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# Greater New York Contractors' NEWS



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December 2008

## President's Message



Ron Nathan

Walk into any retail store, and you will find the winter holidays are in full swing!

Let's slow down for a minute and focus on the autumn season.

The highly anticipated Presidential election is behind us and our country will see a new President sworn in to office in January of 2009. As business contractors and citizens, we have many economic concerns that need to be addressed. Just as we took the

*Turn to President's Message on page 3*

Still Time To Make Reservations  
For The Dec. 4th ACCA Holiday Party



See Details on Page 13

## Wage & Hour Breakfast Seminar

*for ACCA Members Only*

December 10, 2008

at the Atrium Theater

6900 Jericho Turnpike Syosset, New York

*Presented by Alan B. Pearl*

See Details on Page 7

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

time to vote in November, we should take an educated and active role in learning about our government's policies. Stay informed on the issues which affect our industry by regularly attending the monthly meetings of the Greater New York Chapter of ACCA.

I wish you all a Happy Thanksgiving. It is a day to focus on the good in our lives and the blessings we have. Raise a toast to family and friends! Create some memories, relive old times, watch the parade and football games, and enjoy a wonderful meal together with loved ones. Make a donation to one of the many organizations which help those who may not have the resources to celebrate this season.

Recently, members of my office staff attended the Phone Genie class sponsored by ACCA. Business etiquette is an invaluable tool in our ever-changing industry. Often the first impression a customer receives of our organization is a phone call handled by front line employees. The class was led by Susan Brown, who has many years experience in the HVAC business. The basic premise was that answer-

ing phones and getting and giving information in a proper manner can build profits and benefit your company. She stressed the importance of listening to what the person on the other end of the line is saying and getting customer information in a way that the customer feels pleased to give it. Stressful conditions such as handling irate customers and high-capacity situations in a calm and sympathetic manner were also covered. This worthwhile seminar would benefit anyone in your company who answers your phones.

The 2008 ACCA Holiday Party will be held on December 4 at The Inn at New Hyde Park. This elegant venue features a magical atmosphere of turn-of-the-century America in a central location for guests arriving from New York City, Long Island or Westchester. Cocktails and dinner will be served, there will be music, dancing, and raffle prizes. The festivities will begin at 6:30 pm. If you have attended our holiday parties in the past, I am sure you will make it a point to join us again. New attendees are encouraged and always welcomed. Please join us for a wonderful evening!

**- Ron Nathan**

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## Editor's Notes

By Anthony N. Carbone

The country has mandated change and a new Democratic President-Elect, Barack Obama, has made history. We are witnessing monumental changes in our government, business and economic stage. We will also now see great governmental focus on energy and the environment.

All of your clients, from the big corporations to the average working "Joe the Plumber," are focused on reduction; reduction of spending, reduction of usage. We are in an economic reversal. Those who were considered financially rock solid are now on shaky ground. Those who have minimized overhead exposure can only survive if they are able to continue to eek out revenue.

We had a large attendance at our last meeting on "Insuring Your Receivables." It was an interesting alternative to protecting your money and Coface North America did an extensive presentation. At the meeting, many contractors said they were still busy. Clients want to be efficient. Many are in austerity mode and are not going to travel, purchase or make any financial decisions, except for securing their immediate indoor environment, which means heating and cooling, air filtration and humidification indoors are on the minds of consumers. This may be the only light at the end of the tunnel for many contractors.

I want to take this time to wish each and every one of you a healthy and happy holiday season. These are trying times for many of us, but the holidays and the annual holiday party give us all a chance to catch up with each other. Without the support of the volunteers who help run the Air Conditioning Contractors of America, and the associate members, we would not have a viable and relevant industry group.

John DeLillo, our Executive Director, and his staff, are the backbone that allows ACCA to function with great success and succeed in its goals. I want to thank the advertisers in the newsletter and the contributing writers, Alan B. Pearl, Stuart S. Zisholtz and Daniel B. Brothers, for allowing our most important form of communication to continue with our industry. We appreciate your contributions!

I hope to see you at our holiday party and I wish you a healthy and prosperous New Year. Thank you!

— Anthony N. Carbone



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**Our next monthly dinner meeting is January 8, 2009.**

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## Special Wage & Hour Breakfast Seminar for ACCA Members Only

PMP invites you to join us for an informative Employment Law Breakfast Workshop entitled “Wage & Hour - Who’s Counting”.

This seminar will help you to navigate the finer points of wage and hour law so as to eliminate misunderstandings, missed information and misinterpretation of critical laws, regulations and amendments.

Are you sure that all your salaried employees pass the duties test? When can you dock a salaried employee? Are you sure you are paying exempt employees properly? Is your office manager always exempt from overtime? These and other questions will be discussed. The FLSA rules and regulations can frustrate and confuse even seasoned human resources and payroll professionals. This workshop will help attendees get up to speed on the complex, constantly evolving Fair Labor Standards Act.

