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ATTORNEYS AT LAW

# LAW FOR LABOR

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## Single Health Insurance Provider

by: Mark Stulmaker  
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The City of Buffalo's recent move to a single health insurance company has saved the City a ton of money, or at least avoided the normal double-digit increase in premiums that most other employers are facing. The move has raised a number of questions from our clients as to whether they, too, could move to a single insurance company and obtain similar savings.



*Workplace injuries pose a serious threat to your quality of life. It is important to secure an experienced advocate to ensure you*

### **What's Going On Here And Why Can't Everybody Do This?**

In the past, insurance companies all offered their community-rated HMOs to employers, unions, and their employees, and dictated the price. By moving to one insurance company, the City was able to en-

ter into an experience-rated insurance contract. If the City's workforce is younger and healthier than the community's, the move to an experience-

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## Workplace Injury

by: Richard Weisbeck  
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Staying safe at work is a job itself. Every year approximately 4.7 million workers are injured on the job and over 5,500 people die as a result of work accidents. For individuals working in industry, those employed on construction sites, and people working on our nation's busy highways, the risks are even greater. Working safely requires knowledge of the types of injuries which most commonly occur so you can protect yourself

and your co-workers.

**AUTOMOBILE ACCIDENTS:** Automobile Accidents are the leading cause of work related deaths in this country. The majority of the victims are males between the ages of 35 and 44. Truck drivers have the highest rate of death, with utility workers and construction workers also experiencing large numbers worker deaths. In the last decade over 15,000

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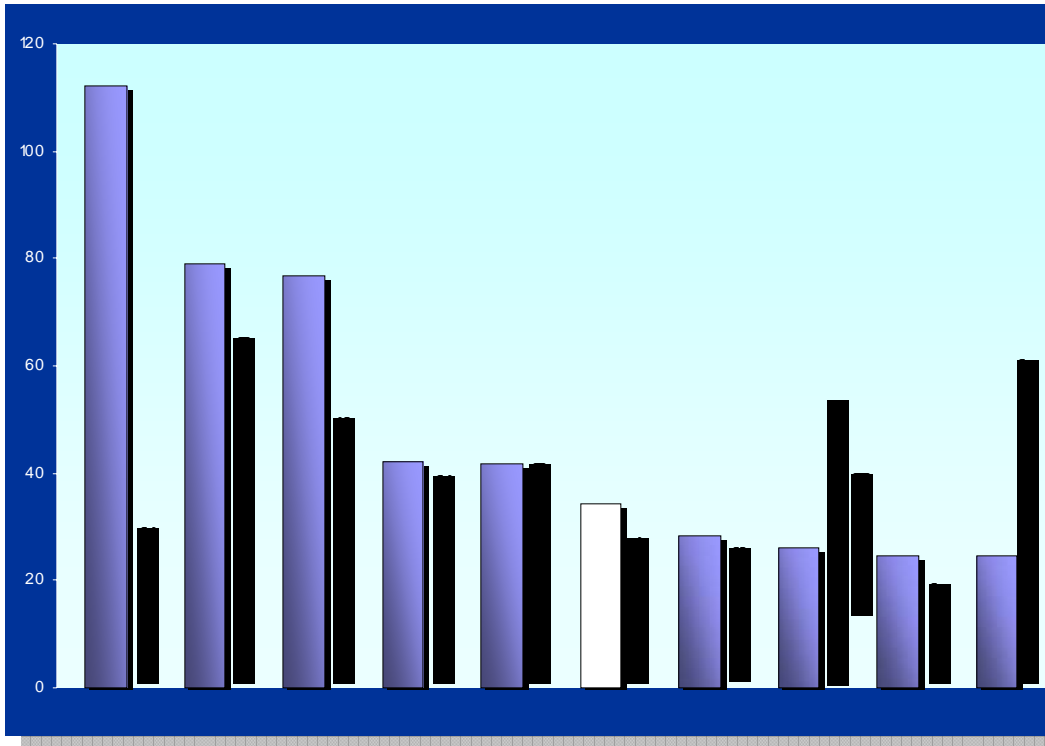
FIFTY YEARS OF EXCELLENCE IN SERVING EVERY LEGAL NEED

## Workplace INJURIES

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(check statistic) workers have died in on-the-job automobile accidents.

