

# Greater New York Contractors' NEWS



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November 2007

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.

## NOVEMBER MEETING—

# HUMAN RESOURCES

*Rita DiStefano, from the law firm of Portnoy, Messinger and Pearl will discuss Human Resources in depth and explain the important information you need to know.*

*See details on page 4.*

**Thursday, November 1st, 2007  
Westbury Manor**

**Cocktails — 5:30 pm; Dinner — 6:30 pm  
Followed Immediately by the program**

**Let us know ONLINE you are coming: [www.accany.org](http://www.accany.org)**

**Also at our November Meeting - LIPA WILL GIVE A SHORT PRESENTATION on their Residential HVAC Rebate program "Cool Homes" and a contractor reimbursement program for tools needed to complete home assessments.**

**Prospective  
New Members are Invited to  
Attend Free!**

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new friends and contacts in the industry!

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[www.accany.org](http://www.accany.org) to let us know you  
are coming or call 516-922-5832.

**Don't Miss Our ACCA Holiday Party Dec. 7th at The Water's Edge...see page 9**

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**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.

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**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.

Call us at 516-922-5832 or visit our dynamic website at [www.accany.org](http://www.accany.org). •

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

# November Membership Meeting to Feature Human Resources/LIPA Rebate Presentations

*HR questions you always wanted to know but were afraid to ask!* That is the topic of our November 1st meeting presentation. The Greater New York Chapter, ACCA is fortunate to have Rita DiStefano, from the law firm of Portnoy, Messinger and Pearl as our featured speaker. Ms. DiStefano has an extensive background in Human Resources as it pertains to the HVAC industry.

She will be discussing the following topics in depth:

- Workers Compensation Procedures
- Harassment in the work place
- Importance of Handbooks
- Federal Labor Standards Act- Classifying employees for their exempt or non-exempt status to determine if you are required to pay your employees overtime.
- Documentation of new hires
- Drug testing do's and don'ts

A question and answer session will follow the presentation.

Also at our November Meeting, LIPA will give a short presentation on their Residential HVAC Rebate program "Cool Homes" and on a contractor reimbursement program for tools needed to complete home assessments.

Both talks will provide valuable information.

Prospective new members are invited to attend free of charge as Chapter guests. So if you are thinking of joining us, or if you are a member and would like to bring along a friend who may join, please let us know. We even have a free ACCA cap and a golf shirt for him/her.

The meeting will be held at the Westbury Manor on Thursday, November 1st. Cocktails are at 5:30pm with dinner at 6:30pm followed immediately by the presentations.

To reserve your place, register online at [www.accany.org](http://www.accany.org) or call the Chapter office at 516-922-5832. •

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## President's Message

DAN STEVENS OF DDS EMPLOYEE SCREENING SERVICES treated those that were in attendance at our October meeting to a very informative presentation. Mr. Stevens discussed the advantages of performing background checks and drug testing on prospective employees and doing drug testing on an ongoing basis after the employee has been hired. In today's litigious society, it is to your advantage to find out what your liabilities are and how to protect you and your company.

I'd want to thank John Ottaviano for his effort in setting up the ACCANY Scholarship fund at Suffolk County Community College. Our chapter has set up a fund that will give a scholarship of \$1,000.00 per year to a deserving student at the school that is enrolled in its HVAC program. It is our hope that this will help in attracting more people into our industry that desperately needs more qualified individuals.

I want to remind you that there are still a few openings for the HVACR Sales and Marketing Class being held November 13, 2007 at the Holiday Inn in Plainview, NY. You can enroll on our website: [www.accany.org](http://www.accany.org) Also, anyone interested in attending the 40<sup>th</sup> Annual Conference & Indoor Expo – Feb, 5-7, 2008 at the Broadmoor Hotel in Colorado Springs should register by Jan. 2, 2008 for a discounted rate. Rooms at the hotel are limited – don't get shut out.

