



Wishing You Happy Holidays and a Healthy, Prosperous 2026

Bidders on State Contracts Must Adopt “Gender-Based Violence and the Workplace” Written Policy

As part of this year’s budget, New York State added a new Section 139-m to the State Finance Law, which requires any employer submitting a competitive bid to a New York State agency on and after November 5, 2025 to certify that they have a written policy addressing “gender-based violence and the workplace” and that such policy meets certain requirements. Specifically, the statute requires competitive bids to contain the following statement:

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing gender-based violence and the workplace and has provided such policy to all of its employees, directors and board members. Such policy shall, at a minimum, meet the requirements of subdivision 11 of section five hundred seventy-five of the executive law.

A copy of the certification form is included in this Newsletter. While this certification is mandatory for all bids that are required to be competitive, it may also be required for bids on noncompetitive contracts at the discretion of the public entity awarding the contract. A bid that fails to comply with the new requirements will not be considered for award.

To help businesses comply, the New York State Office for the Prevention of Domestic Violence (OPDV) has published a model policy. This model policy and other related information can be found at <https://opdv.ny.gov>.

OPDV has published guidance in its website, including what gender-based violence and the workplace policies must contain, which specifically include the following provisions:

- **Share Information:** Employers must provide information regarding gender-based violence where employees can see and access it, including displaying the NYS Domestic and Sexual

Violence Hotline information and a gender-based violence and the workplace poster (found on the OPDV website).

- **Refer Employee-Survivors to Services:** The policy must require that the employer refer employees who disclose victim status to the NYS Domestic and Sexual Violence Hotline and/or a local service provider.
- **Prohibit Retaliation:** The policy must clearly state that discrimination or retaliation against employees who identify as victims or survivors of gender-based violence is prohibited.
- **Comply with Laws:** The policy must follow state law. For employers based in New York State, this means the policy must follow the SAFE Leave Act, New York State Human Rights Law, and any other relevant laws and regulations.
- **Offer Implementation Support:** OPDV is able to assist employers in developing and implementing this policy. Employers must provide information to supervisors and human resources, where available, about this technical assistance from OPDV. OPDV can be contacted at workplace@opdv.ny.gov.

NESCA

Holiday Reception & Dinner December 11, 2025 – Century House

***6:00 p.m. – Cocktail Reception and
Hors D’oeuvres***

7:30 p.m. – Dinner

Toys for Tots Presentation

Cost - \$110

Spouses/Significant Others Come for Free!



PRESIDENT'S MESSAGE

Our November 13th General Membership meeting was a great success, and we thank all of you who showed up to help support the efforts of NESCA. We would like to thank our presenters Rob Kind - Teal Becker CPA's, Rochelle Moore - The Bonadio Group and Nicholas Watkins - RBT CPA's, for their presentation on the "One Big Beautiful Bill Act of 2025" which offered some enlightened tax information on this law for everyone. I also want to thank Tom Zupan and Jolene Borell with RBT CPA's and Brandon Sunderlin with Johnson, Lauder & Savidge for similar presentations they made at our Mid-Hudson and Binghamton membership meetings.

I would like to encourage everyone to sign up for NESCA's December 11th Holiday Reception & Dinner at the Century House. This event will be sponsored by NESCA's Board of Directors and past presidents. Instead of our normal business meeting, we'll be getting into the holiday spirit by providing members with the opportunity to socialize with your NESCA friends and

colleagues. Members will be treated to a 1 ½ hour reception, complete with holiday music and great hors d'oeuvres, with a fantastic dinner to follow. Best of all, spouses and significant others are invited to attend free of charge! This event will also mark the 47th year of NESCA's participation in the U.S. Marine Corps Toys for Tots campaign, so please remember to bring an unwrapped toy with you to the meeting. A representative of the Marine Corps will join us for a special presentation of the toys we collect along with a check for more than \$4,500 raised at NESCA's October 9th Trade Show.

As we move into December, we hope that the Governor will sign our bill that prohibits the withholding of retainage of more than 5% on commercial construction projects valued over \$150,000. As you may recall, the Governor signed a 5% retainage bill several years ago. However, due to some nuanced language contained in the General Business Law, some believe that contract language can supersede the statutory 5% limit on retainage. This year's bill clears up any ambiguities contained in the law and makes it clear that retainage on commercial construction projects is limited to no more than 5%.

Thank you to all members who have paid their 2025-26 membership dues. I am very pleased to report that the vast majority of our members have renewed their membership in NESCA. This tells me that our members believe NESCA continues to be of great value to your businesses. I encourage all members to fully utilize your membership in NESCA and call the NESCA office for assistance on any number of construction and business-related issues. Our small staff of three are not rookies. They have a

collective 110 years of experience helping NESCA members deal with a wide variety of business matters.

In closing I would like to offer my warmest wishes for you and your families during this Holiday season and hope you get to spend some time with family and friends to enjoy this time of the year. Looking forward to seeing you all in the upcoming year at all our events.

Joe Jerkowski, President

NESCA NEWSLETTER

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COUNSEL'S MESSAGE

It is not unusual for subcontracts to require a subcontractor to sign a final release of claims and waiver of lien as a condition of receiving its final contract payment. It is important a subcontractor identifies and excludes any unpaid claims, unpaid owner/contractor directives or unresolved change orders from the final release & waiver.

