

Top 100 Celebrates its Silver Anniversary

The 2011 Rochester Top 100 gave us double cause for celebration.

More than 1,800 guests gathered for a special dinner gala the Nov. 3 event – which also serves as the Rochester Business Alliance’s annual meeting, to cheer on the top companies and to mark the 25th anniversary of this popular program.

“It is simply wonderful how much this program - my favorite event of the year – has grown in 25 years,” said Sandy Parker, president and CEO of the Rochester Business Alliance, which co-sponsors the program with the accounting firm KPMG LLP.

“It’s my favorite program because it gives us a chance to celebrate both the considerable accomplishments of these companies, as well as the remarkable resiliency our business community has shown as our entire nation continues to wade through a challenging economic cycle.”

At the annual meeting, RBA also announced its board officers for the coming year, as well as new directors.

Chairing the board in 2012 will be Susan Holliday, president and publisher of the Rochester Business Journal. Daan Braveman, president of Nazareth College will serve as

vice chair and secretary and David Klein, CEO of Excellus BlueCross BlueShield will be treasurer. Newly elected to the board were John Batiste, president and CEO of Klein Steel Service, Inc., Andrew R. Gallina, president of Gallina Development Corp., Rick A. Heinick, corporate vice president for Global Human Resources and Transformation at Bausch + Lomb, Michael G. Kane, president and publisher of the Democrat and Chronicle, Mark S. Lynch, president of NYSEG and RG&E, Terry Taber, chief technology officer at Eastman Kodak Co. and Kevin Warren, president of U.S. Customer Operations at Xerox Corp.

But the highlight of the event was the 25th Annual Rochester Top 100. Competition this year was strong, with 182 companies submitting applications. To be considered, companies must be headquartered in the nine-county Greater Rochester region, and have revenues of at least \$1 million in each of their three most recent fiscal years. Entrants are then ranked according to revenue growth, factoring in both dollars and percentage increase.

The companies on the 2011 Rochester Top 100 had combined revenues in the most recent fiscal year of \$9.4 billion, and employ nearly 91,000 people in construction, financial services, manufacturing, retail, service,



Sandy Parker stands with the top three 2011 Top 100 Companies executives - (l to r) RailComm, Manning & Napier Advisors LLP, and Real Lease Inc.

technology and wholesale/distribution.

Topping this year’s list – Manning & Napier Advisors LLC, financial advisors that employ 414 at its Perinton facility. In the second spot was RailComm, a Fairport business that provides software-based solutions to the railroad industry, and in third was Real Lease, located in Pittsford, which does commercial, municipal and energy equipment leasing.

Some of the companies on the list are names everyone recognizes, such as Wegmans Food Markets, which has been a Top 100 company for all 25 years. And there are newcomers, such as Cast Industries and KJT Group, both founded in 2007. ★

Mark Your Calendar...

Find out what your membership can do for your company at the next Membership Orientation Dec. 7

Join us for information conversation with our CEO Sandy Parker here at the RBA 8-9 a.m. Dec. 8

For more events, visit us online at www.RochesterBusinessAlliance.com

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Board Officers

Thomas F. Judson, Jr., Chairman
The Pike Company

Susan R. Holliday, Vice Chair and Secretary
Rochester Business Journal

David H. Klein, Treasurer
Excellus BlueCross BlueShield

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*This newsletter is the official newsletter
of Rochester Business Alliance, published at
150 State St., Rochester, NY 14614.
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Follow us on...



From the President and CEO

As 2011 draws to a close, we at the Rochester Business Alliance are already focusing on ways to help our members make the connections to the resources, information, and opportunities that can help their businesses thrive and grow.

We understand that health care costs are a large obstacle on the business path and we are making investments and collaborating on behalf of our members to make improvements in our services that affect your business. In spite of the high cost of health care, member companies continue to offer health care benefits to their employees because they believe it is an important benefit. But for the overall health of their entire business, they still have to control costs where they can. One of the many services that RBA provides to help members stay competitive is benchmarking local trends, including health care costs.

In our 2011 Health Benefits Survey, 68% of survey respondents reported they anticipate an average health insurance premium increase of 12% for 2012. However many employees are unaware of the significant investment that companies make towards benefits. The survey reported that employers contributed an average of 68% of monthly health care premiums, which employers reported equates to about 9% of payroll cost.

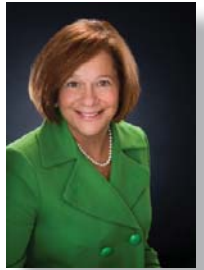
In an effort to help combat rising health insurance costs, we've been proactive with the efforts of the Health Care Initiative including the High Blood Pressure Collaborative. This particular initiative is focusing on increasing awareness to reduce the level of health complications linked to high blood pressure reduce health care costs to the community and to employers.

Another avenue we provide to help control these rising costs is our ability to operate as a licensed health care broker. Our dedicated staff will help you analyze the costs and benefits and select a suitable health insurance plan for your company's needs.

We're also offering a new way to purchase benefits for your business. I'm very excited to announce that RBA is partnering with Liazon, a company that is reinventing the employee benefits model in the United States. (Please check out their advertisement in this

newsletter on page 10.)

