

NYSIF[®]

NEW YORK STATE INSURANCE FUND

Workers' Comp.

ADVISOR

www.nysif.com

October, November, December 2006

**Employee Complaints
Generate 60-70% of
All OSHA Inspections**

**SAFETY
SUGGESTIONS**



**SAFETY COP:
No Excuse For
Not Using
NYSIF Online
Safety Material**

*Are You
Listening?*

NYSIF Has Role in 9/11 Laws

NYSIF CEO David P. Wehner accepted a pen certificate signed by Gov. George E. Pataki, acknowledging NYSIF's role in the crafting of legislation that will aid Ground Zero rescue and clean-up workers in receiving workers' comp. benefits.

Gov. Pataki's Acting Chief of Staff William Howard made the presentation at the American Association of State Compensation Insurance Funds (AASCIF) 5-Committee Joint Workshop on Governance and Risk Management, August 28-29, at NYSIF.

The governor signed three important pieces of legislation that remove statutory obstacles preventing ill 9/11 recovery workers from obtaining workers' compensation benefits and offers accidental death benefits to families of uniformed service personnel who died from 9/11-related illness.

The first new law enables workers who became ill after the expiration of the statutory two-year workers' compensation filing deadline to resubmit their claims for further consideration. The legislation was developed as a result of negotiations among NYSIF, the Workers' Compensation Board, the AFL-CIO and the State Legislature.

"We could not have crafted this legislation without NYSIF's and the Workers' Compensation Board's partnership," Mr. Howard said.



NYSIF CEO David Wehner (l.) accepts pen certificate from Gov. Pataki's Acting Chief of Staff Bill Howard

The governor also announced a plan to speed access to benefits and medical care for 9/11 workers while insurers litigate claims.

"It's clear that many champions of 9/11 have developed debilitating illnesses over time resulting from their selfless acts," the governor said. "These New Yorkers need to know that New York State will not abandon them."

NYSIF hosted the AASCIF workshop in the Terence L. Morris Conference and Training Center at 199 Church Street, renamed for the late NYSIF chairman who passed away last April.

Workplace Deaths Drop in '05

The rate of workplace fatalities dropped to 4.0 per 100,000 workers in 2005, a slight decline from 2004, according to the U.S. Labor Department. There were 5,702 fatal work injuries recorded last year, compared with 5,764 in 2004. OSHA noted a decline in fatalities among women and Hispanic workers, and a drop in fatal falls.

Build R&R Into Shift Patterns

Shifts planned with little thought to ergonomics are a health and safety gamble. If shift work patterns fail to balance work demands with time for recovery from fatigue, accidents, injuries and ill-health are inevitable, says a new publication by the Health and Safety Executive (HSE) in the United Kingdom, according to ergoweb.com.

HSE's *Managing Shift Work: Health and Safety Guidelines* found that obesity, diabetes and heart disease are higher for night workers, who have a 20% greater chance of having a severe accident, and make five times more serious mistakes than their daytime counterparts. Employers who build more recovery time into shift patterns can anticipate improved productivity and fewer claims.

Next Generation for Lovell

Stephen J. Lovell stepped down as president of Lovell Safety Group on July 1, and named his son, Barry S. Lovell, as president. Founded in 1936, Lovell Safety Management Co. is celebrating 70 years of service. Steve Lovell, who took over from his father, Jac M. Lovell, and served as CEO for 36 years, will continue as Lovell chairman.

WCA FYI

News You Can Use

NYSIF Workers' Comp. Advisor
October/November/December 2006

In This Issue No Cop-Outs!



With its free online safety resources, NYSIF is making it easier than ever for business owners to promote safe work practices. No longer does anyone have a legitimate

excuse for not being proactive on workplace safety. Just visit NYSIF's new web site [WCA July/August/September], click on *Safety & Risk Management* and get with the program.

Page 5

The Crackdown Continues

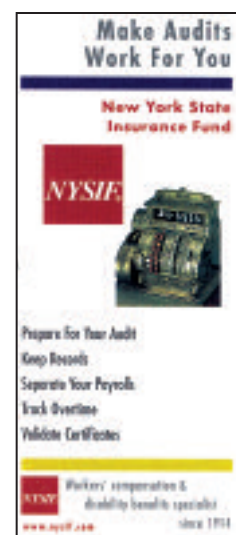
NYSIF launched an advertising campaign against fraud, and helped take down a construction coalition leader.

