

Greater New York Contractors' NEWS



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January 2008

ACCA, a federation of 60 state and local affiliated organizations, is the leading trade association representing the business, educational, and policy interests of the nation's heating, air conditioning, ventilation and refrigeration contractors. ACCA represents over 9,000 small businesses nationwide through its federation of affiliates.

*Prospective New
Member?
DINNER IS ON
US!
See the details
on page 4*

**Check out
Associate
Member Profiles
on Pages 8 & 9**

JANUARY MEETING
Thursday, January 3rd, 2008

**GOING
GREEN
WITH THE
USGBC**

— SEE PAGE 4

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The Greater New York Chapter of the Air Conditioning Contractors of America (ACCA) is a federation of HVACR contracting businesses who have joined together to share great ideas, build better businesses, and make powerful contacts within our industry and friendships even with our competitors.

How do we do it? By bringing contractors together, we create tools and resources that contractors use every day to save time, save money, and save themselves from reinventing the wheel.

Your 24/7 Resource

As a member of the Greater New York ACCA Chapter you gain access to exclusive specialists who are at your service.

Facing a vexing technical problem or unusual request from a customer? ACCA's technical specialists are here to respond.

Have a general question about employee relations, contracts, or other legal matters? Our legal specialists can answer general questions and point you in the right direction before you have to hire an attorney.

Looking for ideas about sales, marketing and other management resources? Just ask us and we'll research your question and get you the right info from successful contractors and specialists.

Your Learning Partner

ACCA is the leading source of HVACR technical and business knowledge, and as a member you gain deeply-discounted access to the leading learning opportunities in our industry. Our live, **interactive online seminars** give you and your key employees the chance to learn from leading contractors and specialists on a wide variety of topics—from the comfort of your own office. **The ACCA Conference & Indoor Air Expo** is the leading annual management conference for successful HVACR contractors. And we offer a **whole schedule of classes and conferences** in HVAC system design, business management, legal issues, and much more.

Monthly Meeting Presentations and Roundtables

Attend our monthly dinner meetings where you will gain valuable information on service agreements, sales strategies, workplace issues and other important management topics as well as opportunities to network with competitors and key industry people.

Recreational Activities

Cheer for the home team at our annual **Night Out with the Mets**, have a blast at **Casino Night**, and Golf with the best and worst of our members at our **Annual Golf Outing**. And of course, there is our **Annual Holiday Party**. This year, on December 7th it will be at The Water's Edge in Long Island City overlooking the East River and the spectacular beauty and romance of Manhattan at night. (There is still time to make reservations for this much enjoyed event – see page 9 for details.) There are always prizes and giveaways and much fun at all these great chapter activities.

Free Personalized Brochures and Collateral Materials

ACCA produces a series of promotional materials to help you and your technicians assist customers and “upsell” products and services. And they are FREE with your ACCA membership. Called ComforTools, each covers a specific topic, such as the value of proper load calculation, or duct testing and repair; zoning systems; importance of regular maintenance; and other generic issues you can use as leave-behinds, mailing stuffers, handouts, and in any number of other ways. No designing or writing is required and no special software. Members can download these brochures customized with your company information.

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**ATTEND
THIS MONTH'S
DINNER MEETING
FREE
IF YOU ARE
THINKING OF
JOINING ACCA.
SEE THE DETAILS
ON PAGE 4.**

United States Green Building Council and LEED Certifications is Focus of the January Membership Meeting

The January meeting will focus on the United States Green Building Council (USGBC). The meeting will offer information on what the USGBC really is, and what's its mission is. It will provide introductory information on the certifications that are offered LEED (Leadership in Energy and Environmental Design) LEED Certified Buildings and their different certified levels. Also explained will be the LEED accredited professional titles for individuals and what value these bring to the table.

Speakers will discuss what is happening locally and nationally with the GREEN movement and how it can bring bottom line profit dollars to the contractors that embrace this movement and get involved.

The meeting will be held at the LaGuardia Marriott.

Cocktails are at 5:30 pm with dinner at 6:30 pm. The program follows.

