

# The Sub Con NEWS



DECEMBER, 2015

THE MONTHLY PUBLICATION OF THE SUBCONTRACTORS ASSOCIATION OF CENTRAL NEW YORK, INC.

**WEDNESDAY, DECEMBER 9, 2015**

**7:45 a.m. Breakfast Available, 8:00 a.m. Welcome  
8:15 - 10:00 a.m. Speakers!**

**TOPIC: LABOR REGULATIONS!**

**US DOL Fair Labor Standards Act:  
"Changes Are Coming! Get Into Compliance Now!"**

**SPEAKERS: US Department of Labor**

**Catherine Quinn-Kay, Wage Hour Division, Division of Communications**

Cathy Quinn-Kay has been with the Wage Hour Division of the US Dept of Labor for over 30 years. She worked as an investigator in NY City and was an Assistant District Director in NY and Syracuse for many years, She is currently with the Division of Communications where she works on developing plain language compliance assistance, press releases and other national projects.

**John Steves, Assistant District Director, Wage & Hour Division,  
Syracuse Area Office**

**Bring Your Questions, They have Answers!**

**NEW LOCATION:**

**Genesee Grand, 1060 East Genesee St.  
Syracuse, NY 13210**

**\$30.00 Per Person SACNY Member**

**\$35.00 Per Person Non-SACNY Member**

(\$10.00 of each ticket supports the Holiday Gift program for children of parents in an SBH addiction treatment program. See details in the enclosed article.)

**REGISTER TODAY ON THE ENCLOSED FORM!**

**SACNY MEMBERSHIP  
RECRUITING BONUS!**

**Sponsor a new member, receive a  
\$50.00 cash bonus!**

**Call the SACNY office for details!  
315-637-7780**

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newsletter article deadline is the 15th of  
each month.*

*Please contact the SACNY office with any  
information you would like published in  
our Newsletter.*

**SAVE THE 2015-16 DATES!**



**December 9 Breakfast. . . . . Genesee Grand  
“The DOL presents current DOL Regulations:**

**January 13 Breakfast . . . . . We are the guests of  
Syracuse Behavioral Healthcare for a  
“Recovery Works”: Options available for  
employees with drug and alcohol addictions.  
Updates on the local heroin and synthetic  
marijuana epidemics.**

**February 10 Breakfast: . . . . . Genesee Grand  
Safety Consultant and OSHA: “What’s New”**

**March 9 Breakfast: . . . . . Tour of JPW**

**April 13 Breakfast: . . . . . Genesee Grand  
NYS DOL: DOL Wage and Hour Regulations**

**May 11 Breakfast: . . . . . Genesee Grand  
Achieving 30%”. Zea Wright and Office of  
General Services speaker with update, and  
Sharon Howland will speak on how this  
relates to bonding.**

**June 8 Lunch: . . . . . Genesee Grand  
“Updates From ESSA”**

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**The SACNY Office Moved!**

**The NEW Address is:  
117 Highbridge St. U-2B  
Fayetteville, NY 13066**

## **PRESIDENT'S MESSAGE**

**Suzanne Kondra-DeFuria**

**December, 2015**

### **Greetings!**

I want to wish all members and their families a happy, healthy and safe Holiday Season and a prosperous New Year! I like the *Five New Years Resolutions for Construction Contractors* posted by William Smyth in "Construction Pros": review them in detail in this newsletter.

A big thanks to Greg Wilt (Greg Wilt CPA) for his presentation on *End of the Year Tax and Financial Planning*. His information was invaluable!. A copy of his presentation is available by e-mail from the SACNY Office. To request the information simply call the SACNY Office (315-637-7780) or send an email ([sacny@sacny.com](mailto:sacny@sacny.com)) and request the information be e-mailed to you.

