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Greater New York Contractors' NEWS



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President's Message



Michael Newman

January 2011 began with our board meeting

at the LaGuardia Marriott. Most of our board members attended and pledged their support for our organization to bring great achievements and new ideas to the Greater New York Chapter of ACCA.

The January meeting featured Alan Pearl and Rita DiStefano from Portnoy, Messinger, Pearl & Associates who discussed new points on Labor and Employment Law, Employee cell phone use, new

Turn to President's Message on page 3

February 3rd Meeting

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Thursday, February 3, 2011

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Cocktails at 5:30 pm; Dinner at 6:30 pm

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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.

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PRESIDENT'S MESSAGE *Continued from page 1*

wage and hour developments and workplace privacy issues. As always, they put on an amazing show and we walked away with very valuable information.

This year we will be focusing on increasing the membership within our organization and seeking out greater participation from our contractors, suppliers and associate members. If anybody has an idea or issue relating to our business and industry, please get in touch with us and we will make it happen. How can ACCA help you this year?

Please use ACCA as a networking experience and a place where you can bring the hottest and most relevant business topics back to your day to day operations.

Thank you for your support and I look forward to seeing you at the next meeting!

— *Michael Newman*

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Technician Selling Is A Hot Button

By John R. Hall

Excerpted from ACHR News

One of the most interesting and talked about topics in the HVAC trade is technician selling. The question is: Should an HVAC technician be trained to sell HVAC equipment and supplies?

That question has sparked debate among the trade for many years. The result is that there is no definitive right or wrong answer to the question. It is based on the preference of the business owner and manager. Tech selling works for some and not for others.

The question was once again put to an array of HVAC contractors across the United States and their answers, sometimes very passionate, are included in this article. For a full text of all replies, visit the Extra Edition at www.achrnews.com.

The most compelling arguments for tech selling include the fact that technicians often know more about the equipment they service than anyone else and are the most qualified to sell it. They also establish a trusting bond with customers that is very important in the sales process. The most compelling arguments against tech selling include the fact that the selling process takes technicians away from what they are trained to do — fix equipment. Sales opportunities among techs can also be seen as extra income opportunities that often lead to unnecessary equipment replacement — leading to distrust among customers.

And then there is the area “in between” where technicians may be allowed to sell add-on equipment such as air filters and humidifiers, as well as service agreements, but not the complete HVAC system. Technicians can also be encouraged to generate sales leads and are often rewarded with a commission for leads closed on by salespeople.

Tech selling for accessories is critical to the success of the business,” said Dave Dombrowski, NEWS consultant and manager at Metro Services/ARS, Raleigh, N.C. “However, with the new mechanical code, using selling techs to size and install equipment is a code violation waiting to happen. All jobs must have a heat load run and this either requires an investment of a computer for each tech or eliminating a one-stop sale.”

Linda Couch, COO and vice president of sales for Parrish Services Inc., Manassas, Va., sees both sides of the issue. “In our company, there are appropriate situations for both tech selling and salespeople,” she said. “Clearly there are benefits to having a technician close a sale on the spot. However, rather

than “tech selling,” we want our technicians to take on the role of “trusted advisor.” What’s the difference?

“To explain, we use the analogy of a veterinarian and how they work. First, veterinarians are not cheap. We pay a premium for their expert opinions. Second, veterinarians know that sometimes the most appropriate recommendation is to put a pet down, and they’re not afraid to tell us that is the best option. That’s what a tech needs to be able to do; he needs to use all his knowledge and experience to identify all appropriate recommendations, including replacing a system, and help the owners decide which alternative is best given their unique situation.”

THE CASE FOR TECH SELLING

There are many reasons why techs should sell HVAC systems and many support systems for doing it. HVAC contractors have several resources to send their techs to for training and rely on their own staff to provide support during the sales process.

But some contractors are content to turn over the entire selling process to their technicians. “I feel tech selling is very important to a company,” said Bill Bradley of Airtronic Heating, Redford, Mich. “The tech is the most trusted person the homeowner sees on a regular basis. I started as a tech selling products and did so well my boss at the time got rid of our salesman. I send my techs to classes at Lennox and have done a lot of coaching to get them started.”

In some cases, trust is the key word and a huge reason why techs can be successful salespeople. “Customers have an inherent distrust of salesmen,” said Dan Troyer of Danco Heating & Cooling, East Peoria, Ill. “A selling tech has a leg up on salesmen because people tend to trust their opinion more. I think it’s better to have the sales staff dress down, even to the point of wearing a service tech uniform.”

Selling equipment may not be the strong point of many techs, but selling air filters and service agreements are important and fall under the selling umbrella. One contractor has seen the process from different sides and has enjoyed success because his techs have practiced good selling skills.

