

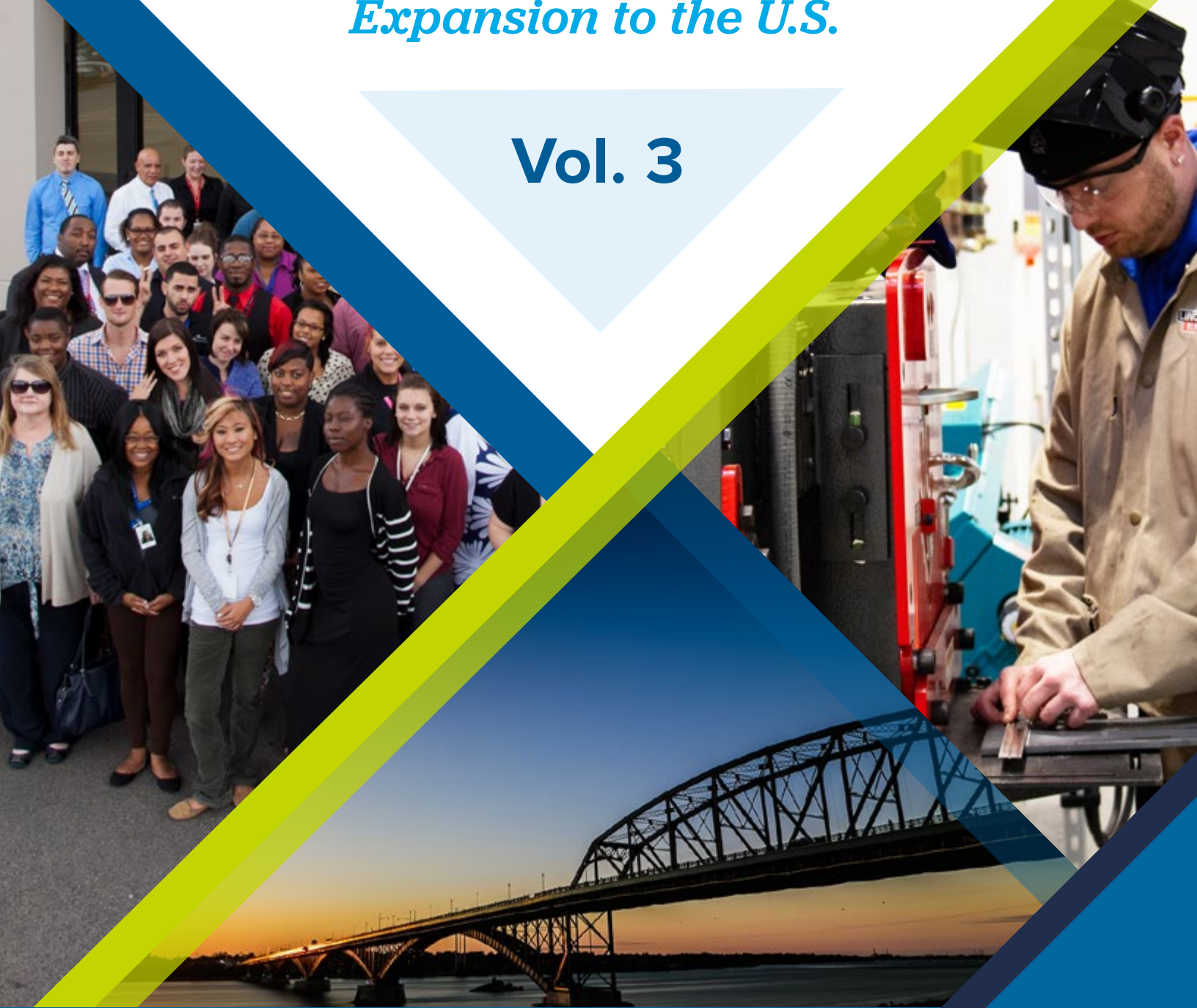
*Guide to*

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# Canadian Business

*Expansion to the U.S.*

**Vol. 3**



**WORKFORCE & WORKPLACE**

**INVEST** BUFFALO  
NIAGARA



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## Letter from Carolyn

When working with expanding companies, workforce is always a critical topic. Companies want to understand the local labor market and the HR differences between Canada and the U.S. Compiled from the insights of our regional experts, this guide includes information on the differences between Ontario and New York State employment, tips for recruiting top talent in a tight labor market, strategies for developing a strong manufacturing and warehouse culture, and more.

