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Air Conditioning Contractors of America
Greater New York Chapter
229 South Street, Oyster Bay, NY 11771

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Greater New York Contractors' NEWS



www.accany.org

June 2008

President's Message

OUR GREATER NY ACCA CHAPTER HAS FUNDED A NEW SCHOLARSHIP to benefit students enrolled in the HVAC Associate Degree Program at Suffolk County Community College. This



Ron Nathan

endowment has the potential to support two yearly \$1000 scholarships. SCCC will be debuting a new HVAC campus building in the near future, and anticipates an increase in students enrolling in their HVAC program. Criteria for choosing scholarship winners will include intent to enter into the HVAC industry after graduation, a brief state-

Turn to President's Message on page 3

June Membership Meeting Sail the NY Seas to the Statue of Liberty



Enjoy the cool breeze as you sail with Lady Liberty Cruises aboard the M/V STERLING through the majestic gateway of America, view the spectacular world famous Manhattan skyline and its expansive bridges, and marvel at the original Lady Liberty - the Statue of Liberty in historic New York Harbor. Departs from the Manhasset Bay Marina in Port Washington.

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PRESIDENT'S MESSAGE *Continued from page 1*

ment of personal goals, and grade point average. Please check our website for more details.

This year's air conditioning season is heating up! Enjoy an evening out socializing with other ACCA members on a relaxing dinner cruise around Manhattan on June 12. Besides a spectacular view of the New York City skyline and the Statue of Liberty, your admission cost includes parking, dinner, a DJ, a three hour open premium bar, dessert, tax and gratuity. Register online at www.accany.org today!

Welcome to our newest members – Sal D'Angelo of DML&S A/C & Heating, Jeff Antonoff of Dynamic A/C Co., Brian Egan of Brian Egan Mechanical, and Edward Byrne of Byrne Heating and A/C. Our membership has been growing, and thanks to our new memberships and our loyal renewing members, we have broken the 100 Member Mark!

A special incentive for new ACCA members is about to be unveiled at www.acca.org/join. If you, or someone you know, would like to become a new member of the Greater NY ACCA Chapter, this is a perfect opportunity. Beginning May 23, and continuing for 30 days, new members who enter the promo code gnyspring when prompted will receive a deduction of \$50 from their dues.

Thanks to Steven Lichtenstein of Lichtenstein Financial Solutions and The Forest Hills Financial Group for his Networking Formula for Success presentation at our May meeting. Steve explained to our group the importance of marketing companies as a brand to achieve growth and success in business. The handouts he provided demonstrated the value of networking within the business community and the great worth of positive referrals.

I am sure you have encountered a renewed customer interest in energy efficient systems. You are probably looking for ways to reduce your own energy consumption also. The ACCA national website contains training materials to clearly explain to contractors the Energy Star Program and marketing materials to help you demonstrate to customers the benefits of high efficiency systems. The Energy Star labeling program appears on over 35 different categories of products including appliances, computers, light bulbs and residential HVAC equipment. These products save your company and consumers money by reducing utility bills and help protect the environment from pollution by using less energy that must be produced at power plants. Take some time to read about the Energy Star Program under the Technical Services section of www.acca.org and save some money while you enjoy the spring and summer months! — **Ron Nathan**

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NEW MEMBER INCENTIVE! TELL YOUR NONMEMBER FRIENDS & COLLEAGUES!



National is offering a new incentive to join ACCA. If a prospective member visits www.acca.org/join and enters promo code **gnyspring** when prompted, \$50 will be deducted from their membership cost. This incentive begins May 23 and runs for 30 days until June 22. The offer is only for NEW MEMBERS

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Editor's Notes

By Anthony N. Carbone

Are You Referable?

Steven Lichtenstein, of Lichtenstein Financial Solutions and The Forest Hills Financial Group, asked our contractors and associates at our last programming meeting in May, "Are you referable?" Many contractors asked themselves this question. Steve Lichtenstein explained the value of being referable for others.

The thought that an individual is referable means someone reached out to a person that they have confidence in to recommend someone else for a particular job or task. The burden of this choice is enormous. One fact is the person

reaching out is depending on an answer from his advisor that will yield a good experience with more than acceptable results. The advisor's reputation of referring a contractor is on the line.

The responsibility of the contractor acting on a referral is not only representing his company, but the advice given by a third party. My company, Systematic Control, gives hundreds of referrals out to many contractors that we have confidence in. This builds up a network of power and information that always produces leads and referrals back to us.

I have taken the list of 13 questions provided by Steve Lichtenstein for those of you who were not able to attend our last meeting.

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1. Do you do what you say you will do?
2. Do you call leads promptly?
3. Is it your practice to update the person who gave you the lead/referral?
4. Have you ever called the nominator (referral given) to ask for help in reaching a hard to approach referral?
5. Do you have a system in place for tracking referrals?
6. Do you consistently send personal notes, e-mails, or thank-u-grams to your spheres/centers of influence?
7. Good or bad, upon achieving an interaction, appointment or belly-to-belly with a referral, do you make a point or thanking the nominator in a public forum?
8. Are you reliable? Do you always show up on time for opportunity calls, or do you sometimes cancel appointments

at the last minute?

