



Vol. 41, No. 4

(518) 869-9800

October 2023

## NESCA Trade Show Coming October 12th

It's Show time! Business owners, managers and supervisors involved in the commercial construction industry who wish to learn about the latest in construction products and services will have the opportunity to engage in some one-stop shopping when NESCA hosts its 42nd Annual Trade Show on Thursday, October 12, 2023 at the Century House in Latham. The Trade Show, which will be held from 4:00 - 8:30 p.m., will expose general contractors, subcontractors, design professionals, facilities managers, developers and others to a wide variety of products and services in virtually every trade category. Specialty gas and welding products, rigging products, water & sewer products, power tools, aerial lifts and scaffold, acoustical products, insulation systems, concrete accessories and products, insurance and bonding services, building materials, fasteners, and equipment rentals are among the many products and services that will be on display at the Trade Show.

All available exhibit space has been sold out for the Trade Show, and total attendance is expected to top 500. NESCA members who have attended the Trade Show in the past know that it is much more than just a trade show, it is an industry event calculated to bring the various segments of the commercial construction industry together for an evening of business networking. Not only that. In addition, we will once again be holding a silent auction, the proceeds of which will be donated to the U.S. Marine Corps Toys for Tots Campaign. A festive atmosphere, great food, interesting door prizes and a chance to raise money for Toys for Tots will make this Trade Show one you won't want to miss! While taking in the exhibits, attendees will be treated to a variety of hors d'oeuvres, carving stations and other great food provided by the Century House. Door prizes will be given away by exhibitors, and a "Super 50/50" drawing will be held, with a guaranteed payout of at least \$1,000 to the winner!

NESCA's condensed 4 ½ hour format, unlimited food and bar, exciting prizes and the chance to see the most complete line-up of construction industry products and services available, has made this the premier commercial construction trade show in Northeastern New York. To register to attend the Trade Show, contact the NESCA office at (518) 869-9800.

## New York Enhances Criminal Liability for Wage Theft

On September 6, 2023, Governor Kathy Hochul signed legislation into law that amends the Penal Law to include nonpayment or underpayment of wages in the definition of larceny. This includes not paying the minimum wage and overtime, or the promised wage if greater than the minimum wage.

This new law, Chapter 353 Laws of 2023, adds a statutory description of larceny by wage theft: "A person obtains property by wage theft when he or she hires a person to perform services and the person performs such services and the person does not pay wages, at the minimum wage rate and overtime, or promised wage, if greater than the minimum wage rate and overtime, to said person for work performed."

The bill's sponsors stated that "The purpose of the bill is to allow prosecutors to seek stronger penalties against employers who steal wages from workers." They added that "According to Cornell University's Worker Institute, wage theft in New York accounts for nearly \$1 billion in lost wages each year and affects tens of thousands of workers. Conventional wisdom suggests that wage theft solely affects low-income workers who are cheated through subminimum wage or unpaid overtime schemes. However, the reality is that the problem is much larger in scope and much more pervasive, especially within the construction industry in New York."

It is notable that this new wage theft law is in addition to, and does not replace, existing criminal wage theft offenses in New York. For example, Section 198-a of the New York State Labor Law provides for criminal penalties for employers who fail to pay the wages of any of their employees.

It should also be noted that the Construction Industry Wage Theft Act, enacted in 2021, provides that prime contractors on private construction projects shall assume the liability for all unpaid wages and benefits that its subcontractors have failed to pay. The prime contractor is considered jointly and severally liable for any unpaid wages, benefits and wage supplements to the subcontractor's employees, and the subcontractor's employees can sue the prime contractor to collect wages and benefits unpaid by subcontractors.



## PRESIDENT'S MESSAGE

I can't believe it's October already as we start our fourth quarter of 2023. I'm not sure about anyone else but September was a blur. By now you know if your football team is any good and you should have a pretty good idea how your year end is shaping up. October is a very busy month for NESCA, and I look forward to catching up with all of you this month.

