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Greater New York Contractors' NEWS



www.accany.org

SEPTEMBER 2009

President's Message



Ron Nathan

The calendar shows September closing in fast, but a delayed summer has finally arrived to our area with a blast! The heat and humidity have been a challenge for us all. Labor Day arrives on September 7. It's a great opportunity to salute the hard working people who keep America strong. I sincerely hope that economic upturns by next Labor Day will find greater numbers of Americans back in the labor force.

Turn to President's Message on page 3

You Are Invited To Our SEPTEMBER 10TH MEETING FEATURING REPRESENTATIVES FROM CON-EDISON AND NATIONAL GRID

National Grid's Lou Rizzo will speak on the new Efficiency Rebate Programs, and the BPI Certificate Program that began on June 1st, along with other training programs that National Grid will be hosting.

nationalgrid  conEdison

David Pospisil of Con-Edison will speak on his company's gas and electrical efficiency programs.

Together, these presentations will create an entertaining and valuable evening. Make sure you reserve online at www.accany.org.

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Cocktails — 5:30 pm; Dinner — 6:30 pm

Followed Immediately by the program

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PRESIDENT'S MESSAGE

Continued from page 1

July 10 marked our annual Take Me Out to the Mets Game outing. Over 1,000 attendees represented the Greater New York Chapter of ACCA at the beautiful new CitiField. ABCO was on hand to distribute commemorative t-shirts, Mets pens, sodas, and Cracker Jax. It was a terrific time. If only the Mets had won!!

Our annual ACCA Golf Outing was held on August 17 at the Hamlet Golf and Country Club in Commack. We had a very large turnout, and I would like to thank everyone who made this event so successful, especially Roy Bernheimer, Nick Terran, Ken Ellert, Marc Stoffer, Greg Singer, and John DeLillo. After breakfast and foursome photos, there was a shotgun start to the day and lunch on the course. Following a day of golf, we enjoyed a cocktail hour and barbecue dinner.

It was my pleasure to be able to present a contribution on behalf of our ACCA Chapter to a representative from the Make a Wish Foundation. This charitable organization grants the wishes of children with life threatening illnesses. The Greater New York Chapter of ACCA is proud to be able to continue our tradition of charitable giving with our donation of \$2500 to an organization that offers hope, strength and joy

to so many children and their families.

The scores for the day were wonderfully low – lots of smiling faces were observed. Congratulations to Glenn Hertzberg of Liebert Corp. for scoring a hole in one in the chip off contest!

Our next meeting will be held on September 10 at the Westbury Manor. — **Ron Nathan**

Thoughts to grow your business by –
Ask not what you can do for your customers – ask where your competitor comes up short, suggest a pair of business school professors. Try planning a business strategy that doesn't just play to your company's strengths, but also considers its role in the industry and the voids being left by lackluster competitors, they suggest. (knowledge@wharton)

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Editor's Notes

By Anthony N. Carbone

It's August 10th and the thermometer finally hit 90 degrees again. The last time we have seen 90 degree temperatures was back in April. This pause has cost contractors thousands of dollars in sales. Many of those sales revenues subsidize the existence of these companies through the winter.

The way consumers are spending money has changed significantly in the past year. Hesitation and careful consideration are applied to all big ticket items. Even consumers with money, and unaffected by the economic downtime, are being fashionably frugal. Big Flash and Big Cash are a thing of the past for now.

We at ACCA are looking forward to getting back to our programming and networking events. We are concentrating on asking our members to join us by attending our meetings so we can compare and exchange ideas in this changing market place. Please join us for our September meeting. Utility energy saving rebate programs are of great interest to all consumers. Can you afford to lose sales to your competition because you are uninformed??

— *Anthony N. Carbone*

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Diligence Pays Off with Preventive Maintenance

By Kelly Hiner, Enterprise Fleet Management

Being diligent about preventive maintenance for a fleet of vehicles not only can help a company's bottom line, it benefits the environment. Preventive maintenance means taking the time to monitor fluid levels, tire pressure, belts and hoses, battery, air, fuel, and transmission filters, vehicle lighting and turn signal systems. In addition to keeping the vehicle safe to drive, benefits include everything from avoiding more costly repairs and loss of productivity due to down time to helping the environment by reducing fuel consumption, decreasing harmful emissions,

One way to implement a preventive maintenance program is to follow the manufacturer's recommended preventive maintenance schedule. However, since there can be substantial variations in each manufacturer's schedule, it is important to continually check the owner's manual for individual vehicles.

