LARGEST PREMIUM FRAUD INDICTMENT

VISO

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NVSIF 2010 Realing Forum

ANCINE JAMES

NYSIF

It's all about

Saving Money for Clients!

July, August, September 2010

NYSIF 2010 Brokers' Forum

 Underwriting 101 - Discounts, Safety Group Dividends
 Audit Tips - What You Don't Know
 Can Hurt You
 Claims - How to Limit Liability
 Managing Risk - NYSIF Action Plans
 Enriched DB - Best Price In Town



Chief Deputy Executive Director Francine James (top) led the 2010 brokers' forum in NYC, where NYSIF staff (from left) including Claims Director Edward Hiller, Underwriting Operations Mgr. James Kennedy and Lower Manhattan Business Mgr. Sherwin Taylor (photo r., I.) met client representatives News You Can Use

NYSIF Workers' Comp. Advisor July/August/September 2010



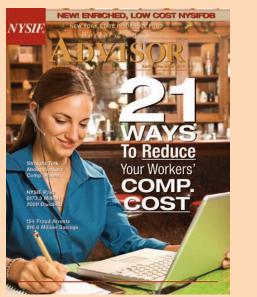
This Issue Come On In

What does NYSIF offer customers that other comp. carriers may not? See "Inside the Brokers' Forum."

Pages 4-7

Breathe Easier

sought broker feedback



WCA Apr-Jun'10 joined a spring mix of news about respiratory protection (*Safety Cop - Matter of Life & Breath*). First, President Obama's call for open government led OSHA to release 15 years of toxic exposure data measuring asbestos, benzene, beryllium, lead, nickel, silica and other chemical levels in the workplace. Then OSHA pronounced its methylene chloride standard a success over its first 10 years in protecting up to 54,000 workers annually from exposure to the metal-cleaning, cancer-causing liquid. **Correction:** Another article in the same issue stated that NYSIF eliminates the Section 15-8 charge applied to the NYS Assessment to reduce workers' comp. insurance rates for policyholders by 9%. The actual reduction is 7.9%.

Weekly Benefit Goes Up

Maximum weekly benefits for workers' comp. rise to 2/3 of the New York State average weekly wage for the previous calendar year on July 1, 2010. The maximum weekly benefit for comp. claims dated July 1, 2010 to June 30, 2011 is \$739.83, based on the 2009 average weekly wage of \$1,109.75, as determined by the NYS Dept. of Labor.

OSHA Crackdown on Severe Violators; Hike For All Fines

The US Department of Labor Occupational Safety and Health Administration (OSHA) announced new enforcement procedures that took effect in June, targeting repeat offenders who flaunt OSHA safety standards.

Construction risks may now renew their CPAP credit with

the NY Comp. Insurance Rating Board online; see page 7

The new Severe Violator Enforcement Program (SVEP) will focus on employers who demonstrate indifference to the law by repeatedly endangering their workers. The program entails increased OSHA inspections, mandatory follow-up inspections, and inspections of other work sites of the same employer. In addition, OSHA said it will make changes to its penalty calculation system over the next several months to increase the overall dollar amount of all civil penalties.

The agency, meanwhile, issued requests for public comment, published new rules for improved worker protections, and levied some of its largest fines this year as it works to address what it called "urgent safety and health problems facing American workers." Earlier, the AFL-CIO released a report stating the direct and indirect costs of disabling job injuries and illnesses (more than 4.6 million reported in 2008) is estimated between \$156 billion and \$312 billion annually.

Child Labor Rules Revised

Need to know...

The Labor Dept. announced final child labor rules, updating protections for young employees in non-agricultural work just as the summer hiring season started. The new regulations clearly put employers on notice that children may not perform certain jobs, protecting teens from dangerous machines and tools, excessive work hours and other hazards. The agency indicated it also would begin to strengthen regulatory protection for children working in agriculture.

Public Comment on Walking/Working Surfaces

OSHA published a notice of proposed rulemaking to revise the Walking-Working Surfaces and Personal Protective Equipment (PPE) standards to help prevent an estimated 20 workplace fatalities and 3,500 serious injuries from slip, trip and fall accidents annually. OSHA said new standards address outdated and dangerous fall protection equipment, such as lanyards and body belts. The new standards also would allow OSHA to fine employers who let workers climb certain types of ladders without fall protection. See the *Federal Register* at http://s.dol.gov/3J for more information. Public comment may be submitted through Aug. 23. OSHA also announced August deadlines for public comment on two other standards, both affecting healthcare workers [see opposite page].