Nearly three years ago, Canadian owned Lynch Fluid Controls made the decision to invest in their future and expand into the U.S. through the Buffalo Niagara market. Throughout the expansion process, a major consideration for the company was finding and retaining the right workforce. The company, along with the help of a local staffing firm, focused on finding skilled staff members that were underemployed or underutilized in their existing positions. Lynch also focused on keeping the U.S. operation closely tied to their Canadian headquarters and making the U.S. employees feel like part of the global team. Since their initial expansion, Lynch has prospered on both sides of the border.

Our organization, Invest Buffalo Niagara, supports companies like Lynch Fluid Controls with complimentary project management services and connections to an extensive network of experts in cross-border business throughout our region. I have personally helped over 90 Canadian companies expand in Buffalo Niagara.

Flip through this book, use what you need, and give me a call. We are here and happy to help.

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## Lynch U.S.A.

In their first phase, Lynch U.S.A. set up a warehousing and distribution space. In each of their first 10 months, Lynch U.S.A. has hit targets set. Their current location in Niagara County has space for expansion into manufacturing.

*“Owning a business is like making a painting that never dries.”*

- Ernie Lynch, Founder and President, Lynch U.S.A. Inc.





# Recruiting and Retaining Talent

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- 5 Attracting Top Talent in an Employee Driven Market
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*“The amount of IT talent in the region is amazing”*

- Jay Goodwyn  
Director, IBM Buffalo Innovation Center

## Attracting Top Talent in an Employee Driven Market

To attract top talent, an employer must be able to provide the job seeker with compelling reasons to join the organization and be creative in ways to attract candidates.

### *Why is this so important?*

- Top talent is employed and rarely actively looking
- Compensation is not the top factor as these individuals are going to be paid regardless
- Most job descriptions are rather vanilla - BS degree, 5 years' experience, excellent communication skills – this is not enticing

Attracting these individuals is a sales job. You need to sell them that your company has more upside than their current employer.

### *Examples of Creative Ways to Attract Talent:*

- Do not rely on the typical job posting, create the "why" for your position and company.
- Be visible where passive job candidates are:
  - o Social Media
  - o Trade Associations/Networking groups
  - o Charitable Events
  - o Sports Leagues (kids and adults)
  - o Church
- Create an opt-in newsletter and/or utilize YouTube to showcase why you're an employer of choice

Once you've attracted the talent to interview for your position, you need compelling reasons for that candidate to leave their current position.

### *Examples of Compelling Reasons:*

- **DISRUPTION:** You have a product or service that is revolutionizing how something is done
- **PURPOSE:** Why does your company exist, what is the value to its employees and customers?
- **CULTURE:** Depending on the generation you are seeking to hire, culture plays a large part in selling the candidate.

Below are key items to address:

- o **Flexibility:** What is your policy? How do you address work/life balance?
- o **Social/Environmental Accountability:** For Millennials in particular, these is very important.
- o **Professional Development:** Share your training and development philosophy for employees.
- o **Environment:** Do you have areas for lunch, exercise, rest, entertainment, sports?
- **COMPANY GROWTH:** Won a new contract, acquired a company, in an expanding industry
- **CAREER ADVANCEMENT:** Show a defined career path. Discuss succession planning. Be cautious of basing advancement on job title rather than on duties and responsibilities
- **VOICE:** Many job-seekers seek new positions as they feel their voice/opinions are not being heard by their current employer. Share how this is possible at your company.

**For more information on this topic, please contact Chris Beckage**, Senior Vice President at Acara Solutions, an Aleron Company. He can be reached at BeckageC@acarasolutions.com or 1-800-568-8310.

