

“A Surprising Turn” in the NYS Budget: The Building & Realty Industry Welcomes Progress in Reforming the State’s Workers Compensation System

An IMPACT Staff Report

ALBANY

The New York State Fiscal Year 2017-18 Budget has enacted various reforms to the Workers Compensation System, building, realty and construction industry officials said.

Industry observers - as well as representatives of related industry sectors - said that they view the changes as a positive step toward reform. Industry officials cited a series of changes as among the noteworthy highlights of the action:

- Establishes a 130-week General Rule for reaching Maximum Medical Improvement (MMI) for the purpose of classifying for Permanent Partial Disability Awards, and provides a safety valve for injured workers who have not reached MMI within 130 weeks;
- Removes the requirement that injured workers remain attached to the workforce after being classified with a permanent disability;
- Expands the Safety Net Threshold from above 80 percent to above 75 percent impairment, to allow the most seriously injured workers to petition to continue receiving benefits after the Permanent Partial Disability Caps have been met;
- Moves the responsibility for Annual Safety Net Reporting from the Department of Labor to the Workers’ Compensation Board (WCB);
- Provides for a statutory mechanism to require release and implementation of updated impairment guidelines reflective of advances in modern medicine;
- Provides for a Comprehensive Prescription Drug Formulary;
- Authorizes the WCB to implement administrative efficiencies related to billing and periodic reporting;

- Authorizes the WCB to execute Assumption of Liability Policies for the Special Disability Fund and the Reopened Cases Fund;
- Requires a study of Independent Medical Examinations be conducted by the WCB and that a report be submitted to the Legislature and the Governor;
- Prohibits the WCB from disallowing certain claims by police or firefighters that are related to job stress;
- Provides for a reduction in the Maximum Fund Balance from 10 to five percent that can be retained by the WCB from the Section 151 Assessments and creates a fiduciary fund to transfer such excess fund balance for the purpose of rate stabilization.

“It will take time to determine the overall effect and savings realized by New York State’s private and public sectors by these changes,” said Albert Annunziata, executive director of The Builders Institute (BI)/Building and Realty Institute (BRI) of Westchester and The Mid-Hudson Region.

Annunziata added: “Certainly, these efforts, on the face of it, are going in the right direction, and they give the state’s Workers Compensation Board greater responsibility and flexibility in the review and handling of cases, along with increased accountability to the executive and legislative branches of state government. It is a welcome and surprising result of budget negotiations.”

The BI/BRI, Annunziata said, will be working with other building, realty and construction industry groups - as well as its insurance industry consultants - to better assess the changes going forward.



The Vendor Showcase of the BI-BRI is Set for Oct. 12

By Jeff Hanley, IMPACT Editor

WHITE PLAINS

The Second Vendor Showcase of The Builders Institute (BI)/Building and Realty Institute (BRI) has been scheduled for Thursday, Oct. 12, association officials recently announced.

The event will run from 5:30 p.m. to 9:30 p.m. It will be at The Crowne Plaza Hotel in White Plains.

More than 175 members of the local building, realty and construction industry attended last year’s showcase on Oct. 13. The event featured representatives of virtually every membership sector of the BI-BRI, a building, realty and construction industry membership organization with more than 1,800 members in 14 counties of New York State.

BI-BRI spokesmen said that the 2016 showcase was the first of its kind in the 70-year history of the organization, since it featured many sectors of the association’s diverse building, realty and construction industry membership base. More than 40 Vendors wishing to promote their services and products to that membership base participated in the event. The showcase was termed as a tremendous success by most vendors and attendees, BI-BRI officials added.

Maggie Collins, event coordinator of the showcase and the director of membership for the BI-BRI, said full details on the 2017 event will soon be sent to members of the organization.

“Notices with full instructions on the registration processes for exhibitors, as well as for overall participants, will be in the mail in the coming weeks,” Collins said. “We urge companies wishing to exhibit at this year’s event to respond as soon as possible. The response to the 2016 showcase was tremendous. We expect the same to happen this year.”

Based in Armonk, the BI-BRI was formed in 1946. Members of the association are involved in virtually every sector of the building, realty and construction industry. The organization has more than 1,800 members in 14 counties of New York State.