Some companies make their drivers responsible for remembering and scheduling their own oil and filter changes and other routine maintenance work. Unfortunately, due to busy schedules, they may forget or postpone it for too long, resulting in more costly repairs. Alternatively, some drivers feel they're helping the company by changing their own oil or performing other routine maintenance, but this also can be counterproductive because failure to complete and maintain detailed records of regularly scheduled maintenance can often end up compromising the vehicle's warranty.

There are many ways to structure a preventative maintenance program to suit an individual company's budget and needs. One of the most cost-effective ways is to outsource to a professional fleet management company that specializes in serving companies with medium-size fleets.

To help maximize savings, a professional fleet management company may use a service interval guide that considers the optimal timing for preventive maintenance to stay within warranties for all makes and models. Their expertise may also help direct drivers take advantage of opportunities to combine service with the replacement of various components that may be covered by warranty, to further reduce costs.

A fleet management company can also be a watchdog. For example, if a repair shop recommends new spark plugs for a vehicle with 60,000 miles, the fleet service company will question the shop about why the tune up is needed. Unless there is a drivability problem, spark plugs in most vehicles are good for 100,000 miles. Also, many of the

fluids used in today's vehicles, such as transmission fluid, differential oil, and engine coolant, have extended service intervals.

In addition to overseeing and authorizing service and repairs, maintaining good records, and consolidating invoices, a professional fleet management company may be able to negotiate better prices on maintenance and repairs, facilitate goodwill assistance claims, and secure available rebates. Often, this negotiating ability can mean that you can avoid paying for unnecessary repairs and service or those that may be already covered by warranty.

Kelly Hiner is Group Sales Manager for Enterprise Fleet Management in New York and can be contacted at 973-709-2499. Visit the company's web site at www.enterprise-fleet.com or call toll free 1-877-23-FLEET. •

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People & The Workplace

By Alan B. Pearl,

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Recent NY and Federal Legislation

Both the federal government and New York State have made recent changes to many laws that affect employers. Employers should review the following changes to ensure that they are in full compliance with federal and state laws.

Minimum Wage: The federal minimum wage is now \$7.25 per hour, effective July 24, 2009. New York adopts the Federal minimum wage, so New York employers should adjust their payment practices.

Now is a good time for employers to ensure that they are keeping adequate records of their pay practices. Pursuant to New York State law, every employer should establish, maintain, and preserve for not less than six years, weekly payroll records. These records should show for each employee: (1) name and address; (2) social security number; (3) wage rate; (4) the number of hours worked daily and weekly, including the time of arrival and departure of each employee working a split shift or spread of hours exceeding 10; (5) when a piece-rate method of payment is used, the number of units produced

daily and weekly; (6) the amount of gross wages; (7) deductions from gross wages; (8) allowances, if any, claimed as part of the minimum wage; (9) net wages paid; and (10) student classification (if applicable).

Employers can be penalized for failure to keep records, falsifying records, failure to allow inspection of records, as well as hindering investigations. Penalties can be up to \$1,000 for a first violation, \$2,000 for a second violation and \$3,000 for a third or subsequent violation of New York labor laws.

Healthy Families Act: Introduced this summer, this federal bill would require employers to provide workers with up to seven days of paid sick leave per year. Employers would fall under the Act if they had fifteen or more employees. It would guarantee employees one paid hour off for each thirty hours worked, enabling them to earn up to a maximum of seven paid sick days a year. Employees could use these paid days when they or a child, parent, spouse, or someone else close to them became ill. Although the bill stalled under the Bush administration, Obama has been a large proponent of this legislation and it is predicted to pass this year or in 2010.

The Bill has not yet become law. However, it is pending before Congress. Stay tuned for updates.

New York Labor Law 195: Section 195 of the New York Labor Law currently requires employers to notify new hires of their rate of pay and the regular pay day. For employees hired on or after October 26, 2009, notification must be in writing and include, for non-exempt employees, both the regular hourly rate



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and the overtime rate. Further, an employer will be required to obtain from each new hire an acknowledgment of receipt of such notice. All New York employers should review their offer letters and new-hire paperwork to develop a strategy to comply with this requirement.