Fines On the Rise

OSHA issued large fines recently in some catastrophic cases. The agency issued 23 citations and a fine of more than \$1.6 million against a McLaughlin, South Dakota, wheat grower where an employee was buried and suffocated beneath a mound of grain in an unsafe silo. It found 26 violations and fined a shipbuilder more than \$1.3 million after an explosion killed two workers and seriously injured two others at a Escatawpa, Mississippi, shipyard. OSHA cited a Yonkers, NY, woodworking plant for a fine of \$130,800 when a motorized saw missing required safety features cut off part of a worker's hand. OSHA also fined a Bronx elevator cab company \$346,500 for 18 violations, a precast concrete installer \$125,800 after a partial building collapse in Brooklyn, and the same contractor \$112,000 for exposing workers to falls of 40 feet without protection.

Report Cites Safety Laws

In its report released in April, *Death on the Job-The Toll of Neglect*, the AFL-CIO concluded that, while workplace safety and health has improved since OSHA's passage in 1970, the number of workplace inspectors is inadequate and penalties are too low to deter violations. The report cited the latest Bureau of Labor Statistics showing an average of 14 workers per day killed on the job in 2008. Latino workers continue to be at an increased risk of fatalities. The report called for strengthening safety laws.

Fraud File \$25M Premium Bust Largest in NYSIF Annals

The owner of a Manhattan-based temporary staffing company is facing up to 25 years in prison for an alleged workers' comp. fraud scheme of more than \$25 million in unpaid premium to the New York State Insurance Fund.

Manhattan DA Cyrus R. Vance, Jr., charged Eric Goldstein, 61, of Manhattan, in a five-count indictment with insurance fraud, forgery, offering a false instrument for filing, and fraudulent practices under the New York Workers' Comp. Law on May 17.

The charges follow a joint investigation by the DA's Office and NYSIF's Division of Confidential Investigations into Mr. Goldstein's ownership of GT Systems, a company operating 50 temporary placement agencies.

Over several years, GT Systems allegedly established one insurance policy after another under different pseudonyms, allowed policies to cancel for non-payment, and misclassified workers to avoid paying premium on more than \$400 million in payroll.

DA Vance said the indictment against Mr. Goldstein represents "the largest premium fraud case our office has seen to date."

"I want to thank District Attorney Vance and his office for their persistence in pursuing this case," NYSIF Chief Deputy Executive Director Francine James said. "This indictment is the result of a lengthy investigation by the DA's Office and NYSIF's Division of Confidential Investigations to unravel the dealings of a large company charged with fraudulent practices over several years. The case includes dozens of temporary employment agencies in a multi-million dollar scam involving unpaid premium, which NYSIF intends to recover for the State of New York."

NYSIF canceled Mr. Goldstein's policy under GT Systems in

2000 for non-payment of premiums. From 2003 to 2007, according to court documents, seven companies owned by Mr. Goldstein applied to NYSIF and received workers' comp. policies under false pretenses. Mr. Goldstein failed to allow NYSIF to audit company payrolls, wherein NYSIF would simply raise premium rates on the policies in effect. To avoid paying higher rates, Mr. Goldstein allowed NYSIF to cancel policies for non-payment and repeated this pattern by allegedly having his employees apply for policies in their names without revealing a connection to him or GT Systems.

Investigators alleged Mr. Goldstein classified much of the workforce as "clerical" in order to obtain insurance at lower rates. Instead, investigators said, many of Mr. Goldstein's employees were nurses, truck drivers and warehouse workers.

He allegedly underreported payroll by more than \$400 million to avoid paying higher premiums and allegedly used hundreds of fraudulent certificates of insurance to represent to clients that his companies carried coverage that the companies did not have.

"Let's not forget that workers' compensation fraud is a felony which saps our economy of billions of dollars annually, leading to higher prices, lower wages, and less money for hiring, training, investment and expansion," Ms. James stated. "In the case of premium fraud, it also leads to abuses of unprotected workers for whom employers have no coverage. NYSIF is committed to fighting workers' compensation fraud because it is our job to protect legitimate businesses and working men and women while controlling costs that are ultimately passed on to the public."

