



# NERCANEWS

NORTH / EAST ROOFING CONTRACTORS ASSOCIATION INC.  
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## October 2017

### November LEARN w/ NERCA Wednesdays

Thank you to all those who attended NERCA's October Webinar Wednesday. We had great turnout on the webinar for Pete Shackford to explain the OSHA Recordkeeping rule and walk us through the Injury Tracking Application.

Our next Webinar Wednesday is the first Wednesday of November. We will have Todd Bairstow of [Keyword Connects](#) joining us to discuss how mobile technology is changing the online marketing world for roofing lead generation.

Please join us!

**L** LEARN with NERCA  
**E** At 1:00 PM on the 1st  
Wednesday of Each  
Month  
**A** next November 1st  
**R** 5 Ways Tech has  
Changed Online  
Marketing for  
Contractors  
w/ Todd Bairstow



**NERCA**

NORTH/EAST ROOFING CONTRACTORS ASSOCIATION

### New York City Safety Bill Enacted

Roofers and other construction workers will now have to take 40-55 hours of safety training and each worker who doesn't could cost their employers up to \$25,000 in fines.



This comes as the NY City Council passed the so-called Safety Bill after more than eight months of debate. The city already requires construction workers to pass the OSHA 10-hour course. The bill, expected to be signed soon by Mayor Bill de Blasio, is set to take effect March 1, 2018. The deadline for full compliance is yet to be determined, but can't be later than Sept. 1, 2020.

Critics of the bill have questioned whether there are sufficient numbers of trainers available to meet the need and how workers who are unemployed currently will get the training they need if contractors will not pay for it. However, to cover some training costs for workers who can't afford to pay on their own, the bill budgets about \$5 million annually in tax dollar support.

Adding to the uncertainty, the specific details of the required elements for the training are still unknown. Most expect it will incorporate some of the OSHA 10 curriculum, but that might negate the desired effect since that was already required.

A task force of 15 representatives of workers, unions, and construction companies will be appointed by the mayor or speaker of the City Council. The task force must recommend to the city building commissioner specific topics classes will cover and the number of instruction hours by March 1, 2018.

## **GUEST CONTRIBUTOR SECTION**

Philip Siegel is a member and shareholder of Hendrick, Phillips, Salzman & Siegel. He focuses on labor law, including OSHA citations, contract consulting and litigation. He will hold a webinar for NERCA on December 6th at 1 pm.

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### **High times: Striving for a drug-free workplace in states that permit marijuana use**

*By: Philip Siegel – Reprinted with permission*

It seems with each election season or legislative session, another state passes a law legalizing marijuana for medicinal or recreational purposes or both. Indeed, 28 states have deemed medical marijuana legal, and eight states and the District of Columbia have deemed recreational marijuana use legal. Yet marijuana remains illegal under federal law. The conflict between state and federal law can be particularly vexing for roofing contractors.

#### **State laws**

Roofing contractors operating in states where marijuana use is legal often are confused and unsure about whether they can continue to discipline employees for marijuana use in accordance with drug-free workplace policies or need to accommodate marijuana in the workplace. The answer, of course, depends on the specific statutory language. But though certain states have enacted laws legalizing marijuana use, many laws only remove the state criminal penalties associated with marijuana use and do not provide employment protection for employees who use marijuana.

For example, in Massachusetts, the law does not regulate the conduct of a private employer or protect an employee from being discharged because of authorized medical marijuana use and, instead, expressly provides employers are not required to accommodate any on-site medical use of marijuana. New Jersey and Vermont have similar laws, and provide no employment protection for marijuana users.

Other states provide some protection for employees who use marijuana consistent with state law. For example, Connecticut, Delaware, Maine, New York and Pennsylvania each have laws that provide some manner of protection for employees who are registered medical marijuana users. Most of these laws protect marijuana users from discriminatory action when hiring, terminating, and establishing terms and conditions of employment. Generally, the laws have exceptions that expressly permit an employer to discipline a medical marijuana user for violating a workplace drug policy or failing a drug test.

#### **Federal law**

It is important to remember marijuana use remains illegal under federal law. The federal Controlled Substances Act lists marijuana as a Schedule I drug, and there are no exceptions for medicinal use. This has important legal consequences, particularly with regard to claims under the federal ADA.

The ADA prohibits discrimination based on someone's disability. Under the ADA, an employer must provide a reasonable accommodation for the known physical or mental limitations of an employee with a disability to allow them to perform the essential functions of the job unless it can show the accommodation would impose an undue hardship on its business.