Our December 9 Breakfast meeting is focused on a topic that affects every employer: US Department of Labor regulations found in the Fair Labor Standards Act. Many of you have become familiar with this regulation through the vast amount of publicity surrounding the significant upcoming regulatory changes. These changes are coming, and they will have a significant impact on which employees can be classified as salaried (exempt) and which must receive an hourly wage. The annual threshold required for payment of a salary is increasing significantly to over \$50,000.00! This will require salaried employees to receive a raise to that amount or greater, or be reclassified. In any case, planning is essential for upcoming changes. Don't miss this comprehensive explanation of the regulations.

We are assigned rooms at our **NEW MEETING LOCATION**; the Genesee Grand at 1060 East Genesee St. Syracuse, New York, based on the number of reservations we receive. Please make your reservation as soon as you know you are able to attend, so we receive a room comfortable for the number of people coming. This new location seems to be convenient for everyone, so we will be holding meetings there from this point forward. We are guests of Syracuse Behavioral Healthcare (SBH) in January for a presentation on the increasingly alarming local problem of illegal drug use that will affect all of our businesses at some point. SBH is also one of the very few local Department of Transportation-approved Substance Abuse Professionals, a requirement for anyone with a commercial drivers' license to receive substance abuse evaluation or treatment.

We are closer to the new SACNY website. The old one remains suspended pending the upcoming launch.

We're continuing our membership sponsor reward of receiving \$50.00 cash for sponsoring a new member! If you have any questions on what subcontractors, associate members or material suppliers need to qualify for membership just call the SACNY office at 637-7780. You can have a Membership Application e-mailed to you by requesting one by e-mail at [sacny@sacny.com](mailto:sacny@sacny.com)! Completed applications are promptly voted on by the Board of Directors. I'm looking forward to seeing all of you at our December meeting!

**Suzanne Kondra DeFuria, President**  
**Potter Heating & Air Conditioning, Perrone Plumbing Services**  
**4004 New Court Avenue, Syracuse New York 13206**

**Bring Potential Members to the December Breakfast -  
If they join, collect your \$50.00!**

**DECEMBER 2015**

***Fourth Department Appellate Division Establishes  
the Legal Standard for Recovering for Goods Sold and Delivered***

On October 2, 2015, Byrne, Costello & Pickard, P.C. obtained a decision from the Fourth Department Appellate Division impacting how subcontractors and suppliers to get paid. In the matter of *Erie Materials, Inc. v Central City Roofing Co., Inc.*, 2015 N.Y. App. Div. LEXIS 7145, 2015 NY Slip Op 07137, 17 N.Y.S.3d 244, a construction material supplier furnished roofing materials to a roofing company on various projects. The roofing contractor refused to pay a significant balance to the supplier, not because of complaint about the quality of the materials, but because it had a theory that the supplier had engaged in a conspiracy with the roofing manufacturer regarding a roofing warranty.

The material supplier filed a complaint in the matter, alleging a cause of action for goods sold and delivered pursuant to CPLR §3016(f). Critically, once a plaintiff sets forth a cause of action in compliance with CPLR §3016(f), the defendant is required to specifically respond to each and every item which makes up the plaintiff's claim and either admit, or deny the amount is due and owing. The material supplier complied with this provision by incorporating its invoices into the complaint as an exhibit. The roofing company generally denied the allegations in the complaint and interposed counterclaims in excess of \$1 million.

A motion for partial summary judgment was immediately filed to grant judgment on the CPLR §3016(f) cause of action and to dismiss the counterclaims based on the statute of limitations (the claims were too late) and statute of frauds (no written agreement supporting the counterclaims). The motion for partial summary judgment was granted, which dismissed the counterclaims and also awarded a judgment against the roofing company. This holding was unanimously affirmed on appeal.

It is important to note that CPLR §3016(f) applies to both materials furnished and labor performed on a construction project. This decision clearly establishes the legal standard for CPLR §3016(f) causes of action and will serve as a tool to recover amounts owed to subcontractors and suppliers.