9. Have you offered to make an introductory phone call to a lead you have provided to a fellow net worker?

10. Have you offered to be present at the initial meeting between the referral and the referee?

11. If you don't hear from someone you gave a lead to, do you call them?

12. Do you always represent yourself in a professional manner AND do you always present an "industry appropriate" appearance?

13. Do you "Promise a lot, and deliver more?"

This program provides contractors some important points of information combined with the venue provided by ACCA to network. A winning combination that is guaranteed to put you at the top. — **Anthony N. Carbone**



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People & The Workplace

By Alan B. Pearl,

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Exempt And Nonexempt Issues Under The FLSA Park 111

In the April edition, I discussed nonexempt and exempt employees. I discussed paying a person by the hour or paying by salary. In May's edition, I discussed partial day absences and the definition of a supervisor.

This month I'm going to focus upon the administrative exemption since it was revised substantially in September of 2004. Many of the changes are common knowledge, some are subtle and some are quite complex.

The most discussed and litigated category of the exempt employees classifications (executive, administrative, professional, outside sales and computer sales employees) is the administrative employee. The administrative employee must be compensated on a salary or fee basis at a rate of not less than \$455.00 per week. The administrative employee must have a primary duty in the performance of office or non-manual work directly related to the management or general business

operations of the employer or the employer's customers. Finally, the administrative employee must have a primary duty that includes the exercise of discretion and independent judgment with respect to matters of significance. With that said, what is directly related to management or general business operations?

To qualify for this exemption the employee's primary duty must be the performance of work directly related to the management of general business operations of the employer or the employer's customers. Directly, refers to the type of work performed by the employee. To meet this requirement an employee must directly relate to the running or servicing of the business as distinguished, by way of example, from working on a production line or selling a product in a retail or service establishment. (This is called staff-production



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dichotomy.)

Work directly related to the management or general business operations generally includes but is not limited to work in the following areas: tax, finance, accounting, budgeting, auditing, insurance, quality control, purchasing, procurement, advertisement, marketing, research, safety and health, personnel management, human resources, employee benefits, labor relations, public relations, government relations, computer network, interneet and data base administration, legal and regulatory compliance, or such other classifications, or such other classifications covered by the Code of Federal Regulations. Be careful to note that some of the activities above-mentioned may be performed by employees who could qualify under another exemption (e.g. executive or professional).

By far, the most identifying characteristic is the ability to exercise independent discretion and judgment on matters

of significance. Here the regulations get "sticky" and cover in depth an employee's primary duty. That duty must include the exercise of independent decision in areas of significance which normally would involve the comparison and evaluation of possible courses of conduct and acting or making a decision after various possibilities have been considered. The regulations say the term "matters of significance" refers to the level of importance or consequence of the work to be performed.

The Secretary of Labor or his designee issues opinion letters in response to questions submitted from the public. By far, most of the letters address the discretion and independent judgment standard. This standard according to the regulations is viewed in the light of all the facts involved in the employment situation in which the question arises. A

Continued on page 10



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Continued from page 9

fancy way of saying that there is no stock answer. Factors that can be considered when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include:

1. Whether the employee has authority to formulate, effect, interpret or implement management policies or operating practices.
2. Whether the employee carries out major assignments in conducting the operations of the business.
3. Whether the employee performs work that affects business operations to a substantial degree, even if the assignments are related to the operation of a particular segment of the business.
4. Whether the employee has authority to commit the

employer in matters of significant financial impact.

5. Whether the employee has the authority to waive or deviate from established policies and procedures without prior approval.

6. Whether the employee has authority to negotiate contracts and bind the company on significant matters.

7. Whether the employee provides consultation or expert advice to management.

8. Whether the employee is involved in planning long or short term business objectives.

9. Whether the employee investigates and resolves matters of significance on behalf of management.

10. Whether the employee represents the company in handling complaints, arbitration disputes, and the resolution of grievances.

Exercise of discretion and independent judgment necessarily requires that the person have authority to make an independent choice free from immediate direction and supervision from above. That is not to say that an employee may not exercise independent judgment even if his or her decision or recommendations are reviewed at higher levels within the company.

Finally, depending on the nature of the company and the number of employees, it is not uncommon to employ a number of employees to perform the same or similar work; the fact that many employees perform identical work or work of the

Continued on page 12

JOHN F. DeLILLO

Certified Public Accountant

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Board Approves Scholarship

At the May 1 meeting, The Board approved the Greater New York Chapter of the Air Conditioning Contractors of America Scholarship for HVAC Students. The scholarship has been created in order to attract young, mechanically inclined high school graduates into a career in the HVAC industry, and to increase skilled labor HVAC workforce available for employment by Contractors.

This scholarship is for high school graduates who are enrolled full-time or part-time in a HVAC AAS Degree Program. Those students that maintain a 3.0 cumulative GPA and receive a recommendation from the HVAC Program Director may qualify for a continuing scholarship award.

