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Greater New York Contractors' NEWS



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January 2012

President's Message

December is the last month of my first year as President of the New York ACCA chapter.



Michael Newman

January will begin my second and final year of my presidency. We ended the year with our holiday party at North Hills Country Club which was an amazing time. I would like to thank the Board of Directors, our Executive Director and the staff, all the members of ACCA, Standard Refrigerators Inc. and my family for all of the support you have provided me. This year was great... next year will be even BETTER!!

2012 will be an exciting year!

Turn to President's Message on page 3

*Wishing you a
happy, safe
and prosperous
New Year*

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PRESIDENT'S MESSAGE *Continued from page 1*

First order of business I have to express right now is you must come to the February meeting!! In February, Paul Stalknecht, CEO of ACCA will be the main attraction for the February general meeting. He is making a special trip from Virginia to meet our chapter and discuss ACCA on a national and government level. I urge all members and companies to attend the event.

This year we will be focusing on increasing the membership within our organization and seeking out greater participation from our contractors, suppliers and associate members. If anybody has an idea or issue relating to our business and industry, please get in touch with us and we will make it happen. How can ACCA help you this year? Are there any issues or topics you want to hear about this year?

Please use ACCA as a networking experience and a place where you can bring the hottest and most relevant business topics back to your day to day operations.

Thank you for your support and I look forward to seeing you at the next meeting. Have a Happy Holiday and Happy New Year!!

— *Mike Newman*



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Greater New York Contractors' News is printed monthly by the Greater New York Chapter of ACCA. Questions should be directed to the appropriate director or committee member for assistance. While this newsletter is designed to provide accurate and authoritative information on the subjects covered, the Association is not engaged in rendering legal, accounting, or other professional or

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**

2011 IS OVER and the economy is starting to perk up. Unemployment rates are dropping and the overall mood of consumers is beginning to change. This holiday season saw an influx of buyers and the air of caution is starting to wane. HVAC contractors are beginning to see those jobs that sat on the side lines are now beginning to take life and quotes are being requested so they may begin shortly.

Inevitably, the patchwork repairs to many systems are loosing their ability to function, with low loan rates many are taking the plunge to get the work done. Hopefully 2012, an election year, will be a transition to prosperity. A changing cycle may be coming about.

At the Greater New York Chapter of the Air Conditioning Contractors of America, we have forged into a year of progress with new President Michael Newman. We are proud of his accomplishments this year and appreciate his leadership that he has provided to our all volunteer industry organization. We have had many great learning technical and management programs this year with record turnouts of top quantity contractors and their employees, as well as associates members.

We also had many social programs like Casino Night, Night at the Mets, Annual Golf Outing, Waterfront Cocktail party and the Holiday Party at North Hills Country Club. During these functions although some may not think of them as educational, they are the strengthening of relationships and the sharing of information is priceless. I personally have seen many contractors grow while learning from the enormous talent pool we have and the experience our contactors have give to one another, IT'S HUGE!

I encourage anyone who has not made the decision to participate with ACCA, to do so this year.

On behalf of myself and the Board of Directors and Officers of the Greater New York Chapter of the Air Conditioning Contractors of America, we wish you a very Happy, Healthy and Prosperous 2012.

Thank you for your support!!! — **Anthony N. Carbone**



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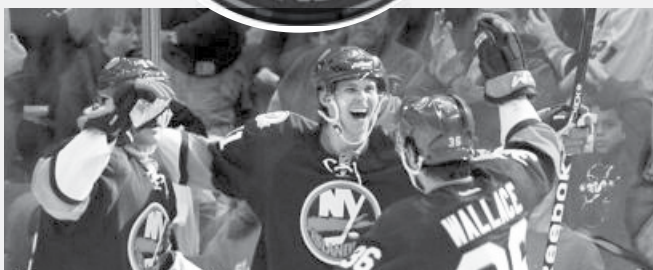
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Special Monthly Meeting
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featuring
Paul T. Stalknecht
President, CEO, ACCA
discussing issues and answers
on the national scene

Join your fellow ACCA contractors for a special meeting featuring a presentation by ACCA president and CEO Paul T. Stalknecht. Mr. Stalknecht will discuss a variety of national and local initiatives and opportunities offered by our national organization. Included will be the following:

ACCA National's Major New Initiatives to Help Contractors Succeed — Overview of ACCA's latest programs, products and activities.

ACCA is the Contractors' Voice on Capitol Hill — Update on ACCA's advocacy efforts on behalf of the HVACR Industry in the legislative & regulatory arenas.

Your Competitive Edge in Today's Economy — Educational Opportunities (In-person and on-line Training Courses, Webinars, ComfortU, etc.).

Increase Your Opportunity for Success — Networking with Your Peers and Industry Leaders at ACCA Annual Conference & Expo - March 5-7, 2012 Paris Hotel in Las Vegas; and Contracting Week - October 9-12, 2012 Sheraton Hotel in Austin, TX.