Liazon has saved employers millions of dollars while expanding employee choice and coverage through its Bright Choices® Exchange, where employees can buy benefits online that fit their individual needs using money allocated by their employer.



Sandy Parker

Bright Choices gives employees access to an array of benefit choices that are superior to what even Fortune 500 companies offer, including a variety of health care plans, dental, vision, critical illness, and even telemedicine.

The Bright Choices Exchange educates employees about coverage options, guides them to make the right decisions, and helps them buy and manage all of their benefits using friendly technology and individualized support.

By creating transparency and choice in the benefits market, the Bright Choices Exchange has created "a better way to buy benefits".

- Employees are more satisfied because they get the specific coverage they need
- Employers save money, control over ever-rising insurance premiums, and simplify their benefits administration

Liazon is partnering nationwide with the leading insurance and financial services companies to offer a broad range of cost-effective and varied benefits options. Liazon also serves thousands of customers nationwide, ranging in size from micro-employers to companies with more than 2,500 employees.

Businesses in New York state have already saved millions of dollars using Bright Choices. You can learn more on the Bright Choices page on our website, or by contacting Liazon at (888) 280-3958.

Here's wishing you and yours a happy holiday season – and a prosperous 2012. ★

Sandy Parker

2011 Top 100 Dinner Gala a Huge Hit, Thanks to Sponsors' Generosity

The Rochester Business Alliance would like to thank those who made the 25th Annual Rochester Top 100 program possible. With the sponsors' support, we will continue to grow and bring visibility to the Rochester Top 100 Companies.

Click here to view the list of sponsors who have supported the 2011 Top 100 dinner gala, held Nov. 3 at the Convention Center.

If you're in the market for a particular product or service provided by these sponsors, please consider doing business with them. It is only because of the Top 100 partners and sponsor's support and commitment to the Rochester community and the Rochester Business Alliance, that we are able to make the Top 100 program available to the Rochester region. ★

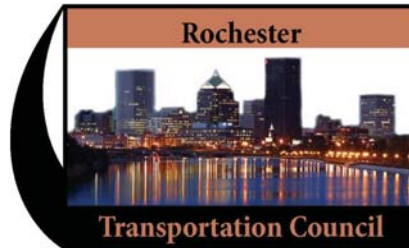


Transportation Council Seeks Participation to Adopt Two Families this Holiday Season

The Transportation Council of Rochester is sponsoring two families for the 2011 Holiday season through the Mary Cariola Center and have at least one child with special needs that attends the Center school.

Transportation Council members, their employers and the community are welcome to donate a monetary contribution or a gift from the "Wish List" provided by the Center. In addition, food items and donations are being collected for a Holiday Food Basket.

Without this event, these families would not experience the joy and happiness of the



holiday season. The Transportation Council is looking for your generosity for these needy and deserving families. Any contributions are greatly appreciated. Contact Amy Platenik at 585-256-4642 for information about how to donate. Donations will be accepted until December 2. ★

New Member Profile: Odyssey Controls

We welcomed Odyssey Controls as a new member company in August, and had and had a moment to get acquainted with President Dan Harmon to learn more about this small business.

Q: Tell us about your company.

A: Odyssey Controls provides manufacturers with design and fabrication of custom automated control systems. I started Odyssey Controls in 2004, after about 12 years working with my father's company in the automation and controls industry. We have moved from having five employees 18 months ago to 15 employees this year, and we anticipate hiring more in the next 18 months as we expand.

Q: What prompted you to join the RBA?

A: Involvement in the local business community is very important to us, and RBA represents an excellent resource for the entire business community to tap into. It offers an excellent opportunity to share ideas with businesses of all sizes in the Rochester area, and hopefully to help Rochester come back as a leading place to do business in New York.

Q: What business/economic challenges are you currently facing as a small business?

A: Our challenges are unique because we actually have an opportunity to grow our business in an economic climate that is difficult for many other companies. As manufacturers streamline, our services that help them automate become more and more important. Finding quality people with experience in this industry is important and challenging.

Q: What is your business outlook for 2012?

A: We are encouraged by the outlook for 2012. We pride ourselves on the quality of people we have, and the services we provide. This past year, we underwent a significant expansion in both personnel and facilities. We will have the ability to undertake a significant increase in the number and size of automation control projects that we handle for our customers. ★



Business After Hours: Holiday Jam at the Riverside Convention Center

Date: Wednesday, Dec. 14

Time: 5-7 p.m.

Cost: \$10 members/ \$50 future members

Register at www.RochesterBusinessAlliance.com

Member Spotlight: Allen-Bailey Tag & Label, Inc.

By Kevin Donahue
Director of
Membership and
Business Development



About Allen-Bailey Tag & Label, Inc.

Sam Allen and Jim Bailey got their business off the ground in Dansville the same year the Wright Brothers flew – 1911. The company moved to Caledonia in 1913 to take advantage of the four rail lines in place at the time, and has been here ever since.

Allen-Bailey, which employs 101, manufactures custom-printed, blank paper and synthetic tags and labels.