This past month on September 18<sup>th</sup> NESCA held its 39<sup>th</sup> annual golf outing at Troy Country Club. Despite very rainy conditions, 232 hearty souls participated in the tournament, with 112 morning golfers and 120 who played in the afternoon. We had two hole-in-one events, and lots of other prizes for longest drive, closest-to-the-pin and closest-to-the line. Thank you so much to all the tournament sponsors and volunteers as this is a very big event for the organization. I'll grade Roger Jones and his committee a D- for the weather; thanks Roger. All in all, it was a great day, and everyone had a great time. Congratulations to our first and second place scramble teams. First place went to the team of Tom Kretzler, Dave Vener,

Steve Despart and Chris Despart. Our second place team included Tom O'Hare, Steve Radloff, Matt Arcianado and Josh Erwell.

An event that I'm very excited and proud of the NESCA Young Professionals for putting together is on October 6<sup>th</sup>. The group will be engaging in a community service project at Northern Rivers (formerly Parsons Child Development Center). Northern Rivers has several small projects they need to have done, but these projects are not in their budget. NESCA's young professionals will supply the labor, and materials for these projects will be paid for through funds raised in connection with the Young Professionals Mixers NESCA has held over the last 4-5 years. Please ask the young professionals working at your business to give a little of their time on October 6<sup>th</sup> and volunteer for this community service project.

On October 12<sup>th</sup> NESCA will host its 42<sup>nd</sup> annual trade show at the Century House. We sold out all available exhibit space in about two weeks, and we're expecting 500 or more to attend. The trade show is an excellent opportunity to see the latest that construction industry suppliers and service providers have to offer and to network with many industry peers. Plus, there will be great food, beverages and door prizes, and a chance to win \$1,500 or more in our super 50/50 raffle. Once again, the trade show will feature a silent auction, the proceeds of which will be donated to the U.S. Marine Corps Toys for Tots campaign. If you have any prospects for the association, please bring them along so they can see one of our trademark events.

On October 19<sup>th</sup>, NESCA will hold a regional Mid-Hudson membership meeting at Coppola's Italian & American Bistro in Hyde Park, and we will be

holding a Binghamton regional meeting on November 16<sup>th</sup> at McGirk's Irish Pub.

NESCA's first regular membership meeting of the year will be held on November 9<sup>th</sup> at the Century House. Because there have been so many new laws and regulations that have been enacted during the past year that will have an impact on NESCA members, we thought it would be helpful to our members for us to provide a summary of these new laws and regulations, when they become effective, and what members need to do to comply. Put another way, we want to jog our members' memories on some of the new things their businesses will soon have to comply with as we approach effective dates. NESCA executive director Mike Misenhimer will make this presentation.

**Robert L. Kind, President**

## NESCA NEWSLETTER

*Published monthly by the Northeastern  
Subcontractors Association*

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## COUNSEL'S MESSAGE

Much of the membership have received subcontracts or purchase orders which include a contractual clause mandating that a dispute arising out of their agreement must first be submitted to non-binding mediation prior to pursuing litigation, or arbitration, depending upon the terms of the agreement.

Recently I have participated in several mediations, both as an advocate and as a mediator, in which one or both participants did not fully understand the purpose of mediation nor how the process functioned. Hopefully, this column will provide some guidance.

The mediation process is designed to help the participants bridge their contract differences and resolve the dispute without having to resort to arbitration or litigation. Parties can participate in mediation without the assistance of legal counsel but, customarily, legal counsel is engaged for larger commercial disputes.

Normally a specially trained neutral third person, the mediator, is selected by the parties to organize the

mediation process and guide the party's assembly of pertinent documents, photographs, or other information to assist in communicating each party's position.

The parties can utilize the assistance of a commercial company such as the American Arbitration Association to identify potential mediators which have an expertise in the subject matter of the dispute. It is also not unusual that counsel for the parties mutually select a private party who has knowledge of an industry and the subject matter of the dispute to serve as a mediator.

The mediation process is private and confidential. Unless available from another source, information and statements exchanged as part of the mediation cannot be utilized in an arbitration or mediation. Normally the mediator will have a pre-mediation conference call during which a schedule is established to exchange information, set a date for submission of pre-mediation statements and the date of the mediation.

Once selected, the mediator will sign an oath of impartiality and disclose to the parties any information he retains that may be prejudicial to either party. The mediator does not retain decision maker authority, nor does he/she retain authority to impose any settlement on the parties. The mediator's role is to demonstrate, through knowledge and experience, the strengths, and weaknesses of the respective party's position.

