Financial & Professional Services - Annual Law Career Day

Awards/Recognition

Each year PEB holds an Annual Awards Program in June presenting CNY STEM Scholarships and honoring Students, Leaders, and Companies of the Year

Teacher in the Workplace

PEB places teachers in workplaces so they can explore careers and use the experience of the observed day-to-day activities to help students understand the skills, education, and behaviors needed for success in the workplace.

Schools

PEB provides a planned set of career exploration activities (speakers, job shadows, internships) under an agreement with schools. Participating districts include East Syracuse Minoa, Jordan-Elbridge, Central Square, and Syracuse Academy of Science. PEB also uses corporate support to offer opportunities to another 15 districts during the course of the school year.



Career Coach Ed Onori from Beardsley Design Associates

PEB is soliciting participation from both individuals and companies. It’s working - for example, in a recent survey, nearly two-thirds of students said that they would now consider a career in manufacturing based on their participation in Manufacturing Careers Day!

To learn more about any of these programs or to get involved as a career coach, a sponsor, or a host of students or teachers, contact Joe Vargo at joev@macny.org or 315-448-1012.



Career coach from Ephesus Lighting working with students.



Peter A. Jones
Bond, Schoeneck and King, PLLC

EEOC Issues Final Enforcement Guidance on Retaliation

Recently, the U.S. Equal Employment Opportunity Commission issued its final “Enforcement Guidance on Retaliation and Related Issues.” That Guidance provides insight into the EEOC’s position on the retaliation issue and an opportunity for employers to review their policies and practices to prevent, and help defend against, retaliation claims.

Since 1998, the Supreme Court and lower courts have issued a number of significant rulings regarding employment related retaliation. It should come as no surprise that the EEOC takes a broad view of the protections afforded by the anti-retaliation provisions of the EEO law, including in many cases, a broader view than the courts. The Guidance offers employers insight into how the EEOC will handle retaliation charges and suggests “promising practices” for employers to follow to avoid such charges. Here are the highlights of the Guidance.

An Expansive View Of Protected Participation Activity

The basic premise of “retaliation” has not changed. Retaliation occurs when an employer takes a materially adverse action against an individual because the individual engaged in protected activity. Protected activity includes participating in an EEO process (participation activity) or opposing discrimination (opposition activity).

Both the courts and the EEOC recognize that participating in administrative proceedings or lawsuits to enforce rights under the EEO laws is protected participation activity. However, the EEOC goes a step further, taking the position that participation in an employer’s internal complaint

process is also protected participation activity. This is significant because participation activity is so broadly protected. According to the EEOC, even internal complaints made in bad faith or which contain false or malicious allegations are protected participation activity.

A Wide Range Of Actions Are Considered “Materially Adverse”

Relying on Supreme Court precedent, the EEOC makes clear that in the context of a retaliation claim, a much broader range of employer actions will be considered “materially adverse” than in the context of a discrimination claim. For purposes of a retaliation claim, a materially adverse action is “any action that might well deter a reasonable person from engaging in protected activity.” Work-related threats, warnings, reprimands, negative or lowered performance appraisals, and transfers to less prestigious or desirable work or work locations all likely meet this standard. The Guidance also lists the following examples of materially adverse actions: disparaging an employee to the media, making false reports to government authorities, filing a civil action, threatening reassignment, scrutinizing work or attendance more closely, removing supervisory responsibilities, requiring re-verification of work status or initiating action with immigration authorities, terminating a union grievance process, and taking or threatening to take adverse action against a close family member.

A Lower Standard For Actionable “Retaliatory Harassment”

The EEOC recognizes that sometimes retaliatory conduct is characterized as “retaliatory harassment.” The standard for establishing “retaliatory harassment” differs significantly from the standard for establishing a discriminatory harassment claim. To constitute unlawful retaliation, harassing conduct does not have to be severe or pervasive enough to create a hostile work environment. If the alleged harassing conduct is reasonably likely to deter protected activity, it would be actionable retaliation, even if not sufficiently severe or pervasive enough to create a hostile work environment.

Promising Practices Identified by EEOC

The Guidance includes “promising practices” which the EEOC posits may help reduce the risk of violations, although these practices may not completely insulate an employer from liability or damages for unlawful actions. The “promising practices” include:

- Maintaining written policies which include examples of retaliation, steps for avoiding actual or perceived

LEGAL ALERT

retaliation, a complaint procedure, and a clear explanation that engaging in retaliation will result in discipline, up to and including termination;

- Training all managers, supervisors, and employees on the anti-retaliation policy;
- Establishing a process for reminding the parties and witnesses involved in an EEO matter of the anti-retaliation policy, and providing advice to managers and supervisors alleged to have engaged in discrimination on how to avoid engaging in retaliatory conduct or conduct which may be perceived as retaliatory;
- Following up with employees, managers and witnesses while an EEO matter is pending to ask if there are any concerns regarding potential or perceived retaliation; and

- Reviewing proposed employment actions, preferably by a designated human resource or management official, to ensure that employees and witnesses are not subject to retaliation.

