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# Greater New York Contractors' NEWS



[www.accany.org](http://www.accany.org)

PLEASE ROUTE THIS PUBLICATION WITHIN YOUR ORGANIZATION

NOVEMBER 2014

## President's Message



Al Trudil

**T**HE HEATING SEASON IS ABOUT TO BEGIN, our nights are getting cooler while our days are continuing to be in the 70's. Hopefully everyone has almost finished all there heating PM's and are waiting the cold winter months.

Our October meeting in which Gary Butchen spoke about addiction was informative. We learned some new information about the medical marijuana laws and what will happen if you discriminate against anyone who is prescribed marijuana. Thank you to Gary for this insightful information.

*Turn to President's Message on page 3*

## November 6th Meeting

# ROUNDTABLE DISCUSSION

Computer Software

Retaining and finding new employees

New Technology – Tablets, Paperless Office & GPS

Perception of ACCA – Topics

Working to find new Customers and Marketing  
plus more...

## LaGuardia Marriott

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

Register Online at [www.accany.org](http://www.accany.org)



## Holiday Party December 4th

*see page 7*

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**PRESIDENT'S MESSAGE** *Continued from page 1*

It is election time not only for our government but here at ACCA. At our November meeting we will elect our board members for 2015. This meeting will also be a roundtable discussion about computer systems, retaining employees, new technology and finding new customers. Our meeting will be on Thursday November 6th at the LaGuardia Marriott. We would love to see you all at this meeting.

On another note, I know that some of you have tried to get into the OSHA 10 class and found that it is full. The board will be holding another class in 2015 so be on the lookout for the dates on our website. — *Al Trudil*



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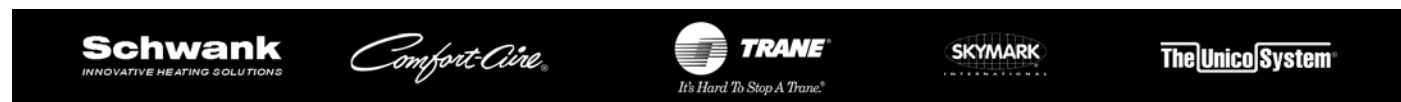
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- |                                                       |                                            |                                      |
|-------------------------------------------------------|--------------------------------------------|--------------------------------------|
| <i>Advertising/Newsletter</i><br>Anthony Carbone      | <i>Golf Outing</i><br>Ken Ellert           | <i>Scholarship</i><br>John Ottaviano |
| Donald Gumbrecht & Co.                                | <i>Holiday Party</i><br>Anthony Carbone    | <i>Trade Show</i><br>Rich Staiano    |
| <i>Baseball Outing</i><br>Scott Berger<br>Nick Terran | <i>Membership</i><br>Ron Nathan            | Steve Bergman                        |
| <i>Casino Night</i><br>Jim Carlson                    | <i>Political Action</i><br>Anthony Carbone | Web Page<br>Roy Bernheimer           |

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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

The economy seems to be slowing down as a glut of gasoline has hit the market and is dropping prices. Usually a drop in prices at the pump means more discretionary money for people to spend on things like movies, dinners, clothing, appliances and some excesses that can drive the economy up.

But with recent world events such as terrorist threats from multiple regions and a worldwide viral outbreak of Ebola infiltrating our country, it has turned the heads of the general public. Many are in the wait and see mode.

The stock market is taking dramatic losses in a short period of time and many 401K portfolios look weak. This is a barometer to many if they should spend money on big ticket items.

Many contractors had complained of such moderate to weak summer weather due to cool temperatures and lack of humidity. So it makes sense that job pricing seems to be all over the place depending on how hungry or how lean a summer was experienced by any one contractor.

This being said it makes the most sense to get all this information first hand at our monthly program meetings. This month in November we will be having a roundtable event that draws many contractors. We compare many points and comparative opinions that can't be found any place else. Please join us. You won't be disappointed. — *Anthony N. Carbone*

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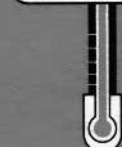
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**RECENT MONTHLY MEETING PHOTOS**



**Some photos from ACCA's September and October meetings. *Superior Customer Service* and *Employee Addiction* were the topics of presentations given by Steve Coscia, CSP and his team and Gary Butchen, of Bridge Back to Life Center, respectively. Our topics are always of value to contractors and their staffs. More photos are on our website at [www.accany.org](http://www.accany.org). In November we will be hosting a Roundtable consisting of discussions on a variety of subjects important to members. Join the discussions on November 6th.**



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## People & The Workplace

By Alan B. Pearl,  
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### Who Is A Supervisor In Discrimination Suits, And Why It Matters.

Title VII of the Civil Rights Act of 1964 is the federal law which governs discrimination in the workplace. According to the law, individuals cannot be discriminated against or harassed based on their race, gender, ethnicity, or religion. Recently the Supreme Court has issued a decision in the case of Vance v. Ball State University which clarifies a long standing question in Title VII cases, namely who is a supervisor? This is an important question, as under Title VII an employer can be held vicariously liable for actions of a supervisor, but not a regular employee.