## Attracting Top Manufacturing Talent

77% of manufacturing companies in the U.S. are expected to increase hiring and increase wages and benefits over the next six months. There are several important factors to take into account when hiring. A core group of best practices can ensure a successful hire.

Currently, there is high demand in many areas of manufacturing including mechanical, electrical, and technical skills. Some specific examples of core positions are machinists, maintenance mechanics, CNC programmers, engineers, and more. This demand requires employers to view the hiring process in a different and strategic way than in years past.

Best practices for hiring in manufacturing entails a comprehensive search including job boards such as LinkedIn, Indeed, CareerBuilder, as well as active community recruiting. This type of recruiting involves trade association memberships, networking, and participation with non-profit training centers and educational institutions. The key is actively building relationships and providing value to the candidates. The timeline to hire has shortened because of advances in technology on both the candidate and company. Having a detailed timeframe and communicating that to the candidate will lead to an effective and efficient process.

When making a successful hire, it is equally important to focus on employee engagement and retention. Many manufacturing companies have formal onboarding processes that include in-house training and skill development and upskill education, as well as proper succession planning for specific difficult to fill/replace skill sets. Investing in new and current employees has proven to be an excellent recruitment and retention tool.

To attract and retain top talent in manufacturing, companies need to position themselves as employers of choice in their area. This can be done by providing value added services and offerings to employees. The CEO of a leading manufacturing employer recently recommended that in order to be successful, companies should follow four rules – Hire Right, Pay Fair, Act Fast, and Treat Well.

**For more information on this topic, please contact Jeff Weber**, Owner of Remedy Intelligent Staffing. He can be reached at [jeff.weber@remedystaff.com](mailto:jeff.weber@remedystaff.com) or 1-716-831-4800.



NWTC Student



Northland Workforce Training Center



RED-INC

## Tips to Maintaining a Positive Warehouse or Manufacturing Environment

Fostering a positive culture in any workplace can be a challenging task for many employers, but can be particularly challenging in the warehouse or manufacturing industry where there are non-traditional working hours, mandatory overtime, and physically demanding workloads. Here are a few tips some of our Alcott HR clients have implemented to keep their workforce engaged:

### 1. *Employee Recognition*

Whether it's a company BBQ, movie tickets for star performers, or a token of appreciation individually distributed by upper management, a little recognition goes a long way. Be sure to keep it fun, fresh, and targeted to your workforce.

### 2. *Professional Development Opportunities*

Implementing cross training or job rotation can positively impact your bottom line as well as keep employees engaged as they learn. Additionally, it is always great to promote from within the organization. Not only will your promoted employees be a perfect cultural fit, but it will also inspire their fellow co-workers.

### 3. *Giving Back*

The current workforce is showing a desire to work at socially responsible companies. Show your dedication as a positive community influence by participating in local fundraising and philanthropic events.

### 4. *Support Wellness*

Show your employees you care about their well-being both on and off the clock. This can be accomplished by promoting wellness initiatives such as on-site flu shots, friendly fitness competitions, or even having a quiet room on your company property.

### 5. *Feedback, Feedback, Feedback!*

Annual reviews are no longer enough feedback for the modern workforce. Set up monthly or quarterly touch-base meetings with your employees to provide ongoing feedback and goals that can easily develop over time to continue meeting individual and company needs.

**For more information on this topic please contact John H. Bradley**, Vice President of Sales at Alcott HR. He can be reached at [johnb@alcotthr.com](mailto:johnb@alcotthr.com) or 1-716-626-9500.

## Northland Workforce Training Center (NWTC)

NWTC is dedicated to collaborating with industry. The training center currently runs certificate degrees through SUNY Erie and Alfred State, which was recently ranked U.S. News and World Report's top technical college in the country. Attending students can study in six different disciplines currently with more to come.