Page 7

Make This Brochure Work For You

NYSIF has published *Make Audits Work for You*, an update of its popular brochure to help policyholders save money on premium audits. The expanded version replaces its predecessor, *Would You Like To Save Money?* "We saw a need for a revision based on input from PHS managers in our business offices," CEO David

Wehner said. "The new pamphlet contains more information, yet provides a simple breakdown on what to do to prepare for an audit." Call **212-312-9121** for copies.



Empathic Ear Prevents OSHA Surprises

A Good Safety Record is Not Enough If A Complaint Triggers An Inspection

You've always thought that your company's safety record was holding its own. You haven't had a claim in years, and the last one you did have was for a minor injury. You have a good NYSIF experience modification. Certainly, you're not a target for an inspection by the Occupational Safety and Health Administration. The next thing you know, you're staring at the prospect of thousands of dollars in OSHA fines. What happened?

It's widely-known that OSHA mainly focuses on businesses and industries with above-average lost workday rates. For most companies, there's usually little to fear about the possibility of an OSHA on-site inspection. That is, until the unexpected happens.

Fate can strike at any time and trigger a mandatory visit from OSHA: a death occurs on the job, or three or more workers are hurt in the same incident. More likely, however, that unexpected OSHA visit is the result of an anonymous phone call made to OSHA by one of your employees.

What can you do to curtail employee complaints to OSHA?

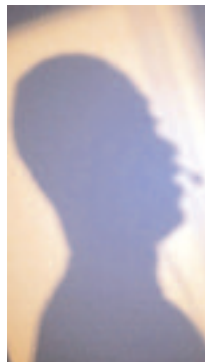
Employee complaints trigger up to 70% of OSHA inspections. The best way to avoid an inspection is to avoid employee complaints.

SUPPORT A SAFETY CULTURE

According to Steven Hollingsworth, who writes about workplace safety for *Occupational Hazards*, about 60 to 70% of all OSHA inspections are triggered by employee complaints. "The best way to avoid an inspection," Mr. Hollingsworth says, "is to avoid employee complaints to OSHA."

Not unlike what NYSIF has been writing about for many years in the *Advisor* and in our guide to workplace safety, *Partners In Safety*, Mr. Hollingsworth recommends that employers should "focus their efforts on getting employees to call their own company representatives for safety support."

That support begins from the top down, with the CEO, president or owner of the company. It's achieved by building employee confidence in your company's commitment to safety and in your company's response to employees' safety concerns.



Building a supportive safety culture in your place of business extends from top management, to supervisors, to safety committees that should include members of the management team, supervisors and others involved in your safety program. The important thing to remember is, when it comes to workplace safety, management's actions speak volumes.

A good workers' comp. safety record is not enough to avoid an OSHA citation. You must document your safety program.

DOCUMENT YOUR PROGRAM

A credible, ongoing safety program is the best preparation for — and defense against — surprise OSHA visits and penalties. Something else to remember is that a good workers' comp. safety record is not enough to avoid an OSHA citation should an inspector appear at your door. Many OSHA standards have documentation requirements. So, while your safety training may be the reason for a small number of work-

ers' comp. claims, if you're not documenting your safety program, you may not be meeting OSHA standards.

Having a working, documented safety program in place that addresses your industry's hazards (and your workers' exposures) is the key to being prepared for an OSHA visit. OSHA requires documentation that includes required written programs, training records, evidence of certification (where required), chemical inventories (if applicable), Material Safety Data Sheets (MSDS) and the OSHA 300 Log. As Mr. Hollingsworth advises, make sure you know where these documents are kept, keep them current and in good order.

Still, business owners and managers, chiefly in smaller companies, cite lack of time, failure to see how a written safety program can help their businesses, and a perception that their company (or industry) has a low risk of injury as common reasons for lack of preparation.

NYSIF safety resources can help you build

Certified Workers' Compensation Professional **Gary Dombroff**, who writes about safety for the *Advisor* as NYSIF's resident *Safety Cop*, wrote this article.

What's OSHA Finding?

Top 10 Violations for '05

Page 4



Injury Logs, Training Records, MSDS

Don't Fail the Written Test

Page 4

Are You Ready for an OSHA Visit?

From 3

a solid safety program [see *Safety Cop*], but while NYSIF can conduct safety training or make on-site safety recommendations, we can't guarantee that your safety program is OSHA compliant.