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

Removing Error in Patient Handling Calls for Standardization

When it comes to safe patient handling, avoiding injury may simply come down to choosing the correct equipment. The right choice, however, is often complicated by the lack of a standardized, consistent deci-

sion-making process used by all caregivers, says Jill Kelby, PT, CEA and president of ergo-PATH System, LLC, writing for the web site Ergoweb.com. She offers several reasons for error in the selection and use of safe-patient handling equipment, including:

• Lack of consistent patient assessment among caregivers;

• Failure to follow a consistent process because

caregivers don't perceive value in it, or it's not functional;

• Lack of a common language to describe degree of mobility;

• "Hand-off" communication emphasizing the

number of people to move a patient (i.e., patient is a moderate assist of 2), instead of the equipment to use.

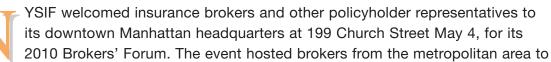
Ms. Kelby notes differences in how nurses and therapists assess mobility. Therapists measure range of motion, strength and balance. Nurses judge patient response during daily assessments, such as listening to their lungs, determining their level of alertness, etc. She recommends a three-part standardized assessment to include:

- Patient assessment (cognitive and physical)
- Environment assessment (space surrounding the patient), and
- Task assessment (size of patient).

Comment Sought on Infectious Disease, Bloodborne Pathogens

OSHA seeks strategies to prevent occupational exposure to infectious diseases in hospitals, clinics, nursing homes, biomedical laboratories, medical examiners' offices, mortuaries and similar workplaces to determine further action to stop the spread of occupationally-acquired infectious diseases. **Deadline for comment is Aug. 4**. OSHA is reviewing its Bloodborne Pathogens standard to assess its effectiveness and whether technology or other factors eliminate need for the rule. **Deadline for comment is Aug. 12**. See the *Federal Register* to submit comments.

Cover Story



learn about what NYSIF offers to help clients save money and why it may be the best choice for workers' compensation and disability benefits insurance in the New York market.

Chief Deputy Executive Director Francine James welcomed NYSIF's guests to the forums, covering a range of topics in "critical areas of underwriting, premium audit, claims management, NYSIF safety services, and new, enriched disability benefits coverage."

Ms. James thanked brokers who place policies with NYSIF, and said the forums were part of continuing outreach to policyholders and brokers to "educate you about our quality service and commitment to excellence, answer questions you may have, and give you an overview of our operations."

Ms. James explained NYSIF's desire to reach out to the broker community so that they might gain a better understanding of NYSIF's expertise in workers' compensation and disability benefits insurance, and the realization that NYSIF offers customers value and cost savings they may not be receiving from other insurance carriers.

Inside the Brokers' Forum

UNDERWRITING

NYSIF sells four types of insurance policies for businesses operating in New York State: workers' compensation insurance, disability benefits insurance, volunteer firefighters' benefits insurance, and volunteer ambulance workers' benefits insurance.

In describing NYSIF's statutory role, Underwriting Operations Manager James Kennedy stated that NYSIF is available to any business with the ability to pay for coverage regardless of risk. "If you need workers' compensation and you come to us, our mission is to write it."

Discounts, **Dividends**

In its role as a ballast for the market, NYSIF is a not-forprofit state agency that basically calculates premium to cover the cost of claims and operating expenses only. NYSIF then reduces rates further with insurance plans offering consistent discounts, dividends or premium adjustments that give qualified customers some of the most competitively low premiums in the industry.

Insurance plans:

General group plan – Best suited to the needs of most employers. When merited, on renewal employers receive an advance discount guaranteed for the policy year.

Safety group plan – Dividend participation plans designed for employers in the same trade or industry who, by cooperative effort, seek to curtail accidental injuries or occupational disease, thereby reducing their insurance costs.

Retrospective rating plan – For employers with substantial annual premium, subject to NYSIF approval, whose net premium is determined by their individual loss experience.

"Business owners with a good safety record and claims history will do well with our discount and dividend plans," Mr. Kennedy said. "For the most part, we evaluate each risk on its own merits."

Money Saving Tips



NYSIF Director of Premium Audit Glenn Cunningham

Underwriting Criteria

A NYSIF underwriter's job is to "see that each NYSIF modification and renewal is fair and reasonable," Mr. Kennedy said.

Criteria include:

- actual loss experience,
- classification,
- payment history,
- commitment to safe workplace practices,
- cooperation in the claims process,
- special conditions that may increase NYSIF exposure.