“Everyone in our company is expected to sell,” said Bob Forty of Energy Services Air Conditioning and Heating Co., Naperville, Ill. “Several months ago, I heard rumors that three of my service techs wanted to begin selling,” he said. “I took each one of them privately into my office to try to talk them out of selling. They firmly told me they decided they wanted to sell and would do whatever was necessary to get the job done.

“Each one of them is doing well. My main guy actually conducts his own sales training meetings with the techs who want to learn more. When he comes up with a successful

sales process, he loves to train the other guys and see them succeed as well.”

Tech selling can be the difference between good margins and no margins at all, according to trainer Dan Favata of Oklahoma City. “The only way to make any real profit is to utilize your service techs as emissaries for the company, to build trust from the customer so that when replacement of equipment is called for, they utilize your company,” he said.

“I teach classes weekly to technicians and although there are technical aspects, the bulk of the training is sales: equipment leads/ sales, agreement sales, and add-on sales. If a tech cannot sell, it does not matter if he/she can repair any system in the world, they will not be seen as a valuable asset to the vast majority of service companies, and will be compensated and treated accordingly.”

Couch said she is one person whose mind has changed about tech selling since entering the HVAC industry. “I came to this industry after 20 years in a Fortune 500 IT company known for its excellent sales force,” she said. “Having managed both salespeople and technicians, I was very much in favor of leaving all selling to our salespeople. I believe sales involve both skill and process, and I didn’t think technicians should try to take on more than one role. After two years at Parrish, I’m a convert to tech selling.”

The word “selling” itself has some negative implications and one contractor likes to label the process differently — because he believes that techs should be able to sell equipment. “We make a concrete effort to sharpen the selling skills of our service techs through the use of outside consultants twice a year and a monthly tech meeting dedicated to the subject,” said John Waldorf of Estes Heating & Air Conditioning Inc., Atlanta. “We just do not refer to it as selling; that word can sometimes have a negative connotation to techs, especially the more experienced ones,” he said. “We call it informing and educating. The goal is to inform the customer as to the options available and educate them as to what is in the customer’s best interest.”

THE CASE AGAINST TECH SELLING

The very nature of a tech’s job is to fix something, whether it is the equipment or the customer. That is usually done by repairing HVAC equipment and providing comfort and relief to the customer. There is little doubt that a tech must have mechanical aptitude to diagnose and repair systems — and contractors who responded to this topic preferred to keep techs in that mindset and not cross over into selling.

“We have a shortage of technicians in our industry,” said Fred Canady of Canady’s Precision Air Conditioning & Heating, Richmond Hill, Ga. “They work about 2,000 hours per year. We should be generating as much revenue as possible with this valuable resource. A service tech is a revenue

generator, not a salesperson.

Service techs have a different mindset and skill set than salespeople. The same is true for accountants, dispatchers, and installers. If we are going to allow service techs to sell, why don’t we just send our bookkeeper to perform a job set-up?”

One contractor said his company tried to get techs to sell but not everyone could do it well. “We have gone away from having our service techs sell equipment in the field,” said Dennis Muravez of McClelland Air Conditioning Inc., Chico, Calif. “In 1995, we developed a pricing cookbook for our service techs and they would sell the equipment when needed. We found that one tech excelled at this and the others had less success. Some of the techs did not want to sell, and we would miss sales.

“In 1998, we abandoned this program and made our best selling tech our salesperson. This increased our equipment sales because we closed more sales and our service sales increased because our techs spent more time on billable service. With the increased regulations from the building codes and tax credits, rebates, and financing, service techs do not have training to keep up.”

For some contractors the answers to tech selling or not is very black and white: there are job definitions for everyone, period.

“We are a firm believer that salesmen sell, installers install, and servicemen handle the service,” said Steve Hale of Hale’s Air Conditioning, St. Petersburg, Fla. “We do let our service techs give pricing for standard efficient systems. They do not have the time needed to properly educate a homeowner on high efficiency and duct modifications that are needed to make a proper working system.”

“Can you really have a true technician that is also able to sell and still maintain a service schedule?” asked Paige Fisher Simpson of Simpson Air, Tampa, Fla. “In rare instances a tech will quote a condenser or air handler change out if warranted and to code. We are one of the a/c contractors in our area that does not hire service/sales technicians. We believe that when a company does this, they are (typically) paying them based on sales not repairs and this leads to replacement sales when they may not be necessary — and we all know what this may lead to.”

