

# MANUFACTURING MATTERS

## Make Way for Manufacturing! October is New York State Manufacturing Month



While here at MACNY we enjoy celebrating manufacturing year round, we especially enjoy the month of October, New York State's Official Manufacturing Month! Similar to the rest of the nation, New York, although robust in manufacturing jobs and output, currently faces a workforce crisis: our unemployment rates are high, yet our manufacturers struggle in their ability to find skilled workers. Officially declared New York State Manufacturing Month by Governor Andrew Cuomo, October is our State's annual opportunity to promote manufacturing not only as a great career path, but as the viable strong sector we are!

With over 40 events going on throughout New York State, there are many opportunities to join in and learn about the many benefits provided within a manufacturing career. Want to see what events are going on in your area? Simply visit [www.mfgday.com/events](http://www.mfgday.com/events) to see what is going on in your area throughout the entire month!

If you would like to learn more about ways to get involved not only in October but throughout the year as well, contact us! We hope to see you throughout the month at many of our celebratory and informational events!

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## Maximize Your Membership

Do you want to...

- learn more about MACNY's services and how to better utilize your membership?
- meet our staff and, more importantly, have an opportunity to meet other MACNY members and learn more about what they do in our community?

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...

October 13 November 10 December 8

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

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**Don't Miss Our Upcoming Manufacturing Conference!**

**Date:** Tuesday, October 18, 2016

**Time:** 8:00 a.m. - 12:00 p.m.

**Place:** DoubleTree by Hilton Syracuse

**Cost:** Complimentary!

**RSVP:** [www.dmcpas.com/events](http://www.dmcpas.com/events) or [manufacturing@dmcpas.com](mailto:manufacturing@dmcpas.com)

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MACNY - The Manufacturers Association

# PRESIDENT'S MESSAGE



Randy Wolken  
President & CEO

## Why is Manufacturing So Important?

I know you have heard it before. I certainly have. Time and time again individuals question the importance of manufacturing to our economy. That is – until they understand the facts and see how modern manufacturing is done today. Young people in particular need to learn about the great careers in manufacturing. Manufacturing careers are careers that combine lasting skills with the use of cutting edge technology. Who wouldn't want this kind of exciting future?

October is Manufacturing Month in New York State. Each year, at MACNY's request, the Governor proclaims October as Manufacturing Month. It coincides with Manufacturing Day which has become a national day each year. We at MACNY and PEB have been celebrating Manufacturing Careers Day well before the National Day was established. We are so pleased that now the entire country celebrates it. As we well should, our country needs to recognize just how important manufacturing is to our country's economic vitality. And, we need to do more to grow and support our high tech and advanced manufacturing future. So, here are just a few facts concerning manufacturing for you the next time someone tells you that "manufacturing is not that important."

- The most recent data shows that manufacturers have contributed \$2.17 trillion to the U.S. economy, compared to \$1.7 trillion in 2009.
- Manufacturing accounts for 12% of the U.S. economy. For comparison, agriculture accounts for 4.8%.
- For every \$1.00 spent in manufacturing, \$1.40 is added to the economy. This is the highest multiplier of any sector.
- At \$2.1 trillion in value, U.S. manufacturing would be the 9th largest economy in the world.
- Most manufacturing firms are small. 99% have less than 500 employees, 75% of which have less than 20 employees.
- There are over 12 million manufacturing workers in the U.S. That's about 9% of the workforce.
- The average manufacturing worker earned \$25.58/hour in February of 2016 compared to the U.S. average of \$21.32/hour.
- Over the next 10 years, 3.5 million manufacturing workers will likely be needed.
- In 2015, 92% of manufacturing workers were eligible for health insurance benefits compared to the average of 79%.
- Manufacturers consume over 30% of the nation's energy.
- The output of the U.S. manufacturing industry is higher than ever before, even though employment has hardly recovered since 2010.
- Manufacturers have increased productivity by over 2.5x since 1987.
- Over 75% of all private sector research and development is driven by manufacturers.

Source: [www.themadeinamericamovement.com/manufacturing/15-facts-show-us-manufacturing-growing](http://www.themadeinamericamovement.com/manufacturing/15-facts-show-us-manufacturing-growing)

## Business Activity Edged Lower in New York State

Business activity edged lower in New York State, according to firms responding to the September 2016 Empire State Manufacturing Survey. The headline general business conditions index held below zero, and was little changed at -2.0. The new orders index fell eight points to -7.5 and the shipments index fell eighteen

points to -9.4—developments that pointed to a marked decline in both orders and shipments. Labor market conditions weakened, with both employment levels and the average workweek reported as lower. Price indexes remained close to last month's levels, and indicated ongoing moderate input price increases coupled

with a continued slight increase in selling prices. Indexes for the six-month outlook suggested that firms generally expect conditions to improve in the months ahead. For the full report visit: [www.newyorkfed.org](http://www.newyorkfed.org).



