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# Greater New York Contractors' NEWS



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MARCH 2015

## President's Message

Now is in the forecast, and once again management has to decide how to operate a HVAC service company in the winter months. Take the time to review your procedures so decisions do not have to be made at the last minute. Make sure you have an up to date list of employees with accurate contact information. This will allow you to convey important company information to all of your employees. This can be accomplished by an email blast, or perhaps a recorded message that is sent out by phone. Establish procedures to make sure your technicians are prepared and capable of responding to emergency



**Marc Soffler**

Turn to President's Message on page 3

## Membership Meeting Thursday, March 5

### A Special Presentation By:

**Randi Busse**, of Workforce Development Group, Inc.  
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&

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- Why a Complaint is a Four-Letter Word

## Vivaldi Restaurant

201-10 Cross Island Parkway Service Road

Cocktails at 5:30 pm; Dinner at 6:30 pm  
Register Online at [www.accany.org](http://www.accany.org)

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

service calls. If you decide to limit your operations during a snow storm, make sure you can receive phone calls from your customers and have the capability of dispatching your service technicians.

I want to thank everyone who attended the February meeting at Westbury Manor. It was nice to see many of the existing members, as well as some new faces. Special thanks to John Franceschina and the staff from PSE&G.

Starting on March 16<sup>th</sup>, the national ACCA Conference will be held in Grapevine Texas. This is a great opportunity to meet fellow professionals from our industry and discuss methods for improving your business. Several members have already made their arrangements to attend the conference, so please contact our local chapter if you are planning to attend.

The board of directors is dedicated to providing informative and entertaining content for our members and have many exciting topics planned for the upcoming year. We will also be adding additional programming to our Educational Workshops, geared to providing both technical and business training for your employees. Please visit our website on a regular basis ([www.accany.org](http://www.accany.org)) to stay informed about upcoming events.

—Marc Soffler

# IDEAS WANTED!



*Please visit our website to submit an idea for a topic or speaker for our membership meetings!*

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## Editor's Notes

by Anthony N. Carbone

The age of digital is upon us. Where everything we do is tied to the internet or digital. The photographs we take and transmit are digital. Long gone are the days of film. We scan and digitize all of our documents and create portable document files known as "PDF".

We don't fax them, but e-mail them. So much has changed. The bank teller is disappearing too. Check scanners located in our own business establishments digitize, read the checks, and send the information for deposit to the bank where they digitally transfer funds through the Federal Reserve to get our monies deposited.

Hence, the problem with all of these digital deposits and digital, electronic extractions. The chances today of being scammed or as it is known as "being hacked" is greater than ever!

Even the Sales Tax Department and IRS want access to your accounts. How vulnerable we have all become as digital thieves constantly try to get to your money. And when they do it, it is your problem to unravel and retrieve your money.

Has the overdependence of the digital world left us in a situation where we can't really secure what is ours?

The biggest corporations have liberated our personal information by means of the digital age. Even Anthem Health Care has released many patients' private health information.

What is your opinion? Please let us know your thoughts.

— Anthony N. Carbone

## Keep Your Company Free from Employee Litigation Risk

Check out these frightening numbers: On February 4, 2015, the U.S. Equal Opportunity Commission (EEOC) released enforcement and litigation statistics for fiscal year 2014. Almost 90,000 workplace discrimination charges were filed in 2014, which is actually down slightly from prior years. However, retaliation charges were at an all-time high and comprised nearly 43% of all charges. Thirty-five percent of charges alleged race discrimination, while 29% claimed discrimination based on sex. In all, the EEOC's enforcement activities resulted in almost \$300 million over the last year.

Given all of this, now is not the time to sit back on your laurels of never having had an EEOC claim and congratulate yourself for an HR job well done. Employers should be ever vigilant with their human resources policies and keep up their company's compliance to reduce risk and not become the EEOC's next defendant.