**Welding technology • Electrical construction and maintenance electrician • Machine tool technology • Energy utility technology • Mechatronics • CNC precision machining**

[northlandwtc.org](http://northlandwtc.org)



### Millennials in the Workplace

The emerging workforce has brought with it emerging challenges. While some employers have been hesitant to embrace millennials in the workplace – due in large part to widespread misconceptions and broadly applied characterizations – there are a myriad of unique skills and advantages to leverage from the newest generation of workers. To name a few:

- **Communication** – The millennial generation is increasingly articulate with an intrinsic ability to communicate thoughts, ideas, feelings, and questions with diverse groups of people over numerous platforms (phone, in-person, email, text, video messaging, instant messaging, social media).
- **Technology** – Growing up in the digital age, when it comes to tech, millennials have either used it or can learn it quickly. This is an important skill in an era of ever-evolving technological advancements.
- **Compensation** – It’s no longer all about salary. Millennials want work-life balance. Money will always be a factor, but more and more, young professionals are seeking flexible start/end times, more vacation/PTO, innovative workspaces, collaboration at the company, and positions in which they can see the value of their contribution. Creative leaders can come up with clever ways to motivate and inspire their millennial workforce while potentially saving on their bottom lines.
- **Progression** – Millennials bring new ideas, fresh perspectives, and different ways of doing things, which leads to change. There are two very disparate lines of thought in business: 1) Don’t fix it if it’s not broken and 2) The most dangerous words are “We’ve always done it this way.” Both have merit, but in almost all walks of life, change (or a less scary word like “evolution”) is a good thing. Embrace it.

There are of course hurdles to overcome with the millennial workforce, as well. Work stability and longevity is a real concern and the generational divide between young professionals and aging management is only growing. However, if their skills are harnessed to their potential and if they’re properly positioned, millennials can be an unequivocally valuable asset to any organization willing to invest the time and resources to develop them, especially if those doing so are of the generation who were similarly invested in when they entered the workforce themselves.

**For more information on this topic, please contact Peter Smykowski** Director of Recruitment and Engagement at Imagine Staffing. He can be reached at [psmykowski@imaginestaffing.net](mailto:psmykowski@imaginestaffing.net) or 1-716-256-1264.





# Workplace Policies

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*“The turnover rates are so much lower here. When our associates are happy, our clients are happy.”*

- James Archer  
Director, Sagent Lending Technologies

## The U.S. Employment Law Landscape

We frequently work with Canadian companies that are embarking upon or expanding their U.S. operations. One of the main topics for discussion is the legal and regulatory landscape that American employers face in the workplace. Canadian and U.S. employment law can vary dramatically. Below is a high-level overview of a few important topics that Canadian employers should consult with a U.S. attorney on before commencing operations stateside.

### *American Legal Framework*

Similar to Canada, laws and regulations regarding employment are tiered in the U.S, with federal, state and local provisions. The U.S. federal government sets a baseline that must be followed while states and local municipalities provide additional protections.

### *Independent Contractor or Employee?*

The first fundamental question an American employer must decide is whether their worker is an independent contractor or employee. This is a high priority issue for many agencies and a common claim in plaintiff's lawsuits (in general, it is a holistic review of whether a worker is free from supervision, direction, and control of the employer.)

Classifying a worker as an employee can result in a significant financial and resource expenditure compared to an independent contractor (payroll, workers' compensation insurance, unemployment insurance contributions, etc.) for a Canadian employer who may not have a large American workforce. However, if a worker is misclassified as an independent contractor, an employer can be exposed to liability in the form of fines, penalties, back wages and taxes, or unpaid unemployment insurance contributions.

### *Employment Status*

A major difference between U.S and Canadian employment law is most American workers are "at-will." This means that an employee can be fired for any reason or no reason at all so long as the reasoning is not discriminatory. Typically, there is no requirement under U.S. law to provide severance to an American employee who is terminated so long as the parties did not agree to a severance in an employment agreement.

Given this dramatic variance between Canadian and U.S. employment laws, Canadian employers are well-advised not to, in "knee jerk" fashion, treat U.S. employment situations and issues as they would handle those in Canada. U.S. employers may still offer employment agreements to employees for various reasons. Employment agreements are commonly used for c-level executives in the American workplace. An employer can use an employment agreement to incentivize a worker through bonus or severance compensation. An employer can also use an employment agreement to protect confidential information and/or to keep key employees from moving to competitors. Restrictive covenants such as non-competition and/or non-solicitation provisions can typically be found in an employment agreement. Canadian employers should pause before treating U.S. employees as their Canadian employees and offer employment agreements only when necessary, not routinely or as a matter of general practice.

