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Greater New York Contractors' NEWS



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APRIL 2013

President's Message

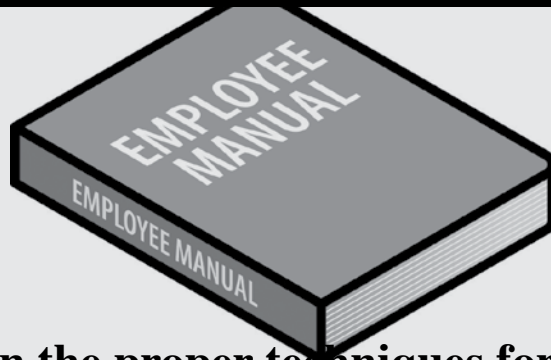


Al Trudil

The March meeting was very enlightening. Gary Slavin did an outstanding job in covering the Affordable Care Act (ACA). We learned New York State is one of only a handful of states that has an insurance exchange already in place. The way we offer health insurance to your employees and their families is going to change in the near future. We will be going through a tough transitional period but with people like Gary to keep us informed and offering suggestions

Turn to President's Message on page 3

Thursday, April 11th Meeting




Learn the proper techniques for HIRING and TERMINATING employees without incurring legal ramifications.

A special presentation by our own Alan Pearl, of Portnoy, Messinger, Pearl & Associates, Inc., and author of our "People and the Workplace" column. This is an important topic for every business owner; one that continually affects your workplace and the successful operation of your company. You won't want to miss this.

Westbury Manor
Cocktails at 5:30 pm; Dinner at 6:30 pm
Register Online at www.accany.org

ACCA, a federation of 60 state and local affiliated organizations, is the leading trade association representing the business, educational, and policy interests of the nation's heating, air conditioning, ventilation and refrigeration contractors. ACCA represents over 9,000 small businesses nationwide through its federation of affiliates.



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PRESIDENT'S MESSAGE

Continued from page 1

we will get through this.

A great time was had by all at the 2013 ACCA Conference set in Orlando, Florida at the Marriott World Center. Contractors visited from all over the country to experience the wonderful educational seminars, general sessions and trade show. In the future if you have the ability to attend this conference you will have a great opportunity to share ideas and network with fellow contractors from around the country. Looking forward to seeing some of you next year in Nashville Tennessee for the 2014 ACCA Conference. —*Al Trudil*



Interested in Shaping Your Business Future and that of our Organization? Volunteer to serve as an ACCA Board Member. Contact Executive Director John DeLillo (516-922-5832) or any ACCA Board Member.

In Memorium

Constance M. Nathan

Connie Nathan, wife of Ron Nathan of County Fair Air Conditioning passed away on Tuesday, March 19, 2013. Ron is a past ACCA president and a current board member. The directors, officers, and members of the Greater New York Chapter extend sincerest condolences to Ron and the family.

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technical advice. Accordingly, the Association cannot warrant the accuracy of the information contained in this newsletter and disclaims any and all liability which may result from publication of or reliance on the information provided herein. If legal advice or other expert assistance or advice is required, the services of a competent, professional person should be sought.

Editor's Notes

by Anthony N. Carbone

Welcome to Spring 2013 and Goodbye to a relevantly uneventful winter with minor snow events. The work load lasted through the winter from October 29th's Super Hurricane "Sandy" for many HVAC contractors. There is anticipation that much of the insurance money and FEMA money will be waiting to be spent to repair and put homes and businesses back together. This could be a business windfall for many South Shore contractors. In flood zones, many homeowners have opted for wall hung equipment, such as boilers and water heaters.

Many people were affected by the magnitude of the hurricane that precautions are being made with every decision of household restoration. Back up systems and redundancies are commonplace for many homes and businesses now.

The March program we provided at "The LaGuardia Marriott" regarding the specific details of how the new medical program will impact your business was beyond informative. Gary Slavin provided details of the costs to businesses that participate and ones that do not participate in health insurance. If you have more than 50 or less than 50 employees, do part-time employees count?? Well, you needed to be there to know. The accuracy and relevancy of our programs will make you a better business owner.