For one former tech, the answer is obvious. “So much money is being left on the table due to the time constraints on the tech,” said Jon Askew of Bud’s Heating & Air Conditioning, Yorktown, Va. “The tech is the frontline of any company, and they are the profit generators. With an average call day of five to six calls a day, they are in front of more customers than the salespeople. Therefore my stand is techs should not sell but turn over the proper lead the right way — and everyone will benefit.” •

January 6th Meeting —
*Important Developments In
Labor and Employment Law*



Photos – Anthony N. Carbone



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By Alan B. Pearl,

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Recap Of Legislative Changes In 2010

Our state and federal legislators kept themselves busy in 2010. Below is a recap of several legislative changes that employers should be mindful of in the New Year. All ACCA members should review these statutes and adjust their employment policies accordingly.

1. Federal HIRE Act: Enacted March 18, 2010, the federal Hiring Incentives to Restore Employment ("HIRE") Act provides two kinds of tax breaks to employers that hire certain previously unemployed workers ("qualified employees"). One is a payroll tax exemption that exempts the employer's 6.2 percent share of Social Security tax on wages paid to qualifying employees, effective for wages paid from March 19, 2010–Dec. 31, 2010. The second is that for

each worker retained for at least 52 consecutive weeks, businesses may claim an additional general business tax credit on 2011 income tax returns of up to \$1,000 per worker.

2. Final GINA Regulations Issued by EEOC: The Genetic Information Nondiscrimination Act (GINA) took effect in November, 2009, but the final regulations on this statute were not issued until November, 2010. GINA strictly prohibits employers from collecting genetic information from employees, and using this information to make decisions regarding hiring, firing, or any other term of employment. The final regulations i) provide examples of genetic tests, ii) more fully explain GINA's prohibition against requesting, requiring, or purchasing genetic information, iii) provide model language employers can use when requesting medical information from employees to avoid acquiring genetic information, and iv) describe how GINA applies to genetic information obtained via electronic media, including websites and social networking sites.
3. NY Bereavement Benefits to Same Sex Couples: Employers must now extend funeral and bereavement leave to unmarried same-sex couples. Bereavement leave, if offered by an employer, must be available to same-sex couples who are in a committed relationship.
4. NY Quarterly Wage Report and New Hire Requirements with Respect to Child Support Orders: This law compels employers to report on both quarterly wage and new hires reports when employer-sponsored family health insurance is available. This bill was signed into law on July 15, 2010.



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Sneak Peak of 2011

Employers should anticipate scrutiny by state and federal agencies on their pay practices in 2011. Both an increase in

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minimum wage for hospitality employees and changes to New York’s Labor Law can create pitfalls for unobservant employers. Take note of the following changes now before they negatively affect business and profits.

Payroll Tax Reduction: The Tax Relief, Unemployment Insurance Continuation and Job Creation Act of 2010 changes how employer’s process payroll in 2011. This law includes a 2% reduction in the employee portion of the Social Security part of FICA taxes. Employers should make their change to payroll deductions as soon as possible. If employers are not able to make the adjustment with the first paycheck in January, the 2% overpayment will need to be refunded to employees in a later paycheck. The IRS says the adjustment should be made no later than March 31, 2011.

1. Wage Theft Prevention Legislation

- a. New York’s Labor Law (“NYLL”) has been amended to include increased penalties for employers who fail to pay their employees the correct wage. In addition, employers now must notify employees of their appropriate wage rates and keep accurate records of payments. Employers who fail to meet these obligations face larger fines and more severe penalties than in the past.

Employers’ failure to pay the correct minimum wage and overtime are not the only focus of the NYLL.



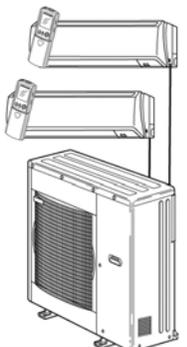
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Naturally, the above paragraphs provide only a brief synopsis of the laws. Portnoy, Messinger, Pearl and Associates can help you further understand the topics discussed in this article, and adapt your internal HR policies accordingly. Of course, any questions about the above topics can be addressed to me at ABPearl@pmphr.com. •

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Affordable Mobile Resource Management Is Dream Come

By Kelly Hiner/Enterprise Fleet Management

Businesses that always thought a mobile resource management system was too expensive should take another look. New, affordable technology is not only available, there are solutions specifically designed for businesses with medium size fleets. In a highly competitive environment where time is money and driver safety is a priority, mobile resource management solutions can be a dream come true.

Mobile resource management solutions integrate real-time GPS vehicle tracking and navigation tools with automated scheduling, dispatching and route optimization applications, as well as job status tracking and two-way one-touch canned messaging to improve efficiency. In addition to generating efficient daily schedules to job locations, software can handle dispatching for emergency and last minute calls that occur throughout the day and alert the closest available worker or workers.