### *Hourly or Salary*

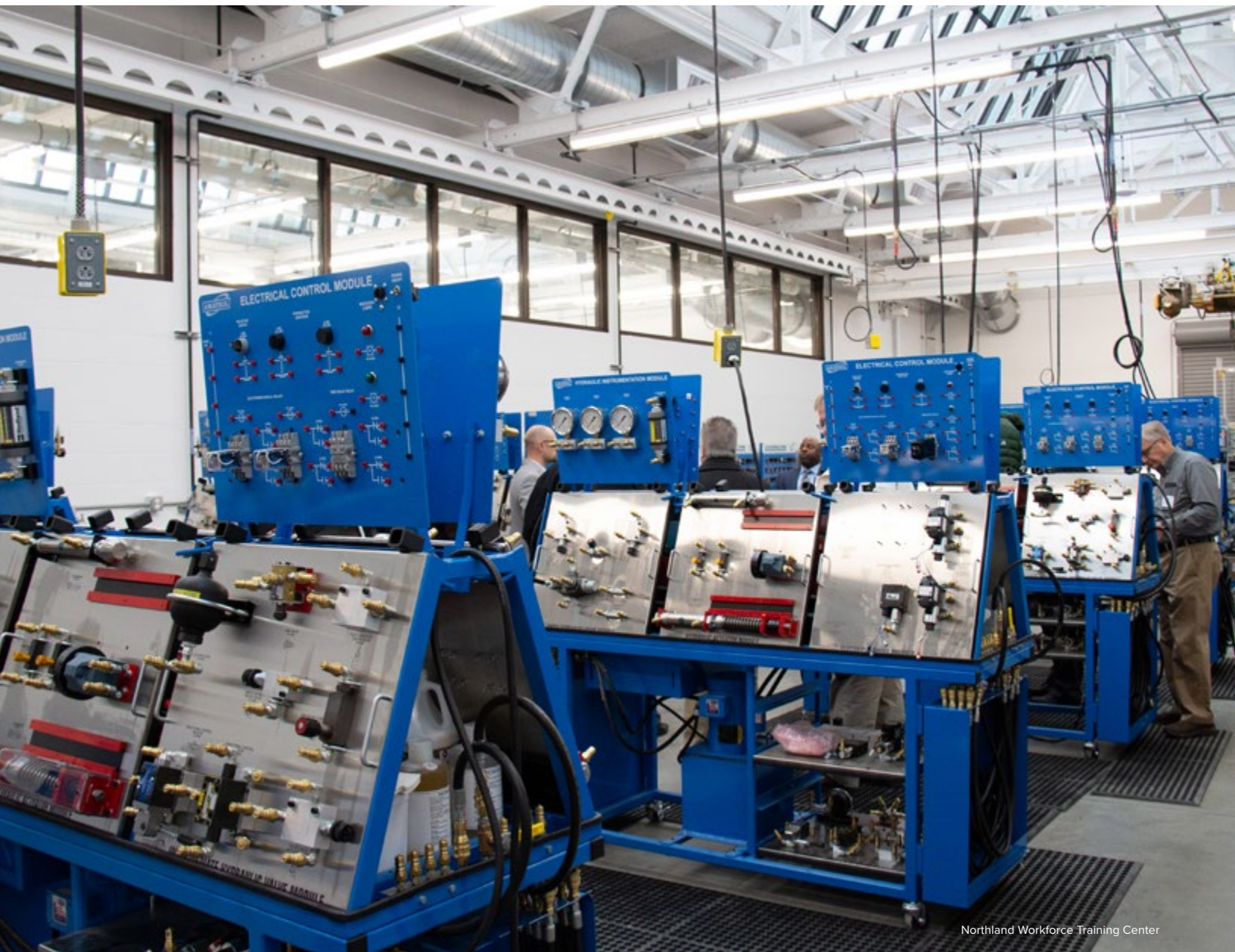
Another consideration for U.S. employers is how they pay their employees – whether hourly or salary. Some employers mistakenly believe that they can simply pay their employees a salary of any amount and avoid the minimum wage and overtime laws. This is not the case. In the U.S., a properly "exempt" employee must meet a salary and duties test before he or she does not have to be paid overtime compensation. In other words, the employee must be paid a certain amount, be paid that amount consistently without regard to fluctuations in their hours, and perform certain duties. The amount of compensation that must be paid for the salary test varies depending on whether federal or state