**Jordan R. Pavlus, Esq.**  
**BYRNE, COSTELLO & PICKARD, P.C.**  
**SACNY CHAPTER ATTORNEY'S FIRM**

**TOWER I, SUITE 1600 100 MADISON STREET SYRACUSE, NEW YORK 13202**  
**PHONE 315/474-6448 FAX 315/424-8556 jpavlus@bcplegal.com**

***LIENS FILED IN OCTOBER, 2015***

LIENOR	PROJECT OWNER	CONTRACTOR/ SUBCONTRACTOR/ SUPPLIER	AMOUNT
DiPeso Contractors, Inc.	ESA 0504 Inc.	Commercial Contracting, Inc.	\$17,142.00
Terry W. Elwood	Heather K. Fuleihan	Heather K. Fuleihan	\$52,950.03

***LIEN EXTENSION***

LIENOR	PROJECT OWNER	CONTRACTOR/ SUBCONTRACTOR/ SUPPLIER	AMOUNT
Murnane Building Contractors, Inc.	Syracuse University	Cameron Hill Construction, LLC	\$465,015.87

## **NEW YEARS RESOLUTIONS FOR CONSTRUCTION!**

The start of a new year usually brings about New Years' resolutions. As a construction business owner or construction worker, now is a great time to consider what resolutions you can make — and keep! William Smyth, Chairman of the Associated Builders and Contractors San Diego Apprenticeship Training Trust board of trustees, recently wrote an article of five resolutions for the construction industry for 2015.

1. His top resolution is to **make safety a priority**. As Smyth points out, there is so much talk about safety that it might almost be too much, causing many people to hear it and forget it. But in an industry as dangerous as construction, it's important for everyone to make safety a priority. That includes staying in-the-know of current safety regulations and making sure your employees or coworkers are informed of current safety practices and any changes made to safety regulations.

But it's not just knowing the safety regulations. As part of this resolution **make sure you're following safety procedures, wearing the appropriate personal protection equipment and actively refreshing everyone's knowledge on job site safety**. Holding regular safety meetings both in the office and on the job site is a great way of pro-actively making safety a priority.

2. Smyth's second resolution is to **pursue advanced education**. Education is a lifelong process, even in the construction industry. Smyth encourages contractors to continue ongoing training in new technology, techniques, materials and codes — especially with technology changing so rapidly. Pursuing advanced education not only keeps you up to date on what's new in the industry and industry practices, but it also can help contractors and skilled laborers advance their careers.
3. In conjunction with pursuing advanced education, Smyth's third resolution for the industry is to **develop the next generation of skilled craft professionals**. We've all seen the headlines (or experienced hands on) about the shortage of skilled laborers now that the industry is starting to rebound. And with many more skilled laborers getting ready to retire over the next decade the need for the next generation to fill these positions will be even more vital. Find opportunities in your local areas to help promote the and educate about working in the trades such as construction. Maybe you can even offer an apprenticeship program or find a way to work with local schools to get students interested in jobs in the construction industry.
4. Another resolution construction contractors can consider for 2015 is to **stay on top of trends**. Smyth says this is crucial to being an effective business leader. "When you see the big picture, you can anticipate what may be around the corner and gain time to react and adapt," Smyth says in his article.
5. Smyth's final resolution suggestion is to **commit to professionalism**. Make an effort to be responsible, accountable and strive for excellence. Hone your communication skills and use them effectively. Be professional in all interactions with employees, coworkers and customers.

In addition to Smyth's five suggest resolutions for 2015, add one more: **follow through**. Most people make resolutions in January that they've already given up by February. Whether you make one or all of these resolutions or some of your own, make sure you follow through all year. You might find that these soon become second nature and less of a resolution and more of everyday habits.

***All of these resolutions can have a positive impact on your company and the industry. So go for it; do something good for your company and for yourself this year.***

## **DOLLARS & SENSE**

**DECEMBER 2015**

### **CHARITABLE GIVING**



Many people enjoy charitable giving this time of year. Charitable donations feel in line with the spirit of the holidays and they also serve as a way to potentially reduce income tax liability for the year. What follows are some suggestions to make better use of your charitable contributions.