Karyn Burns

VP, Communications & Government Relations

## Unintended Consequences From (Often) Good Intentions: Regulatory Burdens in New York State

It is most certainly understandable that businesses should always be mindful and respectful of the health, safety, and working conditions of their employees. It is also understood that Government should effectively work to create policies that help foster a better business climate, and play the important role in accelerating the growth of companies and in turn, economic development. With these two specific roles and responsibilities so clearly defined, why is there such a challenge with Government's role in regulatory policy and its impact on businesses?

In my ten years working at MACNY, overregulation has by far been the most burdensome issue I have heard from our members. So why is this the case?

I believe in most circumstances, regulatory reform and policy, however it comes about and is enacted, is intended for a positive impact. For example, perhaps it is a response to a particular bad circumstance whereas an employee was treated unfairly or wronged. Then, a legislator, attempting to do the right thing, introduces a bill that becomes Law so the circumstance will not happen again.

However, as with any changes in policy, there is always the question of unintended consequences. How does the significant change of a regulation or policy, now enforced on every single business in New York State, affect them? Oftentimes, because the issue was never even a problem in the majority of businesses, the impact is negative.

A perfect example of this was the Wage Theft Prevention Act passed into Law in 2010. This piece of legislation was introduced quickly, passed through the legislative process fast

and furious, and signed into law by former New York Governor David Paterson before many even had a chance to learn about it and react to it. It required every private-sector employer to provide employees with a new, annual wage notice, obtain a written acknowledgement from the employee that the notice was received, and then keep that receipt on file for six years or face a \$50-per-employee fine for not complying.

This concept sounds like a good idea (even the title sounds lovely and justified). However, what happened over the next few months and years was an outcry from businesses across the State. The annual pay notification that was required under the Law was not only a burden to businesses, but also was costly. Taking into account that the majority of businesses already abide by all wage requirements and notifications standards, this was essentially a costly mandate, for something completely unnecessary for their business which impacted their bottom line.

With an outcry from the business community, Albany responded positively, and eventually repealed the annual notification requirement that was passed into Law.

This one example shines light on thousands of other policies that have been passed over the years. Simply put, even a well-intended bill can cause added costs and significant problems for businesses. Today, we have numerous regulatory burdens that cause problems much larger than they are attempting to solve. Or at the very least, need to be vetted ahead of time so all groups impacted could better understand the effects it may have on their businesses and work with Government to make changes that would create better outcomes for all.

Over the course of this coming year, MACNY will be working with our membership to find those pieces of regulatory policy that simply make doing business much more difficult. Once we understand just how burdensome these requirements are, we can work with you to find a solution. In some cases, we should modify the regulation, or perhaps even eliminate antiquated policies that are considered irrelevant in this day and age. We want to hear from you, our members. Keep an eye out for our October survey asking for your challenges with regulation and policy that we can address together in the 2017 legislative session and beyond.



John Lawyer  
VP, Energy Solutions

## Social Cost of Carbon

The Environmental Protection Agency has created a measure for the social cost of carbon. For every metric ton of carbon dioxide emitted, the cost to the people is \$36.

Why is the EPA estimating this figure? The purpose is to include an estimate of the benefit (or avoided cost, really) of different public policies. The higher the cost, the less desirable the policy. From another perspective adding the social cost of carbon to the analysis might change the calculation of whether a policy is “affordable” because of the benefits to the climate.

The process for creating this measure was initiated by executive order back in 1993. President Obama formed a working group in 2010 to replace each of the independent agencies of the federal government independently calculating the social cost of carbon. The first attempt was published in 2010 and it has been going through updates ever since.

The social cost of carbon is calculated using the weight of the carbon, the time in which is emitted, and the estimated costs of climate change. A discount rate is applied to account for the increasing impact of the emission as atmospheric carbon increases.

Estimates of the social cost of carbon are very uncertain. There is a wide range of estimates and there is a bias in the estimation studies towards higher costs. The estimates are also highly sensitive to the discount rate chosen, and thus could be 75% less or 600% more than \$36.

The part of this calculation that has troubled me is the high level of uncertainty in determining the economic cost of carbon emissions. The social cost of carbon is intended to capture the economic damage from:

- Agriculture yields
- Sea level rise
- Human health
- Nonmarket amenity impacts
- Human settlements and ecosystems
- Catastrophes

The governments calculations do not include all potential environmental impacts. For example, the effects on fisheries, fire damage to agriculture, and the effects of migration away from rising ocean levels.

New York is using the EPA’s social cost of carbon to determine the benefit of new energy policies like Reforming the Energy Vision, large scale renewable energy, and the Clean Energy Standard. I am concerned that actual costs of new polices may be disregarded because of a high estimate of the avoided costs of carbon emissions. As the Ninth Circuit noted, “the effect of carbon emission reductions is certainly not zero.” So for the reasons noted in this article, I recommend also considering the cost of a regulation in isolation from the social cost of carbon. These costs should be well understood by policy makers as they are virtually certain to occur.