Indeed, it may be "impossible to train and educate employees on every OSHA standard," according to an attorney who counsels employers on how to limit liability. He advises clients to focus on OSHA's top 10 violations, especially the ones found in their industries [see list below]. The top 10 OSHA violations reportedly account for more than 50% of all OSHA citations.

BE PREPARED

Perhaps the object lesson is that no matter what the industry, any business can receive an inspection based upon a complaint.

Preventative measures work well. Develop an internal complaint system and make it known to all employees.



If you're reactive about safety, instead of proactive, watch out!

What to Expect On Inspect

What should you expect during an OSHA inspection? James Walsh, author of Silver Lake Publishing's *Workers' Comp for Employers* and editor of *OSHA in the Real World* offered this rundown for business owners in the article, "How to Survive an OSHA Inspection" [*Occupational Hazards* online 3/12/04]:

Unless there's been an occupational fatality or a non-compliance tip, inspectors will want to see paperwork first.

They'll check injury-reporting logs, training records and, sometimes, personnel files for information relevant to who works in high-risk areas.

Then inspectors examine the workplace itself, usually looking for signage and equipment compliance.

Compliance officers also may consult with a number of employees, privately if desired. This is where your safety program is most likely to reveal weaknesses, as employees will be informed

that OSHA prohibits discrimination in any

10% Fail 'Written' Test

A full 10% of citations for OSHA's top 10 violations are for failing to establish a written safety program, or failing to provide training. Establishing programs and training helps eliminate these and many other violations that are causally-related to training failure, which often results in injuries and illnesses to employees. Establishing written programs and training also is likely to provide protection against many willful violation citations.

— *Occupational Hazards*, "When OSHA Comes Calling," 3/20/2006

form against workers for anything they say or show the compliance officer during the inspection.

Inspectors may ask about:

the employees' safety orientation, specific job training, safety meeting occurrence, what employees have been trained to do in case of an accident or emergency, whether employees feel their job function is safe.

According to Mr. Walsh, the best way to avoid an inspection is to avoid employee complaints to OSHA. Preventative programs pay off, so consider participating in an OSHA voluntary compliance program, or developing internal complaint systems, and make them known to all employees.

OSHA's Top 10

Most-cited violations in 2005 along with NYSIF publications that cover corresponding safety topics (1910 refers to Code of Federal Regulations general industry standard, 1926, to construction operations):

- 1. Scaffolding** (1926.451) – No. 1 four years in row. This standard requires employers to protect employees from falls and falling objects while working on or near scaffolding 10 feet high or more.
- 2. Hazard Communication** (1910.1200) – Companies with "HazCom" violations often fail to develop and maintain written programs, or can't produce required Material Safety Data Sheets. [*WCA*

- Fall '04, Partners In Safety*]
- 3. Fall Protection** (1926.501) – Employers must provide protection for construction employees working above six feet. [*Partners*]
- 4. Respiratory Protection** (1910.134) – Violations for failure to establish and maintain a respiratory protection program when respirators are required on the job. [*Partners*]
- 5. Lockout/Tagout** (1910.147) – Requires controlling haz-



- ardous energy (electrical, hydraulic or pneumatic) during machinery maintenance. [*WCA Winter '04, Partners*]
- 6. Powered Industrial Trucks** (1910.178) – Known as the "fork-



Call 212-312-9121 for copies of *Partners In Safety*

lift standard," violations mostly for inadequate employee training. [*Partners*]

- 7. Electrical Wiring** (1910.305) – Improperly grounded electrical equipment.
- 8. Machine Guarding** (1910.212) – See No. 5 [*WCA Winter '04, Partners*]
- 9. Electrical (general)** (1910.303) – Requirements for electrical system design.

- 10. Ladders** (1926.1053) – General requirements for ladder safety for construction operations made the list for the first time. [*WCA Fall '05, Partners*]

Also see NYSIF's Safety and Risk Management section at www.nysif.com

Gary Dombroff, WCP

Safety Cop



Tap Our Web Site to Put Your Safety Program in Gear

Chances are you use NYSIF's online services to view bills and statements, print or validate certificates of insurance, and to file and track claims. To take *full* advantage of our new web site you now can tap into resource-rich *Safety and Risk Management* pages to explore useful, informative and easy-to-read materials that can enhance your safety efforts and help control workers' comp. costs.