“If you’ve seen a package of tags for sale in a local office supply store or even Wal-Mart, chances are, we produced it,” said Richard G. Phelps Jr., partner and director of marketing. “But we produce so much more than those blanks. We make them for more than 6,000 companies in many industries – steel, wire, automotive, concrete, hospitality, fire extinguisher and others across the US. Even luggage tags for the Four Seasons Hotel in Kona, Hawaii. We produced 27 million shellfish tags in 2010. There is one shellfish tag on every container of shellfish sold in a

restaurant, retail store, etc. in the United States. They serve an important traceability purpose.”

What’s New at Allen-Bailey

Allen-Bailey celebrated its 100th anniversary on June 11. Despite the recession, the company has been able to grow its top line, improve profitability, consistently share profits with employees, and hire more people. Phelps said that while staffing is sufficient right now, Allen-Bailey is “striving for more sales to increase the size of the company in all respects.”

Challenges

The biggest challenge, according to Phelps, is finding new employees with a strong, mechanical capability to run its presses and stringing and wiring machines. “We work with New York state to help screen candidates as well as private firms to recommend people to us,” Phelps said. Despite its proximity to Rochester, very little business actually comes from Rochester. “We are trying to change that,” says Phelps. “There are ‘part & process identification pieces’ as well as packaging supplements which directly involve a printed tag or label. And, it is our task to make our considerable capabilities known to

the other successful businesses in Rochester.”

Rochester Business Alliance Member

Allen-Bailey has been an RBA member for almost 20 years. “The RBA is a marvelous HR resource. We ask questions of them, we present situations we are dealing with, we ask for recommendations and advice. The RBA has a wonderful depth of knowledge we call upon. We also utilize the RBA for training of our employees in time management, how to be a supervisor, etc. Again, they do a great job!” Phelps said.



Richard G. Phelps Jr., partner and director of marketing

Contact Info

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www.abtl.com ★

The Rochester Business Alliance welcomes its new members

APICS of Rochester
www.apicsr.org

Blank Patent Services
www.blankpatent.com

Charleton Financial, LLC
www.charletonfinancial.com

Clark CSM
www.clarkcsm.com

CMIT Solutions of Monroe
www.cmitsolutions.com/monroe

Colbey Technologies
www.colbeytech.com

Happier at Home
www.HappierAtHome.org

Jeremiah’s Tavern
www.jeremiahstavern.com

Lexington Machining LLC

Miller & Associates Sourcing Specialists, LLC
www.jmillerandassociates.com

Moser Baer Technologies, Inc.
www.moserbaer technologies.com

North Forest Office Space
www.nforest.com

Odyssey Controls
www.odysseycontrols.com

Payroll Connections
www.MyPayrollConnections.com

Prentice Wealth Management, LLC
www.prenticewealth.com

Pro-Tech of Rochester, Inc.
www.protechcorp.com

Rochester Knighthawks Lacrosse Club
www.knighthawks.net

Ryan Plumbing, Heating, Air Conditioning & Fire Protection Inc.
www.ryanservice.com

Sam’s Club
www.samsclub.com

Steinbrenner Law Offices, LLC
www.steinbrennerlaw.com

UBS Financial Services
www.ubs.com/fs

The Rochester Business Alliance offers a variety of networking events each month. Below are some of the highlights from September and October. For more photos, visit our Facebook page (listed under pages as Rochester Business Alliance).

Business After Hours at Harris Beach PLLC Oct. 5



More than 175 attended our last Business After Hours event at our Partner's headquarters, including some of the firm's lawyers.

Transportation Council Fall Golf Outing Oct. 6



42 players participated in the Transportation Council's Fall Golf Outing October 6 at Chili Country Club.

Endorsement Night October 12



Sandy Parker stands with Lovely Warren, an endorsed candidate for city council.

Coffee with Our CEO October 18



In October, we brought this program on the road to Eastman Business Park, where attendees toured the complex following the morning discussion.

Upcoming Affiliate Events

The Rochester Business Alliance is made up of employers big and small, in just about every industry imaginable. While our programs and events are designed for all, we recognize that there are times when employers and employees want to be among a smaller group that shares their specific business issues. Here are some of our affiliates' upcoming events:

Greater Rochester Quality Council

[Click here to go to their website.](#)

Small Business Council of Rochester

- Boot Camp: Succession Planning - Strategic Planning for Small Business & Entrepreneurs - Nov. 9
- SBC Cares 1000: Annual Thanksgiving Food Basket Appeal - Nov. 4-19
- SBC Annual Signature Holiday Networking Event - Dec. 8

[Click here to go to their website.](#)

Rochester Hispanic Business Association

- Christmas Party at Casa Hispana - Dec. 9

[Click here to go to their website.](#)

Transportation Council

- Don't forget to renew your membership!

[Click here to go to their website.](#)

Women's Council

- Building Your Briefcase: Holiday Networking Reception/Tasting - Dec. 13

[Click here to go to their website.](#)

Through our affiliate groups, you can meet business people who share your interests and challenges. For more information, [click here.](#)

Napier, Gentile Named 2011 Small Business Persons of the Year

On Oct. 19, the Small Business Council of Rochester announced the 2011 Small Business Persons of the Year at its 29th Annual Gala Luncheon.

Sharon Napier, president and CEO of Partners + Napier, was named Business Person of the Year in the large firm category.

