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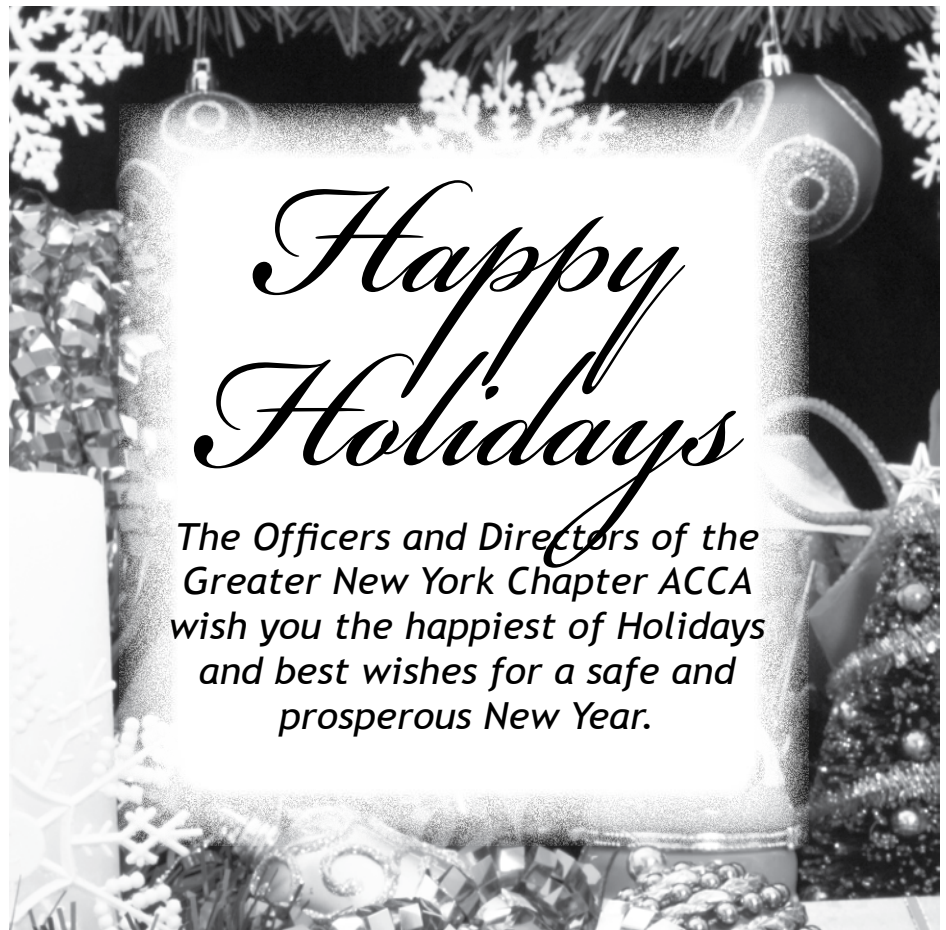


Anthony N. Carbone

The end of 2010 has come quickly and with it the end of my interim presidency. It was an honor and a pleasure to serve an organization that has allowed

one to grow, lead, and be creative with an outstanding board of directors. During these past 12 months, it was my intention to provide interesting programs, ensure quality networking, coordinate social events, and work with our incoming president, Michael Newman of Standard Refrigerator. Mike Newman has forged his way to the top of our organization and will provide excellent leadership that will bring us

Turn to President's Message on page 3



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PRESIDENT'S MESSAGE *Continued from page 1*

into the future and to new plateaus.

Our educational aspect of the Greater New York Chapter of ACCA was my focus of 2010. Joe Straneiri coordinated our first two webinars. They were well attended and we used modern web technology that allowed members to view this presentation live regardless of where they were.

We also provided two scholarship awards to students of the Suffolk Community College HVAC program. In October, I had the pleasure of making a speech at the Suffolk Community College Brentwood Campus upon presentation of these two scholarship awards. The fruits of success were apparent at this state of the art learning facility. Mike O'Rourke has worked with ACCA and Suffolk Community College to spearhead an education program, which included a two year associates degree in HVAC. The tour, provided by Professor Eugene Silberstein, revealed workshops that will allow excellence in HVAC education. His enthusiasm was evident during our tour. He is certainly an asset to this important institution. We must tip our hat and thank Mike O'Rourke for his perseverance and insight regarding the creation of this Brentwood Campus Facility.