There will frequently be breakout rooms at the mediation location between which the mediator will visit and discuss progress or obstacles during the mediation. If a settlement is reached there will be a writing prepared setting forth the key elements of the settlement with a more detailed following the mediation.

Mandating mediation of disputes by contract can be beneficial, or an exercise in futility, depending upon the parties' mind set during participation. Mediation provides the parties an opportunity to "control their own fate" prior to advancing to litigation or arbitration at significant expense with an outcome which is frequently unsatisfactory. On the next occasion to mediate a dispute the membership is encouraged to adopt an open mind and participate with the goal of controlling their own fate and settling their differences.

*Walter G. Breakell, NESCA Legal Counsel*

## 2024 Paid Family Leave Rates Released

The Department of Financial Services (DFS) has announced the paid family leave benefit and employee contribution rates effective January 1, 2024. The maximum employee contribution has been reduced. Below are the 2024 rates compared to the 2023 rates.

	2023	2024
<b>Weekly Benefit (% of AWW)</b>	67%	67%
<b>Benefit Duration</b>	12 weeks	12 weeks
<b>NYS Average Weekly Wage</b>	\$1,688.19	\$1,718.15
<b>Maximum Weekly Benefit</b>	\$1,131.08	\$1,150.49
<b>Employee Contribution Rate</b>	0.455% of wages per pay period	0.373% of wages per pay period
<b>Maximum Annual Contribution</b>	\$399.43	\$333.25

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Contact: Mike Tresidder

### JP Reilly Construction, LP

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[bill@jprlp.com](mailto:bill@jprlp.com)

Contact: Bill Reilly

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Contact: AJ Criscone

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Contact: Troy Donnelly

### Tri-Power Fire & Security

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518-376-8307

[tripowerfire@gmail.com](mailto:tripowerfire@gmail.com)

Contact: Diane Miciotta

## Calendar of Events

**October 6, 2023**

*Y.P. Community Serv. Project*  
Northern Rivers, Albany

**October 12, 2023**

*42<sup>nd</sup> Annual Trade Show*  
Century House, Latham, 4 pm

## Results of 39<sup>th</sup> Annual NESCA Golf Outing

**First Place Team** – Tom Kretzler, Dave Vener, Steve Despart & Chris Despart

**Second Place Team** – Tom O'Hare, Steve Radloff, Matt Arcianado, Josh Erwell

**Closest-to-the-Pin Hole #2** – Craig Corbett

**Closest-to-the-Pin Hole #8** – Rich McQuillan

**Closest-to-the-Pin Hole #12** – Kevin Mocerine

**Closest-to-the-Pin Hole #15** – Travis Reed

**Men's Long Drive** – Brian Haughney

**Women's Long Drive** – Karen Laurette

**Men's Closest-to-the-Line** – Craig Corbet

**Women's Closest-to-the-Line** – Katie Krahulik

**Putting Contest Morning** – Ben Harmann

**Putting Contest Afternoon** – (5-way tie) Dillon Fontaine, Willis Hamel,  
Matt McDonald, Dylan Nizolek, Mark Woodward

## NESCA Membership Milestone Anniversaries

**Community Bank, NA – 5 Years**

**Northwoods Concrete – 10 Years**

**Spectrum Environmental Associates, Inc. – 25 Years**

## U.S. Labor Department Proposes Increasing Salary Threshold for Overtime Pay

The U.S. Department of Labor has issued a proposed rule to increase the minimum salary requirements for “white collar” exemptions (executive, administrative and professional) from overtime requirements under the Fair Labor Standards Act.

Under the proposed rule, the salary level for white collar overtime exemptions will increase from the current \$684 per week (\$35,568 per year) to \$1,059 per week (\$55,068 per year). That would be a 55% increase from the current level that became effective in January 2020. To qualify for the “white collar” exemptions, each of the following tests must be met:

**Salary Basis Test:** The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed.

**Salary Basis Test:** The amount of salary paid must meet a minimum specified amount.

**Duties Test:** The employee's job duties must primarily involve executive, administrative or professional duties as defined in the regulations.

The minimum total annual compensation level for exemption as a “highly compensated employee”, one who customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee would increase from \$107,432 to \$143,988.



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