Additional details about this exciting opportunity will follow.

People & The Workplace

Continued from page 10

same relative importance does not necessarily mean that the work of each such employee does not involve exercise of discretion and independent judgment.

What can we gather from the above? Review the work force and take a look at those whom we currently classify as exempt. Try to fit into neat slots people who act in the general business areas previously mentioned: For instance, administrative assistants would not be classified as administratively exempt because they do not exercise discretion and independent judgment, rather they do clerical or secretarial work, or they record or tabulate data, or perform mechanical repetitive and recurrent or routine work. Even if the person who tabulates the work is entitled "a statistician", the work will be nonexempt. A question that often arises: Is the person administratively exempt because the employer will experience financial losses if the employee fails to perform their job properly? Answer No. The fact that the employees misuse company equipment and could cause serious financial loss to the employer is not a basis to sustain an exemption under the administrative test.

In next month's article, I will provide examples of people who do and do not fit within the administrative exemption. Kindly note that jurisdictions throughout the country are faced with hundreds, if not thousands, of cases asking Judges to determine those entitled to the administrative exemption and those who are not. There are varied decisions at the federal and state level and each is very fact sensitive. There just isn't a mold that has been created that provides an absolute answer without such a fact sensitive inquiry.

As always, call me if you have a question or email me at Abpearl@pmpHR.com. •



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Statement From Stuart S. Zisholtz, Esq.

Get It In Writing — Signed

How familiar is the following scene?

A General Contractor approaches you and invites you to submit a proposal to do a job. He gives you the plans, specs, etc., and asks you to take the job. You submit your proposal and he accepts it verbally. You got the job.

The solicitation, however, has a provision in it that says that the contract is not binding until such time as the General Contractor signs it, and until the General Contractor signs it, the General Contractor has no responsibility or liability for any work that you do in anticipation of getting the signed contract and that includes anticipated profits, etc.

After you submit the bid and it is accepted, you are invited to all sorts of meetings to meet the other people, "kick-off" meetings and coordination seminars, etc. But you have no written contract.

Out of the blue, the General Contractor comes to tell you there is another subcontractor taking your place; that he turned over all of your drawings and specifications, etc., and everything that you had done is voluntary. You are out and the other guy is in.

You bring a claim making all kinds of allegations that you relied upon the verbal commitment, that you spent a lot of money putting your act together, etc., that you are being ripped off, that you are being defrauded, etc. The Supreme Court throws your case out. The Appellate Division, on a divided Court, affirms and throws your case out.

The holding basically is that when it says written it means written with a dissenting opinion that says, that when it says written it could be waived. Certainly the conduct on the part of the General Contractor in taking all of your work product, inviting you to meetings, inviting you to kick-off sessions, etc., clearly indicates a waiver.

Whether or not the case goes up to the Court of Appeals for final adjudication is an open question at this point.

The message is, if it says in writing, it means in writing. The Courts have been holding contractors responsible to stick to writing is writing.

The ramifications of all of these decisions is that you have to be very careful. Not only is the issue with regard to the beginning of the contract important, but the question of change orders is important.

How many times have you been asked to do a change order verbally? You have to keep up with the other contractors, you have to keep pace with the progress, etc., do the change order and worry about it later. This has a familiar ring. A lot



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of contractors relying upon that, get burned.

In one of my previous articles I pointed out that an electrical contractor lost over \$900,000 because he held off sending in written change orders to the City of New York that required that it be done within 5 or 10 days after the change order is completed.

The lesson you learned is that when the agreement says it must be in writing, you must get it in writing.

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

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Online Networks Connect Industry

ACCA has launched a new program of "online networks" enabling contractors and other HVACR professionals to connect with, and learn from, each other.

ACCA Networks offer private online discussion and file sharing capabilities to members of the association, combining email notifications and online archiving in a flexible system. Among the ACCA Networks currently available are:

- * Residential Contractors Network
- * Commercial Contractors Network
- * HVACR Educators Network (for ACCA vocational members)

ACCA Networks are virtual communities in which members of the association can ask questions (and answer them), seek and share ideas, upload example files and documents, and gain instant access to the best HVACR contractors and professionals in the country.

Network participants can choose to receive messages from each network on a daily, weekly, or per-message basis. The ability to post messages and view archives is available 24/7. However, only ACCA members may request access to a network.

More ACCA Networks may be added in the coming months for additional professional and industry specialties and segments. To learn more about the networks and request access, visit www.acca.org/networks/. •



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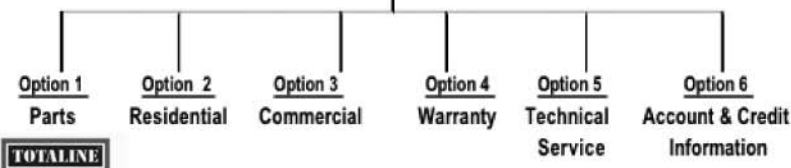
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