As editor of the newsletter, I have written many columns from the point of view of an independent contractor regarding my feeling of the unregulated utility "Keyspan

Home Energy Solutions." I had complained and asked the Attorney General, as well as, the Public Service Commission to intervene on our behalf to remove the utility name from the unregulated subsidiary. Many, as well as myself, felt it was unfair competition, and it WAS! I was happy to hear during my presidency that "National Grid", who purchased "Keyspan Energy", decided to sell its unregulated subsidiary to a U.K. owned company called HomeServ. The disturbing point is that National Grid allowed HomeServ to continue to use the National Grid name for 10 years. Many found it to be a relief that the utility decided to exit from the home installation business although they sold the home service and repair business to HomeServ. Shortly, it will reveal itself as to how well a London based service company will serve gas heating customers. Stay Tuned R.I.P. Keyspan!!

Our programming for 2010 brought many relevant topics to the forefront of our industry organization. In January, we examined the trend of HVAC companies being audited for New York State sales tax. February was an interesting discussion regarding service software for the HVAC industry. March's program was J.P Morgan Chase and the New York Development Group regarding Small Business Administration loans and where HVAC businesses can get loans. May brought in OSHA for safety rules. In September, we discussed vehicle tracking (GPS) systems. October was refrigerants

Continued on page 4

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PRESIDENT'S MESSAGE

Continued from page 3

and R410A. November was Lewsan, building code consultants. In addition, we had a casino night, golf outing, a cocktail networking reception at the Crescent Beach Club, a baseball night at the Mets, and of course, this December we will have our Gala Holiday party.

Thanks to the coordination from the staff of our executive director John Delillo, we are able to make this organization a viable relevant source of industry information. John Delillo's consistent professional guidance has allowed me to make great strides and I thank him for his help.

I want to thank all of our members and the board of directors for participating with me this year and I will continue to guide and support ACCA for as long as our members allow me to serve.

Happy Holidays and may all of you have a prosperous New Year.

Thank you.

-Anthony N. Carbone



Photos by Anthony N. Carbone

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HVAC Program Showcased at Suffolk Community College in October

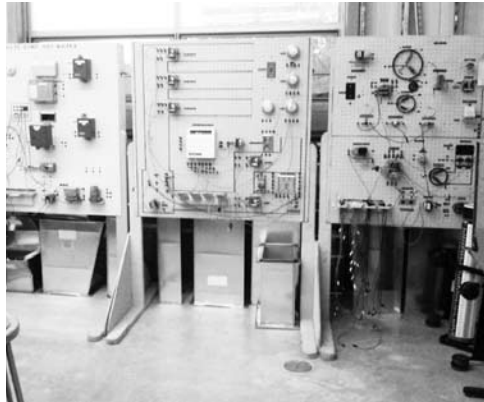
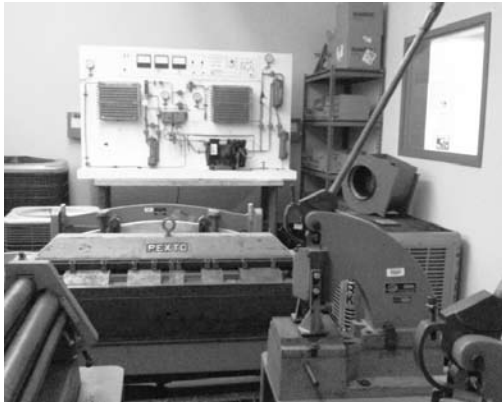
ACCA Members had an opportunity to visit Suffolk Community College's new HVAC building on the Brentwood Campus on October 20th. and to meet with teaching staff and administrators at the facility. Many of the HVAC systems on display at the Open House have been donated by local suppliers and manufacturers.

The College program offers both Associ-

ate Degrees and Certificates in HVAC related areas. With over 100 students in the program, ACCA contractors can look forward to a skilled pool of new technicians, junior engineers and sales persons coming into our industry.

Thanks to Michael O'Rourke of Best Climate Control for coordinating the visit.

Here are some photos from the tour.



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

10 Tips to Keep Holiday Parties Nice and Not Naughty

As 2010 draws to a close, many employers are planning holiday parties to thank employees for their hard work and celebrate the successes of the company. Many companies also throw events to acknowledge major clients. But with the festive attitude of holiday parties, employers often disregard potential liabilities involved, especially when alcohol is being served. Employers should be wise in planning holiday parties that accomplish their goals without opening themselves up to potential lawsuits.

A poorly planned Holiday Party creates the risk of inappropriate behavior such as excessive drinking, off-color jokes, sexual advances, and fights. These types of issues may lead to more than just hurt feelings and water cooler gossip. In fact, the employer could find itself defending a lawsuit. The focus of employers should be both discouraging inappropriate behavior or and establishing

practices that they can use to defend themselves later. Company leaders are urged to consider the following 10 tips when planning their end-of-year celebrations and holiday events.