Thursday,
February 2, 2012

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

About Paul T. Stalknecht
President and CEO, Air Conditioning
Contractors of America

Paul Stalknecht is president and chief executive officer of the Air Conditioning Contractors of America (ACCA), the nation's leading organization of environmental systems contracting businesses. Stalknecht has led the 45-year-old association through a series of unprecedented changes since assuming its top executive role in 2001.



Under Stalknecht's leadership, ACCA has increased its membership and its annual combined revenues. Growth has resulted from Stalknecht's focus on providing solid value to the association's contracting membership base; aggressive advocacy at the federal level; expanded educational programs, including innovative distance learning solutions; an open approach to partnering and collaboration between different segments of the industry; and the development of new standards for heating and cooling systems that are bringing the industry to the forefront of technology and energy efficiency.

ACCA Holiday Party



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Wage and Hour Law Reminders

It is a New Year and a great time to start compliance with wage and hour notice requirements under Section 195 of the New York Labor Law applicable to all employers. A government audit and order to comply is far more costly than taking relatively simple steps to avoid crippling penalties. Section 195 requires that wage notices contain:

- The employees' rates of pay
- The basis of the employee's rate(s) of pay (e.g. hourly, salary, daily, etc.)
- Tip, meal or lodging credits that the employer intends to claim
- Employee's regular pay day (e.g. if employee is a manual worker under the New York Labor Law, it must be a weekly pay day)
- The name of the employer and any doing business as names used by the employer.
- The physical address of the employer's main office or principal place of business and mailing address if different from the above.
- The telephone number of the employer
- If the employee's primary language is not English, the employee must be provided with this notice in his/her primary language.

These notices must be generated for each employee and maintained as a separate form, apart from any other forms or letters. These are required to be generated and given to each employee annually between January 1 and February 1 as well as anytime an employee's wage rate changes. Further, receipt of these notices must be acknowledged by the employee with a signature. If the employee refuses to sign,

the notice should still be given and a notation in the employee's file of his/her refusal to sign should be retained for a minimum of six years. Should the New York State Department of Labor request copies of the notice, the employer is not only legally obligated to retain them at its business premises but must produce them on demand. The penalty for failing to maintain such notice is \$50 per week, per employee.

Wage statements or pay stubs, in addition to the wage notice acknowledgments above, must be given to employees with their wage payments. The wage statements must include:

- Employee's name
 - Employers name, address and phone number
 - The time period covered by the pay stub or wage statement
 - Hours worked
 - Regular and overtime pay rate
 - How the employee is paid, e.g. hourly, salary, weekly, commissions etc.
 - Gross and net wages
 - Deductions from wages
 - Employer credits, e.g. tip, meal or lodging credit
- Failure to provide such pay stubs or wage statements may result in a penalty of \$100 per week



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per employee. These records too should be kept for at least six years for each employee.

Under Section 191 of the New York Labor Law, sales representatives who are paid on a commission basis must be provided with a written agreement signed by the employer. The employer must also retain an acknowledgment of receipt signed by the employee. These agreements must set forth the method by which the commissions are computed and paid. However, this provision specifically requires that such employees must be paid their commission earnings within five business days from the date the commissions become due. The employer faces double damages, costs and attorney's fee liability for failing to comply with the statute.

Finally, the Wage Theft Prevention Act that went into effect April 2011 was designed to correct employers' continued misclassification of employees. Therefore, now is a good time for employers to set their records straight. The independent contractor that employers were paying on a salary basis may actually turn out to be an employee who is entitled to overtime and all benefits afforded the company employees. An employer cannot simply deem or declare a worker an independent contractor or classify a worker as such because they are paid with a 1099. Independent contractor status is highly dependent upon the industry and the facts and circumstances of the employer-employee relationship. These criteria to determine independent contractor status is not a mere checklist thus, it is imperative that employers consult a professional in determining a workers' classification.

Happy New Year from PMP. If you would like to consult with one of our highly skilled HR professionals and invest in your work force, contact us at Portnoy Messinger Pearl & Associates, Inc. We can help you set policies in writing, ensure compliance and provide staff training to meet your specific business needs. I may be reached at ABPearl@PMPHR.Com.

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Enterprise Fleet Management Expands Environmental Sustainability Program with New Microsite for Businesses With Medium-Size Fleets

Featuring sustainable business practices and solutions to reduce carbon footprint

By Kelly Hiner/Enterprise Fleet Management

Companies with medium-size fleets will discover new ways to create an eco-friendly fleet and reduce their carbon footprint using a new microsite developed by Enterprise Fleet Management, a full-service fleet management company specializing in serving businesses with medium-size fleets. The link to the new "Building an Eco-Friendly Fleet" microsite is available at www.drivingfutures.com/fleetmanagement.

The microsite is unique because it focuses exclusively on ways companies with medium-size fleets can take advantage of environmental best practices. Initiatives include programs for offsetting greenhouse gas emissions, fleet emission footprint analysis, vehicle cycling and fleet optimization, and emerging fuel and engine technologies.

Enterprise Fleet Management estimates that the average fleet vehicle each year will log 20,000 miles and emit anywhere from 19,000 to 27,000 pounds of carbon dioxide (CO₂), which is why managing vehicle emissions can represent a key – and highly visible – component of an effective corporate social responsibility effort.