In addition, we will be having our Annual Cocktail and Hors d'oeuvres Party on Tuesday, June 4th. Bring your co-workers and/or spouses to this informal fun time to kick off the summer.

The "Night at The Mets" (June 19th) tickets will be on sale this month and always gets a huge amount of participation. Citifield is a model stadium that must be examined and you might even get to see the Mets win!!!

ACCA will continue to bring your business to new heights with pertinent programs and relative functions. Can you afford not to be a member? — Anthony N. Carbone



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From the Electrical Training Center

Romex (Type NM) Cable

By Sal Ferrara,
Director, Owner of The Electric Training Center

Salvatore Ferrara has 29 years of knowledge and experience in the electrical industry. He has instructed Local Union # 3 Apprenticeship Program 1998-2001; and is currently licensed to teach CEU renewal courses for Master Electricians in New York, New Jersey, Connecticut and Florida; and is a provider of CEU's for NABCEP, building officials, and home inspectors in NYS. He currently serves on Code Panel #2 for the NYC Electrical Code. Salvatore Ferrara has testified as an expert witness in the field of electricity for Con Edison and several other law firms. Presently, he is the owner and Director of the Electrical Training Center, Inc an accredited school, located in Copiague, NY, which provides education for individuals just starting their career, or seeking to improve their skills, in the electrical, HVAC/R, and photovoltaic industries. He is a member of the following organizations: IAEI, NFPA, LISEIA, USGBC-LI, LIPA Trade Ally, NEL, SCECA, LIAA, NYFAA, ACCA, RSES and sits on the advisory board for Western BOCES Wilson Tech electrical program and Stony Brook University Corporate Education Training advisory committee.

Below, Sal offers us some basic information on cabling, specifically Romex (Type NM) Cable.

There is a lot of confusion about (Romex) Type NM cable. Here are some common questions that I get all the time?

Can Romex be installed in a raceway (PVC, Rigid, Alum, EMT) outside?

The answer is NO.

334.12 Uses not permitted (B)(4) states:

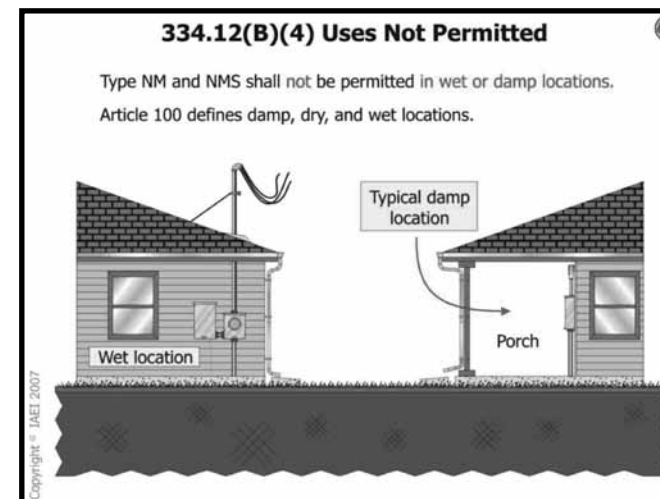
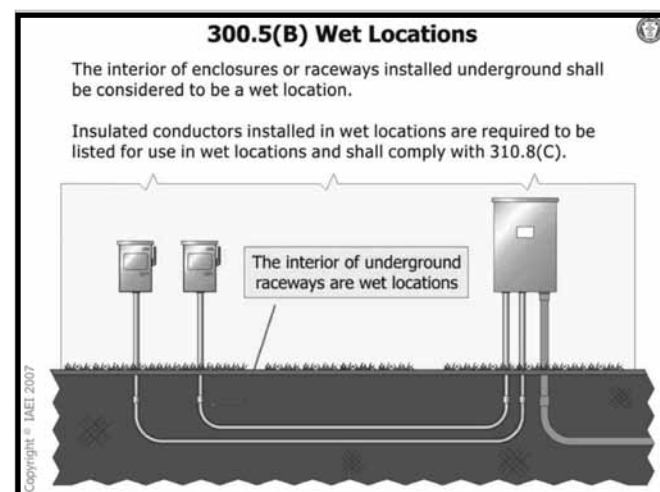
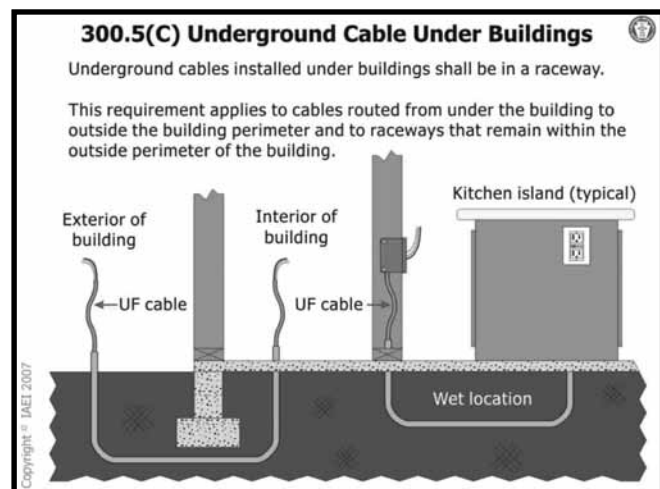
(B) Types NM and NMS. Types NM and NMS cables shall not be used under the following conditions or in the following locations:

