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Greater New York Contractors' NEWS



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President's Message

As we get ready for this coming winter we need to keep up on the most current heating news. Last month's meeting helped our industry



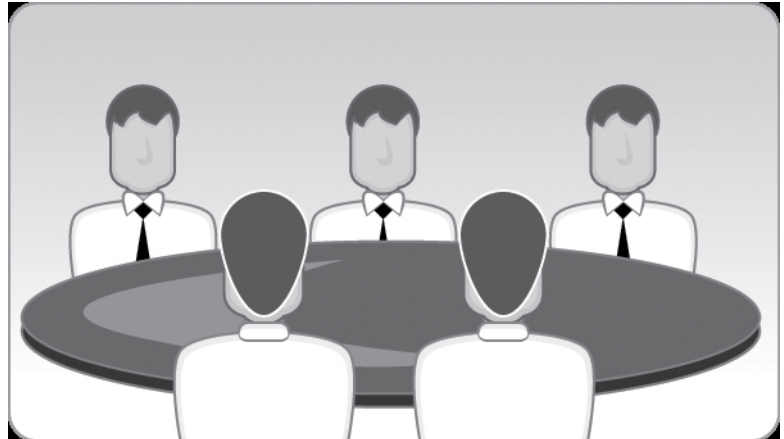
Michael Newman

to prepare our companies for the upcoming heating season. Rich Bruno of Bacharach spoke about combustion, heating codes and the latest in testing equipment. Before you know it heating season will be here.

Unfortunately due to inclement weather our golf outing was cancelled. It will be rescheduled for October 24th. Hopefully the weather will cooperate this time. In November we will have our Management Roundtable discussion. It will cover several hot management topics. Companies are encouraged to bring

Turn to President's Message on page 3

Thursday, November 3, 2011



NOVEMBER ROUNDTABLE

Featuring: *Social Networking*
New Technology
Parking Issues
Screening New Employees
Software

IMPORTANT
Topics

Westbury Manor

Cocktails at 5:30 pm; Dinner at 6:30 pm

Register Online at www.accany.org

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PRESIDENT'S MESSAGE *Continued from page 1*

your key people to this event. This will be one event you do not want to miss.

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! — **Mike Newman**



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Editor's Notes

by Anthony N. Carbone

EIGHT OUT OF TEN CALLS to replace equipment for retrofit replacement in homes request high efficiency energy saving equipment. Customers want the "best" equipment for the lowest price. In most instances, consumers are savvy enough to request specific models that they are interested in. The web affords consumers the ability to investigate the choices available. The manufacturers promote the "golden box" and lure clients to what is perceived to be "the top of the line" equipment.

These choices can include some pretty fancy hi-tech features, variable speed ECM motors, 2-stage gas valves, inducer fan motors, recupera-

tive coils, 2-stage compressors, PVC direct vent exhaust piping, sensors for condensation, carbon monoxide sensors. Well, the next logical question is... Does the technology far out weigh the savings when the inevitable repair problem presents itself? Does the energy saving revenue get wiped out upon a repair of one of these fancy components?

Let's examine what ultimately fails on these technologically advanced pieces of equipment. It's usually an Integrated Control Module (a piece that can't be repaired but must be replaced). First, diagnostic time is required, then, upon revealing its demise, a replacement must be tracked down. Then, since most contractors don't have every ICM control board in stock - a replacement must be shipped. These boards are sensitive

to electrical spikes, pulses and any other anomaly which occurs within the electrical power process.

Now we quote the new board to the client... with overnight shipping... and suddenly an expensive proposition presents itself. Many times clients have long forgotten why they purchased this equipment but want to just get it back online. The one thing they do remember is it's too expensive to repair... they claim "my old unit never needed this expensive type of repair and I had it for 30 years." You do the math... Is your bottom line and profit margin better with top of the line equipment sales or is it just a source of alienation to your client base? "Show me the savings... Show me the money!"

— Anthony N. Carbone



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In February 2010, the Electrical Training Center expanded its curriculum to include a 450 hour HVAC/R program. Enrollment in our day sessions has been successful, and the word is out that our school is the place to train for the HVAC/R industry. Several recent inquiries are requesting an evening/weekend session to better suit their schedules.