NYSIF takes its position as New York's premiere workers' compensation and disability benefits specialist seriously. Our web-based safety information offers a resource library that makes it easy for any business to promote accident prevention in the workplace—all free of charge! These new online safety materials can assist you in beginning, enhancing, revitalizing or maximizing your accident prevention efforts.

COVERING THE BASICS

If you need help in starting a safety program, or need to convince others of safety's importance, your initial click on the *Safety and Risk Management* tab offers helpful links that address workplace safety fundamentals:

Tell me more about safety/loss prevention services NYSIF offers.

What risk management services does NYSIF provide?

What is Industrial Code Rule 59 (CR 59) and how can NYSIF help me comply?

What services are available for small business?

What safety/loss prevention resources are available online?

The first link (above) answers questions frequently put to NYSIF safety specialists:

Why is management commitment so important to the success of a safety program?

Why have a safety policy statement and

*safety committee?
What about safety training?
How do safety surveys help prevent accidents?
Why is accident investigation so critical?*

Information under *What about safety training?* is particularly valuable, as safe work habits are the result of education, training, continuous observation and feedback.

ACCESS RESOURCES

Good safety materials, properly used, are an important part of safety training. NYSIF has a large selection of reference materials that you can access for free. Accessing NYSIF's library of safety information on a variety of topics, and Industrial Code Rule 59 Workplace Safety Program compliance, is easy.

Links to our Safety Resources are available from anywhere in our *Safety & Risk Management* section. They include: *Safety Basics*, *Safety Matters*, *Safety Checklists*, *Safety Cop Articles* and *Safety Posters*.

Safety Basics

Developed for small business, but right for all business, NYSIF's *Safety Basics* assist businesses in promoting safe work practices. *Safety Basics* can be utilized as "tool-box talk" handouts, in safety training



Resources including Monthly Safety Topics like this one are free at nysif.com

sessions, or displayed in the workplace to educate employees on how to avoid injuries. They cover:

- Chemical Safety Basics
- Fire Safety General
- Fire Safety Basics
- Hand and Power Tool Safety Basics
- Power Tool Safety Tips
- Ladder Safety Basics
- Ladder Safety Tips
- Machine Safety

See page 6

New Safety Poster Series Now Available Online

NYSIF CEO David Wehner announced the release of new safety posters created by NYSIF for display by any business.

"NYSIF is pleased to present a brand new line of safety posters on a wide variety of topics," Mr. Wehner said. "As part of our mission to promote workplace safety, we're pleased to make them available to any business, and we'll continue to



expand the number of safety posters we offer to cover a wide cross section of industries."

The 8 1/2" X 11" posters print well in color, or black and white, and are suitable for framing and displaying in any place of business. They are available for downloading from NYSIF's web site.

NYSIF expects to offer over 50 different posters in coming months.

NYSIF Safety Resources on the Web

From 5

Personal Protective Equipment Use
Personal Protective Equipment Basics
Personal Protective Equipment Tips
Chemical Safety (MSDS)
Preventing Infectious Diseases
Proper Housekeeping
Workplace Violence Prevention - General
Workplace Violence Policies & Procedures
Workplace Violence - Retail Operations
Reasons to be Careful at Work
Machine Safety Tips
Safe Lifting Techniques
Safe Lifting - Planning the Lift
General Safety Guidelines
Drug and Alcohol Use
Components of a Safe Workplace
Electrical Safety Basics
Electrical Safety - Ground Fault Circuit Interrupters (GFCI)
Ergonomics - Office Basics
Ergonomics - Office Safety Tips
Fall Prevention Basics
Fall Prevention Tips

Safety Matters

Safety Matters offer information on essential safety topics common to many industries and operations. Use *Safety Matters* in combination with *Safety Basics* to train your employees in safe work practices and reinforce principles of accident prevention. They cover:

Avoiding Slips and Falls
Machine Guarding
Cold Weather Hazards
Ergonomics
Ladder Safety
Fire Safety
Personal Protective Equipment
Back Safety

Safety Checklists

Conducting frequent workplace safety and health



inspections is one of the most widely-accepted means of identifying hazards and unsafe behavior. Regular self-inspection is an essential component in every proactive safety program. NYSIF *Safety Checklists* are customized for specific industries including:

Auto Dealers
Cemetery Operations
Contractors (General)
Farms (Agriculture)
Hotel
Manufacturing
Nursing Homes/Health Care Facilities
Office Ergonomics
Restaurant Food Service Operations
Small Business
Supermarket
Taxi (Limousine Services)
Warehouse

Safety Posters

Demonstrate your commitment to a safe workplace by displaying posters relevant to your operation. NYSIF safety posters supplement your safety program. They reinforce safety training and remind employees of safe work practices.