- 1. Make sure the charity is a qualified charity** that enables you to take an income tax deduction. The IRS has a Select Check tool on its website ([www.irs.gov](http://www.irs.gov)) that you can use to confirm that a charity is a qualified charity. Qualified charities include churches and governmental agencies even if the charity is not listed on the IRS website.
- 2. Do some research to confirm that the charity's goals align** with your own and that the charity makes good use of its funds. There are many web sites that help you choose the right charity for you. Consider [givewell.org](http://givewell.org), [charitynavigator.org](http://charitynavigator.org), and [charitywatch.org](http://charitywatch.org).
- 3. Retain a bank record** (e.g. bank statement, cancelled check, credit card statement) or a written statement from the charity to support the deduction on your tax return.
- 4. If you donate household goods make sure you get an itemized receipt** from the charity. Refer to valuation guides published by the Salvation Army or Goodwill for assistance in valuing the donated property.
- 5. Be aware that the rules have changed** for deducting donations of cars or boats. You can only deduct the FMV of the car or boat if the charity uses the property in its charitable mission. If the charity quickly disposes of the property for cash your deduction is limited to the lesser of your basis in the property or the price for which the charity sold the property. Charities must issue form 1098-C acknowledging the donation of autos and boats.
- 6. Consider giving your charity appreciated stock instead of cash.** If you transfer the appreciated stock directly to the charity you get a tax deduction for the FMV of the stock and you never have to recognize the capital gain on your tax return.
- 7. You may also make a direct gift of a Required Minimum Distribution (RMD) from your IRA to a charity.** In 2014 you were able to make such a gift and not record the RMD in income and not deduct the donation. Congress has not yet extended this tax benefit to 2015 but an extension will likely pass before the year ends. If the extension is not granted, you would still get to take a deduction for the donation on your tax return that will help offset the taxable RMD.
- 8. Charitable Lead Trusts and Charitable Remainder Trusts are great ways to move assets** out of your taxable estate and provide a current income tax deduction. See an estate attorney for advice on establishing a charitable trust.

***Charitable contributions have the ability to advance causes that you care about while providing an income tax deduction at the same time. Perform due diligence to make sure you get the most value for your donation but don't expect the Bell Ringers to give you a written receipt for the spare change you drop in the Red Kettle!***

**Gregory F. Wilt, CPA  
SACNY Treasurer  
117 Highbridge St. Suite U-1A  
Fayetteville, NY 13066  
[greg@gregwiltcpa.com](mailto:greg@gregwiltcpa.com)  
315.575.5428**

## **PREPARING FOR THE NEW SALARY AND DUTIES TEST REVISIONS**

**Exemption requirements will change in 2016: Prepare Now!**

**Don't Miss The December Meeting with the US DOL!**

The US Department of Labor (DOL), through the Fair Labor Standards Act, proposed a regulation that would increase the minimum salary for employees to qualify as exempt from overtime. The new salary would be \$970 per week, or \$50,440 per year minimum, starting in 2016 if the regulation takes effect as written. The DOL estimates that 4.6 million employees who are now exempt would no longer qualify for these exemptions.

Employers do not need to start reclassifying employees yet (the final rule may differ from the proposed rule), but employers should make plans that can be quickly implemented once a final rule is published. First, identify which exempt employees are paid less than the proposed threshold of \$970 per week. Second, for exempt employees at or above the proposed salary level, determine how much time the employees spend performing exempt duties.

***Many changes will be required; get the information you need to make the proper transition!***

## **SACNY DONATION TO CHRISTMAS FOR CHILDREN!**

**You will note that the reservation form states that \$10.00 of each ticket for the December breakfast meeting supports Holiday gifts for the young children of program participants at Syracuse Behavioral Healthcare ([www.sbh.org](http://www.sbh.org)). Additional donations can be made with a check made out to SBH, or to SACNY, or through credit card payment to SACNY. All donations will be acknowledged with a receipt to use for tax purposes!**

### **About SBH and Children**

To date in 2015, SBH helped 4373 individuals recover from their struggle with drug or alcohol substance use disorders. A complete continuum of care from Inpatient to outpatient rehabilitation, to residential rehabilitation services is available. Many of the individuals being treated in one of the 14 facilities are parents; and many of the Mothers treated in the inpatient Women and Children's program have their children living with them in a safe and healthy environment. These children have not typically lived in such safety and experienced the same Christmas and other Holidays that our own children have enjoyed.

