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Greater New York Contractors' NEWS



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JANUARY 2015

President's Message

Well the holiday season is over and I hope everyone enjoyed it. A New Year has come and with that new president for the Greater NY Chapter of



Al Trudil

ACCA. I would like to take a moment and thank the current ACCA board for all they did for me during my 2 years as President, you all made my job easier and it was greatly appreciated. I would also like to thank John DeLillo Sr and Jr for all their hard work and help that they have given me. I would like to congratulate Marc Soffler, the incoming president, and wish him the best of luck. I know he will do an outstanding job for our chapter. This is a great organization to belong to.

The holiday party was a great success, thanks to Anthony Carbone

Turn to President's Message on page 3

January 8th Meeting TAX SAVING IDEAS FOR 2015 & BEYOND!

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PRESIDENT'S MESSAGE *Continued from page 1*

who always chooses the best restaurants. Everyone enjoyed the food and company. We collected a box full of toys for our Toys For Tots drive. — *Al Trudil*



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Editor's Notes

by Anthony N. Carbone

As the New Year of 2015 begins, many contractors are finding the early, cold weather and the dusting of snow in early December are precipitating anxious consumers and business owners to act now and not wait. The combination of more jobs being created and the economy on the upward trend adds to the prosperous feeling that could lead to sales.

One driving factor is the relief of gasoline prices as the price per barrel is dropping to record low prices, less than \$60.00 per barrel. The lowest since 2009. It in turn has made the weekly cost of driving more reasonable for businesses and consumers. This reduction in gas prices will result in more consumer spending. Dinners, clothes, trips, all of which will continue to expand the economy. Many consumers will make the decision to go ahead with expansions and upgrades to their homes or replacement of equipment at their buildings.

Our organization (ACCA) is attracting many different new business people with talents and ideas that are impossible to ignore. I hope you find the time to join us to learn what is occurring and what is relevant to our industry today!

In addition, please consider an ad in this newsletter as it supports the cost and distribution of this publication. The Contractor News is our vehicle to get the word out to many members of our industry. Please support our efforts.

Happy and Healthy New Year to all of our members and readers. —Anthony N. Carbone



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December 6, 2014



People & The Workplace

By Alan B. Pearl,
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New OSHA Reporting Rules in Effect for 2015

Happy New Year! A new year often brings changes to laws and regulations, and this year is no different. The most well known change for New York employers this year is the rise in the minimum wage from \$8.00 per hour to \$8.75. But there are also a number of other changes that you should be aware of. Notably the U.S. Department of Labor, Occupational Safety and Health Administration ("OSHA") has amended its injury and illness recording and reporting requirements. These changes are effective January 1, 2015.

Under the new rules employers must now report "in-patient hospitalizations of one or more employees or an employee's amputation or an employee's loss of an eye, as a result of a work-related incident" within 24 hours. This is a change from the previous rule which required employers to report "in-patient hospitalizations of three or more employees as a result of a work related injury" within 8 hours. The rule also expands the methods of reporting work

related injuries. Now employers can electronically submit incident reports via the OSHA web portal at www.osha.gov in addition to calling an OSHA Area Office or the 1-800-321-OSHA hotline.

The rule also amended the exemptions for OSHA recordkeeping. The current rule of exempting employers with 10 or less employee from routinely keeping OSHA injury and illness records has not been changed. However, the exemption for low hazard industries has been amended to include different types industries that may have previously been exempt. HVAC employers are not considered low-hazard industries and thus are not exempt. Nonetheless, all employers regardless of size must still comply with non-routine reporting requirements for serious injuries.

Failing to Pay Overtime Can Land You in the Slammer

Employers by now are well aware of the high cost of wage and hour suits. Failure to properly pay overtime or minimum wages, can result in not only compensatory damages (back pay), but also liquidated or double damages, and the Plaintiff's attorney's fees. A \$10,000 case can easily result in more than \$50,000 in damages, not including the cost of defense counsel. Worse still, the Fair Labor Standards Act (FLSA) allows for collective actions which means numerous employees can easily join a suit, resulting in six or even seven figure lawsuits. Employers often have a difficult time defending these suits where the company failed to maintain proper payroll records. There is a presumption that the employee's allegations of his hours worked are correct, therefore plaintiffs often grossly exaggerate their hours worked, resulting in increased liability – in addition to penalties for record keeping violations.


A wage and hour suit can thus be financially devastating for a business and the individuals who own and manage them, as the FLSA and New York Labor Law hold business owners who supervise employees personally liable for violations. The financial effect of a wage and hour case is well known amongst employers, but what many do not know is that it may cost you your freedom as well. Both the FLSA and New York Labor Law impose criminal penalties for failure to pay minimum wage and overtime. Now the Attorney General and Governor of New York are vowing to enforce these laws more strictly.

Penalties for violations can be stiff. Under the FLSA first time violators can be fined up to \$10,000 and sentenced to up to 6 month in prison. Under New York Labor Law first time offenders face \$20,000 fines and up to one year imprisonment. The penalties become still harsher for repeat offenders. It is not just owners of large businesses with egregious violations that are facing prosecution. A Queens restaurant was required to pay \$400,000 in restitution for failing to pay minimum wages. A Long Island diner paid over \$500,000 in restitution, and a tortilla factory owner was sentenced to pay \$450,000 in restitution and 90 days in jail for overtime violations.