Reservations are also now being taken for our Holiday Party, December 7<sup>th</sup> at the Water's Edge in Long Island City. This is a special place with its extraordinary view of the city and very good food. Seating is very limited. I urge you to make your reservations early.

At this month's meeting on Human Resources, we are also having a representative from LIPA who will discuss the LIPA's Cool Homes program. It is something that every residential contractor on Long Island should be involved in. This can put money in your pockets. — *Ken Ellert*

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# Editor's Notes

By Anthony N. Carbone

## Can Small Business Act Like Big Business?

As we gather for our monthly meetings, many of us have stories about our daily operations. Some discuss how they can't take a single day off and are in every day. Many are connected with Blackberries for emails, IP phones and Nextels on Sundays and holidays. Others speak of vacations they are going on to Europe for 10 days to 2 weeks.

Why the great disparity in stories? I wondered how big CEO's run multinational broadbased business and not get involved in the day to day and not go broke. Why did Bill Gates step back and become the "chief software architect" of Microsoft?

Can small business mirror big corporate operations and delegate the day to day responsibilities and be assured the same level of quality and customer care will be provided?

John O'Connor is an HVAC contractor, and in the August 2007 issue of Contracting Magazine, he wrote about some interesting information regarding taking control and getting out of the way. He first recommended getting your pricing right. Base your calculations on material, overhead and true costs. To deliver and add value to your new pricing, you will need a reliable and dependable system. No matter who is working at your company, the system must remain in place. The system must be implemented and extensive training and documentation allows these steps to be passed on. No one person should hold the magic to the job. The system, the implementation, the training and cross training is the magic!

One key part contractors have a problem with is putting out the day to day fires, running jobs and constantly answering the

questions from employees, vendors, customers and anyone else you come in contact with. This is a major obstacle to moving forward and it limits your company's growth potential.

How many owners can go on vacation and feel their company won't miss a beat or lose money while they are away? It makes most very nervous. If you were gone for a month, would your company continue?

Mr. O'Connor, formerly of Benjamin Franklin Plumbing and One Hour Heating & Air Conditioning in Hastings, Minnesota, now works with Clockwork Home Services and said, "after finding the systems within the company, doing the training and allowing your people to autonomously do their jobs, then leave." Try it, he says, you will find out where the holes are and what needs to be fixed within your organization.

If your business can't operate without you, it really doesn't have much value to a buyer. You need to get your replacement ready before you decide to leave.

Train someone to take your place and get out of the way. Mr. O'Connor says, "follow the steps." Be profitable. Think about the future. Put yourself in position. It can all happen if you plan ahead!

This is an interesting perspective because we do get caught up in the day to day, and we lack the time to deviate from these daily operations to forge ahead to new heights, developing ourselves and our businesses as opposed to becoming slaves to our businesses. As a point of information, I have included John O'Connor's email if you have any additional questions about his advice. [JohnOConnor@OneHourAir.com](mailto:JohnOConnor@OneHourAir.com), 612-369-1246 or email me, at [AC2@SystematicControl.com](mailto:AC2@SystematicControl.com), with similar experiences and changes you have made to free up your time and better your business. — Anthony N. Carbone



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# People & The Workplace

By Alan B. Pearl,  
Portnoy, Messinger, Pearl & Associates, Inc., Syosset, NY  
516-921-3400, Fax 516-921-6774 e-mail: ABPearl@pmpHR.com, Website: www.pmpHR.com

## New York State: Information Security Breach and Notification Law

New York instituted the Information Security Breach and Notification Law in order to protect both consumers and employees. While there are many measures that businesses should take to protect themselves, the most efficient protection comes from properly safeguarding any document that includes a social security number, drivers license number, account number, or credit/debit card information. Most importantly, businesses must shred any discarded documents that contain this type of sensitive information and always use caution in constructing websites and sending electronic data.

The law defines a security breach as an unauthorized acquisition of computerized data, which compromises the security, confidentiality, or integrity of private information. Thus, this law encompasses a wide variety of breaches and demands that we fervently protect private information.