Mark Gentile, CEO of Odyssey Software, was named Business Person of the Year in the small firm category. ★



(l to r) Sharon Napier, Partner + Napier, Russ Schwartzbeck, SBC President, and Mark Gentile, Odyssey Software

Ask SCORE[®]

Counselors to America's Small Business

Consider a PEO for Hiring Employees

Hiring and managing good employees for your small business can be a burden. That's why many entrepreneurs are turning to Professional Employer Organizations (PEOs) to handle the complex, time-consuming administrative tasks of human resource management.

PEOs are companies that help businesses find and hire people, plus manage such things as health benefits, workers' comp claims, payroll, unemployment insurance and more. As a business owner, you contract with a PEO to assume these and other responsibilities, allowing you to concentrate on the revenue-producing side of your operations. PEOs establish and maintain an employer relationship with the workers assigned to you, and assume many employer responsibilities and risks.

One advantage of using a PEO is that they already have experienced HR pros who can handle benefits, payroll, OSHA compliance and just about everything else you will need. By bringing employees into a larger overall group, a PEO can offer your workers benefits such as health insurance and retirement plans—valuable perks you'd be hard-pressed to deliver on your own.

Pre-employment testing is another area PEOs can help. Without a screening process, you risk placing the wrong person in the job, leading to lost productivity and costly turnover.

Small business owners often dread the prospect of reading resumes and conducting interviews for prospective hires. PEOs can reduce this burden, deliver candidates quickly, and handle the paperwork. Some PEOs have divisions devoted to recruiting and helping small business owners gather information to make hiring decisions.

An excellent source of information for identifying and working with PEOs is the National Association of Professional Employer Organizations (NAPEO). Their [website](#) describes how PEOs work, the benefits they offer new and growing small businesses, and guidelines for selecting one.

To learn more about best practices for human resource management, contact SCORE Rochester. Seasoned, volunteer business counselors stand ready to provide free, confidential business counseling. To schedule a consultation at the RBA office, call (585) 244-1800. ★

A Look Ahead at 2012 Action Items

By Chris Wiest
Vice President of Public
Policy and Advocacy



This past year, Rochester Business Alliance was actively engaged on a number of policy and legislative issues important to members. Areas of focus included taxes, health care, regulatory reform, mandates, economic development, energy and workers' compensation. A recap of 2011 legislative activity and accomplishments is available online.

While we achieved progress in a number of these areas, our work is far from done. Here's a snapshot of some key areas of focus for RBA's public policy and advocacy agenda in 2012.

Mandate Relief: Having supported a 2-percent property tax cap, our efforts shift to ensuring municipalities and schools receive appropriate mandate relief from the state. Employers are also subject to numerous mandates, such as

the Wage Theft Prevention Act, and RBA will be working with Unshackle Upstate to make sure those items are included in mandate relief discussions.

Health Care: Rising health care costs continue to be a primary concern for employers. Health care reform, a rational state Health Insurance Exchange, reducing costly state insurance mandates, and our local efforts with the RBA/Finger Lakes Health Systems Agency High Blood Pressure Collaborative will continue as priorities.

Economic Development: Growing and retaining jobs is a key focus of the Finger Lakes Regional Economic Development Council. RBA is actively involved in this effort and will continue to work with its partners to ensure the Rochester community agenda has a voice in Albany.

Workers' Compensation: There is unfinished business from the 2007 reforms, including formally implementing cost-saving initiatives, such as new impairment rating guidelines. In October, the Workers' Compensation Board approved an average premium increase of

9.1 percent. New legislation threatens to increase costs even more. RBA's Workers' Compensation Committee helped defeat several costly bills this year and will continue to actively push for reforms.

Education: With a graduation rate under 50 percent, Rochester city schools continue to struggle. This is a workforce development priority, and RBA will continue its efforts to increase community engagement and support reforms aimed at improving student performance.

Candidate Endorsements: 2012 will be another important election year for New York state residents. With a closely divided state senate, and the uncertainties of redistricting, it will be more important than ever for the employer community to make its voice heard. RBA's PAC will continue to ask candidates the tough questions and endorse those most supportive of employers.

As always, we welcome your participation and support. For more information on how you can become more engaged in our advocacy efforts, please contact me. ★

Results of the 2011 Elections

The Committee for a Strong Economy, the political action committee (PAC) of the Rochester Business Alliance, would like to congratulate the following endorsed candidates that were elected on Nov. 8:

- County Executive
Maggie Brooks (R/I/C)
- District Attorney
Sandra Doorley (D)
- City Council
East District: Elaine Spaul (D/I/WF)
Northeast District: Lovely Warren (D)
Northwest District: Carla Palumbo (D/I)
South District: Adam McFadden (D)
- County Legislature
District 1: Dick Yolevich (R/I/C)
District 2: Mike Rockow (R/I/C)
District 5: Karla Boyce (R/I/C)
District 7: Rick Antelli (R/I/C)

District 10: Anthony Daniele (R/I/C)
District 11: Mike Barker (R/I/C)
District 12: Jeff Adair (R/I/C)
District 13: John Howland (R/I/C)
District 15: Dan Quatro (R/I/C)
District 16: Vincent Esposito (D/I)
District 17: Ted O'Brien (D/I/WF)
District 19: Jeffery McCann (R/I/C)
District 21: Carrie Andrews (D/I/WF)
District 23: Paul Haney (D/I/WF)
District 24: Joshua Bauroth (D/I/WF)
District 25: John Lightfoot (D)
District 28: Cynthia Kaleh (D/I/WF)

The Committee for a Strong Economy is the political action committee (PAC) of the Rochester Business Alliance. The PAC is made up of representatives of some, but not all, Rochester Business Alliance members as some RBA members cannot by law participate in a PAC endorsement process. For more information on the PAC, click here. ★

Unshackle Releases 2011 Progress Report

In recent years, New York State's leaders have not shown a commitment to job creation and economic development. In fact, our image over the last decade has been quite the opposite – we have one of the worst business climates in the nation.