It is also frequently incorporated within the subcontract agreement a separate provision which advises a subcontractor acceptance of final payment represents a release of all claims for extra work or claims for additional compensation. In the event a subcontractor requisitions and accepts final payment, or a payment designated final payment, when claims for change orders or other additional compensation claims remain pending, the subcontractor will have waived its payment entitlement claim. This action is classified as an accord and satisfaction. It means the subcontractor has accepted final payment in full

satisfaction of all claims which remain outstanding against the contractor. This outcome results even if the parties have agreed on a change order but it remains unpaid at the time of final payment.

The enforcement of this contractual waiver has been upheld even if the contractor was aware of the pending change orders or claims against the owner. Importantly, depending upon the circumstances, it is critical to understand the provisions of this clause may not be waivable. Furthermore, an attempt by a subcontractor to reserve its claims may not be enforceable unless agreed upon in writing with either the Contractor, Owner, or both.

The most effective manner to avoid the above situation is to carefully read the subcontract, especially the general conditions, and negotiate the removal of that clause prior to signing. Importantly, a review of the prime contract will also be necessary because of a potential "flow down" clause. If found, language will need to be added explicitly excluding that provision of the prime contract.

If a subcontractor has an existing subcontract with the referenced waiver clause it may still be possible to secure most of the final payment. This may be accomplished by requisitioning the contract balance while leaving a small token balance.

The most prudent thing a subcontractor can do to protect itself is to conduct a thorough review of the subcontract terms and conditions and eliminate these punitive provisions in advance of execution.

Walter G. Breakell, NESCA Legal Counsel

Question of the Month

Q. Does NESCA have any updated information on New York's pending electronic certified payroll requirements? When will the State provide more information about how this will work?

A. Soon (we hope). You may recall that late last year Governor Hochul signed into law legislation that will require contractors and subcontractors performing public work as well as for work on certain private "covered projects" to submit, on a monthly basis, certified payroll records directly to the NYS Department of Labor in an electronic format to be prescribed by the Department of Labor. Further, this law requires the Labor Department to develop and implement, by December 31, 2025, an on-line database of certified payroll records submitted by contractors and subcontractors. This database will be publicly accessible but will not include personally identifiable information. Failure by a contractor or subcontractor to furnish the required payroll records to the Labor Department will result in a penalty of one hundred dollars per day of violation.

NESCA checks the Labor Department's website on a regular basis for updated information. Currently, the website simply has a posting entitled "**Electronic Certified Payroll Submissions in 2025**" which states, "There is a new subsection 220-j in Article 8, which will require the Department of Labor to develop a publicly accessible online database of electronic certified payroll records, which will be available no later than **December 31, 2025**. All submissions of certified payroll records will be collected electronically through this forthcoming database, starting when the system is completed in 2025. Please watch this space for additional information."

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Contact: Shea Butler



NESCA's December 11th Holiday Reception & Dinner will be our 47th Annual Toys for Tots Night! Please remember to bring an unwrapped toy with you to the meeting. The Marine Corps will have a representative in attendance.

Calendar of Events

December 4, 2025

Board of Directors Meeting
Century House, Latham, 6 pm

December 9, 2025

4-Hour Erosion & Sediment
Control Training
Saratoga City Center, 1 pm

December 11, 2025

Holiday Reception & Dinner
Century House, Latham, 6 pm

December 17, 2025

ESSA Board of Directors Meeting
Via Webex, 10:30 am

December 18, 2025

Notary Public Seminar
Building Industry Center, 12 noon

January 15, 2026

Board of Directors Meeting
Italian American Comm. Ctr. 5 pm

January 15, 2026

NESCA Membership Meeting
Italian American Comm. Ctr. 6 pm

January 27-30, 2026

OSHA 30-Hour Course
10 Airline Drive, Albany

Milestone Member Anniversaries

Above and Beyond Fire Safety Security, LLC – 5 Years

Veith Electric, LLC – 15 Years

Henderson-Johnson Co., Inc. – 25 Years

J&J Sheet Metal, LLC – 25 Years

J&K Plumbing & Heating Co., Inc. – 25 Years

Safety Assistance Available From NYS DOL

The New York State Department of Labor's On-Site Consultation Program is a free and confidential safety and health consultative service that is available to small and medium-sized businesses operating in high-hazard industries or performing high-hazard activities. The program is funded by the U.S. Department of Labor and the NYS Department of Labor. The program's mission is to help business prevent workplace injuries and illnesses and to assist them with OSHA regulatory compliance.

The cost associated with a workplace injury can be staggering. There are direct costs to the employer, such as medical and insurance bills, legal fees, and OSHA fines, but there are also hidden, indirect costs. Those costs are related to the loss of productivity, staff turnover, worker training, clean up, and repairs. Each year the On-Site Consultation Program staff help hundreds of businesses across the state by providing cost-effective solutions to safety and health issues. The service is independent from state and federal enforcement activities, will help your business to reduce workplace accidents by identifying hazards, and will assist you in implementing safety and health programs required by OSHA and complying with OSHA regulations. For more information, contact the On-Site Consultation Program at 518-457-2238.



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