A flagship program through Enterprise enables fleet operators to purchase verified greenhouse gas offsets through a trusted third-party partner that invests in alternative energy projects – such as energy from wind farms and the mining of methane gas from landfills – to remove harmful greenhouse gases from the atmosphere. Based on conversations and feedback from customers, we know there is a demand for innovative ways to address the environmental impact of a company's fleet. The new microsite not only enables businesses to become part of the solution, it's the most comprehensive source of information for establishing medium-size eco-friendly fleets in the industry.

About Enterprise Fleet Management

Enterprise Fleet Management supports a comprehensive set of environmental initiatives that includes helping customers purchase verifiable greenhouse gas emission offsets by pledging to match a portion of each customer's greenhouse gas offset purchases up to a total match of \$1 million.

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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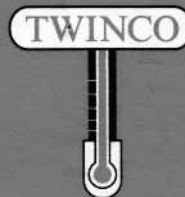
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ACCA, AHRI, HARDI Agree to Collaborate on Hydronics, Radiant Initiatives

The three leading trade associations in the indoor environmental industry have announced they will collaborate closely on educational initiatives to benefit the industry's hydronics and radiant panel sectors.

The three associations are Air Conditioning Contractors of America (ACCA), which represents contracting businesses; the Air-Conditioning, Heating & Refrigeration Institute (AHRI), which represents manufacturers; and, the Heating, Air-conditioning and Refrigeration Distributors International (HARDI), which represents wholesalers and distributors. These three organizations have a longstanding history of collaboration and partnering for the betterment of the air conditioning and heating industry.

The hydronics partnership was developed in a series of meetings at ACCA, which recently launched a Radiant & Hydronics Council (RHC) to provide specific support to member companies who work in the hydronics field.

"Hydronics is of growing importance to our industry, as contractors are now being expected to understand a wide variety of different technologies in order to serve their customers, from air to water to ground and back again," said Paul T. Stalknecht, ACCA President & CEO. "The three legs of our industry – contractors, manufacturers, and distributors – all recognize this

importance. We understand we need to work together to ensure that systems are properly designed, installed, and maintained."

Through the collaboration, AHRI will continue to update basic hydronics training and curricula. This material will be used by HARDI to encourage its distributor members to provide hydronics training in their local areas. ACCA also will use this material to develop online education for contractors and their employees, and encourage members to take advantage of HARDI member training where available. The ACCA RHC will develop advanced online training modules for contractors that need to go "beyond the basics" in hydronics design and installation.

In addition, the ACCA RHC and HARDI will be represented on the AHRI committees responsible for developing or revising hydronics training materials. The ACCA RHC will join AHRI, HARDI, and many others in the North American Council on Hydronics, a USA-Canadian alliance group.

"We are delighted about this new collaboration, said Stephen Yurek, AHRI President & CEO. "Working together, our three organizations will provide a higher level of service and professionalism than we could on our own to the entire hydronics industry."

Talbot Gee, HARDI Executive Vice President & COO, added, "Our members are very excited about the opportunities presented by collaboration between our three organizations. There are tremendous possibilities for future projects that will pay great dividends for those who specialize in hydronics, an area where industry-specific education is sorely needed." •



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Statement From Stuart S. Zisholtz, Esq.

Termination for Cause – Termination for Convenience

In many contracts there is a clause entitled "Termination for Cause" or "Termination for Convenience". Many times contractors overlook these clauses because the last thing they think about when signing a contract is getting fired. Unfortunately, contractors are terminated and you must understand your rights and obligations when this unfortunate situation occurs.

Termination for cause means exactly that. The purpose is that the contract is being terminated for a particular reason.

Most AIA contracts require a seven-day written notice prior to termination. However, it is essential you review the contract to determine the time frame associated with the termination, and whether there is a cure time, whether verbal notice is sufficient, etc. The burden of establishing a proper termination is on the party who is seeking the termination. If you are terminated for cause, the party who served you with the notice is the party who must establish that they served the notice properly and that there were proper grounds for termination.

Any termination for cause should specify the causes, events or conditions under which the contract is being terminated. The

causes may include deficient work, contractor's failure to pay subcontractors or suppliers, delays, insufficient manpower, etc.

The term "termination for convenience", which is different than "termination for cause", is often used by governmental agencies, but may be incorporated into private contracts. This type of termination allows an owner to terminate a contract without much liability. You should be careful when entering into a contract that contains an unlimited termination for convenience clause. This unqualified right to terminate the contract allows contractors little recourse. If the contract is terminated for convenience, many times a contractor loses its rights to obtain its profits on the remaining work.

Whether termination is for cause or convenience, it is never a pleasant experience. It is essential that you understand the terms and conditions of your contract in order to ascertain whether the proper notice was served upon you.

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For a free copy of our new Fourth Edition pamphlet pertaining to mechanic's liens and payment bonds, 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.

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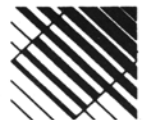
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