SPECIAL NOTE FOR PROSPECTIVE NEW MEMBERS! DINNER IS ON US!

If you are considering joining ACCA, enjoy dinner and this valuable presentation on us. We'll even give you an ACCA cap and a golf shirt. All this and an opportunity to make new friends and contacts in our industry. Go to our website www.accany.org to let us know you are coming or call 516-922-5832.

Register Online for this meeting now! www.accany.org

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President's Message

AS 2007 COMES TO AN END, I would like to wish all of my friends and colleagues at ACCA a happy and healthy holiday season. It has been two years that I have been President of our local chapter of ACCA. In the last two years, we have strived to bring you informative monthly meetings such as discussions on Workman's Compensation insurance, employee classifications and their related wage issues, service roundtables, the advantages of GPS systems, drug and security testing and much more. Our Golf Outings and Casino Nights were enjoyed by all that attended. We are proud of the scholarship that our chapter has set up at Suffolk County Community College for a deserving student enrolled in their HVAC program. We have continued to make donations to Toys for Tots, Make-A-Wish Foundation and Leukemia and Lymphoma Society.

ACCA National has become bigger and stronger in our industry. The annual convention had overflow crowds at many of the workshops and exposition hall. National president Paul Stalknecht has given our organization a presence that is recognized throughout our industry at all local and national levels. The national web site has grown and has a wealth of information that is available to all members. They have implemented Online Seminars that are available where contractors can involve multiple employees in training for one low fee.

On a local level, our interactive web site is up and running. You can now view and register for all of our upcoming meetings and events along with the latest copies of our newsletter.

I want to thank the Board of Directors, and especially, Executive Director John DeLillo, for their support and guidance. There is a lot of work that takes place behind the scenes ---getting out the newsletter, programs for the meetings and arranging our special events. Without their continued dedication to our chapter, we would not be where we are now or headed toward such a positive direction in the future. There are many changes that will be affecting our industry in the coming years and I am confident that our new president, Ron Nathan, of County Fair Air Conditioning, will help move us to new levels of professionalism.

It has been a privilege and honor serving as the president of this chapter. I will remain actively involved in our chapter and look forward to seeing all of you at our meetings and events. My best wishes to you and your families for a happy, healthy and prosperous New Year. — **Ken Ellert**

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Editor's Notes

By Anthony N. Carbone

When Rita DeStefano of Portnoy, Messinger, Pearl & Associates came to our October meeting at the Westbury Manor, she brought a wealth of eye-opening information regarding questions you can ask a potential employee during the interview process. Don't ask and, believe me, they won't tell. Many of the "don't ask" questions are ones that you would think are permissible but are, in fact, actionable. Imagine interviewing a potential candidate to work for your company, asking the wrong question and ending up in a human resource debacle. According to Ms. DeStefano, that is exactly what could happen.

With the labor market so tight and difficulty finding people to work in a technical business, many times we are seeking common ground and comfort as well as the technical expertise many claim to have. Questions and

instinct are our tools initially to dissect the interview process. Evidently, we must dig deeper with information accessible from public sources. These will be the clues to the type of individual you may consider joining your company...then it is trial and error and whatever good or bad that can occur.

I want to thank all of you who support the ACCA organization and the Contractor News. Without the financial support of our associates and contractors, we would not be able to convey all this topical information and wisdom.

May you have an enjoyable, safe Holiday season and a prosperous New Year. Be sure to join us for our monthly meetings and functions. Your membership will pay for itself! — *Anthony N. Carbone*

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Twinco Value Added Services

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We are factory-authorized distributors for all major HVAC supplies, including service tools and test instruments. Twinco has been selected as the first master distributor for Multiaqua chillers and air handlers in the New York Metropolitan area. Our New York City branches are set up as the authorized distributor for Liebert Factory Parts. Twinco's employees are the most experienced and knowledgeable in the industry. •



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The Amerisc Corp. can satisfy all of your company's needs, and not just insurance programs. We also specialize in loss control, group benefits, financial planning/401K, and our surety division is well-equipped to meet all of your surety/bonding needs.