Our SACNY donations over the past several years have provided gifts for these children at Christmas. It is unbelievable to realize that some of the children have not previously received even small gifts. Winter school clothes are also typically provided.

As the SACNY Executive Director, I attend the children's Holiday Party at the SBH Women and Children's Residence each year. I am always humbled by the excitement and appreciation of these children as they open their gift. Of course one of the counselors is always dressed as Santa, and does the distribution! The children receive one gift at the party, and one is provided for Christmas morning. One year, my daughter (age 10 at the time) and I were sitting next to a five year-old boy who was watching the party and the other kids get excited as they opened their present, but was not opening his own. He had told one of the program counselors that he had always wanted a dinosaur, so a set of dinosaurs was one of the gifts SACNY provided. I knew it was what he wanted, so I asked him why he was not opening his present. He said "we move a lot. Santa never knows where we live so he can't leave me anything. So, this year, if he can't find us, I will have one present to open from Santa". I told him "I believe Santa knows where you are now", since I knew he would finally have that one present, and another one, and some school clothes on Christmas morning. He said "I think I will save it anyway". My daughter still talks about that party and the little boy. *Any SACNY member who would like to accompany me to the Christmas party for these children should feel free to call me.*

# SACNY SEMINAR INVITATION

## US DOL FAIR LABOR STANDARDS ACT LABOR REGULATIONS!

The Subcontractors Association of Central New York, Inc. invites you to learn current FLSA US Labor regulations, which will be changing! If you are not in compliance now, getting there will be much harder later!

### WEDNESDAY, DECEMBER 9, 2015

7:45 a.m. Breakfast Available

8:00 a.m. Welcome, 8:15 - 10:15 Speakers

**SACNY ACCEPTS CREDIT CARDS!**

**Register Below!**

**MAIL/FAX FORM TO SACNY**

c/o Employee Management Strategies, Inc.

117 Highbridge St. Suite U-2B

Fayetteville, New York 13066

315-637-7780 phone / 315- 637-7783 fax

[sacny@sacny.com](mailto:sacny@sacny.com)

### LOCATION

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\$30.00 PP SACNY Member

\$35.00 PP Non-SACNY Member

\$10.00 of each ticket supports Holiday gifts for the young children of program participants at Syracuse Behavioral Healthcare ([www.sbh.org](http://www.sbh.org)).

*Additional donations can be made with a check to SBH, or through credit card payment to SACNY. NOTE  
ADDITIONAL DONATION IN TOTAL BELOW!*

## LABOR REGULATIONS!

### US DOL Fair Labor Standards Act:

**“Changes Are Coming! Get Into Compliance Now!”**

### SPEAKERS: US Department of Labor

Catherine Quinn-Kay, Wage Hour Division, Division of Communications

John Steves, Assistant District Director, Wage & Hour Division, Syracuse Area Office

**Bring Your Questions!**

**Reservations / Cancellations Due By Noon Monday, December 7<sup>th</sup>**

COMPANY NAME / ADDRESS \_\_\_\_\_  
NAME(S) \_\_\_\_\_

Circle one: MC Visa Discover Card# \_\_\_\_\_ Expiration Date \_\_\_\_\_

Name on Card \_\_\_\_\_ Signature \_\_\_\_\_

Card Billing Address: \_\_\_\_\_ ZIP \_\_\_\_\_ Total Amount Charged \$ \_\_\_\_\_

Print Contact Name \_\_\_\_\_ Telephone #: (\_\_\_\_) \_\_\_\_\_

**Additional SBH Children's Holiday Donation: \$ \_\_\_\_\_**