Online Quotes

NYSIF's online quote request system is different from others because NYSIF gathers information up front that goes directly to a NYSIF underwriting specialist. NYSIF promises an accurate premium quote within three business days, but usually sooner, that is not an estimate. "Our quote system goes to a human being – an underwriter," Mr. Kennedy said. "It's not a calculator. The quote you get is a real quote."

By entering a policy number or zip code, businesses and brokers can find a name, telephone number and e-mail address for an underwriter online if they need something in a hurry. He reminded customers that they can contact an underwriter at any time if they believe something is amiss with a NYSIF policy, for example, if an adjustment is appropriate for a seasonal business.

PREMIUM AUDIT

Conventional idioms aside, what you don't know *can* hurt you, according to NYSIF Director of Premium Audit Glenn Cunningham. Most businesses probably want to avoid contact with a NYSIF auditor at all costs. That could turn out not to be in a business's best interest because an auditor can find ways to help a client save money on premium.

"Most of our policyholders will see an auditor at one time or another," Mr. Cunningham said. "We want them to use a NYSIF auditor as a resource."

It is important for an employer to respond to a NYSIF audit notice, keep audit appointments, or inform NYSIF of the need to reschedule an audit appointment. Repeatedly ignoring appointment notices, failing to produce required records or file timely reports, may end up in an estimate audit that can be costly. Policyholders should avoid estimate audits for this reason.

The purpose of an audit is to determine the proper price for a NYSIF policy so a business doesn't pay more than it should, or get stuck with an unexpected bill at the end of a policy period because it paid less than it should.

"An estimate audit is always higher," Mr. Cunningham said. "What we want to do is come up with an accurate premium, not a lower premium or a higher premium. We will go over records so

EQUIVALENT LCM AT VARIOUS ADVANCED NYSIF DISCOUNTS	
NYSIF DISCOUNT	EQUIVALENT LCM
35%	.93
30%	1.01
25%	1.07
20%	1.14
15%	1.22
10%	1.29
5%	1.36



Business owners with a good safety record and claims history do well with our discount and dividend plans.

NYSIF Underwriting Operations Manager James Kennedy

they're set up in a certain way to get the best price we can for the customer."

As a service for clients, NYSIF performs deposit premium reviews to discuss payroll levels and record keeping coinciding with renewals prior to audit.

"One of the things we want to avoid is audit surprises," Mr. Cunningham said. "We prefer to get it straight before the billing process so no one gets hit with a surprise bill." Brokers and accountants should stress that this is particularly important for contractors "so they can build the cost into their price for the work they perform."

Money-Saving Tips

NYSIF auditors help businesses establish recording keeping practices that may save money on workers' compensation premium, such as:

Separate any payroll possible from the governing classification; standard exceptions include clerical, outside sales, drivers, and executive officers whose work is clerical in nature;

See page 6

Chart (I.) shows the effect of NYSIF discounts on the Lost Cost Multiplier (LCM), a factor affecting standard premium rates for all policyholders. Employers with good safety records earn the largest discounts. NYSIF also offers safety group programs, returning approximately \$1 billion in premium as dividends to group members in the past 10 years.

Learn more about safety groups at nysif.com>About Workers' Compensation>Safety Groups

Inside the Brokers' Forum



C-2 (Employer's Repo

- C-3 (Claimant's Repo
- C-4 (Attending Docto)
- Medical Report
- First Report of Injury
 - telephone
 - eFROI www.nysif.co

NYSIF Claims Director Edward Hiller

'The employer initiates a case with a timely first report of injury, using NYSIF eFROI®'

From 6

Set up a schedule to take advantage of premium credit for overtime;

Separate payrolls for different construction classifications;

Use payroll limitation credits as prescribed by the Construction Employment Payroll Limitation Law and Construction Classification Premium Adjustment Program;

Promptly notify NYSIF of any changes in ownership, entities, locations, and the nature and size of business operations;

Be sure to accept only valid certificates from any sub-contractors. NYSIF policyholders end up paying premium for any uninsured sub-contractors at the time of audit. Certificate holders can validate NYSIF certificates 24/7 at nysif.com using eCERTS to avoid holding invalid or fraudulent NYSIF certificates.

Most audits take one to two hours to complete. Notify NYSIF if any audit takes an undue amount of time.