COMMIT

COMMIT is a new, do-it-yourself, free safety program that any business can adopt simply by following NYSIF's recommendations. COMMIT stands for *Care, Organize, Meet, Manage, Involve* and *Train* — elements that form the core of an effective safety program for any business to implement, but especially suited to smaller businesses. Visit the COMMIT page to learn more about care, communication and commitment — the foundation of NYSIF's COMMIT program.

MORE TO COME

We hope you like the materials in our *Safety and Risk Management* pages. Additional items, including *Safety Basics* for the health care industry, and Spanish-language safety materials, are on the way. (*Safety Cop* columns from the *Workers' Comp. Advisor* are also available online.)

Remember this when using NYSIF safety resources: even the best safety materials are no substitute for a written safety policy, proper supervision, training, employee involvement in safety, a system for reporting and recording hazards and accidents, and hazard elimination.

Ready to COMMIT?

Excerpts from NYSIF's COMMIT program at nysif.com explain six ways to reduce workers' compensation costs:

Care enough about your employees to make safety a top priority for your business. As a small business owner, or a corporate CEO, you set the tone that will spread throughout your company.

Organize. Structure will keep you and your employees focused on the goals and objectives of your safety program.

Meet. Whether it's a regular safety meeting, a job site safety talk, or an office coffee break, you can focus the same attention on loss prevention as a formal safety committee.

Manage. Once a work-related claim takes place, it's time to proactively manage that claim so the injured worker gets appropriate medical care to facilitate recovery and return-to-work. Stay in touch with your injured employee. Demonstrating concern is a proven way to reduce loss of time.

Involve everyone. Safety initiatives must include top management, supervisors and line employees.

Train. Ongoing safety training is the best way to have everyone thinking safety first!

Are you ready to COMMIT? NYSIF safety resources can supplement your formal safety program or provide small businesses the fundamentals they need to promote safety in the workplace on an ongoing basis. All this material is free from NYSIF's web site, www.nysif.com.

FRAUD FILE

DCI Earns Assist in Manhattan DA's Case

NYSIF assisted in the investigation of a minority labor coalition leader that led to his arrest and indictment on charges under the New York Organized Crime Control Act.

Manhattan DA Robert Morgenthau announced the September 14 indictment of Derrick Walker, a NYSIF policyholder who allegedly controlled the Akbar's Community Services coalition through threats and intimidation to extort kickback payments from contractors and from individuals seeking legitimate construction employment.

Mr. Morgenthau thanked NYSIF CEO David P. Wehner and NYSIF's Division of Confidential Investigations for their assistance in working with the DA's Labor Racketeering Unit-Construction Industry Strike Force in the investigation.

Mr. Walker, 42, of Staten Island, NY, allegedly defrauded NYSIF of more than \$135,000 in workers' compensation premium for companies he created to subcontract labor to contractors. NYSIF auditors uncovered the amount owed during a field audit of a policy for Akbar Construction, Inc., which NYSIF then canceled for nonpayment.

UNDERWRITERS, AUDITORS AID INVESTIGATION

Mr. Walker subsequently reapplied to NYSIF for insurance as Akbar Builders, Inc., allegedly producing an affidavit that he was not the same Derrick Walker and had no connection to the previous company. NYSIF, however, informed underwriters to be on the lookout for Mr. Walker's attempted deception.

"NYSIF takes the fight against fraud seriously because as the state's largest workers' compensation insurer we are well aware of the impact fraud has on the economy, on honest businesses and on hard working people across New York State," Mr. Wehner said. "We are also aware that those who commit fraud are sometimes involved in other, more serious felonies."

The indictment charges Walker with enterprise corruption, coercion and grand larceny. Enterprise corruption is punishable by up to 25 years in prison.

IN OTHER CASES

NYSIF CEO David Wehner announced these arrests:

Ernesto Urrueta, 57, of Weehawken, NJ, allegedly deposited a NYSIF check of \$3,120 and then submitted a sworn affidavit stating that he never received the check.