New York's Mini-COBRA: Currently, both federal COBRA and the New York mini-COBRA law mandate a period of up to 18 months of continuation coverage under a group health plan for covered employees, and their dependents, who lose coverage as a result of the employee's termination or reduction in hours of employment. Continued coverage is at the qualified beneficiary's sole expense, unless subsidized, all or in part, by the employer or under the American Recovery and Reinvestment Act of 2009 (ARRA). An amendment to Section 3221 of the Insurance Law provides an extension of the general continuation covered period from 18 months to 36 months for group policies subject to New York State law. However, the law, which applies retroactively to insurance policies and contracts issued, renewed, modified, altered or amended on or after July 1, 2009, does not apply to self-funded group health plans. Employers, including multi-state employers with New York operations should review and modify their COBRA notices and, if applicable, ensure that their third-party COBRA administrators are set up to apply this new requirement.

New York Human Rights Law: The New York Human Rights Law has been amended to include civil penalties for violations. The change went into effect July 6, 2009. The change in the Human Rights Law now allows imposition of civil penalties of up to \$100,000 payable to the New York State's General Fund. This is a significant change, as the previous penalties were limited to compensatory damages, injunctive relief, and disgorgement of unlawful profits. It is important for small employers to note that for employers with fewer than 50 employees, penalties may be paid in reasonable installments. Currently the New York State Division of Human Rights is in the process of developing guidelines for determining the amount of penalties.

Be Aware of New York State Department of Labor Posting Requirements

Pursuant to New York State law, all employers must prominently post certain information so that employees are apprised of their rights under New York's labor laws. Failure to post could result in penalties. This information includes the following posters:

Minimum Wage: Employers must display an official poster outlining the requirements of the FLSA which includes the current minimum wage: as such, employers should replace their posters if they do not already include the July 24, 2009 increase.

Criminal Convictions Records: Effective February 1, 2009, employers must post a copy of Article 23-A of

the Correction Law relating to the employment of persons with a criminal conviction. A copy of Article 23-A must be posted in a visually conspicuous manner in an accessible location at the workplace. For a copy of Article 23-A the posting must be visually conspicuous in a location accessible to workers

Discrimination: Pursuant to New York State Human Rights Law, employers must post information that employers are not allowed to discriminate based on race, creed, age, color, disability, national origin, or sex/marital Status.

Safety & Health: Employers must post information notifying employees that they are obligated to furnish a workplace free from certain hazards, and that the employer must comply with all applicable health standards. The poster also lists contact information for The New York State Department of Labor's Division of Safety and Health.

Public Work / Prevailing Wage Rates: If applicable to the employer, they must post the current Prevailing Rate Schedule in a prominent and accessible place on the site of the public work project; encased in, or constructed of, materials capable of withstanding adverse weather conditions; and be titled "PREVAILING RATE OF WAGES" in letters no smaller than two (2) inches by two (2) inches.

Public Work Project: The existing prevailing wage rate law, Labor Law §220, paragraph a of subdivision 3-a, requires contractors and subcontractors to post a notice at the beginning of the performance of every public work contract on each job site that includes the telephone number and address for the Department of Labor and a statement informing laborers, workers or mechanics of their right to contact the Department of Labor if he/she is not receiving the proper prevailing rate of wages and/or supplements for his/her particular job classification.

Unemployment Insurance: Employers must provide a copy of Notice to Employees (IA 133) which informs their workers that their jobs are protected by unemployment insurance and instructs them how to apply for unemployment benefits.

Workers' Compensation and Disability Benefits: This information is provided by the employers Workers Compensation Carrier. The carrier will provide a poster for employers, which notifies employees of the availability of coverage.

Continued on following page



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Workplace *from preceding page*

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For copies of the required posters and more information about notice posting, please contact our office. In light of all of these changes, now is a good time to check your employee handbook manual and ensure it is in compliance.

In that regard, please call contact me for an appointment. You can reach me at ABPearl@pmphr.com. •

Chapter's Scholarship Winner Announced

I am happy to announce that the Scholarship Committee (Mike O'Rourke and I) sat with the Director and Assistant Director of Admissions at SCCC and selected our 2009-2010 scholarship recipient. His name is Tom McGinley, a 2009 graduate of Plainedge High School from North Massapequa. He will be enrolled in the HVAC program at SCCC this coming semester as a full time student.

We will have the opportunity to meet with the recipient at an upcoming meeting for a formal presentation. We have also been invited to schedule an upcoming meeting at the new SCCC HVAC facility. — *John Ottaviano*

ACCA Chairman Testifies Before Congress On Stimulus Tax Credits

ACCA national chairman, Stan Johnson, testified before Congress on July 15, 2009.