Under Title VII, if a co-worker harasses an employee, the employer can only be found liable if the employer knows about the harassment and then fails to control the working conditions. Thus for the employer to be liable

the employer must either fail to provide a reasonable avenue for complaint, or fail to take corrective actions upon discovering the harassment. If however, an employee is harassed by a supervisor, the employer is found automatically liable if the harassment leads to an adverse employment action such as, firing, or failing to promote. If there is no tangible adverse employment action, and the employee is alleging hostile work environment due to the supervisor's conduct, then the employer will be found liable unless, the employer takes action to prevent or correct the supervisor's behavior, or the employer has a policy in place to prevent or correct such behavior and the employee fails to take advantage of the policy. In situations where the harasser is a supervisor it is the employer's burden to prove that it took these steps.

Thus, whether or not the harasser is a supervisor can have a significant difference as to whether the employer will ultimately be found liable. Prior to the decision in Vance the term supervisor was ambiguous. The definition of supervisor that was commonly used in New York courts was an individual that had "significant direction over the victim's daily work." This definition has proved troublesome as it is very open-ended.

Thus, the Supreme Court has now adopted a much narrower definition of "supervisor." Under this decision "an employer may be vicariously liable for an employee's unlawful harassment only when the employer has empowered that employee to take tangible employment actions against the victim, to effect a "significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."

This decision provides employers with a far clearer definition of supervisors under Title VII. Employers should thus take this into account where there have been complaints of harassment or discrimination in the workplace, as additional actions may be required where the harasser is a supervisor. Of course if such a situation arises you should always contact an attorney or HR professional immediately.

### Trouble On The Road Could Spell Legal Trouble For Your Business

The general rule is that employers are not responsible for their employees while they are not on duty, and this includes accidents while commuting to and from work. However, in a number of recent cases employers have been held liable for accidents involving employees during their commutes home. In one such case an employee complained of feeling dizzy after the company sprayed the factory for bugs. The company offered to send the

employee to the company doctor, but the employee refused and instead drove home. The employee was subsequently involved in an accident, and the employer was sued. The court found that the company could have foreseen and prevented this risk and chose not to stop it. The takeaway from this case and from cases like it is that employers should not let their employees drive if they believe they might be impaired in any way.

Another potential headache for employers involves tickets. With red light cameras becoming ubiquitous around the area, such tickets have become a major expense for companies that have drivers on the road. The question is who is responsible for a red light ticket? In the case of say a speeding ticket the violation is against the driver. Therefore the employee is directly responsible for paying that fine. However, with red light cameras the violations goes to the owner of the vehicle, in this case the employer. Therefore, due to NY's strict wage deduction laws, the employer is completely responsible for any red light camera tickets. While the company must pay the fine, employers are still free to discipline employees for all traffic infractions.

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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## New Federal Study Quantifies Efficiency Losses Due To Improper HVAC Installation

ACCA announces the availability of a new report, which confirms that HVAC equipment requires a quality installation (QI) in order to perform at rated efficiency. The research, undertaken by the U.S. Department of Commerce's National Institute of Standards and Technology (NIST), found that substantial equipment efficiency is lost due to design and installation deficiencies. The NIST report presents faulty practices commonly-performed by contractors and details the resultant additional energy consumption.

The recently-published report is the culmination of a three-year study that included the impact of building effects, equipment effects, and climate effects on HVAC equipment efficiency. The study found that installation faults significantly increase annual energy consumption. Extensive laboratory testing and computer simulations indicated that the following installation faults have the most potential to significantly degrade equipment efficiency: duct leakage, refrigerant undercharge/overcharge, low indoor airflow, and oversized equipment with undersized ductwork. Furthermore, the report shows that when two or more simultaneous faults occur, the efficiency degradations can be additive, compounding the increased consumption.

"This report quantifies what many industry experts already know – profound efficiency losses occur when HVAC

equipment is not installed properly," says Paul Stalknecht, ACCA president and CEO. "This report should help consumers understand why it is important to hire a contractor who follows the QI Standard. When consumers start asking for QI from every contractor, it will raise the performance bar in the industry, and result in significant energy savings while increasing occupant comfort."

Quality installation (QI) is more than just using high-efficiency products and systems. The correct design, proper installation, and field measurements directly influence the customer's comfort and how much is paid on utility bills. The ANSI/ACCA 5 QI Standard (HVAC Quality Installation Specification; [www.acca.org/quality](http://www.acca.org/quality)) specifies what to measure, how to measure, and the measurement tolerances for unitary residential and commercial HVAC systems. This reduces faults associated with design, installation, and commissioning. Failure to meet the design and installation elements specified in the ACCA 5 QI Standard will impact equipment performance and undercut the deemed energy savings assumed by many energy efficiency programs.

A full copy of the NIST report, entitled Sensitivity Analysis of Installation Faults on Heat Pump Performance (September 2014), can be downloaded at no charge from [www.acca.org/standards/quality/](http://www.acca.org/standards/quality/).

## ACCA Developed Manual J Course Curriculum For Educators and Trainers

ACCA, the Indoor Environment & Energy Efficiency Association, has developed a curriculum especially for teaching students how to do a load calculation using the Manual J8ae Speedsheet. This new curriculum is available for free download at [www.acca.org/educators/](http://www.acca.org/educators/).

