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September 2024

Paid Prenatal Leave Effective January 1, 2025

Beginning on January 1, 2025, workers in New York who are pregnant may also have additional paid time off available to them for doctor's appointments, procedures, or other types of prenatal care.

Specifically, all employers will be required to provide pregnant employees twenty (20) hours of paid prenatal personal leave during any fifty-two week calendar period. Paid prenatal personal leave may be taken for the health care services received by an employee during their pregnancy or related to such pregnancy, including physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy. Paid prenatal personal leave may be taken in hourly increments, and benefits for paid prenatal personal leave shall be paid in hourly installments.

Employees must receive compensation at the employee's regular rate of pay or the applicable minimum wage, whichever is greater, for the use of paid prenatal personal leave. Employers will not be required to pay an employee for unused paid prenatal leave upon such employee's termination, resignation, retirement, or other separation from employment.

This new paid prenatal personal leave is part of New York State's Paid Sick Leave requirements, and separate from New York State Paid Family Leave, which means that paid prenatal leave must be provided **in addition to** the "regular" paid sick leave benefits required since 2020 under Section 196-b of the NYS Labor Law. More information about paid prenatal personal leave is expected to be posted on the NYSDOL website in the coming months.

NESCA members are reminded that Paid Family Leave (as opposed to Paid Sick Leave) provides eligible employees job-protected, paid time off to: bond with a new born, adopted or fostered child; care for a family member with a serious health condition; or assist loved ones when a spouse, domestic partner, child or parent is deployed abroad on active military service. The New York State Department of Labor has developed several resources to help employers communicate Paid Family Leave updates to your employees, including:

- Model Language for Employee Materials – Updated for 2024 – provides model language employers can use, either in an

employee handbook or other written materials, and customized based on your PFL policies and procedures.

- Employee Notice of Paid Family Leave Payroll Deduction for 2024 – a template employers can use to tell employees what their expected payroll deduction will be.
- Statement of Rights for Paid Family Leave – outlines employees' PFL rights and steps to apply.
- PFL At-A-Glance – provides a snapshot of the benefit, along with information on who can request Paid Family Leave and how.

New York State offers complete details on Paid Family Leave at [PaidFamilyLeave.ny.gov](https://www.paidfamilyleave.ny.gov), where you can find the above employer resources along with frequently asked questions and other information.

Mark Your Calendar!!

***NESCA's 43rd Annual
Trade Show***

***Thursday, October 10, 2024
The Century House
Route 9, Latham
4:00 – 8:30 p.m.***

***See the latest in construction
industry technology, equipment,
products, and services while
networking with industry peers!***

More information to come!



PRESIDENT'S MESSAGE

As summer quickly transitions to autumn, I want to extend my deepest gratitude to the more than 80% of our dedicated members who have already fulfilled their 2024-25 dues investment. Your promptness and commitment reflect the strong sense of community and shared purpose that defines our organization.

A special shout-out is also due to those who have generously contributed additional voluntary donations to our sustaining dues, PAC, and college scholarship funds. Your extra support not only fortifies our financial base but also amplifies our capacity to champion the causes that matter most to subcontractors and suppliers. Your unwavering confidence in NESCA's continued efforts—whether it's lobbying for beneficial legislation or keeping you informed about evolving business requirements—is both heartening and inspiring.

As we usher in the fall season, we have several exciting events lined up that promise to bring our organization together in meaningful and enjoyable ways:

- **Annual Golf Outing:** Join us on September 9th at the picturesque Shaker Ridge Country Club for our much-anticipated golf outing. With 252 golfers registered, this event is set to be a highlight of the season. It's an excellent opportunity to connect with fellow members, enjoy a round of golf, and celebrate our collective successes in a relaxed and social setting.

- **43rd Annual Trade Show:** We are thrilled to host our premier Trade Show on October 10th at the Century House, in Latham. Exhibitor registration forms have been sent out, and I encourage you to secure your exhibit space as soon as possible. Our Trade Show is renowned for its energy and engagement, and it's always a sell-out event. Don't miss this chance to showcase your products and services and to engage with our NESCA community.

- **Membership Meeting:** On November 14th, NESCA will feature a critical presentation by attorney Don Hillmann of Couch White, LLP. This meeting will delve into the new law requiring contractors and subcontractors involved in public work to register with the NYS Department of Labor. If your work intersects with public projects, this session will be indispensable in understanding these new registration requirements, which take effect on December 30th.