Janet Benitez, 36, of Shirley, NY, receiving \$400 per week for an injury sustained in 2003, failed to report she had returned to work, allegedly defrauding NYSIF of \$14,593.

Lena Delaney, of Pleasant Valley, NY, allegedly lied about returning to work, collecting benefits from NYSIF totaling \$3,044.

Suffolk County business owner **Walter Eppich**, 54, of Huntington, NY, pleaded guilty to attempted fraud, was ordered to

pay \$25,209 in back premium and sentenced to three years' probation.

Erick Kelecseny, 30, allegedly defrauded NYSIF of \$17,016 by collecting payments for a claim while he owned and operated a Florida gas station.

Renee Kelleher, 46, of Ronkonkoma, pleaded guilty to cashing checks that were payable to her deceased mother.

Frank Bell, 46, of Rochester, NY, continued collecting benefits for an injury sustained in 2000, but failed to report that he had returned to work as a school bus driver.

William Parshall, of Elmira, NY, was caught on tape, allegedly working as a landscaper, while he received benefits for an

We Don't Suffer
Frauds Lightly



Neither Should You

When someone cheats... everyone pays

Workers' compensation fraud costs families, employers, agents, insurers and consumers \$5 billion annually

Report fraud in confidentiality to the New York State Insurance Fund at www.nysif.com or 1-877-WCNYSIF



A leader in the fight against workers' compensation fraud, NYSIF investigations led to 126 fraud arrests and \$14.7 million in estimated potential savings last year

NYSIF investigates suspected fraud committed by NYSIF policyholders, medical providers and claimants. If you suspect insurance fraud involving NYSIF, please call the New York Insurance Department/Frauds Bureau at 1-888-FRAUDNY or the Workers' Compensation Fraud Investigator Generalist 1-888-261-6266.

George E. Pataki, Governor Robert H. Harbo, Chairman David P. Wehner, CEO/Executive Director

NYSIF 2006 anti-fraud campaign includes print ads (top), public service radio spots and Internet placement; DCI Director Larry LaPointe (far l., photo r.) at announcement of indictment by DA Morgenthau



injury he sustained as taxi driver, in a case representing \$152,000 in fraud and potential savings.

Rocio Ayaquica, 34, and **Julio Leal-Tomax**, 31, both of Chester, NY, were charged with fraud when they denied that an injured worker had worked for their Sugarloaf siding and roofing company.

Kismet Domi, 37, of Mastic Beach, NY, a construction company owner, received a one year conditional discharge and paid NYSIF \$21,818 in restitution in a case of premium fraud.

Criminal complaints and indictments are accusations only. Defendants are presumed innocent until proven guilty.

Governor **George E. Pataki**
Chairman **Robert H. Hurlbut**
CEO/Executive Director **David P. Wehner**

NYSIF

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Sherwin Taylor **Safety Group Office 2**
John DeFazio **Group 90 Metro Office**
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Disability Benefits Claims & Service **1-866-697-4332**
See **www.nysif.com** for business office telephone numbers and addresses.

Send *WCA* comments to John Mesagno, chief of agency publications, jmesa@nysif.com

Workers' Comp. Advisor

New York State Insurance Fund
Media and Publications Office
13th Floor
199 Church Street
New York, NY 10007

NYSIF Reprises Training Course for Hudson Valley Safety & Health Council

CEO David Wehner announced that due to overwhelming demand, NYSIF was pleased to re-offer a free 10-hour OSHA General Industry Training Course to the Safety and

safety committee attend.” — SP Industries
“The combination of presenters made the course an overwhelming success. Their knowledge, combined with valuable experience and a sense of humor made

‘The combination of presenters made the course an overwhelming success ... The presenters from NYSIF worked great together as a team and their combined experiences supported what was being taught.’
— *Mental Health Assoc. of Ulster County*

Health Council of the Hudson Valley this October, presented again by OSHA-authorized outreach trainers from NYSIF.

Here’s what council members said about the first training session last April:

“This training course was so enlightening that I am recommending my entire

what could have been some very dry subject matter entertaining and fun to learn. The presenters from NYSIF worked great together as a team and their combined experiences supported what was being taught.” — Mental Health Assoc. of Ulster County

PRESORTED
STANDARD
U.S. POSTAGE
PAID
NYSIF