Read more on ACCA's IE3 webpage at <http://www.ie3media.com/keep-company-free-employee-litigation-risk/>

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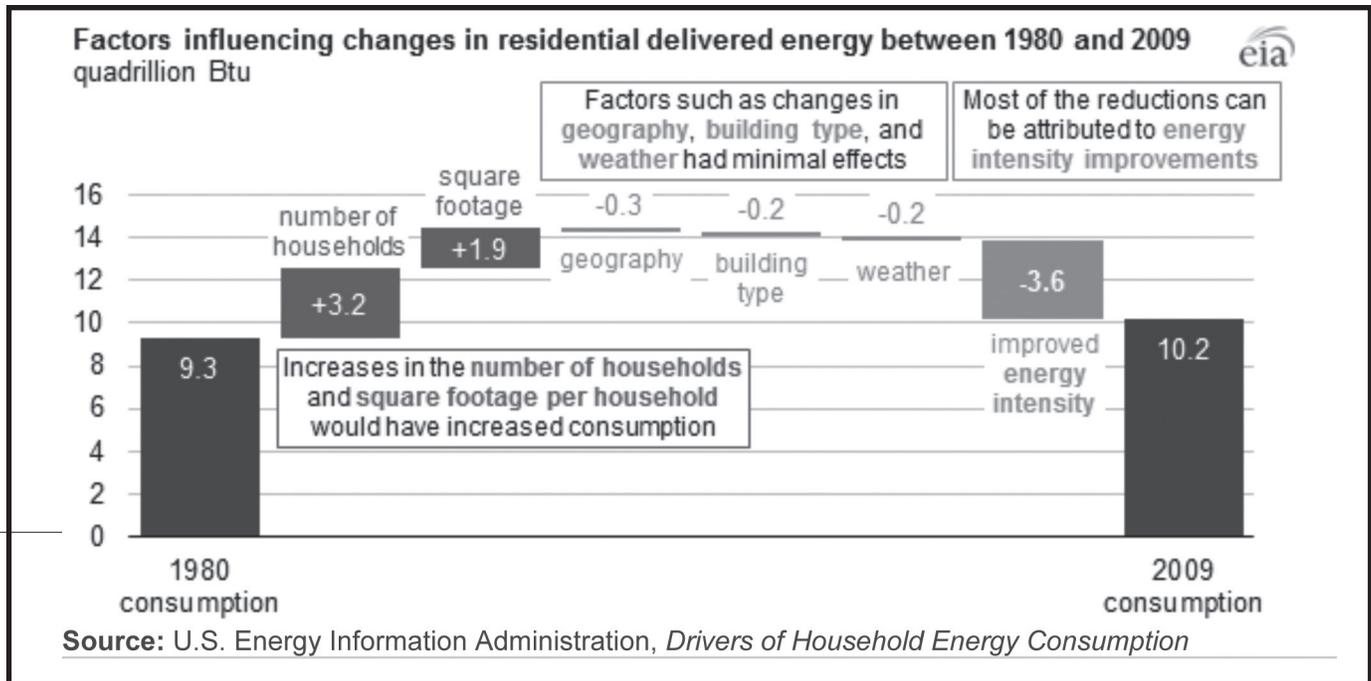
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# Energy Efficiency Improvements Have Largely Offset Effect Of More, Larger Homes

— U.S. Energy Information Administration

The growth in residential energy use has slowed to below the rate of household growth, meaning that per-household energy

including number of households, structural changes (the mix of housing types, the geographic distribution of households, and changes in average floor area), weather, and energy intensity (measured here as consumption per square foot). After adjusting for the effects of the other factors, 2009 energy intensity declined (improved) by about 37% compared with the level in 1980, meaning that without this change, households would have required another 3.6 quads of delivered energy in 2009. The effects of reduced energy intensity are significantly greater when considered in terms of primary energy use, which takes



consumption has decreased. Analysis of EIA’s Residential Energy Consumption Survey (RECS) conducted since 1980 shows how improvements in energy efficiency reduced energy intensity enough to offset more than 70% of the growth in both the number of households and the size of dwellings.