Starting January 9, 2012, the Electrical Training Center will be offering an evening/weekend session of the 450 hour HVAC/R program. The hours of the session will be Mondays-Thursdays from 6:00pm-10:00pm and Saturdays from 8:00am-3:00pm.

We are looking to employ an instructor for this session. If you have mastered the trade and are interested in passing along your knowledge and experience to the next generation of workers, please contact Sal Ferrara at 631-226-8021. We look forward to working with you in the future.

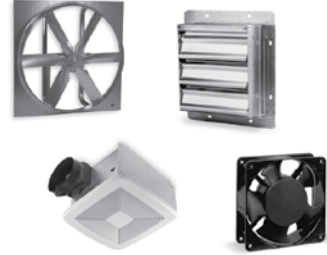








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People & The Workplace

By Alan B. Pearl,

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New York City's Recent Changes to Religious Accommodations Standards

Effective August 30, 2011, New York City will apply stricter standards for employers to provide religious accommodations. Under New York City Human Rights Law (NYCHRL), employers are required to provide reasonable accommodations for employees who require workdays or portions thereof to observe their religious beliefs. Reasonable accommodations are those that do not impose an "undue burden" on the employer's ability to conduct business. Previously, if the accommodation was more than a de minimis cost or burden to the employer, it constituted an "undue burden," which was an easier standard for an employer to meet. Now, undue hardship "shall mean an accommodation requiring significant expense or difficulty" (including a significant interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system). Additionally, the regulation provides that an accommodation that results in the inability of an employee to perform the

essential functions of the position, shall constitute an undue hardship. Otherwise, some factors which will be considered in determining "undue economic hardship" are:

- i) The identifiable cost of the accommodation, including the costs of loss of productivity and of retaining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer;
- ii) The number of individuals who will need the particular accommodation to a sincerely held religious observance or practice; and
- iii) For an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.

Employers are capable of meeting the challenge of this stricter standard by analyzing their current operating procedures and updating relevant policies. While the new law has made it slightly more difficult for employers to do business in New York City, it is a standard that already exists under the New York State Human Rights Law.

NLRB Posting Postponed

In the last newsletter we informed you about a new National Labor Relations Board rule that required private

employers, operating unionized or non-unionized facilities, to post a notice that informs employees of their rights granted by the National Labor Relations Act. The notice-posting rule was initially effective as of November 14, 2011. The National Labor Relations Board (the Board) just announced that it has decided to move back the effective date of this rule from November 14, 2011 to January 31, 2012. The Board explained that it postponed the implementation of the rule due to "uncertainty about which businesses fall under the Board's jurisdiction." Importantly, the Board clarified that it made no other changes to the rule or the content of the notice.

Multiple organizations have already challenged the National Labor Relations Board's authority to impose such a rule, so stay tuned for further information concerning the notice-posting requirement.

Anti-Bullying Policy

Many employers are adding anti-bullying policies to their workplace regulations to help employees and to prevent hostile environment claims. Bullying—verbal or physical—should be defined and forbidden, with a clear and effective reporting procedure and a specific policy prohibiting retaliation for initiating or supporting a claim.

If you would like to consult with one of our highly skilled HR personnel about compliance with this amendment to the NYC HRL or any other workplace issues, contact us at PMP HR Consulting. We can help you analyze and update your company procedures and policies and provide staff training to meet your specific business needs. I may be reached at ABPearl@PMPHR.Com. •

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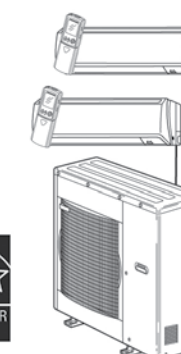


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Driver Education Can Improve Fuel Efficiency

By Kelly Hiner/Enterprise Fleet Management

Never-ending fluctuations in fuel and diesel prices make it challenging for companies with medium-size fleets to control costs. But, while those who oversee fleet operations within their companies may have no control over crude oil prices, state environmental regulations or sales tax on fuel pumps, there are steps that can help keep fuel costs at a manageable level.

A number of factors contribute to how efficiently a vehicle uses fuel, including tires, wheel alignment and inflation pressure, as well as aerodynamics, speed and load. In addition, ambient air temperature, weather conditions, road surfaces (gravel, asphalt, concrete) and terrain (flat, hilly or mountainous) are environmental factors that are impossible to control, but have a direct impact on fuel consumption.