law is examined. There are also a number of different tests that an employer can examine to determine if a worker meets the duties test. Even if an employee could qualify as a properly exempt worker, an employer can always pay an employee hourly for all regular and overtime hours worked.

In summary, before beginning U.S. operations, Canadian employers should understand the employment law varies between the U.S. and Canada and Canadian companies can save themselves some headaches and costs by understanding these differences before expanding on this side of the border.

**For more information on this topic, please contact Vincent Miranda**, Partner at Lippes Mathias Wexler Friedman. He can be reached at [vmiranda@lippes.com](mailto:vmiranda@lippes.com) or 1-716-853-5100.



Northland Workforce Training Center



## Minimum Wage Increase Schedule

The Buffalo Niagara region (as a part of the New York State increases) will see increases in minimum wage this year while Southern Ontario has currently capped their scheduled increase at \$14.00. For non-exempt workers in industries other than fast food in the Buffalo Niagara region, the minimum wage will increase as follows:

Year (Dec. 31)	Minimum Wage Buffalo Niagara (US dollars)	Minimum Wage Ontario (Canadian dollars)
2016	\$9.70	\$11.40
2017	\$10.40	\$14.00
2018	\$11.10	\$14.00
2019	\$11.80	\$14.00
2020	\$12.50	\$14.00

In New York City and the counties of Nassau, Suffolk and Westchester, there is a more aggressive wage increase schedule for these employees. Further wage increases in NYS will be determined by Director of the Division of Budget in consultation with the Department of Labor. Any further minimum wage increases in Ontario are currently being reviewed by the Labour Minister.

These wage increases will have an impact on all employees as the wage gap continues to decrease. Employers should take a closer look at their compensation philosophy to ensure it remains fair and equitable, and gradually make changes to lessen the impact of employee morale when these changes occur.

**For more information on this topic, please contact Carolyn Powell**, Director of Business Development, International at Invest Buffalo Niagara. She can be reached at [cpowell@buffaloniagara.org](mailto:cpowell@buffaloniagara.org) or 1-716-842-1357.



## Employment Forms Update

### 2018 UPDATES

While employers in New York State are still in the throes of implementing New York's new anti-sexual harassment training and other requirements, they would be careless to let other changes to employment laws escape them. Staying up-to-date on employment forms is critical. Among other things, it helps enhance compliance with applicable laws and mitigates the chance of litigation, government investigations and/or liability for related civil penalties.

#### *Form W-4*

In the wake of the Tax Cuts and Jobs Act, the Internal Revenue Service (IRS) rolled out a new Form W-4, Employee's Withholding Allowance Certificate, in February of 2018. The 2018 version includes revised instructions for claiming exemptions from withholding and a revised worksheet, as well as the addition of a reference to the IRS' online "withholding calculator," which may be used in lieu of completing the worksheet. While the IRS is not requiring employers to obtain new Form W-4s from current employees, employers should be using the new Form W-4 for new hires. Additionally, the IRS' open encouragement of wage earners to conduct a "paycheck checkup" using its online withholding calculator may spur current employees to submit a new W-4 regardless. The 2018 Form W-4 can be accessed on the IRS website.

#### *Paid Family Leave Law (New York State)*

While most Paid Family Leave Law (PFL)-related forms were issued prior to January 1, 2018 (i.e., the commencement date of the Paid Family Leave program), new PFL-related forms were issued by the New York Workers Compensation Board (WCB) as recently as May 2018, such as:

- Form PFL-DC-119, Formal Request for Reinstatement Regarding Paid Family Leave, used by an employee if after requesting to take paid family leave, an employer refuses to reinstate the employee to an original or comparable position, terminates the employee's employment, reduces the employee's pay and/or benefits, or disciplines the employee in any way.