- (1) Where exposed to corrosive fumes or vapors
- (2) Where embedded in masonry, concrete, adobe, fill, or plaster
- (3) In a shallow chase in masonry, concrete, or adobe and covered with plaster, adobe, or similar finish
- (4) In wet or damp locations

What is a Wet location?

Location, Wet. Installations underground or in concrete slabs or masonry in direct contact with the earth; in locations subject to saturation with water or other liquids, such as vehicle washing areas; and in unprotected locations exposed to weather.

EXAMPLES



What is a damp location?

Location, Damp. Locations protected from weather and not subject to saturation with water or other liquids but subject to moderate degrees of moisture. Examples of such locations include partially protected locations under canopies, marquees, roofed open porches, and like locations, and interior locations subject to moderate degrees of moisture, such as some basements, some barns, and some cold storage warehouses.

What is Romex UL Listing?

Romex is listed for Dry locations Only. Even though Romex can be sleeved through a raceway, the location of use determines it's listing. An example where it would not be permitted is installing PVC to a kitchen Island that has a slab; since the PVC is installed in a wet location (see Definition), UF cable must be used, NOT Romex.

Last question. If I'm installing an air handler in the attic and I install PVC as a sleeve on the outside of the house. Can I use Romex to bring power(feed) to the air handler from the basement?

Answer is NO.

The Romex is installed in a wet location. This would be a code violation. It is listed for dry location only. •

LIPA Trade Ally Award



On February 26th John DeLillo and Mike Newman attended a "LIPA Trade Ally Recognition Breakfast" where ACCA received an award for participation and support of LIPA events. In photo above, John accepts the award from Dan Zaweski, Assistant Vice President of Energy Efficiency and Distributed Generation for the Long Island Power Authority.

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Cocktails and Hors d'Oeuvres Party Tuesday, June 4th

The ACCA Annual Cocktail and Hors d'oeuvres Party will be held on Tuesday, June 4th. Bring your co-workers and/or spouses to this informal fun time to kick off the summer.

More details will be coming!

COMING SOON!
Monday, August 12th, 2013

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Choosing Vehicle Safety Features & Equipment

By Kelly Hiner, Enterprise Fleet Management

On playgrounds children know that “bells and whistles” are used by their teachers to ensure their safety. However, adults choosing safety features for a new car or truck need to be a little more discerning about which features may be more “bells and whistles” and which are really necessary. More importantly, for businesses with a fleet of vehicles, decisions about safety features and equipment can impact the safety of every driver, as well as the total cost of ownership for each vehicle.