- **Re-establish boundaries.** Make sure your employees know your workplace substance abuse and sexual harassment policies and that these policies are to be followed not just in the office, but at any office social function. These policies should already have been provided to employees in the company handbook. Now is a good time to remind them prior to an office party by using break room bulletin boards and office e-mails to communicate policies and concerns.
- Reinvent the office party concept. Why have a traditional, stuffy office party? Consider something new like a family friendly indoor carnival or a group outing to a performance/event.
- Make sure employees know their limits. If you do serve alcohol at an office event, make sure all employees know they are expected to act responsibly. Use commercial bartenders who are trained in how to identify and handle intoxicated individuals. Rather than having an open bar, consider handing out a limited number of drink tickets or having a cash bar.
- Keep the focus in perspective. Ensure that there are

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plenty of nonalcoholic beverages available. Redirect the focus of the party from getting intoxicated to celebrating the company's accomplishments and enjoying one another's company.

- Designate party managers. Remind all managers that even at the office party, they need to enforce the company's policies.
- Make sure employees get home safely. Each party usually has a handful of individuals that over imbibe. Anticipate this by making special transportation arrangements in advance of the party. Encourage all employees to make use of the alternative transportation if they consume alcohol.
- Serve none for the road. Stop serving alcohol well before the party officially ends while ensuring employees stay around during this time period through strategies such as serving dessert and coffee or having a raffle right before the end of the event.
- Make the party optional, not mandatory. In order to keep the event governed by social host laws (which extend a measure of protection to social hosts in the state of New York), you should never require employees to attend a party. The party should be held off site, away from the office, and no actual work or business should be conducted at the party.
- Keep Religion Out of the Party. Employers should avoid any religious ties to holiday parties, and ensure the celebration is more focused on gratitude for the year's successes. Keep in mind that a "Christmas" party may appear insensitive to some employees and throwing a generic holiday party will ensure everyone feels comfortable, included and will support the intended effect of the party — to boost morale and thank everyone for a job well done.
- Be Family Friendly. Invite spouses and significant others so that there will be someone there to help keep an eye on your employees and, if necessary, get them home safely.

Holiday Bonuses and the FLSA Grinch

As the economy starts to rebound, many employers are considering reinstituting holiday bonuses. However, there are various legal and tax considerations for employers giving awards or bonuses to their employees. The Fair Labor Standards Act ("FLSA") requires employers to count non-discretionary bonuses in an employee's regular rate of pay for the purpose of calculating overtime.

Discretionary bonuses provide a mechanism for rewarding performance, attendance, quality, productivity, etc. without increasing the employee's regular rate. To maintain discretionary status, (i) the fact that the bonus will be awarded, and (ii) the calculation or amount of the award must be determined at the sole discretion of the employer. It is also important that the bonus not be announced to employees until near the end of the period for which the bonus is given. In other words, the bonus cannot have the effect of being a motivator for superior performance. This is important because all non-discretionary bonuses must be included in an employee's wages for purposes of calculating their overtime rate.

Fortunately, the FLSA provides that bonuses given as gifts, such as at the holidays, may be excluded from the regular rate as long as the amount of the bonus is not dependent on hours worked, production, or efficiency. In other words, it should not serve as a motivator for increased or more efficient performance. In addition, a gift bonus may not be so significant that your employees consider it part of their wages rather than a gift.

All employers should understand ahead of time whether a bonus is excludable from FLSA overtime calculation. To the extent your non-exempt employees are working significant amounts of overtime, the award of a non-excludable bonus will require the additional payment of overtime for the weeks covered by the bonus. If this additional overtime is not calculated and factored into the overall cost of the bonus, you could be faced with potentially significant unexpected overtime liability.

Portnoy Messinger and Pearl would like to wish everyone a healthy and prosperous new year. I would like to thank ACCA members for their support of PMP. As always, should this article raise any questions you can reach me at ABPearl@pmphr.com. •

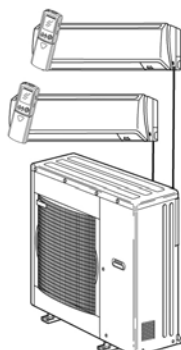


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Roadside Assistance for Towing & Breakdowns

By Kelly Hiner/Enterprise Fleet Management

Despite horror stories – like one unfortunate driver whose vehicle got stuck in the mud up to its wheel wells and required two bulldozers, one to pull out the vehicle and one to repair the road – most roadside assistance calls for fleet vehicle emergencies are far more routine. But the way a call for roadside assistance is handled can make a big difference in how quickly the driver is able to get back on the road and on the job and how much money can be saved on repairs.