Using a mobile resource management system can produce measurable results, as well as intangible benefits. For example, just two months after implementing a mobile resource management system for its fleet of 52 vehicles, one material handling equipment and services company has lowered the average number of hours each of its technicians works per day by one hour, with no loss in productivity. The company estimates this will translate into saving approximately \$400,000 over the next 12 months.

For company drivers, the benefits of improved navigation

and other technology advances far outweigh previous objections about being monitored via GPS tracking. Drivers can receive timely updates about unanticipated schedule changes and audible navigation commands provide directions between job locations, including route optimization that prioritizes alternatives based on current traffic patterns. In addition, drivers don't have to take time to maintain timesheets with detailed arrival and departure times at a job location because this data can be automatically recorded.

Combined with technology advances that have brought down the cost of what used to be prohibitively expensive for businesses with medium size fleets, today's mobile resource management solutions can connect the GPS tracking device to a GPS navigation unit, such as a Garmin, which operates as a mobile workstation. When data is integrated with a fleet management company's mobile resource management system, a variety of reports can be generated to help a company better manage payroll, billing, off hours vehicle usage and other administrative tasks that depend on accurate tracking.

In addition to increasing efficiencies to help a business complete more jobs per day, lower mileage costs, and benefit the environment by reducing fuel consumption through route optimization, mobile resource management solutions improve driver safety because drivers know their vehicle is being tracked and monitored on everything from speed to jack rabbit starts.

With a wide variety of GPS navigation units available, it is important to choose a device that includes safety features such as hands-free, one-touch technology, as well as an automatic "lock" when a vehicle is accelerating over five miles per hour.

The bottom line is that improved customer service, reduced cost and increased mobile workforce efficiency are the main benefits of mobile resource management solutions. Automatic routing and tracking not only enhance the ability to give customers timely updates about arrival times, customers receive the most accurate and timely information to help them better manage their business.

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.

Insurance And The Labor Law Claim

In the past I have written several articles with respect to liability insurance coverage, indemnification and similar issues.

It appears that the insurance industry together with various liability decision is putting together situations where exposure for accidents might ultimately fall back on the employer. You must consult with your insurance experts to make sure that you have full coverage and that your exposure to indemnification is eliminated.

If one of your employees gets hurt on the job, he has the right to bring what they call a Labor Law claim. A Labor Law claim means that the owner and general contractor are absolutely responsible to pay damages if your employee gets hurt on the job. Your employee cannot sue you because you are his employer and his sole remedy is what he can collect under workers' compensation. If the case is worth one million dollars there is no way that he will ever get that type of money out of workers' compensation. As a result, he brings a claim under the Labor Law against the owner and the contractor.

To turn this whole situation around, once the employee brings his claim against the owner and the contractor, they may "implead" you as his employer so that now the claim is not being made by your employee but the claim is being by the owner and the contractor who are seeking "indemnification". This means they want to be reimbursed for whatever they pay your employee. Thus, the circle is complete.

The employee gets his million dollars and you, who are only responsible for workers' compensation benefits, wind up paying one million dollars directly to your employee by paying the owner the contractor.

That was changed by an amendment to the workers' compensation law that said that the only time that situation would apply is if the employee suffered a "grave injury". The definition of a grave injury means death, loss of use or amputation of an arm, leg, hand or foot, total blindness, loss of a nose, ear, index finger, facial disfigurement and certain brain damage. Anything less than that prohibits the owner and the contractor from turning the tables around and seeking indemnification from you.

Moreover, the statute specifically says that an employer cannot waive the prohibition against indemnification for a grave injury. In other words, you cannot agree to reimburse the owner and the contractor and waive your rights under the workers' compensation law as far as grave injury is concerned.

What do the owners and contractors try to do? That around

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that statute they are trying to insert clauses into contracts where you waive all the benefits that you have under the workers' compensation laws. You are not confining your self to grave injury but to any aspects of the workers' compensation law. If you confine your waiver to a grave injury, it will be void. If you give a general waiver or whatever benefits you have under workers' compensation, you might be charged the obligation of indemnifying the owner and contractor for any claims that your employee makes under workers' compensation whether they be grave injury or not.

The law is not clearly settled on that. The purpose of this notice is to advise you that those clauses are going to creep into the contract that you sign with the owners or general contractors and you may very well be stuck holding the bag.

I stress that you have to get hold of your workers' compensation carriers and your general insurance carriers and make sure that you have no waivers and there is no feedback against you where you are violating either the law or the terms of your insurance policy by signing contracts containing waivers.

Never let your lien time run out!!

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

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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