ACCA worked with HVACR educational specialists to develop this curriculum, which is designed to be used for 3 class sessions and is intended to help HVAC instructors introduce their students to industry-accepted heating and cooling load calculation procedures. The curriculum includes:

Instructions on how to perform a Manual J load calculation using the Manual J8ae Speedsheet

Three 45-minute modules/classes that address the basics of conducting a load calculation in accordance with ACCA's

Manual J8 abridged edition (MJ8ae)

Pre-class reading and homework assignments

The format also allows the instructor to expand or contract the actual lesson to suit the needs of their students, available materials, or pre-existing lesson plan.

"For over 50 years Manual J has been the industry accepted load calculation method and that is what students who are going to school to join this industry should be learning," said Paul T. Stalknecht, ACCA president & CEO. "Many schools are teaching Manual J to its students, however ACCA knows that there are still some that are not. We developed this free curriculum to help all educators be able to easily teach their students Manual J, so they have the knowledge they need when they enter the workforce."

The Manual J curriculum is just one of many resources ACCA has available for HVACR educators. To download the free Manual J curriculum and/or the free Manual J8ae Speedsheet and learn about the other educator resources

available, visit [www.acca.org/educators](http://www.acca.org/educators).

If you have questions about any of the resources ACCA has available for educators, contact Chris Hoelzel, ACCA vice president of product fulfillment and development. •

## Energy Department Announces Funding to Develop Improved Next Generation HVAC Systems

The Energy Department has announced nearly \$8 million to support research and development of the next generation of heating, ventilating, and air conditioning (HVAC) technologies. The R&D will focus on developing regionally appropriate HVAC solutions that would offer significant potential energy savings for new and existing buildings, and on developing innovative approaches that could replace current vapor compression HVAC technologies and their use of refrigerants that harm the global environment.

Currently, HVAC systems account for the largest proportion of energy used in buildings, consuming almost 14 quadrillion British thermal units (quads) of primary

energy annually—or nearly 30% of all energy used in commercial and residential buildings. Developing non-vapor-compression HVAC systems could potentially lead to an estimated 40% primary energy savings over current technologies.

In addition to focusing on improving the efficiency of technologies using established ratings as measured by the Energy Efficiency Rating (EER) and/or the Seasonal Energy Efficiency Rating (SEER), the research is aimed at developing technologies or systems that improve partial load efficiency, as HVAC systems operate at partial load most of the time.

The Energy Department seeks proposals from businesses, universities, non-profits, and national laboratories. Learn more about this funding opportunity announcement at <http://www.energy.gov/eere/buildings/building-technologies-office>

The Energy Department's Office of Energy Efficiency and Renewable Energy (EERE) accelerates development and facilitates deployment of energy efficiency and renewable energy technologies and market-based solutions that strengthen U.S. energy security, environmental quality, and economic vitality. EERE supports innovative technologies that reduce both risk and costs of bringing energy efficient building technologies online. •

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

**Lienor Must Be Careful When  
Filing A Mechanic's Lien**

Mechanic's liens are an essential tool for every contractor and subcontractor in the construction industry. When done properly and timely, the likelihood of success in collecting the money due and owing is great.

A mechanic's lien is prepared by obtaining information from the contractor and subcontractor. If the information is inaccurate, the consequences could be severe. The results of an inaccurate or wrongfully filed mechanic's lien could be a dismissal of the lien or, worse, a claim for an exaggerated lien which could result in monetary damages against the lienor.

Recently, a case was decided by the Court which addressed an inaccurate public improvement mechanic's lien. In that case, a contractor was terminated on a public project and the subcontractors filed mechanic's liens and instituted foreclosure actions.

A Motion for Summary Judgment was served alleging that the mechanic's liens filed were defective because there were inconsistencies as to the final date the work was performed on the project. The mechanic's liens identified the final date as being approximately two weeks earlier than the dates identified by other project documents. The motion also sought dismissal based upon a claim that the mechanic's liens sought a lesser amount than what was alleged for unpaid labor, materials and services that were alleged in the complaint.

The Court ruled that if a lienor fails to substantially comply with the requirements of the Lien Law, its lien may be summarily discharged. The Court continued by stating that where a lienor fails to accurately include at least two material elements in a lien, it cannot be deemed to have achieved substantial compliance with the Lien Law. The Court denied the motion by stating that the alleged discrepancies of information provided in the liens were not material.

While this decision seems to be difficult to understand since the Lien Law requires strict compliance, it does establish that a lienor must be careful when filing a mechanic's lien.

A public improvement mechanic's lien must include

**Contractor Comfort Index 75  
in September; Up 8 from 2013**

The September Contractor Comfort Index (CCI) shows that contractors are continuing to be positive about short-term growth heading into fall. ACCA began measuring contractor attitudes toward short-term economic growth with the CCI in February 2010.

For September 2014, the CCI is 75. The CCI also shows that contractors are feeling better than they were 12 months earlier when the CCI was 67.

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 October.



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*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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