It is beyond dispute that the state's policies have contributed to our economic problems by failing to meet the economic challenges we face. In many cases, Albany hasn't just failed to act – state government has actually adopted policies that have made our economic situation even worse.

Unshackle Upstate recently released its 2011 Progress Report, which takes a hard look at what New York state has done right since the beginning of this year, and what additional steps will address the high cost of doing business in the state. Read the report here. For more information, visit www.UnshackleUpstate.com. ★

Prepare Now for Unexpected Closings

Rochester Business Alliance's Emergency Closing Service provides coverage year-round when emergencies arise such as severe winter weather, blackouts, localized power outages, flooding, etc. This free service, open to Corporate and Partner members, is part of a long-established process enabling authentication of telephone calls from employers to radio/TV Stations, which helps prevent fraudulent closing announcements.

Rochester Business Alliance coordinates the program with several radio and television stations in the Rochester area, creating procedures and authorization codes. Once you've signed up, you need to notify your

employees of the stations you've chosen from our list. And then if it becomes necessary to close your facility for any reason, you contact the media groups you previously designated. They will check your code and contact information against the listing we provide to them, and add you to their list of closing announcements. Radio stations typically give first preference to school closings. Business closings are announced if time allows. TV stations can also display your company name in the closings area at the bottom of the viewing screen as well as on their website.

While the initial registration deadline has passed, since this is a year-round program,

you can still sign up to participate. Please complete the registration form which designates the representative(s) at your company who are authorized to contact radio/TV Stations to report closings. Please fax your completed form to Kathy Novak at (585) 244-4864. As a reminder, you must re-register each year even if you have participated in previous years, so that we maintain the most up-to-date information in the database. Only the organizations that complete and return the registration form will be included in the list. ★



Register Now for the 2012 HR Forums

The Rochester Business Alliance is currently accepting registrations for both the 2012 Benefits and HR Professional Forums. If you missed the opportunity to join either of these forums this past year, here is your chance to connect with your peers.

Benefits Forum: Provides senior level benefits professionals with the opportunity to benchmark and network with one another

on benefit trends and issues including benefits practices and strategic planning. Meetings begin in February.

HR Professional Forum: Presents human resource professionals the opportunity to benchmark and network with one another while sharing HR knowledge through roundtable discussions and presentations from guest speakers. Meetings begin in January.

The deadline for registration in the HR Professional Forum is Dec. 8. The Benefits Forum deadline for registration is Jan. 10, 2012. Space is limited and will be offered on a first-come, first served basis.

If you have any questions, please email Jennifer Suppé or call her at (585) 256-4608. To learn more about these forums or to download a registration form, please visit our website. ★

Annual Notices Due Soon

Employers must provide annual pay notices to employees between Jan. 1 and Feb. 1 of each year, starting in 2012, to comply with the NY State Wage Theft Prevention Act. On April 9, 2011, the act took effect and requires employers to provide annual notices, as well

as a notice to all new hires before they start work. In addition, advance written notice is required any time an employee's pay changes unless the change is noted on the pay stub, though written notice must be provided at least a week before any pay decrease takes

effect. For more information and to download the model notices, please visit the NYS Department of Labor website. Members with questions on these requirements can contact Kathy Novak at (585) 256-4618 or Jennifer Suppé at (585) 256-4608. ★

Starting Soon: Rochester-Area Wage Surveys

Participation in Rochester Business Alliance's 2012 Annual Wage and Salary Surveys begins in January. These local wage surveys provide members with valuable benchmarking data for the Rochester area. Questionnaires will be sent out via e-mail the week of Jan. 9, 2012 to Corporate and Partner member companies that requested them. Participation in the National Executive Compensation Survey also begins in January. This comprehensive survey covers compensation and benefits for 47 key executive positions. Questionnaires will be sent out the week of Jan. 2, 2012 to members that requested

to participate. One other survey will be taking place starting the week of Jan. 16 is the Turnover and Absenteeism Survey. This survey gathers data on annual turnover statistics and absenteeism rates. Sign-up for all first quarter surveys will begin Dec. 1 via an e-mail invitation which will be sent to HR contacts at Corporate and Partner member companies. However, if you would like to sign up early for one or more of these surveys, click here to go to the online signup page. If you have any questions, please contact Kathy Novak at (585) 256-4618, or contact Jennifer Suppé at (585) 256-4608. ★

Survey Spotlight

Below are the dates survey questionnaires will be sent out to those who sign up.