Forms Issued in January 2018 include:

- PFL-DC-120, Paid Family Leave Discrimination/Retaliation Complaint;
- PFL-DC-130, Employer's Response to Paid Family Leave Discrimination/Retaliation Complaint;
- PFL-32-D, Section 32 Waiver Agreement: Paid Family Leave Discrimination/Retaliation Claim; and
- PFL-300.5-D, Stipulation for Paid Family Leave Discrimination/Retaliation Claim.

Employers should regularly check for PFL-related form updates, as revisions to forms are likely to occur as the program unfolds during its inaugural year. Employers can access all PFL-related forms on the WCB's website.

#### *Form IT-2104 (New York State)*

All new hires should be completing New York's 2018 Form IT-2104, Employee's Withholding Allowance Certificate, in tandem with the 2018 W-4. The 2018 version of Form IT-2104 reflects recent tax rate schedule changes and can be found on New York's Department of Taxation and Finance website.

### *Family Medical Leave Act (FMLA)*

The U.S. Department of Labor (“DOL”) recently submitted a request to the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995, to extend the use of all FMLA-related forms, including forms WH-380-E through WH-385-V, for another three years, without any substantive changes to the forms. While the OMB is still in the process of reviewing the DOL’s extension request, it has extended the forms’ original expiration deadline from May 31, 2018, to July 31, 2018, to August 31, 2018. It is anticipated that the OMB will keep extending the expiration deadline one month at a time until its review and approval process is complete. In the meantime, employers can access the most current version of the forms (currently marked with the August 31, 2018 deadline) on the DOL’s website.

## 2017 UPDATES

### *Form I-9*

Less than one year following the U.S. Citizenship and Immigration Services’ (USCIS) issuance of its modernized “smart” Form I-9 on November 14, 2016, USCIS issued a revised version of the Form I-9 on July 17, 2017, which included, among other subtle changes, the addition of a Consular Report of Birth Abroad (Form FS-240) as an acceptable List C document. It also included a revision to List C in connection with all certifications of report of birth issued by the Department of State. As of September 18, 2017, all employers are required to use the July 17, 2017 version of Form I-9, available on the USCIS website.

Employers should continue to monitor for updates to government agency-issued forms.

**For more information on this topic, please contact Kevin J. Mulvehill**, Partner and Labor & Employment Practice Team Leader at Phillips Lytle. He can be reached at [kmulvehill@phillipslytle.com](mailto:kmulvehill@phillipslytle.com) or 1-585-238-2095.





## New York State's Paid Family Leave (NYSPFL)

On January 1, 2018, New York State's Paid Family Leave Program went into effect. If an employer is required to provide Disability coverage in New York State, then they will also be required to provide paid family leave to employees.

### *Eligibility*

Paid leave will be available to eligible full-time employees who reside in New York State, and who have worked 26 weeks in the 52 weeks preceding the first day of their leave. Part time employees will also be eligible for paid leave benefits provided they are New York State residents, and have worked 175 days in the 52 weeks preceding the first day of their leave.

### *Reasons for Leave*

Paid leave will be available to eligible employees in order to care for or assist a family member with a serious health condition, bond with a newborn or adopted child during the first year after the birth or adoption, or to provide support when a family member is called to active military duty.

### *Amount of Benefit and Length of Leave*

Paid leave benefits will be phased in, beginning on January 1, 2018, starting at 50% of the employee's average weekly wage (AWW), with a cap that correlates to New York State's AWW (which is set annually \*\*) for a period of 8 weeks. In 2021 the benefits will max out at 67% of the employee's AWW, for a period of 12 weeks.

### *Who pays for the program?*

The program is funded through employee payroll deductions. The deduction amount is set at 0.126% of the employee's weekly gross wage, with a cap based on the state determined AWW. Employers may pay the premiums instead of making payroll deductions, if they wish.

If an employee will not work enough throughout the year to qualify for paid leave, then they may opt out of having deductions taken from their pay by signing a waiver. All employees who will qualify for paid family leave must have deductions taken from their pay, regardless of whether or not they will use paid family leave benefits. Deductions will start on January 1, 2018. You may not take deductions retroactively.