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- Corium – a mineral from the melted down core of a nuclear power plant.
  - Costco sells about 60,000,000 rotisserie chickens a year.
  - 35% of Russia’s entire wealth is now in the hands of just 110 people.
  - Los Angeles was washed away by floods and had to be rebuilt. Twice.
  - “Overmorrow” means the day after tomorrow.
  - Apparently people did not come to America via a “land bridge.” They boated.
  - There is a battery that has rung a bell for over 175 years. It is unknown how the battery works.





Patty Clark  
HR Services Manager

## Paid Time Off vs. Traditional Time Off

Paid Time Off (PTO) or the traditional time off program, is a decision many companies have struggled with. A traditional time off program has separate days for vacation, sick, personal, and holidays while a PTO bank groups all days into one pool of time off. The concept was incorporated by hospitals who struggled with scheduling to cover unscheduled absences and 24/7 shifts. They saw a reduction in absenteeism because staff could schedule days off they would normally take as an unscheduled sick day. The use of the PTO system has increased from 28 percent in 2002 to 40 percent in 2010 and has leveled off at 41 percent since 2014. When a company converts to a PTO bank from a traditional time off system, employees usually see a reduction in the total number of days placed in the bank. However, some employees are willing to give up days accrued for the ability to use the time off as they please.

Converting to a PTO bank has benefits for employees and employers alike. The PTO bank system allows employees flexibility and privacy, availability of extra days for those who rarely take a sick day, and the opportunity to schedule days off as they feel necessary.

There are benefits for the employer as well. PTO banks are easier to administer and track. Less time is spent managing employees' time off, PTO reduces unscheduled time off which can lead to lost productivity, and employees have more control over time off which allows them to pre-plan for days they need to take off.

Although there are many benefits to a PTO bank there are some drawbacks to consider. Employees may resent the reduction in PTO days as compared to the traditional program when they had separate sick, vacation, and personal days. Some employees see the PTO bank as extra vacation days which were meant to be used for sick and personal days, some employees may not use PTO days when they are sick, saving the time instead for vacation, and some employees do not use the time wisely and rely on unpaid leave for unexpected illnesses.

When thinking of converting to PTO an employer should consider the following:

- Scope: How much time is to be allotted annually, in what increments of time can PTO be taken, and what will be included in PTO (sick, vacation, and personal days)?
- Eligibility: Years of service, hours worked per week, or job classification.
- Carry Over: Will employees be allowed to carry over time (if so, how much?) or will it be a use it or lose it policy?
- Employee Responsibilities: Policies and procedures should be in place for when an employee calls in as well as when requesting time off.
- Administration: Supervisors and managers should be trained on how to administer the approval and manage the policy.
- State & Local Sick Leave Regulations: With the trend towards mandated paid sick leave, check to be sure you are not in one of those areas.

Whether you choose the PTO bank, the traditional separate vacation, sick, and personal days or even an open-ended time off policy, it is important to communicate the details of the plan, how it will be administered, and what the expectations are while also being available to answer any questions or concerns your staff may have.

## Hot Off The Line

**Q** – As an employer can we discontinue giving paystubs to employees who have direct deposit (hourly manufacturing). I know that we cannot force direct deposit but in NY State are we required to provide employees with a paystub if they can log on and print one from our payroll system?

**A** – As long as the employee can access the pay stub electronically, have a secure, unique log in, and the pay stubs can be printed you can discontinue providing a hard copy.



## HR Stats & Facts

- According to a recent survey of 140 large employers, 74% offered telemedicine to help reduce lost productivity, avoid costly ER visits, and deliver quality care. *Source: EBN August 2016*
- “I thought of quitting today, but then I decided not to, so I came in late” – One of the most bizarre late-to-work excuses given according to a survey of 2,500 hiring & HR managers and 3,200 workers. *Source: CareerBuilder 2016*
- 88% of 600 U.S. employees surveyed reported overall satisfaction with their current job. *Source: Employee Job Satisfaction & Engagement Survey – SHRM*

## C P I

<u>WAGE/CLERICAL</u>	<u>JULY</u>	<u>JUNE</u>	<u>Pt. CHG (Mo)</u>	<u>% CHG (Mo)</u>	<u>% CHG (YR)</u>
1967=100	699.4	700.9	-1.5	-0.2%	0.4%
1982-84=100	234.8	235.3	-0.5	-0.2%	0.4%
<u>URBAN</u>					
1967=100	720.9	722.0	-1.2	-0.2%	0.8%
1982-84=100	240.6	241.0	-0.4	-0.2%	0.8%

### UNEMPLOYMENT RATES

July - Onondaga County: 4.4; Metropolitan Syracuse Area (MSA): 4.7



David Freund  
Chief Leadership Officer

## Lifters Vs. Leaners

Have you ever heard the question, are you a **Lifter** or a **Leaner**? Whenever I heard this in the past, I always thought of the **Lifter** being the leader, and the **Leaner** was someone leaning up against a tree waiting for something to happen. Recently in a class I was teaching on motivation, one of the participants shared this profound statement “**light a fire in them, not under them.**” What an amazing statement. As I reflected on his comments and the question of **Lifting** or **Leaning**, a new perspective came to mind. Are we **Lifting** others by helping fan the flames of motivation within them or are we **Leaning** on them, lighting fires under them in an effort to coerce, intimidate, or scare them into doing whatever the task or behavior we desired?