Johnson, president of Stan's Heating & Cooling in Austin, Texas, appeared before the U.S. House of Representatives Small Business Committee. The Committee, chaired by Rep. Nydia Velazquez (D-NY), focused its hearing on "Economic Recovery: Tax Stimulus Items That Benefited Small Business with a Look Ahead."

A copy of Johnson's written testimony may be read at www.acca.org/testimony/. Video of the hearing is available at <http://www.youtube.com/profile?user=HouseSmallBizDems&view=videos>.

Johnson focused his testimony on the positive impact of the recent expansion of federal tax credits for high-efficiency HVACR equipment, while also pointing out problems with the way the credits were written and are being applied.

A recent survey of ACCA members revealed that nearly two-thirds of the association's members have seen some increase in the sales of qualifying equipment since the tax credits were included in the stimulus legislation.

"Tax credits help drive up demand for qualified higher efficiency HVAC equipment. Increased efficiency is the low hanging fruit in the effort stimulate the national economy, reduce energy consumption, promote indoor air quality, and



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lower greenhouse gas emissions,” Johnson said.

For geothermal systems, which are highly efficient but expensive to install, the credit is equal to 30% of the installed costs with no limit. This has led to a tremendous spike in interest and sales of geothermal systems, which have a high installation costs but substantially lower operating costs. Johnson’s own company has seen geothermal business skyrocket from 0% of business in June 2008 to over 30% of business in June 2009.

But there have been problems with the way Congress enacted the tax credits. Changes made to the minimum SEER and EER ratings for central air conditioners disqualified a large number of highly-efficient equipment choices from qualifying for the tax credits.

And there have been no incentives created for small businesses to improve their energy efficiency. Johnson recommended that Congress look at creating more incentives for small businesses to replace inefficient HVACR equipment. •

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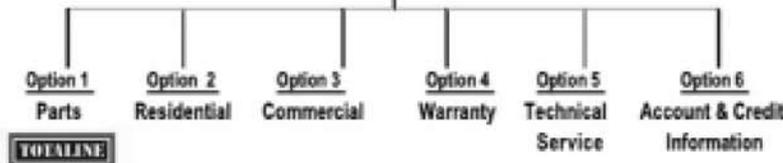
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Statement From Stuart S. Zisholtz, Esq.

Lien Waivers

The construction industry is filled with particular nuances with specific documents that many contractors and subcontractors take for granted. One of those documents is called a lien waiver.

Alien waiver is used in the construction industry to permit an owner or lender to release funds with the understanding that subcontractors and suppliers have been paid or will be paid with the proceeds. The document can be deemed a release for past work performed and can impact future payments as well. It is essential, therefore, that you review the document, understand the ramifications and submit the document to the owner or lender only after it is fully analyzed.

A lien waiver is essentially an escrow agreement. Many times the Court will consider an interim lien waiver as a receipt of progress payments. The owner or lender needs to know that all parties have been paid or will be paid with the construction funds. If the owner or lender pays the general contractor first and then tries to obtain the lien waivers, he may be subject to possible liens and claims. This way, the owner tries to protect himself by obtaining the lien waivers

prior to remitting payment. If the owner or lender refuses to remit payment after receiving the lien waivers, the lien waivers are not enforceable. The lien waivers will only be enforceable when payment is made by the owner or lender to the General Contractor.

Recently, the Appellate Division, First Department, addressed as issue concerning a waiver of lien. In that case, a subcontractor executed various waivers of lien and receipts for payment for a job prior to the General Contractor making payments to the subcontractor. Each of the executed lien waivers were addressed as either a full and final waiver of lien or a partial waiver of lien. The last lien waiver indicated that it was a "Full and Final Waiver of Lien" and was signed by the subcontractor. The subcontractor received a check from the General Contractor which was marked "Full and Final Payment".

The Appellate Division, First Department, held that the last lien waiver, which indicated "Full and Final Waiver of Lien" and set forth that no further claims of any nature would be sought by the subcontractor, prevented any future claims by the subcontractor for a balance due on the project. Essentially, the subcontractor released all claims that may have existed on the project when he executed the Final Waiver of Lien and accepted the payment. The law is crystal clear on this issue. The language of the lawsuit will decide



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whether the subcontractor waived its claim. There must be an intentional relinquishment of a known right for the Court to find a waiver.

It is, therefore, essential that you understand the documents you are executing and what the ramifications may be. Failure to do so could prevent your ability to collect any balance due.

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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