Between 1980 and 2009 (the most recent survey year), delivered energy used by U.S. households increased from 9.3 quadrillion British thermal units (quads) to 10.2 quads, an average growth of 0.3% per year. The change in delivered energy during this period can be broken into component factors,

into account that, on average, nearly three units of energy from primary fuels such as coal, natural gas, and nuclear fuel are used to generate one unit of electricity, which is a major part of energy use in households.

Energy intensity changes are influenced by factors such as energy prices, shifts in household energy fuel sources, consumer preferences for increased comfort and entertainment options, and increasingly efficient technologies. Programs designed to increase the adoption of efficient technologies such as residential appliance standards, building codes, incentives, energy labeling



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(such as the voluntary ENERGY STAR® program), and other informational programs also work to decrease consumption.

The gains from energy intensity improvements would have been even larger if it were not for consumer preferences for larger homes and increased adoption of home appliances and electronics. In this period, the average home size grew by about 20%. With increased square footage came adoption of more and larger devices such as more televisions with larger screens and new or expanding end uses such as computers, networking equipment, and home entertainment devices.

From 1980 to 2009, the population center of the United States continued to shift farther west and south, but this regional effect only lowered consumption by about 2.7%. Similarly, the makeup of the sector changed, as there was a shift away from detached (standalone) single-family homes and apartments in smaller buildings to attached single-family homes and apartments in larger buildings. Again, this effect was minimal, only accounting for a 1.7% reduction in energy consumption. Weather-related factors, which account for much of the variation in year-over-year comparisons, had little impact between 1980 and 2009, as these specific years had roughly similar weather.

Additional analysis of delivered energy consumption as well as separate sections for electricity and natural gas space heating are included in EIA's report on Drivers of U.S. Household Energy Consumption. •

*EIA Principal contributors: Behjat Hojjati, Steve Wade*



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# People & The Workplace

By Alan B. Pearl,

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Website: www.pmpHR.com

## When Hiring Independent Contractors Mistakes Can Be Costly

Its tax season and all across the country employers, employees and contractors are filing their respective forms. This year, however, employers will be facing increased scrutiny from the I.R.S. over the categorization of independent contractors. The increased scrutiny is the result of the new mandates under the Affordable Care Act which require employers which employ at least 100 people to provide health insurance to all full time employees. Thus the I.R.S. is taking a closer look to make sure that employers are not misclassifying employees as independent contractors to avoid these requirements.

The main difference between an employee and an independent contractor is the level of on the job discretion and independence. Thus, the most important factor is the level of direct supervision, the greater the level of supervision, the more likely the individual is an employee. In other words, independent contractors are simply

told to perform an assignment, may choose whatever means to perform the project they wish, and are evaluated solely on the results. Independent Contractors generally are allowed to work for other companies, are free to choose their own schedule, use their own equipment, are paid per project and not hourly, are not compensated for expenses, and do not receive any fringe benefits. When conducting an independent contractor/employee analysis the government usually looks at the totality of the factors, so if one of these factors leans one way or another that may not be determinative over all. New York State uses a "control test" to determine the issue.

There are numerous advantages as well as disadvantages to hiring contractors over employees. Employers with one hundred or more employees are now required to provide health insurance. However, employers can get around this requirement by hiring contractors. In addition employers can evade this requirement completely by hiring enough contractors so that the total number of employees falls below the threshold set by the ACA. Furthermore, employers need not pay payroll taxes for independent contractors and are immune from liability for most employment laws including minimum wage/overtime and discrimination laws.

If, however, an employer is found to have misclassified an employee as an independent contractor the penalties can be stiff. For one, employers will be required to pay back taxes and penalties to both the I.R.S. and state taxing authorities. Additionally the Department of Labor may also require the payment of back wages and penalties totaling into the hundreds of thousands of dollars. In states such as New York, the requirements are even stricter for classifying contractors. A common situation for many New York employers is at the end of a project a contractor makes a claim for unemployment as an employee. In the context of New York unemployment law, it is very difficult to claim someone is a contractor and not an employee. Even in cases where it seems clear cut, and 9 out of 10 factors point to independent contractor, the New York Unemployment Appeals Board has found individuals to be employees.