Ron McMillan, the co-author of *Change Anything* put it best when he said: “When you try to motivate people who lack ability, you do not create change, you create depression.” How true this is and yet for many years as a manager I tried to do the exact same thing. While in my heart I thought I was being a **Lifter**, I was in fact being a **Leaner**. I was leaning on people. I was working to find ways to light fires under them to get the behaviors I was looking for. I thought I was doing what a “Leader” did. Wasn’t it my responsibility to get them to work? Wasn’t it my responsibility to get them to wake up and smell the coffee? Time waits for nobody. A day lost can’t ever be recovered. When things got behind or quality slipped, I turned the heat up. When employees struggled, I brought the issues up in their performance review by showing where they were struggling and how it was affecting their wages. I am sure you have heard the old adage, the beatings will continue until the morale improves. Well I am ashamed to admit it, but I was living that old adage.

So what does it mean to be a **Lifter**? The answer is quite simple, a lifter is someone who helps others, builds them up, and adds value to their lives. Are we a force for good in the lives of people around us? I know what you are thinking, “You don’t understand. This person is a loser.” Perhaps they are a loser

because they have always been told they are a loser. Have they ever been told they are good at something? What if on a scale of one to ten, we saw everyone as a ten? Would we be treating people differently than we do now? Would we put just a little more effort into them to help them develop? What if everyone is a ten in something and we just haven’t found out what? How would that change our perspective? Can you imagine how positive our outlook would be if rather than working to find new people, we spent our time finding ways to connect with the people we have? Recently I heard from an accomplished HR professional that it costs a year and a half salary to replace a bad employee.

Here are some tips for becoming a great **Lifter**:

- Get to know each member on your team; really get to know them. What are their likes and dislikes? What hobbies do they have? What are their dreams and ambitions? Perhaps we have the right people but in the wrong jobs.
- Find out their **WHY**. As leaders, we need to find out why our people do what they do. What moves their heart. If we can tap into their why, they will become self-motivated and self-directed.
- Show empathy. Leaders touch the heart before they ask for the hand.
- Grow yourself so you can add value to others. You cannot give what you do not have.
- Commit to encouraging others daily; every day! Imagine the culture in our companies if each employee set out to do one nice thing for a co-worker each day.
- Be a source of positive emotion. Happiness is a proactive choice. We decide how we react to situations. Choose well!

Now I am not naive, and I know that not all employees will respond the way we want, but just think about how much better we will feel. The better we feel, the better we will perform. The better we perform the better our teams and companies will perform.

If you would like someone help think through your challenge, give me a call at 315-474-4201 ext. 20.





Bruce Hamm

Director of Business Engagement

## Careers in Manufacturing: Something to Celebrate and Something to Advertise

Manufacturing Day, Friday October 7th, will be upon us as you read this issue. According to the website [www.mfgday.com](http://www.mfgday.com) “*Manufacturing Day<sup>SM</sup>*” is a celebration of modern manufacturing meant to inspire the next generation of manufacturers.” I have written in prior columns about the skills gap and the need to get more persons interested in manufacturing careers, unfortunately that is not going to happen unless we do a better job of getting the information to the various audiences we need to reach. The general public still has a very limited understanding of advanced manufacturing, often still thinking of it as “*dark, dirty, dangerous, and dying.*” We need a publicity campaign for manufacturing and we all need to help.

For the last seven years we have been inviting students into our larger facilities for one day in October to celebrate Manufacturing Careers Day and that is great. Beyond that, Partners for Education and Business (PEB) has held hundreds of career awareness activities affecting thousands of students in Central New York trying to get the word out about the rewarding careers available in manufacturing. Regrettably, unless we step up our efforts it may be too little too late. The average age of a skilled worker in manufacturing is 56 years old. Many of our companies could lose between 25 percent and 40 percent of their workforce in the next decade. A sense of urgency is necessary.

For decades we have told our children they must go to college to be successful. We have all but eliminated our vocational education programs; and the ones that we do have are marginalized and perceived as alternatives for poorly performing students. The teachers and guidance counselors advising our children usually know little about the workplace, and are best at preparing students for college. And our parents in Central New York have

watched as multiple large manufacturers have moved out of the state, out of the country, or closed their doors entirely. Real jobs in manufacturing have declined over the last two decades. All this has created a perfect storm where a career in manufacturing is hardly a matter for consideration among our young people.

Admittedly there are signs that this is turning around. We are constantly hearing about the need for more workers in STEM (science, technology, engineering, and math) and even the “Maker Movement” is helping the next generation discover the joys of creating things from ideas. However I see little direct connection between these initiatives; and filling the very highly skilled technical positions that are opening up in manufacturing. The new jobs in manufacturing may require some college, usually a technical program, but rarely a bachelor’s degree. And these positions can pay well, often very well, and because there is limited college required there is less student debt involved.