CLAIMS MANAGEMENT

Among the critical areas of claims management perhaps none is more critical than how your claims team handles catastrophic claims. NYSIF has more than 60 registered nurses statewide who manage catastrophic cases. "We are very fortunate to have highly-qualified, accredited medical professionals who handle these claims," NYSIF Director of Claims Edward Hiller said.

Medical care professionals who manage catastrophic claims are one example of the advantage of a NYSIF policy. Another is full Employer's Liability 1B coverage, separate from statutory workers' comp. liability, under which some catastrophic claims, among others, end up in legal action against an employer by a third party - an equipment manufacturer involved in an injury lawsuit brought by the claimant, for example.

Although workers' comp. reforms vastly qualified claims in which 1B lawsuits can proceed, they still do occur. That is when NYSIF's legal team acts to protect the interests of policyholders to limit liability. "We defend and indemnify the employer in these cases," Mr. Hiller said.

Employer's Role

All NYSIF claims managers, whether in concert with a NYSIF medical care representative or other members of the claims team, manage their cases from "cradle to grave," that is, inception to resolution. Part of the process, and one of the keys to limiting liability, which therefore influences underwriting criteria, is employer cooperation. The employer is a key player on the claims

team. An insurance agent can and should facilitate an understanding of the employer's crucial role in the claims process.

The employer initiates a case with a timely first report of injury. Using NYSIF eFROI® (Electronic First Report of Injury) enables employers to quickly notify NYSIF with the information case managers need to limit liability. It is the employer's responsibility to provide details of the accident and verify the injured worker's account of the incident to expedite necessary care, and the quickest resolution of a claim. Employer cooperation means promptly providing all information requested by the case manager, including the forms C-240, "Employer's Statement of Wage Earnings Preceding Date of Accident," and C-11, "Employer's Report of Injured Employee's Change in Status or Return to Work."

As Mr. Hiller pointed out, NYSIF is not part of the Workers' Compensation Board (WCB), a separate agency that adjudicates claims as well as sets rules and regulations by which all workers' compensation insurance companies must abide. "The WCB has jurisdiction over us just as they do over our competitors," he said. If NYSIF requests an employer to testify at a hearing before the WCB, it is the employer's responsibility to appear. The employer's testimony before the board is crucial in controversial claims.

Further Limiting Liability

Crackdown on Fraud

An aggressive anti-fraud program that led to 154 arrests and estimated savings of \$16.6 million last year is another way NYSIF limits liability for the employer. "NYSIF is by far the state leader in fighting workers' compensation fraud," Mr. Hiller said, noting that NYSIF initiates the large majority of cases in New York that end in convictions for workers' comp. fraud. "That's not bragging. It's a fact. Other insurance companies pay lip service to fighting fraud. We fight fraud."

First Aid Option

For minor injuries, Mr. Hiller advised brokers that employers have the first aid option, which allows them to pay for medical services and treatment without having the injury affect the employer's claims history. Employers have the first aid option if:

the injury results in no more than one day of lost time, and

no more than two first aid treatments.

Section 32 Settlements

NYSIF further limits liability through successful use of settlements allowed by Section 32 of the New York State Workers' Comp. Law. Section 32 provides for complete and final resolution of claims in which no settlement can be reopened, appealed or modified. Through Section 32, NYSIF has saved approximately \$500 million in the past 10 years.

SAFETY & RISK MANAGEMENT

NYSIF Director of Field Services Armin Holdorf has this guarantee for brokers and clients: "You put your policy with us and we're going to do the best we can to provide the policyholder with safety services at no extra charge."

Actually, safety services only begin to describe the extent of NYSIF's safety and risk management program. Safety services includes loss prevention, safety training, field audits for risk assessment, Code Rule 59 consultation, and most other customer service that coincides with underwriting issues, premium reduction and claims prevention. Safety services come with the skill of NYSIF workers' compensation specialists who draw from the cumulative knowledge of 96 years of experience, professionally performed by NYSIF's team of Certified Safety Consultants (CSC) and OSHA-certified Outreach Trainers.

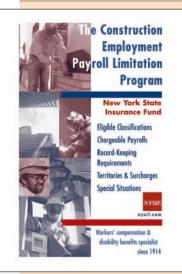
Safety Resources and Action Plans

This is all part of what NYSIF calls "value-added" service, something any employer or broker who does business with NYSIF can use to add tremendous value to their policies, and, as Mr. Holdorf notes, it doesn't cost anything extra.