Some of the safety features worth considering when ordering new vehicles include:

- Electronic Traction & Stability Control Systems – activate faster than a driver can react to help steer, slow down or brake a vehicle automatically in emergencies
- Rear vision cameras – provide a natural view of objects directly behind the vehicle when backing up, as well as during parking maneuvers
- Side blind zone alerts – utilize radar sensors to identify and indicate the location of other vehicles that might otherwise not be in the driver’s line of vision
- Lane departure warnings – camera-based system that activates at speeds above 35 miles per hour to alert the driver when vehicle is changing lanes with no advance signal
- Intelligent brake assist – utilizes radar and vision sensors to help driver avoid or lessen the damage caused by a front-end crash by automatically applying added brake force

While today’s safety features are more sophisticated and effective than ever before, choosing the right safety features and equipment has become a lot more complicated. A professional fleet management company that is familiar with all the latest safety features and equipment across a wide range of manufacturers can help a business determine

which features are necessary for individual vehicles within the fleet. Factors such as how vehicles will be used, lease terms, insurance costs and anticipated residual values are all taken into consideration as part of calculating the total cost of ownership.

A recent poll by the Alliance of Automobile Manufacturers found that two-thirds of customers are interested in looking at the latest high-tech features aimed at helping drivers avoid crashes the next time they buy a car or truck. The alliance’s CEO, Mitch Bainwol, said in a statement, “More than 90 percent of crashes involve driver error of some kind, so automakers created a range of driver assist systems that aid the driver for brief periods of time to help avoid an accident.”

There is little question that safety features are effective. The National Highway Traffic Safety Administration recently reported that electronic stability control, which automatically detects the loss of traction, saved 2,202 lives between 2008 and 2010.

But the number of choices, features and options is extensive and growing. According to an article in Automotive News, “In many ways, the hardest part is choosing the features that help drivers and also are easy to use. It’s not easy to keep from overloading drivers with features.”

Ultimately, all the safety equipment in the world cannot take the place of a good driver who drives defensively and knows as much as possible about the operating systems in the vehicle that he or she is driving. However, businesses with a fleet of vehicles can easily become overwhelmed by the variety of options and choices in safety features and equipment and end up paying too much or not getting the features that offer the best protection. Working with a professional fleet management company that understands your business needs and objectives can help choose the features that will benefit your business while avoiding “bells and whistles.”

Kelly Hiner is Group Sales Manager for Enterprise Fleet Management in New York and can be contacted at 973-709-2499. Visit the company’s web site at www.enterprisefleet.com or call toll free 1-877-23-FLEET. •

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Non-Compete Agreements in New York

Are you concerned that your employees who have access to confidential information or have developed relationships with some of your most important customers may leave your company and join or start a competing business? If so, you may want to require these employees to sign restrictive covenants. In New York, without a restrictive covenant, an employee is free to compete with his or her former employer so long as he or she has not used improper means, such as divulging trade secrets or misappropriating confidential information. Restrictive covenants can be used to 1) limit employees from competing with your company, 2) restrict employees from contacting your company's clients after they are no longer employed by your company, and 3) prohibit

employees from disclosing your company's proprietary information. This article will briefly explain some of the general rules for preparing an enforceable non-compete agreement in New York.

The key question that a court will consider when determining whether to enforce a non-compete agreement is whether the agreement is reasonable. Courts will find a non-compete agreement to be reasonable if it (1) is no greater than is required for the protection of the legitimate interest of the employer, (2) does not impose an undue hardship on the employee, (3) is not injurious to the public, and (4) is reasonably limited in time and area.