Manufacturers are not advertisers. Frequently they are not even very good salespersons. They make things; and usually at most they are businesses selling to other businesses rather than to consumers. And quite likely they probably have a few patents, trade secrets, or otherwise confidential processes they would like to protect and keep out of the public eye. So manufacturers are not predisposed to talking about themselves, advertising, or to promoting that they have good well-paying jobs that are remaining open for lack of persons to fill them. Unfortunately what manufacturing needs right now is a public relations campaign. It needs an initiative that says manufacturing is not dead, it is clean, it is modern, it is high tech, it is safe, it is challenging, and it pays pretty darned well.

Manufacturing Day is a start but we need some champions, maybe some promotional dollars, and maybe a little outside help to figure out how to get the word out. Without a strong workforce, without new blood in the workforce, and without a talent pipeline into the workforce; manufacturing will suffer. It is time that we start letting students, school officials, parents, and the general public know what manufacturing does for Central New York and what it has to offer. Who is ready to start?



Joe Vargo  
Executive Director  
Partners For Education & Business



## PEB Kicks Off The New School Year *MACNY Members Encouraged to Get Involved/ Stay Involved!*

### STEM Career Exploration Series for 2016-2017

This very popular program introduces students, teachers, and parents to STEM (Science/Technology/Engineering/Math) companies and careers in our community. Each month a different company is featured and a hands-on activity for attending students creates relevance to their school studies. In addition to rotating the school venue within Onondaga County, this year the Series is expanding into Oswego County with a session being held at Oswego High School.

**Who:** Students (14+), parents, teachers, and guidance counselors from any CNY school district can register.

**When:** Each program will run from 6:30 PM to 8:00 PM – first session is October 26 at ESM High School, featuring SRC, Inc.

*Be sure to check the schedule and spread the word. Register online at [www.cnystem.com](http://www.cnystem.com) under "News & Events."*

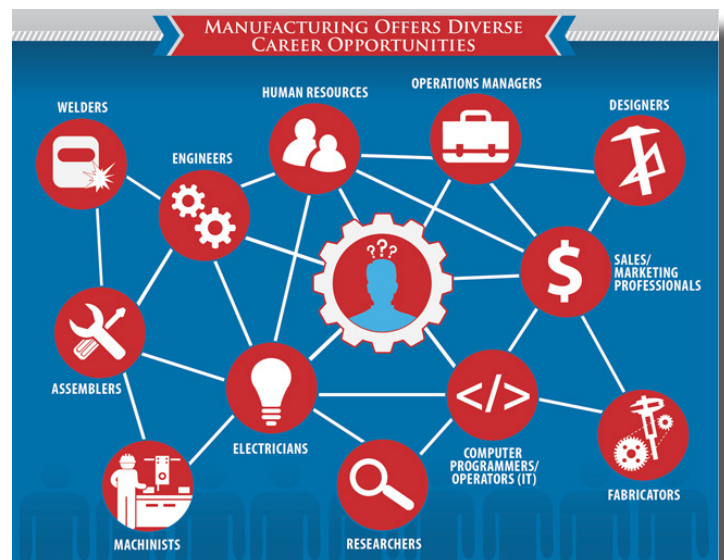
### 7th Annual Manufacturing Careers Day – October 7th

PEB and MACNY have scheduled two venues for this year's event, in conjunction with National Manufacturing Careers Day. 400+ high school students and teachers will participate in tours and other activities at manufacturing sites at Welch Allyn and The Fulton Companies.

Manufacturing Day is an incredible opportunity to showcase the amazing work manufacturers do on a daily basis and to educate students, community members, media, and policymakers on how integral manufacturing is to the local, national, and global economy. Business and Education professionals will have the opportunity to attend a forum at Welch Allyn featuring special guest

Regent Elizabeth Hakanson as well as a panel discussion for the Advanced Manufacturing Sector from 7:30-9:30 AM.

To register, please use: <http://www.macny.org/calendar.aspx?id=2801> or contact Joe Vargo at [joev@macny.org](mailto:joev@macny.org).



## **P-TECH Business Outreach Coordinator**

Partners for Education & Business, Inc. (PEB) and MACNY welcome Meghan McBennett as the new P-TECH Business Outreach Coordinator for both Syracuse and Auburn. Meghan has a long history of working to educate students through her former positions as an Education Enrichment Specialist at the MOST and STEM instructor at West Side Academy (Blodgett School). Before that, she spent nine years volunteering at local schools in and around the Syracuse Metro Area.



Over the summer, Meghan has immersed herself in the many tasks associated with developing relationships with local business professionals. The relationships she has developed to this point will be instrumental in building and expanding the P-TECH Career Coach/Mentor Programs. Meghan is looking forward to working with MACNY members as she strives to implement the new program “5 for P-TECH,” a challenge for companies to provide five Career Coaches/Mentors to participate in the P-TECH Program throughout the year.