Counsels’ Corner

How to Deal With A Troublesome Employee

By Kenneth J. Finger, Esq., Carl L. Finger, Esq., and Daniel S. Finger, Esq., Finger and Finger, A Professional Corporation, Chief Counsel To The Builders Institute (BI)/Building and Realty Institute (BRI)

WHITE PLAINS

One of the most significant problems encountered by employers, whether it be a Landlord, Managing Agent or Cooperative or Condominium Board of Directors, is how to deal with a troublesome employee.

While, as attorneys, we have handled many hundreds of Grievances and Arbitrations, it is, of course, best to avoid those processes, if possible. An employee problem can arise in the context of insubordination, failure to do the assigned work, poor performance, fighting, or the like.

Most of the employers in the realty industry in Westchester County deal with Local 32-BJ Service Employees International Union (SEIU), but there are also other unions in the mix, as well as non-union employers.

In any case, while this article is geared toward union employees, we strongly suggest that even in a non-union context that the employer follow these recommendations, even when there are problems with non-union employees.

Education Is A Key

The basic principle of discipline in the Labor Relations Field is to educate the employee so that the objectionable behavior can be corrected and/or problems can be rectified and the employee becomes productive and valuable to his or her employer.

Therefore, to go back to the beginning, every employee should not be hired without checking on the references and utilizing the Probationary Period, whether it be the period set forth in the union contract, or 90 or 120 days. While we understand that, during the Probationary Period, most employees are on their more than best behavior, you can certainly get an idea of the quality of the work, work ethic and attitude. If there are issues and you can, try to extend the Probationary Period. Once the employee becomes permanent, it is infinitely harder to terminate him or her.

Steps

If you are having problems once the employee becomes permanent, the basic tenet is “Progressive Discipline.” That means that there are steps that you take to correct the problems, and as stated, salvage the employee’s job.

The first step is an Oral Warning. That means that you meet with the employee (and with the union representative, if possible) and advise of the adverse behavior, work, etc., and that failure to improve, or correct, can ultimately lead to job termination.

Every step must be noted in the employee’s personnel file, with the date, reason and substance of the warning and who was present. It is always advisable to have another management person present at the time of the warning. The union, if any, should be notified, in writing, of the Oral Warning and the substance of the warning. We recommend that the union should even be invited to be present, unless time does not permit.

If there is a repeat of the problem, or another problem, the next step is a Written Warning. That is the second stage and obviously more serious. Once again the employee should be counselled with advice, again, of the detrimental consequences of the failure to cure and rectify the problem.

The employee should be requested to sign for the Written Warning and if he/she refuses to sign, have the two management personnel note on the warning of the refusal to sign. Once again a copy should go to the union.

Ultimately, if the situation is not resolved and the employee continues to act in a fashion determined to be unsatisfactory, a Final Written Warning should be given to the employee, noting that the next step might be suspension and/or discharge. And, again, a copy should go to the union and the employee should again be requested to sign for the warning. And, as with all such disciplinary steps, management should have two people present.

The next-to-final step is a suspension, and once again the employee should be counselled, again in the presence of at least two management personnel and the union representative. And, again, send a written copy of the suspension letter / notice to the union, and have the employee sign for its receipt.

The Final Act

The final step is, of course, the most significant and that is Discharge. A Discharge will generally be for repeated defalcations, after repeated warnings, or an obviously bad act such as striking a supervisor, fighting, drunkenness on the job, stealing and the like.

If you do discharge the employee you should prepare, with the advice of counsel, a Letter of Termination providing the reasons for the termination and send same to the employee, copy to the union. Be complete and careful with the letter because you will be bound by its contents in a future Arbitration. We also suggest that if the discharge is not due to a one-time event, such as stealing, insubordination, fighting, etc., that you list the prior warnings and history.

At the time you advise the employee of the disciplinary action, we strongly recommend that you interview the employee (in the presence of two management personnel), and question the employee as to the action or actions leading to the discharge, and try to find out why they didn’t do what they should have done, or did do what they did (which led to the discharge).

At this time you should also interview any other employees who may have been involved or were witnesses. If you can video them, all the better. In these days of cell phones, it is not that hard to video.

Also, if you see something wrong, video it for future reference and proof.

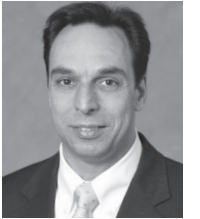
After the Disciplinary Action, the union may, or may not, file a Grievance, which is a procedure by which the union and the employer “informally” meet to air the issues and attempt to arrive at a mutually satisfactory resolution. If not resolved, be ready for an Arbitration Demand. Make sure you let an attorney know each step of the way as soon as you get any notices from the union and keep counsel advised.