Mark your calendars and join your fellow ACCA members on:

Date: Wednesday, December 10, 2008

Time: 8 am to 11 am (including Continental Breakfast)

Place: Atrium Theater at  
6900 Jericho Turnpike Syosset, New York

Cost: \$50 per person

To reserve your place and for additional information please contact us no later than December 2, 2008 [melody@pmphr.com](mailto:melody@pmphr.com) or call 516-921-3400.

Seating is limited so don't miss the opportunity to be part of this informative presentation. We look forward to seeing you on December 10th.

— **Alan B. Pearl**

## People & The Workplace

By Alan B. Pearl,

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### Changes in Negligent Hiring

So you interview an engaging young person for a vacant position. He appears to have all the qualities you want in an employee: he is well spoken, well dressed, and has a good resume. On the spot, you decide to offer him a position, before you lose him to a competitor. Have you forgotten something? Yes—the background check. Recent New York legislation signed into law by Governor Patterson can provide protection to employers from a “negligent hire” lawsuit.

Looks can be deceiving. Legally, there are grounds to sue an employer on the basis of a “negligent hire.” If an employer negligently hired an employee with a criminal record, and that employee harms a third party, the employer can be on the hook.

Three recent pieces of legislation have changed the

landscape for lawsuits under this theory. They are aimed at enhancing employment opportunities for individuals with prior criminal convictions. At the same time, they afford greater protection to employers who hire these individuals if they follow the correct procedure.

Article 23-A of New York’s Correction Law requires employers to consider and balance a number of factors before terminating or refusing to hire individuals with prior criminal records. Note, however, this does not apply when there is a specific legal prohibition on hiring applicants with a criminal past.

The factors employers must consider include:

The relationship between a prior offense and the individual’s ability to perform specific duties on the job;

The length of time that has gone by since the offense;

The individual’s age at the time of the offense;

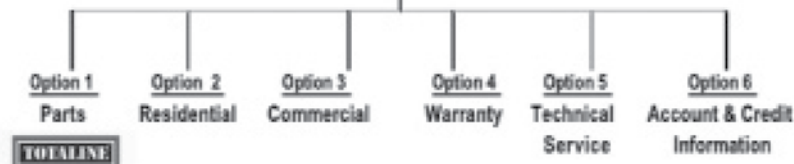
The seriousness of the offense;

Any information attesting to the individual’s rehabilitation and good conduct.

Effective September of 2008, the New York State Human Rights Law was amended to protect New York employers from negligent hiring claims alleging an em-

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ployee with a criminal conviction caused harm in the workplace. If an employer has evaluated an applicant's criminal history in accordance with the Article 23-A factors and decided in good faith to hire the individual, then the employer is protected by a rebuttable presumption that information regarding the individual's background should be excluded from evidence. This is a crucial advantage in defending a "negligent hire" suit.

Second, effective February 1, 2009, all New York employers must post a copy of Article 23-A of the Correction law in a visually conspicuous manner in an accessible location in the workplace.

Third, all employers, effective February 1, 2009 must, as part of their background check process, provide a copy of Article 23-A to individuals subject to background checks.

The policy of this legislation is not only to provide greater opportunities for rehabilitated individuals, but to remind employers of their obligation to engage in the Article 23-A balancing process. By the end of this year, employers should prepare for this legislation by reviewing their employment policies to ensure they comply with this new legislation. Although not required by law, employers should consider adjusting their hiring practices in two ways. First, they should consider providing all job applicants with a copy of article 23-A along with any consent and disclosure form authorizing a consumer report. Second, employers should consider adding an acknowledgement of receipt of Article 23-A on the consent form, to further bolster their defense in the event of a "negligent hire" suit.

**FLSA Issues**

No one likes to work for free. It is clear that you must pay employees for extra time spent on the job-but, when does "work" begin and end? Imagine if your employees argued in court that they should be compensated for time it took to commute between home and work. This is the question the Second Circuit recently addressed involv-

ing employees who argued they should be paid for their commuting time. Ultimately, the Second Circuit in Singh v. City of New York found that the employer was not liable for the commuting time. However, employers should know the analysis the court uses because the answer could sometimes be the opposite.

In Singh, the plaintiffs were required each day to pick up 15-20 lb. briefcases containing files, take them home with them, and transfer them between inspection sites

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# Workplace from page 9

and their offices. Their argument was that since they were required to carry the briefcases to and from work, their commute was compensable work. The plaintiffs secondarily claimed that their commute was controlled by their obligation to bring their suitcases to work. Not only did it extend the time of the commute, but they were prevented from attending after work social events because they had to secure the files in a safe location.

Ultimately, the “predominant benefit test” became the court’s focus. Under the Fair Labor Standards Act (FLSA), the employee must engage in work for the employer’s benefit at the employer’s request, in order for

commuting time to be compensable. In addition, if an employer’s policies increase that commuting time by only a trivial amount, the employee is still not entitled to be paid under the FLSA.

In Singh, the Second Circuit indicated that the appropriate application of the “predominant benefit test” is whether an employer’s restrictions hinder the employees’ ability to use their commuting time as they otherwise would have had there been no work-related restrictions. Ultimately the Second Circuit found that carrying the cases presented only a “minimal burden,” and did not transform the commute into “work time.”