As a MACNY member company, you can expect to hear from Meghan soon and she will explain how you can benefit from participating in many of the events that are coming up. You can reach Meghan by email or phone to learn more about being a Career Coach/Mentor or to register for other activities— [mmcbennett@macny.org](mailto:mmcbennett@macny.org) / cell:315-440-4937 / office:315-448-1012.

## **LOOKING FOR: CAREER COACHES/MENTORS**

### *Benefits:*

*Smiles/Inspired Students/ A Feeling of Achievement/ Sincere Gratitude/Qualified Work Force*

All you need is the simple desire to positively impact a student’s career path. Make a difference and join the Syracuse or Auburn P-TECH Program –no experience required!

Hear the heartfelt thanks offered by the students to their Career Coaches:

<https://www.youtube.com/watch?v=NtXbAM779Kk>

## **MEET SOME OF OUR CAREER COACHES**



*Dave Welsh - G.A. Braun &  
Leab Isgar - C.R. Fletcher*



*Earl Barber - National Grid*



*Jeff Shuster - Ephesus Tech*



Chris Harrigan, Esq.  
Barclay Damon LLP

## Second Circuit Extends Reach of “Cat’s Paw”

[On August 29, 2016, the Second Circuit Court of Appeals, New York’s highest federal court, ruled that an employer can be held liable for acting on bad information from an employee when it takes adverse employment actions. In *Vasquez v. Empress Ambulance Service Inc.*, case number 15-3239, the Second Circuit, for the first time, expressly adopted the “cat’s paw” theory and even somewhat expanded upon it.

The “cat’s paw” phrase derives from a fable in which a wily monkey flatters a naïve cat into pulling roasting chestnuts out of a fire for their mutual satisfaction; the monkey, however, eats all of the chestnuts immediately leaving the cat “with a burnt paw and no chestnuts” for its trouble. In the employment discrimination context, as explained by the court, the “cat’s paw” metaphor now “refers to a situation in which an employee is fired or subjected to some other adverse employment action by a supervisor who himself has no discriminatory motive, but who has been manipulated by a subordinate who does have such a motive and intended to bring about the adverse employment action.” Because the supervisor, acting as agent of the employer, has permitted himself to be used “as the conduit of [the subordinate’s] prejudice,” that prejudice may then be imputed to the employer and used to hold the employer liable for employment discrimination. In other words, by merely effectuating or “rubber-stamp[ing]” a discriminatory employee’s “unlawful design,” the employer may play the role of the credulous cat to the malevolent monkey and, in so doing, allow itself to get burned – i.e., successfully sued.

In *Vasquez*, the plaintiff was a medical technician for the defendant ambulance service. The plaintiff alleged that she received an unwanted, sexually explicit text message from a co-worker. She immediately reported the matter to her supervisors and filed a report. However, between the time of her report and her meeting with company representatives, the co-worker allegedly falsified documentation, including a text message conversation, that made it appear as if the plaintiff had been the one willfully engaged in improper and sexually explicit messaging with him. The plaintiff alleges that the company accepted the dispatcher’s account and

falsified evidence without considering the evidence that she was willing to present for inspection (her cell phone). The company representatives allegedly refused the evidence offered and fired both the plaintiff and the co-worker for engaging in inappropriate conduct.

Prior to *Vasquez*, the “cat’s paw” theory had only applied when the individual with the discriminatory motive (i.e. the manipulative monkey) was a supervisor. *Vasquez* extended that to any employee of the defendant company (even a low level employee), so long as that employee’s conduct played a “meaningful role” in influencing the decision-maker to take action against the plaintiff.

The court was clear, however, that the “cat’s paw” theory should not be construed as holding an employer liable simply because it acts on information provided by a biased co-worker. The court stated that courts must still look to what “motivated” the employer and not just the truth of the allegations against the plaintiff on which the employer relies. Thus, an employer who, non-negligently and in good faith, relies on a false and malign report of an employee who acted out of unlawful animus still cannot be held accountable for or said to have been “motivated” by the employee’s animus. Rather, it is only when an employer in effect adopts an employee’s unlawful animus by acting negligently with respect to the information provided by the employee, and thereby affords that biased employee an outsize role in its own employment decision, can the employee’s motivation be imputed to the employer and used to support a claim under Title VII.

In other words, an employer can still “just get it wrong” without incurring liability under the “cat’s paw” theory, but it cannot “get it wrong” without recourse if in doing so it negligently allows itself to be used as conduit for even a low-level employee’s discriminatory or retaliatory prejudice. In *Vasquez*, the court found that there were sufficient allegations in the complaint to suggest that the defendant employer may have acted negligently in adopting the co-workers version of events and evidence, and, thus, held that it was improper for the lower court to dismiss the case at that stage of the litigation.

The Second Circuit’s adoption of this theory should put New York employers on notice that they must conduct a thorough investigation, in a good-faith and non-negligent manner, with consideration to where the evidence is coming from and the motivations of the individuals providing it.