**MACHINERY ACCIDENTS:** Machinery Accidents are the second leading cause of occupational deaths. Machinery-related hazards are present in virtually every industry. Workers are exposed to these hazards most frequently in construction, farming, and manufacturing trades. Unsafe and defective machines, those without proper warning devices or labels, and machines which malfunction



\_\_\_\_\_ increase the dangers to all workers.

**CONSTRUCTION ACCIDENTS:** As those in the business know, construction is an extremely high hazard occupation. More than 17,000 construction workers died from injuries suffered on the job from 1980 to 1995. In fact, the construction industry lost more workers to traumatic injury death during that time than any other major industrial sector. The leading causes of death among construction workers are falls from elevations, automobile accidents, electrocution, machine accidents, and being struck by falling objects.

**HIGHWAY CONSTRUCTION:** Workers in highway construction zones face injury on a daily basis not only from construction machinery and vehicles but also from passing motorists. They work in areas with low lighting, low visibility, inclement weather, and high volume and high speed traffic. As a result, highway construction workers

face constant safety challenges.

**ELECTRICAL DANGERS:** Nearly all members of the workforce are exposed to electrical energy during the performance of their daily duties, and electrocutions occur to workers in many different job

categories. Electrocutions were the fifth leading cause of worker deaths in the past. The dangers are present in something as simple as a broken light bulb to complex overhead power lines.

This list highlights

areas where workers must be extra careful and highly aware to protect their own safety and the safety of their fellow workers. Unfortunately even heightened awareness of these on the job dangers won't prevent all accidents from occurring.

*If you are injured at work, please contact us immediately.* In addition to workers' compensation benefits, there are also other avenues we may be able to pursue on your behalf including actions against responsible individuals and companies. There are important time deadlines which must be met to ensure you receive everything you are entitled to in order to cover your medical costs, lost wages and to compensate you for your pain and suffering. Please call us so we can explain your rights and options.

# Protest Secondary Employer

by: Richard Weisbeck  
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The NLRA generally prohibits a union from pressuring a secondary employer. A secondary employer is an employer who is not directly involved in a labor dispute, but who is doing business with an employer that is involved with a labor dispute. For example, if a union's primary dispute is with a manufacturer, the union cannot picket a retailer that sells the manufacturer's goods.

## THE LAW BEFORE 2003

The Supreme Court ruled in 1988 that hand billing at a secondary site does not violate the NLRA, reasoning that more than mere persuasion is necessary to prove a violation of the law. There must be threats, coercion or restraint. Following this ruling, the National Labor Relations Board allowed for the use of signs, t-shirts, large foam hands and large banners by unions at a secondary site.

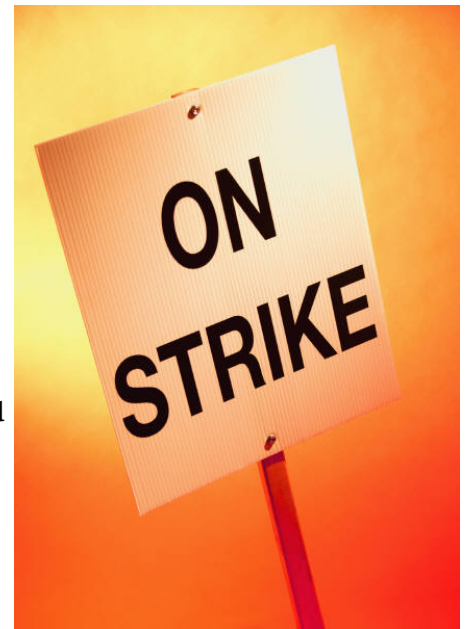
## CHANGE UNDER PRESIDENT BUSH

Last year, however, Bush-appointed General Council Arthur Rosenfeld started aggressively asserting that union activity at secondary sites was "coercive." Some administrative law judges have followed the General Council's lead and ruled that the use of banners and large inflatable rats constitutes coercion or picketing and is therefore illegal.

Federal courts have not yet agreed with the General Council. The latest rulings from Federal Courts in California have upheld the idea that the use of banners by union members at a secondary site did not constitute picketing.