Retaliation allegations remain among the most difficult to defend. The new Guidance reflects the high level of scrutiny given to such claims. Employers should review their policies and practices and proceed carefully when addressing issues with employees who have complained. Careful planning and attention to detail in this area will ensure a successful defense of such claims.

Pete Jones is a member of the Labor and Employment Law Department at Bond, Schoeneck and King, PLLC in Syracuse and may be reached at jonesp@bsk.com.



Join Us for MACNY's
Post-Holiday Party!

Thursday,
January 19, 2017
4:30 PM to 7:00 PM

Celebrate the holidays
and catch up with
your peers while you
enjoy cocktails
and hors d'oeuvres

\$40/MACNY Member

MACNY News!

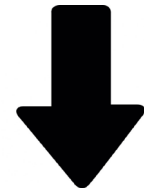
WELCOME OUR NEW MEMBER...

UNITED RADIO

United radio does electronic repair, remanufacture, and distribution to the automotive industry; after sale support including reverse logistics for the consumer electronics industry; and sales, service, and maintenance for commercial communications systems.

Visit them at www.unitedradio.com

If you know of companies that could benefit from a MACNY membership, please contact Cindy Nave at 315-474-4201 ext. 11 or cnave@macny.org.



**YOUR
AD
COULD
BE
HERE!**



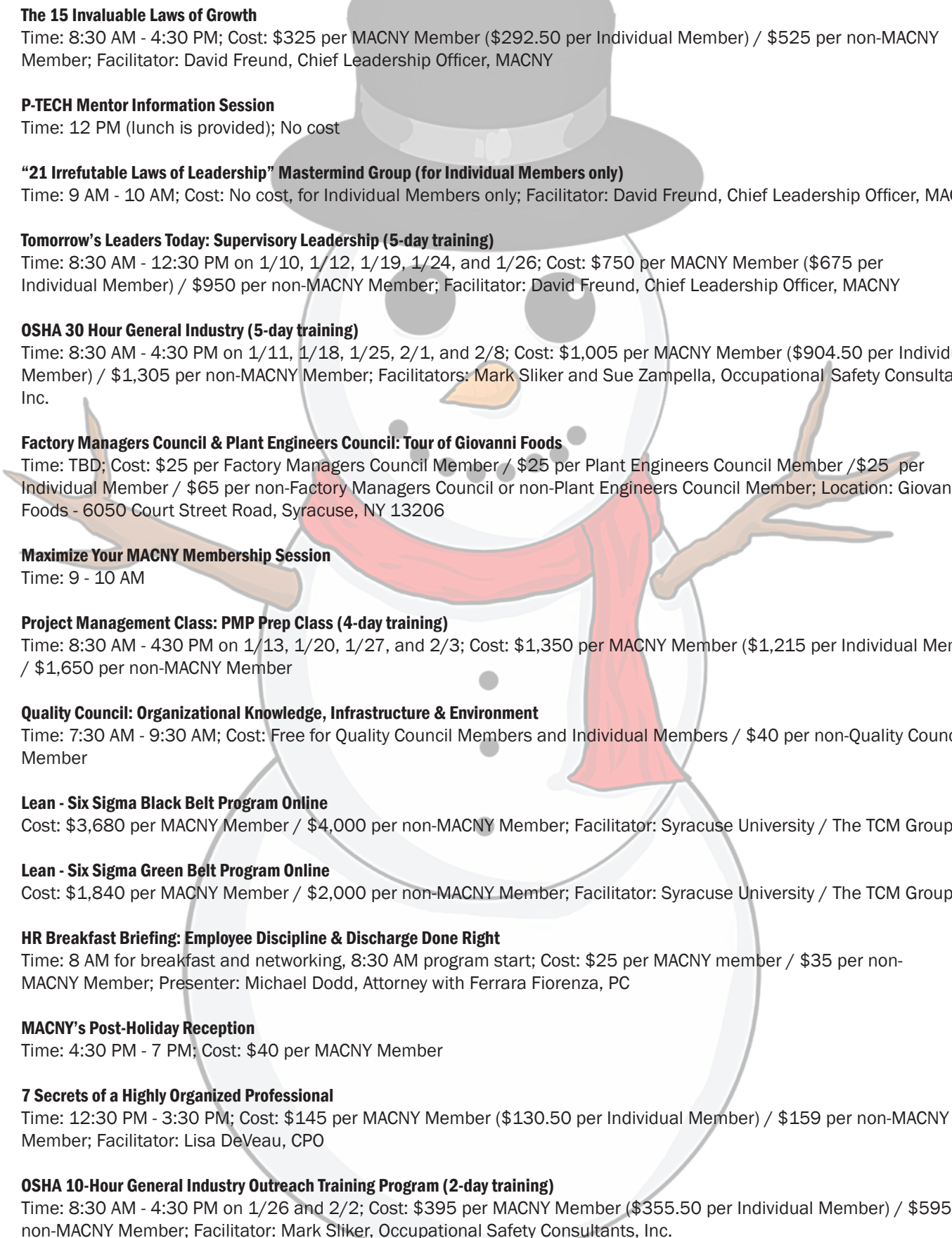
Contact Marisa Norcross for details and rates at mnorcross@macny.org or 315-474-4201 ext. 22