When in doubt, contact your employment counsel. Measure twice and cut once.

*Chris Harrigan and Alan Peterman are Partners at Barclay Damon, LLP and a member of the Firm’s Labor & Employment Practice Area. Barclay Damon is a full service, 275-attorney law firm, with offices throughout the major cities of New York State, as well as Boston, Washington D.C., and Toronto. Barclay Damon provides comprehensive legal and business counsel to a diverse client base in over 30 specialized practice areas with statewide and regional expertise as well as with national and international capabilities.*



John F. Martin, CPA/PFS, CFP®  
Dannible & McKee, LLP

## Year-End Tax Planning for Manufacturers

As the calendar turns from summer to autumn, manufacturers should begin to think about ways to reduce income taxes before it's too late. By implementing these year-end tax planning strategies, manufacturers can help to reduce their 2016 income taxes.

### Section 179 Expensing and Bonus Depreciation

Manufacturers rely heavily on equipment, property, and other fixed assets and some of their biggest expenditures each year are depreciation, repairs, and supplies. The "Protecting Americans from Tax Hikes (PATH) Act of 2015" has generated significant deductions against taxable income for manufacturers. Through the PATH Act, most manufacturers have the opportunity to expense up to \$500,000\* in eligible fixed assets placed into service during the fiscal year pursuant to Internal Revenue Code Section 179. In addition, through 2019 manufacturers can also claim an additional "bonus depreciation" on eligible fixed asset purchases. The additional bonus depreciation is 50 percent of the cost of eligible property in 2015 – 2017, 40 percent in 2018 and 30 percent in 2019. It is vital to meet with management to discuss capital expenditure needs and discuss the timing of those expenditures based on the results of the year-end tax planning analysis.

### Cost Segregation of Buildings or Building Improvements

Any building acquisition or large renovation project can usually defer income taxes and provide cash flow benefits through a cost segregation study. These studies separate the costs of the building and land improvements into assets with shorter lives which may accelerate tax depreciation deductions.

### Code Section 199 Domestic Production Activities Deduction (DPAD)

The DPAD is an attractive tax saving opportunity for manufacturers that engage in qualifying production activities such as, manufacturing, producing, growth, or extraction of tangible personal property. The DPAD is equal to 9% of qualified production income and results in a permanent tax savings.

Manufacturers should review their lines of business and related activities to determine if they meet the qualifying criteria.

### Work Opportunity Tax Credit (WOTC)

Manufacturers should analyze their hiring records and review the WOTC requirements. The WOTC rewards employers that hire individuals from various targeted groups, including veterans, families receiving certain government benefits, and individuals who receive long-term family assistance. The WOTC is generally 25% - 40% of a worker's first year wages from \$6,000 to \$24,000 depending on the individuals hours worked and their specific targeted group. For long-term family aid recipients, the credit is equal to 40% of the first \$10,000 in qualified first year wages and 50% of the first \$10,000 of second year wages.

### Research and Development Tax Credit (R&D)

Most manufacturers perform a lot of qualifying R&D activities and don't realize a significant portion of those activities qualify for the R&D tax credit. Generally, if a manufacturer designs or improves a product or has improved its production processes it will qualify. There are several different methods available to compute the R&D tax credit which may reduce a substantial amount of income taxes. The R&D tax credit was permanently extended by the PATH Act and for tax years that begin after December 31, 2015, eligible small businesses (\$50 million or less of gross receipts) may claim the credit against their alternative minimum tax liability.

### S Corporation or Partnership Losses

For those manufacturers organized as S corporations or partnerships with current year losses, the entity shareholders or partners should consider increasing their tax basis so that current year and suspended losses can be deducted on the shareholder or partner's personal income tax return. There are several options to increase tax basis which should be reviewed during any year-end planning analysis.

### Other Items and Opportunities

A year-end tax planning analysis should also focus on available accounting methods for prepaid expenses, accrual of expenses, and various wage and retirement plan considerations.

For questions on any of the year-end tax planning ideas or opportunities mentioned above, please do not hesitate to contact John F. Martin, CPA/PFS, CFP at Dannible & McKee, LLP.

*John F. Martin, CPA/PFS, CFP® is a Tax Partner with Dannible & McKee, LLP with over twenty five years of experience providing tax compliance and consulting services to a variety of clients including, multi-national corporations, closely-held companies and manufacturers as well as individuals. He has extensive experience in individual and corporate tax planning, financial planning, multi-state taxation, research & development and cost segregation studies. You can contact John at [jmartin@dmcpcas.com](mailto:jmartin@dmcpcas.com) or 315-472-9127.*

\*Section 179 expensing is \$500,000 per tax year, with a dollar for dollar phase-out of the deduction beginning at \$2 million of qualifying fixed asset purchases.