Consequences of faulty record keeping, along with failure to immediately notify victims, can include hefty fines and

needless litigation costs. Immediate notification of a security breach is essential in reducing and even eliminating costs.

In the event that a security breach occurs, employers, businesses, and state entities must immediately notify any potentially affected employees and/or consumers. Notice must occur one of three methods: (1) Written Notice (2) Electronic Notice or (3) Telephone Notice.

While it is important to safeguard all employee and customer information, it is also important to immediately deal with any security breach. If you think that your employee or consumer personal information has been or could be at risk, please contact the employment specialists at Portnoy Messinger Pearl & Associates.

## New York State and Employee Misclassification

It is crucial that all New York businesses re-evaluate the manner in which they classify employees. Last month, Governor Spitzer signed an Executive Order that orders a new inter-agency task force to identify instances of improperly designated workers as independent contractors.

Improper worker classification is a common problem throughout the US and can lead to violations of many laws or regulations which can include state and federal wage and hour laws, (such as overtime and minimum wage laws), unemployment laws, tax laws, as well as worker's compensation and other employment laws.

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immediately re-evaluate your employee and contractor classifications. If these workers are not in business for themselves, or are working from your worksite, controlled and overseen by you, performing work that is similar to your employees' work, working only for you, or receiving benefits from you then your business should categorically re-evaluate your employee and independent contractor classifications.

The results of misclassifications are costly, and often include forced payment of back wages, as well as additional taxes, with penalties, and interest. Our employment consultants can assess any vulnerability to unnecessary litigation; most importantly we can help to decrease such vulnerability.

**Signed Sealed and Delivered: New York Law on Commissioned Sales Agreement Changes**

Beginning October 16, 2007 employers must provide written commission agreements to their commissioned salespersons. The New York law mandates that the employee and employer sign a written commission agreement and that the employer retain a copy of such agreement. Commission agreements must include: the calculation of wages, salary, drawing account, commissions and all other earned or paid consideration. The agreement must also include the methods of calculation not only during the period of employment but also the time following cessation of employment.

Employers should also consider shielding themselves from unnecessary litigation by providing each employee directions to resolve any improper payment. Because courts use complex and varied calculations when computing commissioned payments, it is important for employers to have legal counsel review commission agreements before problems arise. Failure to properly maintain signed commission agreements can be costly. In fact, as a matter of law, courts will presume that the employee's recollection of the commission agreement is correct in the absence of an employer's recorded agreement.

As always, should you have any questions about the issues raised in this article, please email me at [apearl@pmphr.com](mailto:apearl@pmphr.com), or call me at 516-921-3400.



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# Are Your Vehicles Ready for Winter? Companies with Small to Mid-Size Fleets Can Control Costs With These Simple Tips

By Daniel B. Brothers, Enterprise Fleet Management Director, Greater New York Chapter, ACCA

Though we'd all like to hang onto the warm days of summer, the pending winter weather is inevitable and you don't want to be caught in the cold when it comes to your vehicles. A little effort on your fleet now can save you a lot of time and money down the road.

Business owners and fleet managers who make sure their vehicles are ready for winter can drive down costs while

increasing the operating efficiency of their fleet. According to the experienced mechanics and accredited Automotive Service Excellence (ASE) technicians at Enterprise Fleet Management, a good place to start is by following some simple maintenance tips:

- **Winter Check.** Inspect wiper blades and make sure windshield washers are working and washer fluid reservoirs are full. Check battery for load capacity and the electrical/charging system for proper operation. Also, check all belts and hoses for softness and wear.
- **Oil Changes.** For vehicles that spend more time idling than driving, a general rule of thumb is change the oil every 200 hours of engine operation.
- **Transmission Maintenance.** Electronically controlled transmissions require more maintenance to continue operating at peak efficiency. Change the transmission filter

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and fluid every 30,000 miles or less for vehicles hauling heavy loads, pulling trailers, or doing mostly stop-and-go driving. Always use the correct type of transmission fluid recommended by the manufacturer.