NYSIF on-site safety training includes pre-packaged PowerPoint presentations, DVDs and industry-specific fact sheets that come with a visit from a NYSIF safety specialist as part of a targeted "Action Plan" for policyholders of \$15,000 or more in premium. "We set up an action plan for loss prevention with the client, and set goals for safety training and remediation," Mr. Holdorf said. Resources such as a library of safety materials including safety training handouts, safety articles, safety checklists, safety posters and our comprehensive safety guide, many available in Spanish, are free online to anyone.

NYSIF policyholders with more than \$800,000 in payroll and an experience modification above 1.20 can select NYSIF to satisfy their requirements under the Workplace Safety and Loss Prevention Program, otherwise known as Code Rule 59, mandated by New York State. The cost of a private consultant who must

Payroll Limitation & CPAP



Eligible construction risks should take advantage of both the *Payroll Limitation Program* (I.), limiting chargeable payroll, and the *Payroll Adjustment Program* (CPAP), a premium credit program available through the NY Compensation Insurance Rating Board, www.nycirb.org

Learn more about payroll audit preparation nysif.com>

Workers' Compensation>Policyholders>Auditing & Payroll Records



"We do the best we can to provide safety services at no extra charge."

NYSIF Director of Field Services Armin Holdorf

have certification by the NYS Department of Labor to perform this service can run into thousands of dollars. NYSIF CSCs do the job and furnish all necessary elements to assure policyholders are CR59 compliant – consultation service and report, remediation service and report, compliance report and letter to the WCB – at no additional cost.

In fact, standard operating procedure calls for *all* NYSIF safety specialists to have a plan and file reports for *each* client they visit. NYSIF requires each visit by a safety specialist to have a goal and purpose, followed by a letter to the policyholder to review the plan and recommendations made during each visit.

DISABILITY BENEFITS

NYSIF began writing disability benefits insurance for off-the-job employee injury or illness when the NYS Disability Benefits Law took effect 60 years ago. When coupled with NYSIF workers' compensation coverage, NYSIF disability benefits insurance is a convenient, inexpensive way for employers to offer 24/7 coverage for their workers from one insurance company. Like workers' comp., disability benefits insurance is mandatory in New York State.

Employers have more reasons than ever to obtain disability benefits insurance from NYSIF. On April 1, 2010 the NYS Insurance Dept. authorized NYSIF to begin selling enriched disability benefits, whereby employers can increase coverage for employees by as much as five times the statutory minimum – at industry-changing low rates. On January 1, 2010, NYSIF slashed disability benefits rates for the third time in three years, to a gender neutral \$0.14 per \$100 of payroll, per employee.

Lowest DB Rates in Industry

The combination of convenience and cost, along with the option of increasing coverage for valued employees at the same low rates, led NYSIFDB Acting Director Joseph Masi to advise brokers: "If you can find a disability benefits program at a better price, I'd buy it! How many insurance programs can say they have reduced rates three times in the past three years? We can."

Workers' Comp. Advisor

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Send WCA comments to jmesa@nysif.com

Confirm Commissioner Cheng

Gov. David Paterson has appointed Theodore K. Cheng to NYSIF's Board of Commissioners.

Mr. Cheng is a senior associate attorney with the law firm of Proskauer Rose in the Litigation & Dispute Resolution Department. Mr. Cheng is engaged in all aspects of the firm's litigation practice, with particular emphasis on patent litigation and other intellectual property cases.



Theo Cheng

Mr. Cheng co-heads the firm's Asian Lawyers Affinity Group and serves on the firm's Hiring Committee, Diversity Steering Committee, and Pro Bono Advisory Council.

The NYS Senate confirmed Mr. Cheng's appointment to NYSIF in June.

4 Alliances for Buffalo Area Employers

OSHA announced four alliances in western NY:

 Western NY Hispanic
 Alliance - will reach out to Hispanic workers.
 Western NY
 Healthcare Association
 Alliance - will address health and safety in the healthcare industry.

Lehigh Construction Group Alliance - reaches inexperienced workers



- with training about construction hazards.
- Western NY Safety Conference Alliance will provide safety and health training to small businesses in construction and general industry.
 For more info, ampleusors is weatern New York app cell 746 551 2052, ext. 244
 - For more info, employers in western New York can call 716-551-3053, ext. 244.