Week of Jan. 2

National Executive Compensation Survey

Week of Jan. 9

Professional/Managerial Wage & Salary Survey
Nonexempt Wage & Salary Survey
Manufacturing Wage & Salary Survey
Health & Human Services Wage & Salary Survey

Week of Jan. 16

Turnover/Absenteeism Survey

Workplace Privacy: Monitoring Employee Electronic Communications

By Meghan M. DiPasquale
Ward Greenberg Heller
& Reidy LLP



Employee privacy is a tenuous concept. Employers generally are free to monitor their employees at work, provided they have a clearly communicated, definitive policy on workplace privacy.¹ Electronic communications are often, appropriately, an employer's primary concern when considering monitoring. As respected jurist Judge Posner wrote, remarkably before the advent of Facebook, "the abuse of access to workplace computers is so common (workers being prone to use them as media of gossip, titillation, and other entertainment and distraction) that reserving a right of inspection is so far from being unreasonable that the failure to do so might well be thought irresponsible." Accordingly, while the topic of workplace privacy is incredibly broad, this article will focus on laws impacting the monitoring of electronic employee communications.

While technological advances continually affect the workplace, clear legal directives regarding employer monitoring have evolved more slowly. The Supreme Court admitted as much in its recent decision in City of Ontario v. Quon, a case involving a police officer's private, "spicy," text messages on a department-issued device. While Quon was a public employee entitled to Fourth Amendment protections, the court's words of caution have broader significance: "The judiciary risks error by elaborating too fully on the Fourth Amendment implications of emerging technology before its role in society has become clear Prudence counsels caution before the facts in the instant case are used to establish far-reaching premises that define the existence, and extent, of privacy expectations enjoyed by employees when using employer-provided communication devices." The final word from our highest court on this issue: "At present, it is uncertain how workplace norms, and the law's treatment of them, will evolve."

The two main restrictions on private

employer monitoring are the Electronic Communications Privacy Act, 18 U.S.C. § 2511 et seq. ("ECPA"), and common law protections against the invasion of privacy. The ECPA provides for civil and criminal penalties for the "inception" of oral, wire or electronic communications. The statute has two relevant exceptions however: one, when consent is given; the other, when there is a "business purpose," to monitoring the communications. An important distinction between the two is that consent is not limited to business communications. A company arguably can monitor personal electronic communications if it can demonstrate employee consent. Thus, these exceptions typically relieve the employer from liability, provided the monitoring conduct was not egregious. In addition, the ECPA's definition of "electronic communications" may further limit employer liability. Under the Act, "electronic communications" applies to transmission, but not storage of communications. Courts have distinguished between monitoring electronic communications such as email while they are being transmitted versus viewing email that has been stored. Courts have held that viewing stored email is similar to searching through an employee's papers and files, and does not violate the Act.

An ECPA subsection, the Stored Communications Act, 18 U.S.C. § 2701 ("SCA"), prohibits an entity "providing an electronic communication service to the public" from knowingly divulging the contents of an electronic communication. It applies only to communications in which the employee has a reasonable expectation of privacy, that is, when employee authorization has not been given. Where an employer makes it clear that certain communications are not protected, the SCA likely will not apply. However, even where authorization is given, access that intentionally exceeds the scope of authorization is prohibited.

Unlike some states, New York does not have a specific invasion of privacy law. Under New York law, privacy claims can be brought under Civil Rights Law §§ 50 and 51. These statutes are narrow, however – they create a cause of action for a person whose name or likeness is used for advertising or trade purposes without

consent. However, the common law in New York is clear that an employer's legitimate business interest in monitoring, combined with the employer's stated policy allowing for electronic monitoring, diminished any reasonable expectation of privacy an employee may have regarding computer usage.

What happens when an employee uses a personal email account (ex. Gmail) on a work computer? The Southern District of New York recently answered this question, holding that a company's email monitoring policy was limited to "Company equipment," which did not include "email systems maintained by outside entities such as Microsoft or Google." Thus, the employee had a reasonable expectation of privacy in his personal email account, even if viewed on a work computer. Only if the employee consented could the employer be considered authorized to view the account. In the absence of a policy explicitly stating as much, logging in to a private email account on a work computer is not tantamount to giving express or implied consent for the employer to search the account.

The key in employer monitoring is authorization. Employers must have an explicit privacy policy that is communicated to its employees. With such a policy, an employer's right to monitor of emails sent on the employer's system is generally straightforward. Given the lack of settled case law, the monitoring of other communication devices such as texting, or social networking sites such as Facebook is less clear. While courts have acknowledged that information on Facebook is not really "private," monitoring it in an employee privacy context has not been tested. Given this uncertainty, for employers and employees alike, the Supreme Court's caution in Quon is instructive even in its equivocation: "Prudence counsels caution." ✦

Thank you to Bradford Reid, an associate with Ward Greenberg Heller & Reidy, for his assistance with this article.

¹This article focuses on private sector employees. Most public sector employees have additional protections under the U.S. and some state constitutions.

Health, Safety and Environment Update It's Been a Bad Year for Business!

By Chip Dawson



Natural disasters have put hundreds of thousands of U. S. businesses out of business this year, and left many more at risk of failure. The country has been hammered by tornadoes, heat waves, flooding, drought, blizzards, hurricanes, earthquakes, wild fires and windstorms. This has been one of the most severe and deadly years for weather in the nation since records have been kept. The cost is estimated at a record \$50 billion and counting.