Legitimate Interest

An employer's legitimate interests include preventing misappropriation of trade secrets and confidential customer lists, restricting the solicitation of customers and preventing competition by a former employee whose services are unique or extraordinary. Courts have found that a customer list may be deemed a trade secret in certain circumstances. A customer list is more likely to be considered a trade secret where the employer has expended significant resources and time on developing the customer list. On the other hand, a customer list is not likely to be considered a trade secret if it can easily

be discovered through public sources. Courts generally will not uphold a non-compete agreement that prevents a former employee from soliciting customers that the employee brought to the employer through his or her own independent recruitment efforts or customers of the employer that the employee did not have contact with while working for the employer. Courts are more likely to enforce a non-compete agreement where the relationship between the employee and customer was built at the employer's expense.

Undue Hardship

A court is more likely to find that a non-compete agreement does not impose an undue hardship on an employee when the agreement only restricts the employee from working in a limited geographic area for a short time period.

Not Injurious to the Public

A non-compete agreement typically will not be viewed as harming the public interest when the public has access to other individuals who provide similar services.

Limited in Time and Area

Determining whether a non-compete agreement is reasonably limited in duration and geographic scope is a fact sensitive inquiry. There is no bright line rule.

Because this is such a fact-intensive area of the law, you should consult an experienced employment law attorney when drafting a non-compete agreement. If you need assistance in preparing a non-compete agreement or any other type of restrictive covenant, feel free to contact me at ABPearl@pmpHR.com.

New I-9 Form

United States Citizenship and Immigration Services (USCIS) released a new Employment Eligibility Verification Form I-9 on March 8, 2013. The new form contains the revision date 3/8/13 in the lower left corner. Although USCIS is allowing employers until May 7,

2013 to use the new form, employers should begin using it immediately. After May 7, 2013, employers that fail to use the new form may face penalties. Employers are not required to complete the new form for current employees for whom there is already a properly completed Form I-9 on file, unless re-verification applies. In fact, USCIS has stated that "[u]nnecessary verification may violate the anti-discrimination provision[s]" of the Immigration and Nationality Act.

The new form can be accessed at PMP's website; <http://www.pmpHR.com>. If you have any questions about the form, please do not hesitate to contact PMP at (516) 921-3400. •

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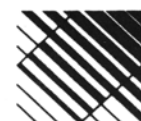
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**Statement From
Stuart S. Zisholtz, Esq.**

Insurance Coverage & Super Storm Sandy

In the aftermath of super storm Sandy, there have been and will be many pieces of litigation dealing with issues of insurance coverage.

In a recent case handled by our firm, the New York Court of Appeals permitted a claim against an insurance broker after the insurance company refused to cover the underlying claim. In that decision, the Court held that an insured is not barred as a matter of law from asserting a claim against an insurance broker even if the insured failed to read and examine the content of its insurance policy if a specific request for insurance was made by the insured.

Despite the insured's failure to read and examine and then complain about the policy upon receipt, the Court held that the insured could maintain an action against the insurance broker for failure to procure adequate insurance coverage if the insured requested specific coverage. The key aspect is whether a specific

type of coverage was requested and whether the insured looked to the expertise of the broker with respect to insurance matters.

In the wake of super storm Sandy, many insurance companies have disclaimed coverage. People who might have otherwise been left without a legal remedy under prior New York law may now be able to assert a viable claim against their insurance broker.

This ruling does not address the issue of whether an insured has a valid claim against the insurance carrier itself. That type of claim needs to be reviewed and determined on a case-by case basis. The Court only addressed the claim against the insurance broker and the requirements needed to be successful.

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For a free copy of our pamphlet pertaining to mechanic's liens and payment bond claims, kindly contact me or the Association.

Stuart S. Zisholtz is a partner in the law firm of Zisholtz & Zisholtz, Mineola, New York, a general practice firm specializing in Construction Law and Mechanic's Liens. He is also a member of the Greater New York Chapter, ACCA. He can be reached at 516-741-2200.

Thursday, March 14th



Board of Directors met prior to the general meeting.

The March 14th meeting offered a valuable exercise regarding Health Care Reform for member contractors. Gary Slavin, CIC, LUTCF, CLTC of Slavin Employee Benefits discussed the impact the Affordable Care Act will have on employee benefit plans and businesses.



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