An employee with a prescription for medical marijuana may claim the underlying medical condition qualifies as a disability. The employee then may ask the employer to accommodate marijuana use as a reasonable accommodation that would allow the employee to perform essential job functions. However, because marijuana is an illegal drug under the federal Controlled Substances Act, allowing use of medical marijuana does not qualify as a reasonable accommodation. Moreover, the ADA expressly excludes current users of illegal drugs from its definition of "qualified individuals with a disability," and some courts have said medical marijuana users cannot be protected by the ADA.

#### **Existing policies**

In addition to providing awareness training for field supervisors, roofing contractors located in states with marijuana laws should review existing drug- and alcohol-use policies. Many roofing contractors will find policies put in place before state legislation legalizing the use of marijuana now are illegal.

Policies most susceptible to claims of illegal discrimination under state law are those that provide for automatic termination in the event of a positive drug test for an illegal drug. Policies such as these should be revised to reflect they apply to drugs illegal under either federal or state law.

Because all state marijuana use laws allow employers to discipline employees who are impaired at work, policies should be revised to reflect signs of impairment. Including signs of impairment in a written policy also helps supervisors determine whether someone will be subject to reasonable suspicion testing. Awareness training regarding the signs of use, abuse and impairment and examples of impairment in a drug testing policy that provides for reasonable suspicion testing may later help defend against a disability discrimination claim from an employee who tests positive on a reasonable suspicion drug test.

## RI Enacts Paid Sick Leave Law

Under the Healthy and Safe Families and Workplaces Act ([HB 54313B](#)), signed by Governor Raimondo at the end of September, Rhode Island employers with at least 18 employees must provide their employees with paid sick leave. The new law goes into effect July 1, 2018.

The Act requires employers to provide 24 hours of paid sick leave in 2018, 32 hours in 2019, and 40 hours in 2020. The paid sick time accrues with one hour of paid sick time for every 35 hours worked. Salaried employees who are exempt from overtime requirements under the FLSA are presumed to work 40 hours per week, unless their normal work week is less than 40 hours.

Employers with fewer than 18 employees are not required to provide paid time off; however they require the employers to allow unpaid sick time in the same amounts of 24 hours in 2018, 32 hours in 2019, and 40 hours thereafter. This means that employers may not dismiss or discipline an employee for taking sick days.

Accrued sick time must either carry over from year to year, or employers may pay their employees unused sick time at the end of the year. However employers who pay off the time must then make immediately available the required amount of paid sick leave at the beginning of the subsequent year. In addition, employers that provide all of the required paid time off at the start of each benefit year do not need to track accrual, allow carry-over, or pay out upon termination.

Employees may use their sick leave in a variety of common circumstances, such as:

- For an employee's or family member's illness, injury, or health condition;
- When the employee's workplace or a child's school is closed due to a public health emergency; and
- For reasons relating to domestic violence, sexual assault, or stalking.

Employers whose paid time off policies meet the amount and other requirements of the Act (including the reasons for which time off may be used) are not required to provide additional paid time off, as long as the policies make clear that additional time will not be provided.

If you have any questions or need any clarification on the law, please don't hesitate to contact the Association office or John Ferrante at [jferrante@nerca.org](mailto:jferrante@nerca.org)

## The North East Roofing Educational Foundation would like to thank our Fall Golf Outing sponsors

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## We'd also like to congratulate the winners!

### First Place – 61

Mark Puleo Steve Amoroso Kevin Malloy Rick Nelson

### Tie - Second Place – 62

Tom Gunning Skip Gentile Paul Cappello Jay Curry

### Tie - Second Place – 62

Rich MacKenzie Jeff Hunt Eric Asikainen Chris Quercia

### Longest Drive

Chadd Lewis

### Closest to the Pin

Don Gleason

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## LEGISLATIVE CORNER

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### **NATION:**

President Trump has taken steps to roll back key parts of Obamacare which were being enforced only by executive order. These include; allowing employers with sincerely held religious beliefs to restrict coverage of birth control, ending subsidy payments in the insurance marketplace, and allowing associations of business to purchase lesser insurance coverage across state lines. Experts predict this will cause turmoil within the healthcare marketplace, potentially increasing costs even for those not involved with the Obamacare exchanges.

### **CONNECTICUT:**

Connecticut has eclipsed the 100 day mark without a state budget. Gov. Dannel Malloy is able to approve critical spending by executive order, while items like local aid and statewide grants are being held until a budget is approved. The Governor was forced to veto a Republican budget despite the House being held by Democrats and the Senate being an even split. Democratic leaders expect movement the week of Oct. 23, while leaders have been discussing the distribution of state education funding, details for a revised state spending cap and how to cover the cost of teacher pension payments.