One of the most significant differences is working with a fleet management company that directly handles the vast majority of roadside assistance calls from its customers instead of routinely routing to an outside third party. Handling calls directly means having instant access to information about the specific vehicle, its maintenance

history and record of breakdowns.

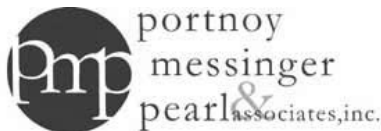
This not only can help the technician respond to the driver's need for emergency assistance, but also expedites the necessary repairs by having the vehicle towed to the right shop and ensuring the repair work will be covered by the manufacturer's warranty when applicable. In addition, the fleet management company's roadside assistance program may provide additional services, such as arranging a replacement rental vehicle while repairs are being made and monitoring the work being done by the shop to complete repairs on time and on budget.

Drivers requesting emergency roadside assistance can help the dispatcher by providing important information such as an exact address, mile marker, landmark or nearest cross street, indicating whether they are in a safe location and explaining as accurately as possible what happened. In addition, providing information about how the vehicle is loaded with special equipment can save time and money by making sure the right size tow truck is dispatched the first time.

As always, frequent breakdowns for the same vehicle may indicate that routine maintenance is not up to date or that a driver who chose to make his or her own arrangements for repairs did not follow through. In these situations, the fleet management company's roadside assistance team may proactively contact the business to call attention to the problem of frequent breakdowns for the same vehicle, as well as include this information in the regular monthly report.

While there is no way to totally prevent breakdowns from happening occasionally, being diligent about preventive maintenance for a fleet of vehicles can help. Preventive maintenance means taking the time on a regular basis to monitor fluid levels, tire pressure, belts and hoses, battery, air, fuel and transmission filters, vehicle lighting and turn signal systems. For drivers with late model diesel engines, checking particulate filters can be especially important.

One way to implement a preventive maintenance program is to follow the manufacturer's recommended preventive maintenance schedule. However, since there



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can be substantial variations in each manufacturer's schedule, it is important to continually check the owner's manual for individual vehicles.

For most companies with a fleet of vehicles, a breakdown means lost productivity. In today's economic climate, being able to get the vehicle back into service as quickly as possible and at the lowest possible cost is more important than ever. Making sure that the first call for roadside assistance is the right call is a good start.

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.enterprisefleet.com or call toll free 1-877-23-FLEET. •

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Statement From Stuart S. Zisholtz, Esq.

Watch Out For Owners and GCs Passing Off Costs To You as a Subcontractor

In another twist to try and burden the subcontractors with as much of the expense necessary to build a project, owners and general contractors have come up with a new scheme to try and pass the burden of all insurance costs to the subcontractors.

Recently, a new Target store was built in the Bronx. Target instituted an owner-controlled insurance program which allowed all contractors and subcontractors working on the project to be insured. In exchange for the insurance coverage provided to them by this program contractors and subcontractors were required to include in their contracts and subcontracts, credits or deductions of amounts to be withheld from the sums due to them in order to offset the costs of their proportionate share of the program.

During the course of the project, as the construction advanced, the scope of the work expanded. As a result, the general contractor began withholding from the subcontractors certain funds to offset the increase insurance costs. Upon completion of the store, when the general contractor finally paid the subcontractors, the general contractor held significantly greater sums to offset the additional costs of the insurance programs.

A subcontractor commenced an action to recover the sums due and owing. The general contractor asserted to defenses that the withholding of the various funds was proper and it was permitted to increase the amounts charged back to the subcontractor to reflect the increase costs of the program.

The Supreme Court denied the subcontractor's motion for summary judgment. The Appellate Division, Second Department reversed and awarded judgment in favor of the subcontractor and dismissed all of the defenses.

The basis for the decision by the Appellate Division was that the insurance program violated New York State's insurance law. Owners and general contractors are prohibited from demanding a subcontractor, on a non-public construction project, to pay a premium or related charges for an insurance policy.

An owner or general contractor may provide a policy without reimbursement from the contractor or subcontractor and may require that the subcontractor provide a credit in its bid reflecting the amount the subcontractor would otherwise incorporate for insurance if it was required to obtain its own insurance. However, provisions in a program which require post-completion adjustments for insurance premiums are illegal and violate the insurance law. Unlike a credit in a subcontract when initially bid, the adjustments require a subcontractor to reimburse the general contractor for the costs of insurance.

This decision is important because it is another example of



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an owner and general contractor seeking to pass all costs onto the subcontractors. Thankfully, the Court was able to see through the scheme orchestrated by the owner and the general contractor and awarded judgment in favor of the subcontractor.

Never let your lien time run out!

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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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