## SECONDARY PRESSURE IN SUPPORT OF CERTIFICATION

The National Labor Relations Board has recently expanded the scope of allowable union activity at a secondary site. In Visiting Nurses, the employer refused to bargain in order to test the certification of the union. The union threatened to picket, and eventually did picket the United Way, which was a direct supporter of the primary employer. The NLRB ruled that the law banning secondary pressure did not apply when a union is forcing an employer to recognize the union's certification and right to bargain. Therefore, since the union was



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## LEGAL GUIDELINES FOR EXERTING SECONDARY PRESSURE

In order to keep the union and its members out of trouble, the following guidelines should be observed when pressuring a secondary employer. First, it is illegal to picket a secondary employer, so make sure everyone involved is clear when asked that union members are simply exercising

their freedom of speech (unless union certification is the dispute with the primary employer, in which case it is legal to picket). Second, members should not confront, threaten or coerce anyone at

the secondary site. Third, members should not block any entrance, exit or other access point to the secondary site. Fourth, handbills or pamphlets may be handed out. The handbills do not even need to mention that the dispute is with another employer; it is legal for a handbill to fail to mention that there is no direct labor dispute with the secondary employer.

Fifth, it is legal to use signs, t-shirts and large foam hands at a secondary site. Sixth, it is generally legal to use large banners. The safest bet here is to mention on the banner that the actual labor dispute is with a different employer, but this may not be required to keep the union out of legal trouble. Seventh, an inflatable rat may be used, but it should be used intermittently and members should claim that its intended use is to draw attention to pamphlets or handbills. Finally, it is illegal to threaten a secondary employer with illegal activity such as picketing.

## LM—2 Seminar

In our Spring 2004 issue of Law for Labor we highlighted the new financial reporting requirements (LM-2 reports) under the LMRDA.

In conjunction with the CPA firm Arcara & Borczynski, we conducted a half-day seminar with representatives from 25 different unions throughout Western New York.

Please let us know if we can help you with any problems you might encounter with the new different unions throughout Western New York. Please let us know if we can help you with any problems you might encounter with the new regulations and reporting requirements.

## Workers' Compensation, The Importance of Legal Guidance

*Continued from page one*

rated contract will save money. Further, the City and its unions have much more bargaining power with respect to administrative costs when they face the insurance company one-on-one.

### ***What's Community Rating Mean?***

Community rating means that an insurer offering health insurance must set the premium rate for a given health insurance policy using the pooled experience of all persons covered by that policy. The premium may not be based on the age, sex, health status, or claims experience of a specific group covered by the policy. This requirement extends to coverage issued by health maintenance organizations (HMOs).

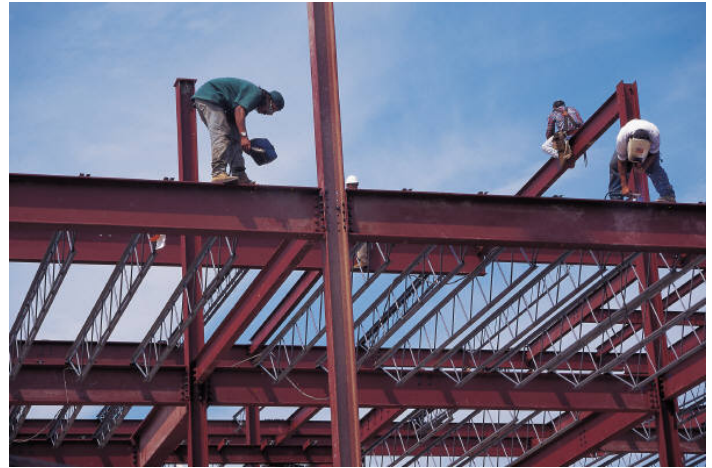
New York State requires that premium rates for all health insurance policies sold to small groups (groups with less than 50 employees) be calculated using a community-rated methodology.

### ***There Are 100 Employees In Our Group. Can We Move To An Experience-Rated Contract To Save Money?***

You could, but there is a big question as to whether you would save money. To get good rates initially, your demographics (the average age, sex of your group) must be more favorable than the community. After that, your rates will be based on your group's claims experience.

### ***Can We Join Together With Other Groups To Create One Large Experience-Rated Group?***

The Insurance Law prescribes what "groups" can be issued insurance policies. Unrelated employers cannot join together to form a legal group. The employees in the group must be employed by one employer, must be represented by a single union, or must be employed by members of an associa-



tion created for purposes other than health insurance. Unions and employers may join together in a trust fund provided the employers are in a common industry and a common geographic area.

