

MACC *News*

**METROPOLITAN AIR CONDITIONING
CONTRACTORS OF NEW YORK**

THE VOICE OF HVACR IN NEW YORK, NEW JERSEY, CONNECTICUT AND LONG ISLAND

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SEPTEMBER 2015



37th Annual Golf Outing at the Village Club at Lake Success – Monday August 10th. A great day! And a \$2,000 check for the Make-A- Wish Foundation. More photos inside on pages 6–11 and on our website – www.maccny.org.

**METROPOLITAN AIR CONDITIONING
CONTRACTORS OF NEW YORK (MACC)**
Formerly Air Conditioning Contractors Association – NY Chapter
123 South Street, Suite 112
Oyster Bay, NY 11771
516-922-5832 / www.maccny.org

From the President...



MARC SOFFLER
Dynaire Corp.

The economy in new York seems to have finally rebounded and construction seems to be increasing at a brisk pace. Although the increase of business is a good thing, it also places many hardships for HVAC companies. Finding skilled and competent employees seems to be one of the biggest challenges. The advanced technologies now found in equipment requires that training become a necessity to maintain an effective service department. Contractors should start to develop an in-house training program and utilize the training classes offered by manufactures. MACC will be expanding its Workshop Program by adding additional topics this year to help further educate your employees.

Our golf outing this year was a huge success. The weather was beautiful and the golf course was in great condition. This was the first year that the event was held at the Village of Lake Success, an appropriate representation of some of the changes ahead for this organization. Special thanks to all of the volunteers that helped make the day more enjoyable.

As most of you are aware, the recent outbreak of Legionella is having a significant effect on our businesses. At our next meeting on September 3rd, Both Cascade and CSI will be presenting information regarding the EPA guidelines, treatments, and contractor and building owner's responsibilities. This is an important meeting and should be attended by all. Please visit our website on a regular basis (www.maccny.org) to stay informed about upcoming events.

— *Marc*

Membership Meeting, Thursday, September 3rd

Legionella

Representatives from Cascade Water Services and CSI will discuss the ramifications, EPA Guidelines, and contractor responsibility of this deadly disease. It's a meeting you won't want to miss. It impacts all our businesses.

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

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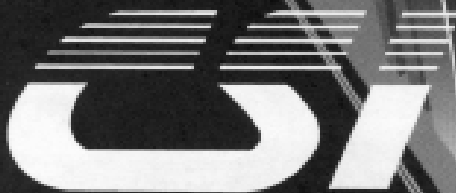
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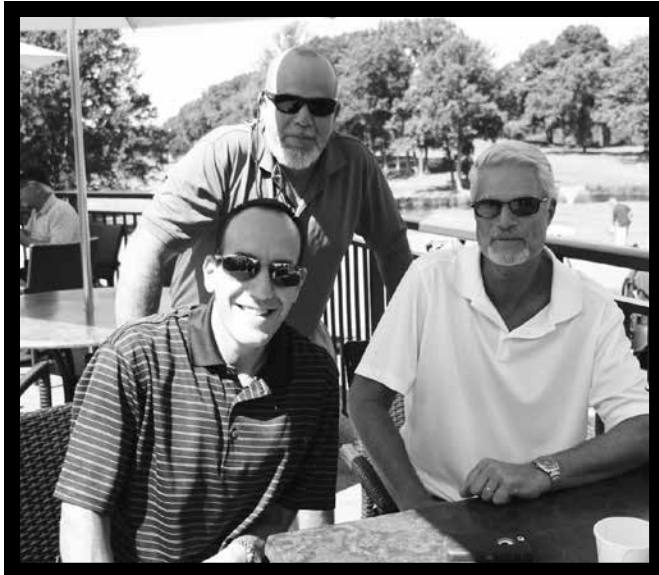
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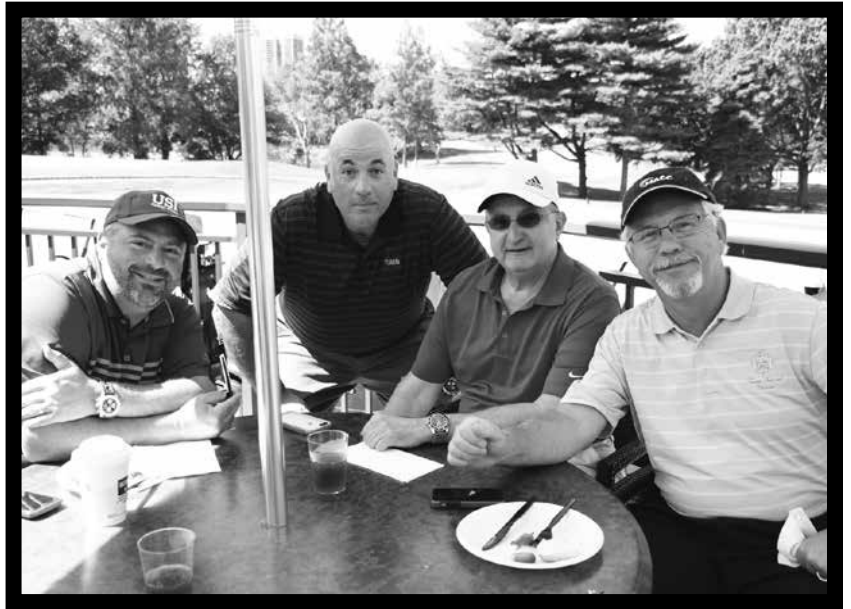
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People & The Workplace