As we embrace the fall months, it's also an opportune time to reflect on the importance of expanding our membership. We are continuously striving to broaden our reach and enhance our engagement with both current and prospective members. This is where your support becomes crucial. We encourage you to help us grow our community by inviting colleagues and industry peers, as potential new members, to join us. A


larger and more diverse membership base strengthens our collective voice and impact. Moreover, the sharing of information among subcontractors is vital to our collective success. By exchanging insights, experiences, and best practices, we foster a more informed and cohesive industry. This collaborative spirit not only empowers us individually but also enhances our collective ability to navigate challenges and seize opportunities. Your active participation in information sharing—whether through attending events, joining discussions, or contributing to forums—helps build a stronger, more resilient network for all.

Looking ahead, NESCA, along with our state affiliate Empire State Subcontractors Association (ESSA), will continue to address key issues and develop a robust legislative agenda for the 2025 session. We are particularly focused on advocating for legislation that would require private developers on "hybrid" projects exceeding \$250,000 to post a payment bond or an irrevocable letter of credit. These hybrid projects, which involve private projects built on public land, currently leave contractors, subcontractors, and suppliers without lien rights—a gap we are determined to address.

Thank you once again for your steadfast support and engagement. Let us embrace this season of change with renewed enthusiasm and a commitment to growing and strengthening our organization. Together, through shared knowledge and collective action, we can continue to make a meaningful impact and achieve great things.


Bryan Berry, President

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INSIDE 300 FIRMS 2024

ALBANY BUSINESS REVIEW BEST PLACES TO WORK

B P F W

TOP WORK PLACES 2024



COUNSEL'S MESSAGE

This column has historically placed great emphasis concerning full compliance with the multitude of written notice requirements to be given a prime contractor within subcontracts. Those notices may address, but are not necessarily limited to, circumstances of changed site or contract conditions, work scope changes that present a claim for additional compensation or additional contract performance time. They can also address several additional circumstances dictated by the terms of the subcontract or prime contract.

It is also important to read the actual contract language to fully comply with the content of the written notice. It may mandate an identification of additional contract performance time, the projected labor & material cost attributable to the claim and an identification of potential impact on the master schedule. This latter requirement may be a prime contract condition with the owner which is being contractually flowed

down by the prime contractor for compliance.

As difficult as compliance with the contractual notice requirements may be, and as draconian the consequences of non-compliance, there exist written notice of claim requirements that are not explicitly identified in the contract other than using the words "or otherwise required by law." This is where the adage "ignorance of the law is no excuse" evolved!

The New York State Education Law §3813 contains a requirement for a **written Verified Notice of Claim** prior to any action (litigation) or special proceeding (bid challenge, etc.) was delivered to the Board of Education within three months after accrual of the claim or alleged wrongdoing. Failure to comply with this law will result in your claim or proceeding being dismissed by the court. Once again, this requirement is not explicitly set forth within the prime or subcontract, but subcontractors must comply through the prime contractor to prosecute its claim against a school district.

Prime contractors who directly contract with agencies of the State of New York are required by the Court of Claims Act to serve a formal written verified Notice of claim within 45 days of the State **mailing final payment. This requirement flows down to subcontractor's claims through prime contractors.**

Similarly, there are various semi-public Authorities of the State of New York which contractually require written verified Notice of Claim prior to a contractor being authorized to seek recovery against the authority. The Dormitory Authority and State University Construction Fund are examples of such authorities.

The above information provides notice to prime and subcontractors to be aware of written notice requirements not only in your contract but mandated by law for which you may not be immediately aware. It is wise to research these contract and statutory notice mandates at the beginning of the contract bid.

Walter G. Breakell, NESCA Legal Counsel

Question of the Month

Q. I'm an early finishing subcontractor who primarily performs private commercial work. I understand that my lien rights expire eight months after I last perform on the project, but my retainage is generally held for long after that point in time. What can I do if my retainage is not paid when the project is completed?

A. One thing you can do is....file a mechanic's lien! In 2011, NESCA drafted legislation that was ultimately signed into law to deal with this very problem. Subcontractors performing work on most private construction projects have up to eight months after their final performance of the work or furnishing of materials to file a notice of lien for unpaid amounts due. For many subcontractors, particularly subcontractors who complete their work in the early stages of a project, the 8-month statute of limitations for filing a notice of lien often expires, not only before the construction project has been completed, but long before the payment of retainage has become due under their subcontracts. The 2011 amendment to the lien law allows subcontractors to, in essence, reopen their lien rights and file a lien for unpaid retainage up to 90 days after the retainage was due to be released.

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Thank you to all members who have paid your 2024-25 membership dues. A special thank you is reserved for the following members who have made voluntary Sustaining Dues, PAC and Scholarship Fund contributions:

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T&C Stone and Gravel ★ Three D Rigging & Construction ★ WPNT Construction

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