### ***Do I Need An Insurance Company? Can I Just Self-Insure My Health Benefits?***

Most actuaries recommend that there be at least 500 employees in the group to adequately spread the risk of high-cost claims. Medium-sized employers, those with 500 up to 2,500 employees, frequently will self-insure with a stop-loss policy to guard against large claims.

### ***Who Can Help Me Make These Health Care Decisions?***

You should ask around for a good independent health care consultant to help you analyze your future decisions for health insurance. Insurance brokers are available, but keep in mind that they are paid a percentage of the premium that goes to the insurance company so their loyalty may be mixed.

## Comp. Coalition

by: Keith Williams  
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The UAW/USWA Worker's Compensation Coalition is made up of locals from the United Auto Workers and the United Steelworker's N.Y. State Workers' Compensation Committee. The Coalition was formed to improve education of its members and officers in the compensation law, to effectively lobby for improvements in legislation, and to retain attorneys to represent their members. At a recent meeting, Local 1122 of the Communication Workers Of America (CWA) was accepted into the coalition.

The newly expanded coalition held election of new officers. New officers are:

- Chairman: Peter Masich UAW Local 774 representing GM Tonawanda Engine Plant
- Co Chairperson: Dan Mangold Chairman USWA Compensation Committee
- Co Chairperson: Jan Borman, President Local 1122 CWA
- Recording Secretary: Tom Newton, Local 3692, USWA representing Dresser Rand Co.

The Coalition meets on a quarterly basis to transact business but more importantly to keep everyone up to date on issues relating to Workers' Compensation. These meetings are a great place for members to "share" their experiences regarding workplace safety issues and discuss strategies to deal with problems their members are experiencing with the compensation system. This joint coalition has a retainer agreement with Lipsitz, Green to represent its members before the Workers' Compensation Board and representatives from the firm attend the meetings of the Coalition to help answer any questions that members may have.

The Coalition has developed a comprehensive legislative reform



*Details of healthcare benefit programs can be overwhelming - but mastering all the rules and regulations is a must to properly serve your members.*

package and members have organized lobby days and visits to the Senate and Assembly to promote these reforms. These reforms were developed by the Coalition, with the attorneys at Lipsitz, Green helping to put them in bill form. Many of these proposals are now part of the AFL-CIO sponsored Compensation Reform Bill being considered in Albany. The full reform proposal was previously featured in Law for Labor.

When asked what prompted her to consider joining the coalition Jan Borman President 1122 CWA responded:

Peter Masich on the benefits of the Coalition: "When it comes to lobbying for legislative changes in the Workers' Compensation Law we can send delegations to meet with Senators and Assemblymen from many diverse workplaces. We become a more knowledgeable force. They can see that we do not just represent Autoworkers, but Steelworkers, and Communication workers and their families. We represent many different workplaces with

## Health Savings Accounts

*Continued from previous page.*

many different problems: workers from small shops; large industrial employers; office workers; telephone workers; public employees; all facing different workplace safety issues.”

“With the addition of Keith Williams, our retired former co-chairman from the Steelworkers, to the staff at Lipsitz, Green as a Licensed Representative we now have someone to talk to who really understands the workplace and the union environment. Keith understands contract language and what we as union leaders face on a daily basis. And he does a great job of helping our members make sense of a confusing compensation system. I can’t stress what a plus this has been for me personally.”

“As for education, there is no formal education for union officers in Workers’ Compensation. Learning from the Coalition members and from the attorneys and licensed representatives at Lipsitz, Green at our meetings is a great service to our members in a time of need.”

Dan Mangold, who represents Local 897 USWA, for workers at ITT Heat Transfer, comments:

“While the USWA maintains its own Compensation Committee, joining with the UAW and now the CWA gives our members a much larger base to learn from. Educating the local union leaders in how to help their members through the maze that is Workers’ Comp is a vital function of the union. Partnering with other unions and with law firms such as Lipsitz, Green gives us access

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# CONSTRUCTION ACCIDENTS



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to knowledge that is not readily available to working people.”

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“When it comes to lobbying political leaders on Compensation issues, we feel that the number of union members that this Coalition represents gives our collective voices a prominent place in the halls of the Legislature.”

Personal

Injury • Union Administration Matters • Labor Relations • Workers’ Compensation  
Benefit Funds • Social Security Disability

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