# OCTOBER COUNCIL EVENTS

- October 5**     **Business Development Council: Gryphon Sensors - Anthony Albanese** *(invited)*  
Time: 8 AM - 10 AM; Cost: Free for Business Development Council Members and Individual Members / \$40 for non-Business Development Council Members
- October 6**     **Human Resources Council: Voluntary Benefits - The Hidden Value to Your Company**  
Time: 8 AM - 10 AM; Cost: Free for HR Council Members and Individual Members / \$40 for non-HR Council Members; Presented by Dan Elliott, Haylor, Freyer & Coon
- October 12**    **Finance Council: How to Deter or Prevent Fraud in the Workplace**  
Time: 8 AM - 10 AM; Cost: Free for Finance Council Members and Individual Members / \$40 for non-Finance Council Members
- October 14**    **Quality Professionals Council: New Employee On-boarding**  
Time: 7:30 AM - 9:30 AM; Cost: Free for Quality Council Members and Individual Members / \$40 for non-Quality Council Members
- October 19**    **Safety & Environmental Health Council: Reasonable Suspicion & Workplace Violence**  
Time: 8 AM - 10 AM; Cost: Free for Safety Council Members and Individual Members / \$40 for non-Safety Council Members
- October 20**    **Government Relations Issue Series: Intellectual Property**  
Time: 9 AM - 10:30 AM; No cost; Presented by Brian Gerling, Harris Beach PLLC
- October 20**    **Factory Managers Council & Plant Engineers Council: TBD**  
Time: TBD; Cost: \$25 for Factory Managers Council Members, Plant Engineers Council Members, and Individual Members / \$40 for non-Factory Managers Council or Plant Engineers Council Members
- October 21**    **Technology Council: How to Sell Your Idea to Your Boss**  
Time: 8:30 AM - 10:30 AM; Cost: Free for Technology Council Members and Individual Members / \$40 for non-Technology Council Members

## WELCOME

### **HARRIS BEACH PLLC**

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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](mailto:cnave@macny.org).

- 4 **Central Upstate Manufacturing Policy Summit**  
Time: 7:30 AM - 1 PM; Location: Marriott Syracuse Downtown; Cost: \$65
- 5 **Root Cause Analysis / Corrective Action**  
Time: 12:30 PM - 4:30 PM; Cost: \$195 per MACNY Member (\$175.50 per Individual Member) / \$395 per non-MACNY Member; Facilitator: Tara McInerney, Quality & Environmental Management
- 7 **Strategic Sourcing**  
Time: 8:30 AM - 4:30 PM; Cost: \$250 per MACNY Member (\$225 per Individual Member) / \$450 per non-MACNY Member; Facilitator: Patrick Penfield, Syracuse University
- 7 **7th Annual Manufacturing Careers Day**  
Time: Business and Education Leaders Session - 7:30 AM - 8:45 AM, Student Session - 9 AM - 12 PM;  
Location: Welch Allyn
- 13 **Maximize Your MACNY Membership Session**  
Time: 9 AM - 10 AM
- 13 **5S and Visual Workplace**  
Time: 1 PM - 5 PM; Cost: \$195 per MACNY Member (\$175.50 per Individual Member) / \$395 per non-MACNY Member;  
Facilitator: David Freund, MACNY
- 14 **P-TECH Mentor Information Session**  
Time: 12 PM (lunch will be provided)
- 14 **7 Secrets of a Highly Organized Professional**  
Time: 12:30 PM - 4:30 PM; Cost: \$145 per MACNY Member (\$130.50 per Individual Member) / \$159 per non-MACNY Member; Facilitator: Lisa DeVeau, CPO
- 18 **HR Breakfast Briefing: Investigating Employee Misconduct**  
Time: 8 AM Breakfast and Networking, 8:30 AM Presentation; Cost: \$25 per MACNY Member/Firm Client / \$35 per non-MACNY Member/non-Firm Client; Presented by Michael Dodd, Ferrara Fiorenza PC
- 20 **OSHA 30-Hour General Industry Outreach (5-day training)**  
Time: 8:30 AM - 4:30 PM; 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.
- 21 **Live2Lead Event Broadcast**  
Time: 8:30 AM - 3 PM; Cost: \$125; Location: The Lodge at Welch Allyn
- 25 **Lean - Six Sigma & Structured Problem Solving Yellow Belt**  
Time: 8:30 AM - 4:30 PM; Cost: \$500 per MACNY Member (\$450 per Individual Member) / \$700 per non-MACNY Member; Facilitator: David Freund, MACNY
- 26 **Emotional Intelligence 101**  
Time: 12:30 PM - 4:30 PM; Cost: \$295 per MACNY Member (\$265.50 per Individual Member) / \$350 per non-MACNY Member; Facilitator: Cindy Masingill
- 27 **ISO 9001:2015 Transition Implementation**  
Time: 8:30 AM - 4:30 PM; Cost: \$395 per MACNY Member (\$355.50 per Individual Member) / \$795 per non-MACNY Member; Facilitator: Tara McInerney, Quality & Environmental Management

Unless otherwise noted, all events and classes are held at  
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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.*