- **Warranty Repairs.** Check your vehicles owner's manual to ensure you are keeping up with necessary preventive maintenance checks.
- **Filter Changes.** Replace the oil filter, air filter, fuel filter, automatic transmission filter and crankcase filter at regular intervals to prolong the service life of the vehicle and lower repair costs.
- **Tire Replacement.** Match dimensions indicated on the tire information decal for new tires. If a vehicle's tires reach 3/32 of an inch or less in tread depth, it's a sign to replace them. Some vehicles with all-wheel drive require replacement of all tires at the same time because of potential driveline problems.

- **Tire Maintenance.** Use a quality air pressure gauge to check pressure at least once a week. Rotation of the tires, recommended every 10,000 miles.
- **Engine Oil.** Always use an equivalently rated API (Automotive Petroleum Institute) oil that is recommended by the vehicle manufacturer.
- **Gasoline Selection.** The gas you choose can directly affect fleet cost and vehicle performance. When choosing a grade or octane of fuel for your company's vehicle, consult your owner's manual. Gasoline that is too low in octane can drastically affect vehicle performance, while gasoline that is too high in octane can drive up expenses unnecessarily.

Daniel B. Brothers is an Account Executive for Enterprise Fleet Management in New York. Visit the company's web site at [www.enterprise.com/fleets](http://www.enterprise.com/fleets) or call toll free 1-877-23-FLEET. •




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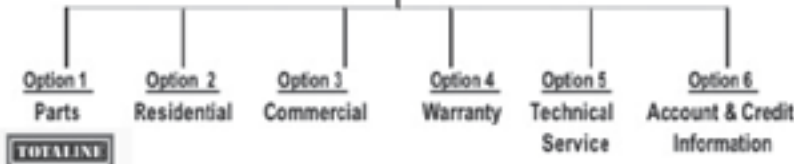
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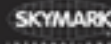


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***Statement From  
Stuart S. Zisholtz, Esq.***

**Delay Damage**

In one of my recent articles, I discussed delay damages and the ability to recover where a project has been delayed through no fault of the General Contractor or subcontractor.

I also indicated that the law does not permit a subcontractor to pursue a claim directly against the owner where it does not have a contract with the owner. In addition, a subcontractor may not have a claim against the General Contractor except in limited isolated circumstances where the General Contractor caused the delay.

The problem occurs where the subcontractor is severely damaged due to the delays and such delays were not caused by the General Contractor. How does the subcontractor recover the damages it incurred if he cannot pursue a claim directly against the General Contractor or the owner?

The answer appears to be that a claim can be brought by the General Contractor against the owner utilizing a liquidating agreement.

A liquidating agreement permits a General Contractor, in effect, to confess liability to an owner and the General Contractor pursues the claim on behalf of the subcontractor to recover the damages incurred. Once the funds are recovered from the owner, they pass through the General Contractor to the subcontractor.

A liquidating agreement has three basic elements. One, the imposition of liability upon a party for a third party's increased costs, thereby providing the first party with a basis for legal action against the party at fault. Two, a liquidation of liability in the amount of the first party's recovery against the party at fault. Three, a provision for the pass through of that recovery to the third party.

New York and certain other jurisdictions recognize liquidating agreements as a valid mechanism for bridging the privity gap between the owner and subcontractors who sustain the damages. Certain other states do not recognize liquidating agreements.

Before a subcontractor enters into a liquidating agreement, he must thoroughly and extensively review his damages, review the agreement and understand that he will not be able to recover any funds until such time as the General contractor recovers the funds from the owner. It is imperative, therefore, that you understand the ramifications of signing a liquidated agreement and what your responsibilities may be.

Never let your lien time run out.

For a free copy of a pamphlet pertaining to Mechanic's Liens and Payment Bond Claims, 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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