Finally, in preparation for the eventual Arbitration that is sure to follow a Discharge, if not resolved at the Grievance Stage, bear the following caveats in mind:

1. Check references before hiring and use the Probationary Period wisely;
2. Be consistent with your discipline - do not engage in disparate treatment;
3. Follow the Progressive Discipline Process previously outlined;
4. Do not discipline in front of a fellow worker;
5. Always discipline, or interview, with more than one management person present;
6. Consider the Length of Service in disciplining;
7. Speak to the witnesses and make good notes, or video, if possible;
8. You can always reduce discipline, not increase it at the time. So if you are debating what to do, impose the more severe and retain the right to reduce at the discussion, Grievance or later stage;
9. If you are in doubt about a severe incident, suspend with the understanding that you retain the right to discharge after full investigation;
10. Remember that there may be a duty to accommodate an employee’s disability or handicap;
11. The basic tenet for an employee who objects to doing work is to work now and grieve later, unless there is a safety issue, and then it may be the employee’s burden to show the “danger;”
12. At the time of an Annual Review, do not automatically give “excellents,” “wonderful employee,” etc. If there have been problems, even without formal discipline, make sure that the Annual Review notes them and they are noted in the personnel file. It is much harder to complain or discipline about bad performance if



Ken Finger



Carl Finger



Dan Finger

Continued on p. 6

BankUnited's National Deposit Team Relocating to Westchester

RYE BROOK

The National Deposits Group of BankUnited, a Florida based-bank with regional offices in New York City and Melville (L.I.), is relocating from Manhattan in June and opening an office in Westchester County, bank officials recently announced.

The office will be at 6 International Drive in Rye Brook. Led by Managing Director Joe Curran, Director Tom Linehan and Relationship managers Karen Gladding, Jay McGetrick and John Habermann, the National Deposits Group has built a robust business on its deep understanding of the commercial real estate market, officials said.

The group's business focuses on providing banking services to the real estate industry, including:

- ◆ Property Owners and Managers;
- ◆ Associations;
- ◆ Title/Settlement Firms;
- ◆ 1031 Exchange Companies;
- ◆ Real Estate Attorneys and Firms.

The team, bank officials said, has built a segregated account and escrow platform specifically to service the real estate industry.

"Tom, Karen, Jay and I spent more than 20 years working together at Citi, where we helped build a \$20 billion deposit business," Curran said. "We opted to move to a regional-sized institution, where flexibility and meeting the demands of the customer could be taken to the next level. John (Habermann) joined us from Webster Bank and we've been able to provide superior service, thanks to our extensive knowledge in the financial services industry."

BankUnited, a member of The Building and Realty Institute of Westchester and the Mid-Hudson Region (BRI), issued a presentation on May 3 to the BRI's membership on preventing cyber fraud and avoiding business e-mail compromise. The event, the Membership Meeting of The Advisory Council of Managing Agents (ACMA), was attended by more than 25 ACMA/BRI members. It was held at the Crowne Plaza Hotel in White Plains.

Houlihan Lawrence Commercial Group Expands Into Connecticut

RYE BROOK

Houlihan Lawrence Commercial Group, the commercial arm of Houlihan Lawrence, recently announced its expansion into Connecticut.

Agent Michael Rackenberg, the company said, will serve as team leader of the expansion. The company will serve communities throughout Fairfield County, including New Canaan, Greenwich and Stamford. Rackenberg will be joined by Terry Baxendale, Jim Higgins, Peter Wells and Teresa Marziano. The agents were termed as "experienced" by company spokesmen.

"Connecticut, much like New York, is experiencing renewed momentum in the commercial market from industrial, retail and health care industries," said Thomas LaPerch, managing director of Houlihan Lawrence Commercial Group. "We're eager to meet these needs and introduce new buyers and sellers to our growing team of highly skilled, successful real estate professionals." Rackenberg will oversee the agents, working between the company headquarters in Rye and the residential brokerage office in Greenwich.

"This is an important move for Houlihan Lawrence Commercial Group, as it allows the company to expand its commercial services into the lucrative Connecticut market," Rackenberg said. "I am committed to leading this new team to success by ensuring the utmost in honesty and integrity to clients."