### *Employee Rights and Notification*

Employers operating in New York State must update their Employment Manuals to include this policy. It is recommended that employers designate that leaves as covered under both PFL and FMLA run concurrently, or you risk employees "stacking" their leaves.

Employers must post the New York State provided poster for employees to be aware of their rights and how to access the paid leave. Paid Family Leave requires the continuation of the employee's health insurance during leave (unless the employee wishes to drop coverage), as well as restoring the employee to their position (or an equivalent one) upon their return from leave.

**For more information on this topic, please contact Jan Owczarczak**, Executive VP of Business Development at Employer Services Corporation. She can be reached at [jowczarczak@myesc.com](mailto:jowczarczak@myesc.com) or 1-716-691-4455 ext. 858.

\*\* The AWW (Annual Weekly Wage) set for NYS is \$1,305.96 for 2018. This is an average of all of NYS wages. Data from 2016 is used to arrive at the 2018 number. NYS may look at 2017 data to come up with a new AWW for 2019 or they may not. Employees on PFL will get 50% of their own AWW (the past 8 weeks of their wages prior to leave is averaged) up to a cap of 50% of the NYS AWW of \$1,305.96 or \$652.98. So if they make less than the NYS AWW, they will get 50% of their AWW. If they make more, they will get \$652.98.

## Sexual Harassment Policy in New York State

The New York State Department of Labor (“DOL”), in consultation with the New York State Division of Human Rights (“SDHR”), has released the final version of its guidance relating to New York State’s anti-sexual harassment laws. See New York State’s website, *Combating Sexual Harassment in the Workplace*.

As New York State has now finalized the guidance and related requirements, employers will need to adopt and use the New York State model policy and training program or develop and use their own policy and training materials, which equal or exceed the minimum standards established by the DOL and SDHR.

### *Key Points*

Employers must implement new anti-sexual harassment policies by October 9, 2018. Notably, the final model anti-sexual harassment policy now provides, among other things, that:

- The policy “applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business, regardless of immigration status, with” the employer;
- Although the policy “specifically addresses sexual harassment, harassment because of and discrimination against persons of all protected classes is prohibited,” including harassment and/or discrimination based on “age, race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, domestic violence victim status, gender identity and criminal history”;
- In addition to reporting “any complaint that they receive, or any harassment that they observe,” managers and supervisors must report any harassment that they “become aware of”;
- An investigation will be “commenced immediately and completed as soon as possible” after a complaint; and
- The policy “must be provided to all employees and should be posted prominently in all work locations to the extent practicable (for example, in a main office, not an offsite work location) and be provided to employees upon hiring.”

In addition, according to the final guidance:

- Only those employees “who work or will work in New York State” must be trained. That said, employers must train employees who “work a portion of their time in New York State, even if they’re based in another state”;
- All existing employees must complete the model training or a comparable training that meets the minimum standards by October 9, 2019. This may be the most important change, as the draft guidance initially indicated that such training must be completed by January 1, 2019; and
- All new employees should complete sexual harassment prevention training as quickly as possible.

### *What Should Employers Do Now?*

New York employers should work with experienced counsel to review their sexual harassment policies and training programs to ensure that they meet the minimum standards set forth in the final guidance.

**For more information on this topic, please contact Kevin J. Mulvehill**, Partner and Labor & Employment Practice Team Leader at Phillips Lytle. He can be reached at [kmulvehill@phillipslytle.com](mailto:kmulvehill@phillipslytle.com) or 1-585-238-2095.



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—National Association of Home Builders, November 2015



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# 22 MINUTES



## 4.3 MINUTES FASTER THAN THE NATIONAL AVERAGE

Source: U.S. Census Bureau, 2016



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# Friendliest American City

- Travel & Leisure, October 2017



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# Cost of Living is Low

NEW YORK CITY

SAN FRANCISCO

SEATTLE

**BUFFALO**

Council for Community & Economic Research, Cost of Living Index (2017)



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- The Huffington Post, August 2014







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