Drivers also impact fuel efficiency more than many people realize. For example, aggressive drivers, "jackrabbit" starts and sudden braking can negate many of the gains obtained from investments in fuel-efficient engines and tires, aerodynamic devices or synthetic lubricants. In addition, driving at 55 mph rather than 65 mph can improve fuel mileage about 15 percent. And many drivers may be surprised to know that

they can optimize fuel economy on the highway by putting the car into overdrive because using the transmission's highest gear allows the engine to run at a lower level of revolutions per minute, which uses less energy.

Also, some of the most popular beliefs can actually be counterproductive. For example, although drivers may think that driving in the summer with open windows instead of using air conditioning helps conserve fuel, the reality is that at speeds over 40 mph opening the windows can create resistance or "drag", which actually reduces the car's normal fuel mileage. Many drivers also believe it can be more fuel efficient to let an engine idle rather than turning it off and restarting it when making quick deliveries or sitting in a traffic jam. The reality is that idling uses more fuel.

The impact of proper maintenance on fuel efficiency cannot be underestimated either. Periodic wheel alignments and keeping tires inflated to your vehicle's recommended pressure can improve fuel mileage. Although regular engine tune-ups are advisable for a variety of reasons, the old rationale that dirty air filters throw off the car's air/fuel ratio and make it less fuel-efficient is no longer true thanks to modern engine technology designed to compensate for problems caused by a dirty air filter.

Fleet managers agree there are simple things businesses can do to help keep fuel costs down. Driving wisely and maintaining vehicles on a routine basis go a long way toward improving mileage and increasing efficiencies. Fleet managers often recommend talking to company drivers about driving habits because it can make a big difference in the long run.

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.

Make a habit of checking the ACCA Chapter website at www.accany.org

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Statement From Stuart S. Zisholtz, Esq.

Statute of Limitations

Under ordinary circumstances, the Statute of Limitations to institute a lawsuit for breach of contract is six years. The Statute of Limitations can be reduced from six years to a shorter period of time as long as it is not the product of overreaching or an unreasonably short period. The Courts, in the past, have held a six month Statute of Limitations as being valid when the parties agreed to it in a signed written agreement.

Many contracts for public projects contain shorter Statute of Limitations to six months.

Recently, a subcontractor was awarded a project to perform work at Suffolk County Community College. The signed written contract contained a clause reducing the Statute of Limitations to six months. The contract also contained a pay when paid clause whereby payment by the owner was a condition precedent for the contractor's obligation to make payment to the subcontractors. The contract also provided that the subcontractor was required to pursue a lien foreclosure action to final judgment as a condition precedent to any action by the general contractor to collect the funds from the owner. Finally, the contract contained a provision that any

action by the subcontractor for breach of the subcontract or to enforce any trust imposed by law on the general contractor had to be commenced within six months after the work of the subcontractor had been substantially completed.

The general contractor, after being sued by the subcontractor, argued that there was a six month Statute of Limitations in the contract and moved to dismiss the complaint as untimely. The subcontractor argued that the pay when paid clause conflicted with the six-month limitation clause because the subcontractor's right to bring an action might not ripen until after the six-month period had expired.

As all of you may know, a pay when paid clause is unenforceable in New York. Thus, the terms associated with the pay when paid clause in the subcontract agreement were unenforceable.

However, the Appellate Court held that the pay when paid clause and the contractual limitations clause were not severable. As a result, the Appellate Court concluded that the six-month limitation clause did not bar the action and the subcontractor had the right to pursue its claim.

The rationale of the Appellate Court was that even though the pay when paid clause was unenforceable, the fact that the terms were not severable resulted in an ambiguity.

The logic of the Appellate Court is confusing and unclear. However, the key aspect to this article is knowing your contract and the terms and conditions of the agreement. In this

particular case, the subcontractor was lucky and utilized an ambiguity to save his claim against the general contractor. Many times, these arguments are unsuccessful.

Never let your lien time run out!!

For a free copy of a pamphlet pertaining to mechanics 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. •



OCTOBER 6th MEETING

The October 6th meeting featured Rich Bruno from Bacarach, Inc., discussing combustion on oil and gas condensing and showing the latest test equipment. The well attended meeting was the second of two consecutive management "tech talks." The November 6th meeting will feature a Roundtable potpourri of pertinent topics.

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