Rochester has escaped most disasters, but Hurricane Irene wrecked havoc just to our east and south. The storm significantly affected 25 percent of the U. S. economy with at least one or two lost days for every business in its path.

With all the death, destruction and loss of business this year, one might expect every business to have a current emergency plan,

well-tested and managed by lots of capable employees. That's not the case. An AT&T survey found half of all businesses either totally unprepared or poorly prepared for a disaster of any kind. Of those with plans, only half are tested. Seventy percent of employees say they don't know what to do in a crisis.

Here are chilling facts:

- One quarter of all companies will declare a disaster over a five-year period.
- Twenty-five percent of businesses do not reopen after a major disaster.
- Ninety percent of small businesses fail if they don't reopen within five days. Small businesses with a worse than average financial outlook have much greater difficulty recovering from a disaster. The smaller the business, the more likely the disaster will impact you and your customers.

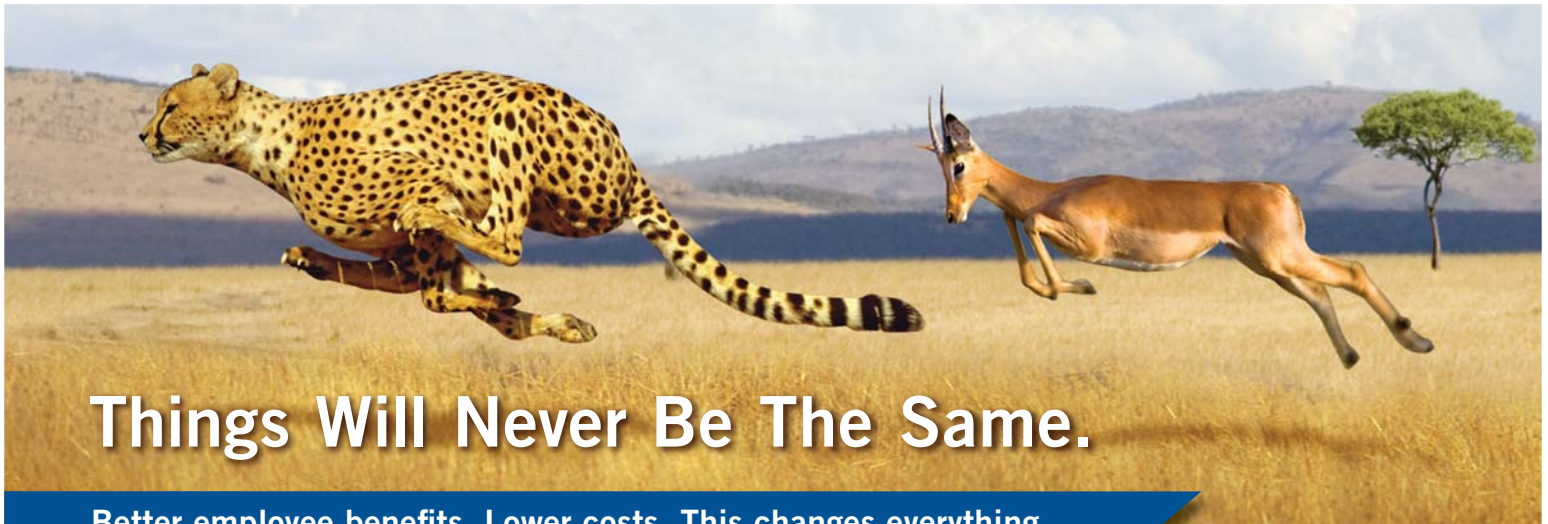
Nowhere does data show that failure to plan for an emergency makes good business sense. With social media, everyone's a reporter and the bad news gets out before management knows something is happening. Insurance

carriers know what can be foreseen and if you don't plan, your loss can become an uninsured risk. Something as simple as a power loss with damaged computer systems that keeps you down for more than a day can send customers to a competitor.

Within the next three years, you will need to be certified in emergency planning if you want to do work for the federal government. The bottom line: a significant emergency can ruin your reputation, cost you in court, lead to sizable fines, lose customers and close your doors—all because you failed to plan, train, exercise and implement a plan.

If you have HSE questions or column suggestions, or would like to be added to the e-mail HSE Update list, contact me at (585) 461-1549 or chipdawson@aol.com. ✦

**Don't Miss
Managing the Emergency
Nov. 15
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Tackle Performance Appraisals with Ease

By Barb Cutrona
Vice President
of Operations



Performance appraisals have become the norm in corporate life, an accepted way to both manage employees and determine who gets a raise and how much.

At many places of employment, such appraisals are done on an annual basis, typically at the

end of the calendar year. A supervisor sits down and composes an evaluation of the prior year's work, sometimes in a predetermined format, and other times just in essay form.

But workplace experts say that annual evaluation is not enough. Performance appraisal should be a year-long process, one that provides regular feedback in a timely fashion so that employees can use the information to improve their performance and rise to their maximum potential.