### **MAINE:**

After months of work, the Marijuana Implementation Committee has released its proposal outlining a structure for retail marijuana sales in Maine. There was a public hearing at the end of September and the Committee is now holding work sessions to put the bill out in a Special Session. Among other provisions, the legislation proposes to allow licensed retail marijuana stores to sell their product online and at drive-up windows. This proposal lacks the support of Senate Chair Roger Katz, and is being criticized as making it too easy to buy a drug that is still illegal under federal law. Proponents of the measure contend that these purchase options are already available for alcohol and should be permitted for marijuana. Proponents have indicated that their priority is to fight the proposed 20% sales tax on marijuana.

### **MASSACHUSETTS:**

Massachusetts is considered a strong contender for Amazon's heralded 2<sup>nd</sup> national headquarters. In addition to Boston itself, about 12-15 other municipalities are expected to make a bid for the opportunity. Already, officials in Rockland, Weymouth, and Abington have approved a proposal to offer Union Point, the site of the former Weymouth Naval Base. Proposals are due by October 19<sup>th</sup>.

### **NEW HAMPSHIRE:**

The Speaker of the NH House is looking to move to the state's agriculture department. Speaker Shawn Jasper says he's been eyeing the commissioner's job for a while after growing up as a poultry farmer. His grandfather and father bred chickens for nearly 75 years in Hudson and Jasper says he keeps up on agriculture issues through the legislature and as an advisor to UNH's agriculture fraternity. Jasper says he will remain Speaker until he's confirmed as commissioner. If he gets the job, the House will elect a new speaker at the end of November. Deputy Speaker Gene Chandler and Rep. Laurie Sanborn have expressed interest in the Speakership, with Sanborn criticizing Jasper's tenure, specifically the defeat of right-to-work legislation and the House inability to pass its version of a state budget bill five months ago.

### **NEW JERSEY:**

The Professional Fire Fighters Association of New Jersey has joined [Build with Strength](#), a coalition of the National Ready Mixed Concrete Association. The goal of the coalition is to enact more stringent building codes in New Jersey. Proposed legislation would set conditions on the use of lightweight, wood-framing in large buildings. This newsletter has previously reported on some of the woodframe construction fires which have drawn scrutiny.

### **NEW YORK:**

A group of Democratic lawmakers are urging Gov. Cuomo to reform the Scaffold Law in his 2018 budget proposal. In an [open letter](#), 7 Assembly members argued that the Scaffold Law should be reformed. The statute requires business owners and contractors to be held fully responsible when a worker is killed or injured in a fall on or from a scaffold. Cuomo has signaled support for reforming the law, but he also said that "you can't change" the law due to the heavy support from building trades and trial lawyers. Proponents believe that the financial impact of reform will convince the governor to take action.

### **PENNSYLVANIA:**

Two state bills seek to break up building inspector monopolies, but several towns and counties say the laws would make things worse. House Bill 1469 and Senate Bill 663 seek to amend Pennsylvania's Uniform Construction Code by requiring any town hiring a third-party building inspector to offer multiple inspectors to choose from. Since July, several towns in have passed resolutions opposing the bills. About 90 percent of towns that follow the current code either hire their own inspectors, share an inspector among several towns or hire a third-party company. Erie County state Sen. Dan Laughlin, and Carbon County House Rep. Doyle Heffley, both said they introduced bills due to the actions of a few expensive and unethical inspectors. HB 1469 narrowly passed the House in a 107-87 vote and has remained in the Senate's labor and industry committee since July 6. SB 663 is currently awaiting a final consideration on the Senate floor.

### **RHODE ISLAND:**

Recently, the Senate Finance Committee questioned municipal-finance experts, consultants and MLB executives regarding the financing of a new stadium for the Pawtucket Red Sox. Senators wanted to know who would back the city's bonds if revenue falls short, what amount of supplementary development would be built around the new ballpark to help pay the bills and why team executives believe a new stadium would reverse its years-long attendance decline. In public statements, opponents called for a referendum on whether to issue \$38 million in bonds to be paid back by the state and City of Pawtucket to raise cash for an \$83-million stadium project. Supporters outlined why they believe the stadium will help revitalize Pawtucket. The committee has set a seventh hearing date for Oct. 24.

### **VERMONT:**

Gov. Phil Scott signed an executive order creating the Governor's Marijuana Advisory Commission that will review issues regarding the legalization of marijuana and potential legislation to create a regulated retail market for pot by 2019. The first-term Republican is creating the commission after vetoing a bill in June passed by the Democratic-led Legislature that sought to legalize the possession and cultivation of marijuana beginning July 1, 2018.