Thus, employers are taking calculated risks by hiring contractors, especially for jobs previously performed by employees. If your company utilizes independent contractors it is essential that you contact an HR professional to determine if you are in compliance with tax and employment laws.

## The Pros and Cons of Non-Compete Agreements

Employers, in increasing numbers, are requiring employees to sign so called covenants not to compete, or non-compete agreements. A covenant not to compete is an agreement that an employee will not work for a competitor for a specified period of time. This is to prevent employees from misappropriating proprietary information such as trade secrets or client information and supplying it to competitors. Such agreements also prevent

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employees from poaching clients and starting their own firms.

Because these agreements may result in prolonged unemployment, the courts have placed limits on the scope and reach of non-compete agreements. Covenants not to compete must be reasonable in terms of duration, geographic scope, and industry. Courts will generally not enforce a non-compete that has a duration longer than two years. The shorter the duration the more likely courts will find the agreement reasonable. As for geographic scope, the scope must be limited to the area where the business primarily operates. For example, a company that does most of its business in New York, New Jersey and Connecticut must limit its non-compete to those states. Furthermore, non-competes must be limited to the particular industry of the employer. A company that produces semi-conductors cannot prevent an employee from working in a restaurant. Another factor to consider is which employees should be required to sign the non-compete. Employees that pose the greatest risk to theft of proprietary information should be required to sign. Thus courts are far more likely to enforce a non-compete against an engineer, or accountant than an administrative assistant. Overall these agreements must be drafted in a way that satisfies their purpose of protecting proprietary information, while not being excessively burdensome on the employee.

There are numerous pros and cons of requiring employees to sign non-compete agreements. In some cases where the risk to propriety information is high, they are a necessity. In other situations these factors should be weighed to determine if one is necessary. Some advantages of non-competes are that they protect trade secrets and other confidential information, they can help prevent high performing employees from leaving and working for competitors, they prevent the loss of clients or key customers when an employee leaves, and they have the effect of improving retention.

On the other hand requiring employees to sign a non-compete can create tension between employees and employers and may induce some employees to leave or start working elsewhere. It may also be more difficult to attract talent, as incoming employees may be reluctant to sign a non-compete.

Thus employers must weigh these advantages and disadvantages when deciding whether to require employees to sign a non-compete. PMP has advised dozens of employers whether such an agreement is right for their business.

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



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# Statement From Stuart S. Zisholtz, Esq.

## Two Gimmicks Coming Back With A Vengeance

The purpose of this Article is to alert my readers to two gimmicks that were outdated and outmoded twenty years ago and are now coming back with a vengeance.

The first gimmick is where the General Contractor holds back from a subcontractor, the last 10% of his bill. The General Contractor tells the subcontractor "I am tight on this job. Do me a favor, add it to the next job that I am giving you".

Since the General Contractor is a good customer, and he will be giving you more work, you roll the balance over.

The next job is for \$100,000 and you bill him \$110,000. At the end of that job he again tells you that he was tight and asks you to roll over \$20,000. On the third job you bill him

\$120,000 and again he comes with the same story and again, you roll it over.

On the next job, you bill \$130,000 and he turns around and says, how can you bill me \$130,000 on a \$100,000 job? Worse than that, he goes into bankruptcy and you have to file

a Proof of Claim stating your claim is for \$130,000 which is false. If you have to file a Mechanic's Lien for \$130,000, you have willfully exaggerated the lien for that particular project. In addition, you may have perpetuated a fraud by allowing an innocent owner to be billed for work that was not done on his Project.

The bottom line is - get paid when the job is finished and let the next job take care of itself, etc., without any rollovers.

*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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Marc Soffler, ACCA New York's new president, leads the directors at a board meeting prior to the February 12th general membership meeting.

John Franceschina of PSEG Long Island offered a first look at the 2015 Rebate programs.



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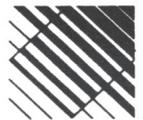
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