How does a company create such a process? On Dec. 2, trainer Robert Brancato will offer

a half-day seminar entitled "Performance Reviews and Coaching." In this course, he will discuss setting clear goals, expectations and objectives for each employee. He'll review the roles and responsibilities of employee and managers in performance development, and demonstrate three key skills - observation, inquiry and feedback - needed in the process.

If the subject matter interests you, but the timing of this seminar doesn't work, consider having RBA develop a custom training program for your workplace. Contact Amy Platenik for information. ★

Maintain Employee Retention by Offering Training Opportunities

Consider this:

Companies identified as being among the best typically spend between 4 to 5 percent of their annual payroll on employee training.

In a constantly changing business world, companies that don't provide training have a workforce that is not learning, and will likely fall behind the competition, Dun & Bradstreet reports.

A study of 2,500 businesses done by the American Society for Training and Development (ASTD) found that companies that provided employee training had more

productive workers and higher profits.

The Rochester Business Alliance knows how important training can be to the success of your company. We're constantly reviewing our broad array of courses and seminars to ensure that the training we offer is up-to-date and relevant to the community's business needs. And we offer custom training that can be tailored to your company's needs and schedule.

All our course offerings are available on our website, in this newsletter and in a dedicated monthly training email. But we wanted to find a way to help you get more indepth

information on the value of training, as well as some specific offerings.

So we've introduced Of Course! , a new email newsletter that you can receive every other month. It offers tip on choosing courses, profiles of our trainers and highlights of upcoming sessions. Watch for the next edition in mid-December. ★

Our new website is coming soon!

Friday Business Briefings

Nov. 4 - Company Sponsored Parties and Picnics: the Good, the Bad and the Ugly

Nov. 18 - An Update on Health Care Reform

December - TBD

Time: 8-9 a.m.

Location: Rochester Business Alliance

150 State St., Rochester, NY 14614

Open to: Members only (no cost)

To register, e-mail Michele Hefferon at

Michele.Hefferon@RBAAlliance.com

End-of-the-Year Help isn't Just for the Retail Business

We're heading into the home stretch of 2011, and as you eye that year-end budget goal, your company is ramping up productivity and tightening up spending.

That makes it the perfect time to consider what temporary staffing has to offer and how it can help boost your bottom line.

Perhaps you have a specific project you'd like completed, but don't see a long-term need for additional staff. A temporary employee may be just what your business needs to get that job done, whether it takes six days, six weeks or six months, without overburdening your permanent staff.

Perhaps you need some staff support to help

fill in the gaps during holiday time when your employees may be taking time off. Hiring temporary employees can be an effective way ensure your operations keep running smoothly, unaffected by vacation schedules.

No matter what your business needs - clerical or administrative support, skilled trades, light industrial or professional, there are workers ready, willing and able to join your operation. And RBA Staffing makes it especially easy, because we handle the interviewing and screening, as well as the payrolling for as long as the temporary worker is serving you.

Want to know more? Check out our RBA Staffing website, email Burt Parks, manager of contract staffing, or call him at (585) 256-4639.

Seminars

November

2	Communication Skills for Women
3	Why Union Free Employers Should Be Concerned
3	Negotiations
15	Finance for Non-Financial Professionals
15	Managing the Emergency
16	Project Management
17	Goal Setting for Success
18	Employment Law - Basic
18	Employment Law - Advanced

December

5 +	Coaching, Mentoring and Motivating
6 & 13	Gaining the Title, Earning the Respect

Computer Training

November

3	Get Going with Quick Books - Beginner
7 & 11	MS Word Advanced
8 & 10	MS Access Introduction
10	Keep Going with QuickBooks - Intermediate
14 & 15	MS Excel Introduction
15 & 17	MS Access Advanced Part 1
18	MS Excel Creating & Using Formulas
21 & 22	MS Excel Advanced Part 1
28 & 29	MS Excel Advanced Part 2

December

2 & 9	MS PowerPoint Advanced
6 & 8	QuickBooks
7 & 9	MS Excel Introduction
12 & 13	MS Access Introduction
14 & 16	MS Excel Advanced Part 1
12 & 14	MS Word Introduction
2 & 9	MS PowerPoint Advanced

It's a great time
to update
computer skills!

Be on time
and within
budget: Project
Management
Nov. 16

Set and manage
your goals: Goal
Setting for
Success Nov. 17

• What is the
supervisor's role?
Gaining the
Title, Earning the
Respect Dec. 6

Top reasons to join

- RBA understands small business.**
75 percent of our 2,000 members employ 25 or fewer people, so we offer an array of products and services tailored to their needs.
- RBA offers first-class business-to-business networking.**
From large Business After Hours gatherings to the small Coffee with the CEO sessions, we help you get connected.
- RBA promotes your business.**
We offer affordable advertising, event sponsorships and member-to-member discounts.
- RBA gives you access to government leaders.**
We connect you to the decision makers through our aggressive advocacy at local, state and federal levels of government.
- RBA is the regional chamber of commerce.**
We collaborate with other chambers and business organizations across the nine-county Rochester region to support the success of our members and the entire community.

For additional course listings or to register, visit our calendar online at www.RochesterBusinessAlliance.com.

Seminars are held at the Rochester Business Alliance, 150 State St.

Computer courses are held off site. Please check location when registering.