Whatever your specific needs may be, The Amerisc Corp. welcomes the opportunity to tailor a program to satisfy them. We take pride in our ability to meet our clients' ever-changing needs, and we hope you will give us the opportunity to find the best solution for you. And remember...Amerisc is large enough to deliver, but small enough to care! •

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Mr. John Zurawski, Manager

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People & The Workplace

By Alan B. Pearl,

Portnoy, Messinger, Pearl & Associates, Inc., Syosset, NY
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NEW I-9 FORMS REQUIRED Effective December 26, 2007

The revised Form I-9 is now available for employers to use. US employers are required to document that all citizen and non citizen employees hired after November 6, 1986 are eligible to work in the United States. Only one document, Unexpired Employment Authorization Document (I-766) was added to the List of Acceptable Documents from List A. The most significant change to the revised Form I-9 is the elimination of five documents from List A of the List of Acceptable Documents. These are:

1. Certificate of U.S. Citizenship (Form N-560 or N-570)
2. Certificate of Naturalization (Form N-550 or N-570)
3. Alien Registration Receipt Card (Form I-151)
4. Unexpired Re-entry Permit (Form I-327)
5. Unexpired Refugee Travel Document (Form I-571)

Employers must begin using the revised I-9 by Decem-

ber 26, 2007. Both the revised form and the "Handbook for Employers, Instructions for Completing the Form I-9" are available online at www.uscis.gov. The new form should be used for all NEW employees. Current employees with valid I-9's will not be required to fill out the revised forms. Failure to use the new forms can result in stiff penalties. Call Alan, at 516-921-3400, if you have questions regarding the new I-9 form, or any other employment law question.

HOLIDAY PARTIES: Helpful hints to avoid litigation

Not only do holiday parties hosted by employers demonstrate employee appreciation, they also keep tradition alive and boost company morale.

Several employee-related lawsuits have brought attention to ways in which employers should protect themselves. Here are some ways employers or party hosts can avoid legal pitfalls:

- The employer should not invite clients; this infers a business purpose and can cause a court to construe cases in favor of the employee.
- Attendance should be voluntary and never "strongly encouraged."
- The venue should be away from the office, not during

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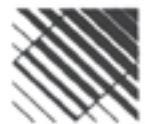
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working hours, and the employer should not offer compensation for attendance.

- If an employer must provide alcohol the employer should consider limiting alcohol intake by serving alcohol with a meal or limited drink tickets.
- Employers should strongly encourage people to drink responsibly and remind employees that the party is a professional gathering.
- Employers should never provide alcohol to minor employees, volunteers or interns.
- Employers should offer taxi vouchers.
- The employer/host should never give someone who is drunk more alcohol and should never allow someone who is drinking to drive home.

If you have any questions or concerns regarding any of the articles, do not hesitate to contact Alan at (516) 921-3400.

Proper Collection of a Medical Leave Proof of Absence

The Federal Family & Medical Leave Act (FMLA) allows eligible employees to take up to twelve weeks of unpaid job protected leave each year for an employee's "serious health condition," or to care for a parent, spouse or child with a "serious health condition." To help determine if an ailment rises to the serious condition, employees may be required to

submit medical certification. Most often, medical certification is in the form of a doctor's note that spells out the ailment, diagnosis and cure period.

While the law doesn't require employers to obtain medical certification from employees who take an FMLA leave, it is prudent to ask for certification in certain situations.

FMLA fraud has been a serious problem in recent years. While employees may be legally allowed to take FMLA leave in small increments (intermittent leave on a daily or even hourly basis.) Some employers have discovered that employees are increasingly using intermittent FMLA in a noticeable pattern on Fridays and Mondays.

Extending an employee's weekend may be considered

Continued on page 12



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People & The Workplace

Continued from page 11

FMLA fraud. In order for an employer to combat possible fraudulent FMLA use, the employer should ask for re-certification when such a pattern is noticed. FMLA permits employers to request such recertification on a reasonable basis.

Typically, FMLA recertification can be requested no more than once in every 30-day period and only in connection with an actual absence. However, if you have information that makes you suspect that an employee has abused FMLA leave, then you should ask for recertification more frequently than 30 days.