Company officials said the new team has already secured deals in Connecticut. Baxendale secured the sale of 62 Mason Street in Greenwich for \$2.8 million. The historic building was originally listed for lease, but Baxendale brought a prepared buyer to the opportunity.

Wells has brokered leasing deals in Greenwich, at both 86 Greenwich Avenue and 125 Mason Street, by sourcing the right tenants for the properties, company spokesmen said.

Houlihan Lawrence Commercial Group, a full-service division of Houlihan Lawrence, specializes in investment opportunities, office condominiums and leasing, industrial and retail sales and leasing, land acquisition and development, as well as municipal approval consultation.

The firm has 25 highly experienced agents across New York City, Westchester, Putnam, Dutchess and Fairfield counties. Featuring a database of international buyers and sellers, Houlihan Lawrence Commercial Group effectively markets commercial properties and investment opportunities on a global scale, company officials added.

An IMPACT Special Report

A Project Case Study: Pump It Up - UV Disinfectant in Westchester County

WHITE PLAINS

There is no question that clean water is essential to the health of our global community.

Water is life! As Da Vinci said, "it is the driving force of all nature" and sometimes we neglect to realize just how fortunate we are for having access to the rarest natural resource on this planet.

Luckily, Westchester County understands the value of having this privilege and has prioritized the revitalization of its existing Water and Sanitation Systems, making sure it is at the top of the county's "To-Do List."

Aided with the help and support of the Environmental Facilities Corporation (EFC), Westchester County has increased the amount of UV Disinfectant used at each Pumping Station to rehabilitate its systems to provide a safe, long-lasting, and sustainable environment because, "clean water is an investment in the future," as all involved parties agreed.

As such, the EFC backed the county's decision to increase the UV Disinfectant for the two-tank water system south of the Kensico Reservoir, which services roughly 270 homes in the Town of North Castle.

If you had the pleasure of hearing Sabrina M. Ty, president and chief executive officer (CEO) of the EFC, speak at the Feb. 16 General Membership Meeting of The Builders Institute (BI)/Building and Realty Institute (BRI), she explained that one of the EFC's goals is to provide as much Water Infrastructure Support as possible, with a combination of its federally funded loan program and the state Water Infrastructure Improvement Act Grant Program.

A Designation

In March of 2016, the Town of North Castle awarded the General Contracting and Site Development responsibilities for the "North Broadway UV Disinfection" project, an EFC-funded plan, to Kings Capital Construction of White Plains. The company is pioneered by J.D. Summa, chief executive officer and president of general construction, and Mike Casarella, chief operating officer and president of the firm's Site Development Division.

Kings Capital Construction has ranked on Inc. 5000's Fastest-Growing Companies List for the last three years. Since 2009, Summa and Casarella have successfully completed various projects in and around the tri-state area. The projects have specialized in turnkey, ground-up commercial construction offering expert services in Construction Management, Commercial General Construction, and Site Development, company officials said.

Kings Capital Construction owns and operates an extensive fleet of trucks and heavy machinery, the essentials for the company's Site Development Division (led by Casarella), company spokesmen said.

The winning bid for the "North Broadway UV Disinfection" project was prepared by veteran Project Manager Jerre Coleman. Coleman has a degree in Civil Engineering from the University of Florida and has more than 40 years of field experience. Coleman focused his studies on water and wastewater systems, which proved to be advantageous for not only Kings Capital Construction, but also for the needs of the project in the Town of North Castle, company officials said.

The town was under a Consent Order mandating that the project be completed by October of 2016, a non-negotiable demand which meant that the construction schedule had limited flexibility and even less margin for error, company officials added.

The Winning Formula

Kings Capital Construction spokesmen said that it was Coleman's extensive leadership experience and attention to detail that paved the way for him to confidently lead his onsite team to victory, completing all the work that was requested by deadline. Per the plans designed by GHD Consulting Services, the project's scope of work required Coleman and his team of laborers to build an extension onto the existing building, since the original system was not to be removed, company officials said.

Moreover, company officials added, Kings Capital Construction had to guarantee that the water supply would remain available to the community, forcing Coleman to strategically plan, making sure the pumps never shut down for longer than 6-to-8 hours at a time. The process guaranteed that the system would continue to operate effectively throughout the entire working schedule for construction.