MANUFACT

Manufacturers in the United States perform more than three-quarters of all private-sector research and development (R&D) in the nation, driving more innovation than any other sector. R&D in the manufacturing sector has risen from \$126.2 billion in 2000 to \$229.9 billion in 2014. In the most recent data, pharmaceuticals accounted for nearly one-third of all manufacturing R&D, spending \$74.9 billion in 2014. Aerospace, chemicals, computers, electronics and motor vehicles and parts were also significant contributors to R&D spending in that year. (Source: Bureau of Economic Analysis)

DID YOU KNOW?

Month at a glance... **JANUARY**

- 
- 3 The 15 Invaluable Laws of Growth**
Time: 8:30 AM - 4:30 PM; Cost: \$325 per MACNY Member (\$292.50 per Individual Member) / \$525 per non-MACNY Member; Facilitator: David Freund, Chief Leadership Officer, MACNY
- 6 P-TECH Mentor Information Session**
Time: 12 PM (lunch is provided); No cost
- 6 "21 Irrefutable Laws of Leadership" Mastermind Group (for Individual Members only)**
Time: 9 AM - 10 AM; Cost: No cost, for Individual Members only; Facilitator: David Freund, Chief Leadership Officer, MACNY
- 10 Tomorrow's Leaders Today: Supervisory Leadership (5-day training)**
Time: 8:30 AM - 12:30 PM on 1/10, 1/12, 1/19, 1/24, and 1/26; Cost: \$750 per MACNY Member (\$675 per Individual Member) / \$950 per non-MACNY Member; Facilitator: David Freund, Chief Leadership Officer, MACNY
- 11 OSHA 30 Hour General Industry (5-day training)**
Time: 8:30 AM - 4:30 PM on 1/11, 1/18, 1/25, 2/1, and 2/8; Cost: \$1,005 per MACNY Member (\$904.50 per Individual Member) / \$1,305 per non-MACNY Member; Facilitators: Mark Sliker and Sue Zampella, Occupational Safety Consultants, Inc.
- 12 Factory Managers Council & Plant Engineers Council: Tour of Giovanni Foods**
Time: TBD; Cost: \$25 per Factory Managers Council Member / \$25 per Plant Engineers Council Member / \$25 per Individual Member / \$65 per non-Factory Managers Council or non-Plant Engineers Council Member; Location: Giovanni Foods - 6050 Court Street Road, Syracuse, NY 13206
- 12 Maximize Your MACNY Membership Session**
Time: 9 - 10 AM
- 13 Project Management Class: PMP Prep Class (4-day training)**
Time: 8:30 AM - 4:30 PM on 1/13, 1/20, 1/27, and 2/3; Cost: \$1,350 per MACNY Member (\$1,215 per Individual Member) / \$1,650 per non-MACNY Member
- 13 Quality Council: Organizational Knowledge, Infrastructure & Environment**
Time: 7:30 AM - 9:30 AM; Cost: Free for Quality Council Members and Individual Members / \$40 per non-Quality Council Member
- 15 Lean - Six Sigma Black Belt Program Online**
Cost: \$3,680 per MACNY Member / \$4,000 per non-MACNY Member; Facilitator: Syracuse University / The TCM Group
- 15 Lean - Six Sigma Green Belt Program Online**
Cost: \$1,840 per MACNY Member / \$2,000 per non-MACNY Member; Facilitator: Syracuse University / The TCM Group
- 17 HR Breakfast Briefing: Employee Discipline & Discharge Done Right**
Time: 8 AM for breakfast and networking, 8:30 AM program start; Cost: \$25 per MACNY member / \$35 per non-MACNY Member; Presenter: Michael Dodd, Attorney with Ferrara Fiorenza, PC
- 19 MACNY's Post-Holiday Reception**
Time: 4:30 PM - 7 PM; Cost: \$40 per MACNY Member
- 24 7 Secrets of a Highly Organized Professional**
Time: 12:30 PM - 3:30 PM; Cost: \$145 per MACNY Member (\$130.50 per Individual Member) / \$159 per non-MACNY Member; Facilitator: Lisa DeVeau, CPO
- 26 OSHA 10-Hour General Industry Outreach Training Program (2-day training)**
Time: 8:30 AM - 4:30 PM on 1/26 and 2/2; Cost: \$395 per MACNY Member (\$355.50 per Individual Member) / \$595 per non-MACNY Member; Facilitator: Mark Sliker, Occupational Safety Consultants, Inc.

Unless otherwise noted, all events and classes are held at MACNY Headquarters, 5788 Widewaters Parkway, Syracuse, NY 13214



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The information provided herein is general in nature and is designed to serve as a guide to understanding. If the reader has a specific need or problem, the services of legal counsel should be sought to address the particular situation. Non-profit bulk rate postage is paid at Syracuse, NY.