For employers, and particularly with the addition of BlackBerrys, this case emphasizes that the employer should review its policies and practices to ensure that commuting time remains non-compensable. In particular, the employer can emphasize that non-exempt employees should not perform work during their commute.

REGISTER NOW for our FLSA IN THE WORKPLACE SEMINAR, to be held on December 10, 2008 from 8:00 a.m. until 11:30 a.m. Registration can be emailed to melody@pmphr.com or faxed to (516) 921-6774. This session is for ACCA members only!

As always, should this article raise any questions you can reach me at ABPearl@pmphr.com. •



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# “Green” Driving Tips To Help Reduce Fuel Use, Improve Efficiency

By Daniel B. Brothers, Enterprise Fleet Management

(This is the second in a 2-part series)

When it comes to improving fuel economy and reducing our impact on the environment, sometimes the simplest things can make a difference. When multiplied by the number of vehicles in a company’s fleet, even saving just a few gallons of gasoline every week can add up to a substantial savings at the end of the year. Smarter driving and maintenance are two steps everyone can take.

Enterprise Fleet Management is offering *Keys to “Green” Driving – useful tips that can be used to reduce fuel consumption and save money.* Following is the second in a two-part series of tips:

**Keep engines tuned.** A tune-up can increase fuel economy. Follow your owner’s manual guidelines. Be sure to check for worn spark plugs, dragging brakes, and low transmission fluid; have your wheels aligned and tires rotated; and replace the air filter if needed. Make sure all used vehicle fluids are recycled or disposed of safely.

**Use the right fuel.** Most cars don’t need premium fuel – although some vehicles do call for higher-octane gas to maximize performance and fuel efficiency. Check your owner’s manual when choosing what grade of gasoline to use, and don’t spend the extra money on a premium grade if you don’t need to. If you have a FlexFuel vehicle, which is able to use E85 fuel (a blend of 85 percent ethanol and 15 percent gasoline), take a few minutes to locate E85 fueling stations in your vicinity by visiting [www.e85refueling.com](http://www.e85refueling.com). According to the Environmental Protection Agency, using E85 can reduce greenhouse gas emissions by up to 20 percent.

**Avoid the top off.** Drivers often top off their tank beyond the gas pump’s automatic cutoff point to get an even total or to squeeze in as much fuel as possible. But that extra squeeze can lead to spills and release gas vapors into the air. This wastes money and pollutes the air, even aggravating smog in bigger cities.

**Cool off wisely.** A common mistake drivers make in warm weather is turning off the air conditioning and rolling down their windows to save gas, regardless of circumstance. While it is true that rolling windows down in lieu of the AC can increase fuel economy at slower speeds, at faster highway speeds the reverse is true – open windows can actually increase drag and hurt fuel economy.

**Replace older, less fuel efficient vehicles at appropriate intervals.** Knowing when to dispose of older vehicles, a systematic process known in the fleet management industry as “cycling,” depends on many factors, such as the time of year, mileage, vehicle type, age and maintenance issues. A cycling program not only ensures vehicles are getting the best fuel mileage and the latest emission controls, it helps a company achieve optimum performance and the best resale value, which also directly affects cost savings.

For more information about Enterprise’s industry-leading environmental stewardship initiatives, visit [www.keystogreen.com](http://www.keystogreen.com).

*Daniel B. Brothers is a Senior Account Executive for Enterprise Fleet Management and is a member of the Board of Directors of the Greater New York Chapter of ACCA. He can be reached at 718-458-7920 ex: 301.*

# Phone Genie Customer Service Workshop



Staff from ACCA members' offices attend Phone Genie breakfast workshop in October. The program, sponsored by the Greater New York Chapter, ACCA, was held at the Keyspan/National Grid Facility in Hicksville. The workshop was designed to improve the effectiveness and efficiency of telephone interactions with customers

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

### **Payment and Performance Bonds**

Most public projects require a contractor to obtain payment and performance bonds. In addition, large private projects may require a contractor to obtain payment and performance bonds. If you are considering doing these types of jobs, you must find out whether you are bondable and what the criteria is for obtaining bonds.

A surety stands in the shoes of the contractor. In the event of a default, the surety will be called upon to either finish the project under a performance bond or pay the subcontractors and suppliers under the payment bond. It is vital, therefore, that the surety feel comfortable and that it be fully protected when issuing a bond to a contractor.

Bonding companies pre-qualify contractors utilizing, amongst other criteria, the following:

1. Financial statements
2. Bank information
3. Resume of employees
4. Recommendations of owners, engineers and architects
5. Current projects, including contracts, contract price,

estimated gross profit, billings, estimated costs to complete and estimated completion dates

6. Personal financial statements
7. Contract receivables

In addition to the above, the surety, when reviewing the financial statements, may request the following.

1. Working capital
2. Historical analysis of contracts completed
3. Billings on contracts in progress
4. Additional bank information

Once this information is obtained, the surety may request security or collateral for the bonds procured for a particular project. The surety may also request personal guarantees to secure the surety in the event of any default under the terms of the agreements.

**Never Let Your Lien Time Run Out!**

For a free copy of a pamphlet pertaining to payment bond claims and Mechanic's Liens, please 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. •*



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