By Alan B. Pearl,

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Wage Recoveries and Independent Contractor Classification

Earlier this week, the governor's office announced that New York is set to recover a record amount of back wages and benefits owed to workers. Within the first seven months of 2015, the state recovered and distributed \$18.1 million to nearly 19,000 workers whose employers failed to pay them the proper minimum wage, benefits and overtime. This was a six percent increase from where New York was in 2014 at the same time. The total last year was \$30.2 million.

Part of the increase for 2015 is due to a growing number of lawsuits that allege companies should not be classifying workers as independent contractors. The U.S. Department of Labor offered guidance earlier this week on how it interprets the tests to determine whether a worker should be classified as an employee or independent contractor.

The result? The department considers most workers to be employees under the Fair Labor Standards Act. The federal "economic realities" test is used to determine whether a worker is economically dependent on the employer (and therefore an employee) or in a business for him or herself. The following are factors within the economic realities test:

- Is the work performed an integral part of the business?
- Does the worker's managerial skill affect his/her opportunity for profit/loss?
- What is the nature of the worker's "investment" vs. the employer's investment relative to the work?
- Does the work require special skill or initiative?
- Is the relationship permanent or indefinite?

- What is the nature of employer control?

The definition of employment under the FLSA is "to suffer or permit to work" and the Act's intended expansive coverage for workers must be considered when applying the economic realities factors to determine whether a worker is an employee or an independent contractor. The factors should not be analyzed in a vacuum, and no single factor is dispositive. Instead, each factor should be considered in light of the ultimate determination of whether the worker is really in business for him or herself. It is likely that a very broad definition of employee will be used when the DOL is determining a case.

Employers generally engage the services of an independent contractor because they are cheaper for the company's bottom line. Employers don't have to pay for health benefits, fringe benefits, 401k, overtime or vacation. Independent contractors are not eligible for payments by the employer into the unemployment insurance fund or the workers compensation fund. The independent contractor is responsible for all the payroll taxes.

Independent contractors further have the ability to have autonomy when deciding when and how to complete work assignments, when to work and when to attend meetings.

The lines blur when a company hires someone to do work that might be considered "integral" to the core of the business i.e. that a full-time employee would normally do. Recently, the Department of Labor together with the Internal Revenue Service have cracked down on misclassification, resulting in employers paying huge back wages and benefits in various industries in 2014. Some of the industries are construction, meat processing, landscaping and personnel services.