Kings Capital Construction was onsite for seven months at the North Broadway Pump Station. Coleman was onsite daily, overseeing and delegating responsibilities with his team, company officials said.

With the help of B.A.C Electric, CLR Plumbing, and Premier Comfort, Kings Capital Construction lived up to its reputation by providing excellent, reliable services for the Town of North Castle. With this rehabilitation project - as well as the remodeling of the Cottage Avenue and Winfield Avenue Pump Stations in Harrison, also guided by Kings Capital Construction and Coleman - Westchester County certainly proves that it cares for the health and wellness of its residents above all, officials from Kings Capital Construction said.

The Current Dangers of Internet Usage for Businesses Reviewed at Building and Realty Industry Conference

By Jeff Hanley, IMPACT Editor

WHITE PLAINS

The recent Membership Meeting of a leading building and realty industry organization focused on the dangers of internet usage that confront businesses.

"Business Email Compromise/Fraud Prevention/Understanding and Preventing Cyber/Email Fraud" was the topic of the May 3 Membership Meeting of The Advisory Council of Managing Agents (ACMA) of The Building and Realty Institute (BRI). The conference was at The Crowne Plaza Hotel in White Plains. It was attended by more than 25 ACMA/BRI members, event officials said.

Representatives of Bank United, a member of the BRI, were the keynote speakers at the event. Tom Linehan, an executive vice president of Bank United, led the presentation.

"We urged our members to attend this important conference," said Albert Annunziata, executive director of the BRI. "The seminar covered issues that affect all businesses, and certainly the business routines of our members. It was well done, and the presentation of Bank United reviewed some very important and timely topics."

ACMA/BRI officials said that the meeting is open to all members of both organizations. Those wishing to attend the conference can confirm their attendance to jeff@buildersinstitute.org. Reservations are also being accepted through the ACMA/BRI offices at (914) 273-0730.

ACMA is composed of the leading property management companies in the Westchester and Mid-Hudson Region.

Members of the organization help to oversee the operations of co-ops, condos and rental apartment buildings/complexes, association officials said.

The BRI is a building, realty and construction industry membership association. The organization has more than 1,800 members in 14 counties of New York State. Those members are involved in virtually every sector of the building, realty and construction industry, association officials said.

How to Deal With A Troublesome Employee?, Continued from p. 3

the employee has exemplary Yearly Reviews;

13. Prepare for the Grievance by meeting with your attorney and let your attorney negotiate with the union. Similarly, prepare for the Arbitration, with all of your witnesses meeting with your attorney. There is nothing like complete and detailed preparation to assure the best possible presentation to the Arbitrator. Have three copies of all documents ready for the Arbitration.

Finally, be aware that timely and thorough preparation will give you the best chance at success in an Arbitration. We speak from many years and hundreds of Arbitrations of experience.

Editor's Note: The authors are with Finger and Finger, A Professional Corporation. The firm, based in White Plains, is Chief Counsel to The Builders Institute (BI)/Building and Realty Institute (BRI).

Goldschmidt and Associates Brokers Two Retail Leases in Armonk

ARMONK

Goldschmidt and Associates of Scarsdale recently announced that it has brokered two retail leases at 450 Main Street in Armonk.

Eric S. Goldschmidt, senior partner of Goldschmidt and Associates, made the announcement.

The entire shopping center, which is anchored by CVS, is now 100 percent leased, officials said. Lisa Daniel of Goldschmidt and Associates negotiated both leases for the facility. Daniel handles the leasing for the center.

The first signed lease was for 2,276 square feet for First Five Learn and Play, a children's activity gym, which is opening its first Westchester location. The tenant specializes in classes that are constructed to be age and developmentally appropriate. The tenant was represented by Tyler Lyman and Ryan Stranko of RHYS

Commercial, officials said.

The second signed lease was for 1,120 square feet to Gumdrop Lane, which specializes in a full-service Gift and Party Destination. It also features one-of-a kind gifts, onsite monogramming, helium balloons and more. Daniel was the sole broker, according to spokesmen.

450 Main Street is a highly visible retail center in downtown Armonk. The center has a new CVS, Koku Restaurant and is close to Armonk Square, officials said.

Goldschmidt and Associates, since 1991, specializes in the leasing and sale of retail, office, medical, industrial, land, and investment properties in the New York metro area. The company is licensed in New York, New Jersey and Connecticut, company spokesmen said.