The recent increase in criminal prosecutions for wage and hour violations highlights the importance of compliance with the law. Even if employees are paid above the minimum wage and are paid overtime, without proper records employers may still face civil and criminal penalties. If you have any concerns about your payroll or recordkeeping practices it is essential that you contact an HR professional immediately. This is especially true in the

construction and hospitality industries as these trades are on the DOL's radar screen.

If you need any assistance with regard to this or any other labor or employment matter please contact me at abp@pmpHR.com or (516) 921-3400. •



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Statement From Stuart S. Zisholtz, Esq.

How Much is Your Mechanic's Lien Worth

The basic concept behind filing a Mechanic's Lien is that there has to be a balance due from the owner to the contractor to which a subcontractor's lien can attach. If you have a contract with a general contractor for \$100,000 and the owner has paid the general contractor in full, your lien is worthless. If the owner owes the general contractor \$10,000, then your lien is worth \$10,000. If there is more than one lien on the job, all the other lienors share proportionately. The timeliness of filing the lien is irrelevant. If someone files a lien on January 10th and another one files a lien on February 10th they all share proportionately, regardless of when the liens were filed.

The issue here is how to deal with a defense that the owner claims that he paid the contractor in full. How do you overcome that defense?

In the first place, it may be true. If that is the case, then you have no lien.

More often than not, however, it is not true and not necessarily because anybody is lying, but because they are looking at the same document in different ways and from different points of view. When you are hit with the defense that payment was

made in full, you have to do some very deep investigating and discovery.

An example that we had in our office was about 50 years ago in 1966 when we represented a lumber yard. The owner was a very substantial and responsible person, and totally honest. He claimed that the general contractor was paid in full. The amount of the lien was only \$10,000, but in 1966 that was a lot of money.

My office examined the contract between the owner and the general contractor and went word for word, line by line, issue by issue and, behold, up came a charge for \$40,000 for the use of a hoist. The owner charged the general contractor for the use of the hoist. There was nothing in the contract between the owner and the general contractor requiring the general contractor to have the hoist. The \$40,000 was thrown into the pot and our client collected his \$10,000.

The name of the game is to explore every possibility. You may have retainage money which is usually 10% or sometimes 5%, but it is still a fund. You have credits and/or debits and it may or may not add to the fund. You have deposits, counter-claims, cross-claims, and disputes between the owner and the general contractor all of which could or could not add or create a fund.

The bottom line is that you have to thoroughly examine the books and records, the accounts receivables, the accounts payables, the charges and back charges, etc., before you can be

satisfied that the payment has been made in full.

Never let your lien time run out!

For a free copy of a 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.

Contractor Comfort Index 74 in November; Up 10 From 2013

The November Contractor Comfort Index (CCI) shows that contractors are feeling positive about short-term growth as autumn is ending. ACCA began measuring contractor attitudes toward short-term economic growth with the CCI in February 2010.

For November 2014, the CCI is 74. The CCI also shows that contractors are feeling better than they were 12 months earlier when the CCI was 64.

The CCI is calculated based on a survey of the association's contractor members, who are asked how positive they feel about new business prospects, existing business activity, and expected staffing decisions in the short-term future. Weighted and averaged

into one number, a CCI of 50 or above reflects anticipated growth.

The CCI is released prior to the start of each month; the next index number will be released during the last week of December. •



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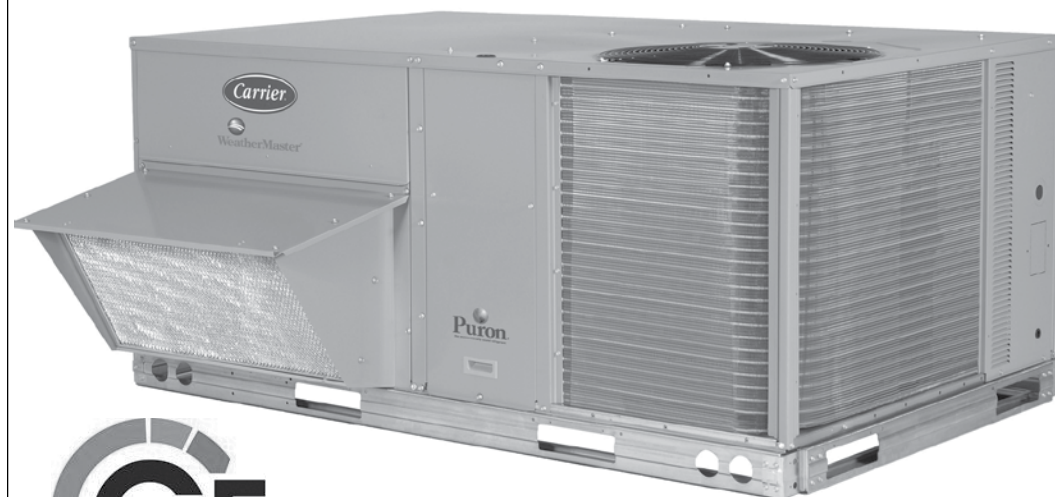


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