Based on this growing trend, companies need to be even more careful when filling a need with an Independent Contractor. 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. This is how you avoid litigation. We say "educate don't litigate." Enjoy the Labor Day weekend and drive safely. *



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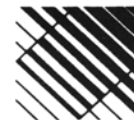
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***Statement From
Stuart S. Zisholtz, Esq.***

**Understanding the
Ramifications of the
Satisfaction of Lien**

Many times when a Mechanic's Lien is filed by a sub-contractor or supplier, the lienor receives a telephone call directly from the owner seeking to resolve the lien and pay a portion of the amount due.

In these situations, a Satisfaction of Lien is prepared and releases are exchanged. The question becomes whether the lienor can pursue a claim against the general contractor for the difference remaining outstanding.

The releases executed at the time of payment should specifically carve out language that the release is not intended to include the general contractor. Any ambiguity in the releases could be construed against the lienor and result in a favorable ruling for the general contractor.

In a similar situation, but with different results, if the general contractor pays a portion of the claim and obtains a Satisfaction of Lien and a general release, the subcontractor

cannot pursue a claim directly against the owner. The lienor does not have a direct contract with the owner and loses his claim against the owner once the Satisfaction of Lien is filed. Without a Mechanic's Lien, the owner is absolved from any future liability to the subcontractor.

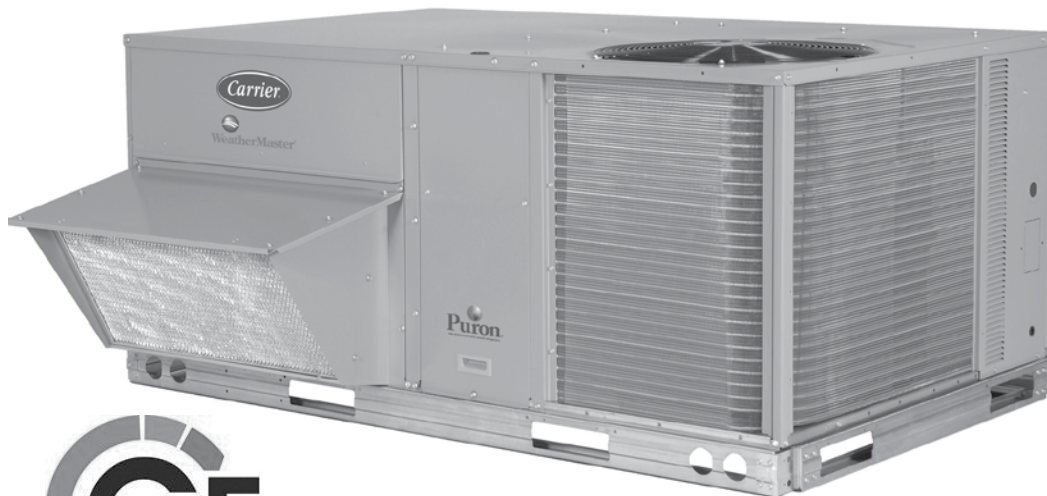
It is essential, therefore, that you review the paperwork and understand the ramifications associated with providing the owner or a general contractor with a Satisfaction of Lien and a general release. You may be losing your ability to collect additional funds that are legitimately due you.

NEVER LET YOUR LIEN TIME RUN OUT!!!

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Editor's Notes

by Anthony N. Carbone

Can the Uber Model work in the HVAC industry? It was a question recently posed in one of the local trade magazines. The idea of getting labor to materialize at will and maintain the required insurance and licenses needed to perform is beyond ridiculous. Maybe a handyman might be able to do small repairs, but skilled labor is not available at will. Many talented technicians are part of a team. They tend to specialize in specific types of installations. So in my opinion, the Uber Model will not work in our industry.

The MACC Board of Directors and President Marc

Soffler have met to have in-depth discussions to make our organization interesting to many. We have discussed the idea of meetings, but there will be concentration on events. The events would draw larger audiences. The information and networking exchange is worth its weight in gold. So participate and see the value for your company.

Night at the Mets, the Outdoor Cocktail Party, the Golf Outing bring many contractors and suppliers together and the most current buzz of the industry can be heard at our industry organization events. –*Anthony N. Carbone*



“The MACC Board of Directors and President Marc Soffler have met to have in-depth discussions to make our organization interesting to many.”

MACC Directors
at work
at a recent meeting
in August