Generally speaking, the medical certification response should contain the employee's name, the patient's name, the type of health condition, some medical facts supporting the certification, the date the health condition began, the health condition's likely duration, and any facts that concern the need to take reduced or intermittent leave. If the employee cannot perform certain types of work during the FMLA period, the doctor should indicate what essential functions of the job can or cannot be performed. Finally, you can require that the health care provider would sign the certification and submit it in a timely fashion.

I hope these items help you when confronting an issue of intermittent FMLA leave. Of course, each individual situation presents a specific scenario, which must be individually analyzed. If you have any questions regarding this or any other employment law issue, please call 516-921-3400 or

email me at ABPearl@pmpHR.com.

****This article reviews employment law issues. It is designed to provide accurate and informative information but should not be considered legal advice*** •*

Measuring Up: Case Studies of Green Building Energy Performance Shared in ASHRAE Seminar

When it comes to high-performance buildings, the proof is performance.

Measuring actual energy performance, however, can be challenging due to inadequate modeling practices, failure to include operations staff in goal setting, and lack of adequate budgets for commissioning, evaluations and ongoing benchmarking.

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"As more actual energy performance data become available on high-performing buildings, clearer and more realistic expectations will help establish confidence within the building design and construction industry about costs and savings," said Donald Winston, The Durst Organization, New York, N.Y.

Winston is one of three speakers who will provide a look at the role of performance measurement in high-performing buildings presented in a seminar at ASHRAE's 2008 Winter Meeting, Jan. 19-23, New York City. The seminar, Green Building Energy Performance: Some Experience and Data from the Field, takes place from 9:15-10:45 a.m. Jan. 23 at the New York Hilton.

Winston will focus on his experiences with Class A office space in midtown Manhattan, including the Conde Nast Building at 4 Times Square and recent high-rise green residential buildings. His experiences with this building also are featured in a new magazine, High Performing Buildings, recently launched by ASHRAE. •



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Statement From Stuart S. Zisholtz, Esq.

Validity of Oral Change Orders

In the past, I wrote various articles about how you must get your agreements signed before you do any work. This included the contract, any change orders, purchase orders, etc.

I also instructed everyone to review the terms of the contract so that they are clear and unambiguous. It is imperative that you understand the terms and conditions of the agreement as clearly as you understand your bid.

Recently, a decision was rendered by the Appellate Division, Second Department, which could have lasting effects on the construction industry in New York.

In the public sector, a change order will not be paid unless there is a written and authorized change order executed by the parties. In the private sector, however, a change order is valid, even if it is oral and the contract directs written C.O.'s, as long as it was authorized and the work performed was outside of the scope of the contract. The rationale for this rule is that the parties may waive any portion of the contract and as long as the work performed is outside of the scope of the contract, the owner should be obligated to pay for it.

Recently, however, the Court found in a private sector project that where a contract executed between the parties ex-

pressly precludes oral extras or change orders not documented in writing and the owner disputes the extras or change orders, the claim may be dismissed.

This is the first time that I have come across a decision which dismissed oral change orders where the contract directed that they be in writing.

Ramifications of this decision could be severe. Most contractors are told in the field to do certain work which is outside of the scope of the contract and the paperwork will follow later on. Many times the paperwork does not follow and you are forced to invoice the change order without having a signed change order.

According to this decision, you perform the work at your own peril. While it may cause your job to be performed at a slower pace, it appears that the Courts are now directing that you receive a signed written change order pursuant to the terms of the agreement before you commence with your work.

Never let your lien time run out!!

For a free copy of a pamphlet pertaining to mechanic's 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. •



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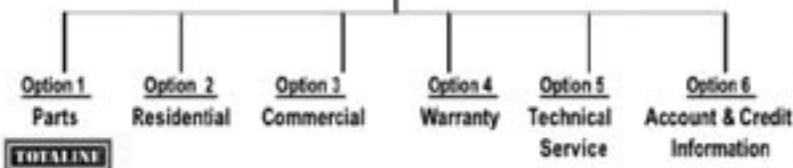
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