IN THIS ISSUE...

Air Conditioning Contractors of America

Greater New York Chapter
229 South Street,
Oyster Bay, NY
11771

RETURN SERVICE REQUESTED

Greater New York Contractors' NEWS

Air Conditioning Contractors of America
Greater New York Chapter

www.accany.org **PLEASE ROUTE THIS PUBLICATION WITHIN YOUR ORGANIZATION** JUNE 2010

President's Message

Anthony N. Carbone

May's meeting at the LaGuardia Marriott was of great interest to many contractors. Lois Wallace of Occupational Safety and Health Administration (OSHA) gave a thorough understanding of why safety in the workplace is of great importance. Most contractors hear the word OSHA and fear fills their thoughts.

Turn to President's Message on page 3

THURSDAY, JUNE 3rd

AN ACCA NETWORKING EVENT!

An Open Invitation!

Members and Non-Members Welcome!
Bring Your Spouse and Watch The Sunset Over Long Island Sound.

Crescent Beach Club In Bayville

6:30 pm to 8:30 pm

Complimentary Beer, Wine and Hors D'Oeuvres

Let us know you're coming. Register online at www.accany.org

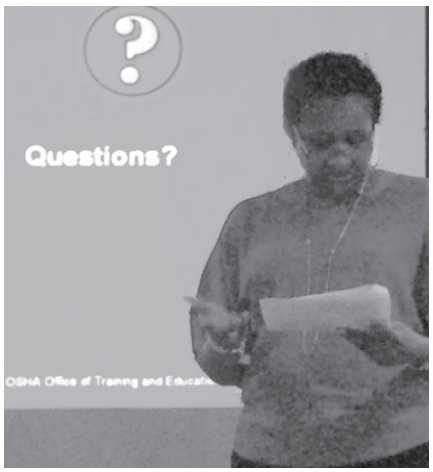
ACCA, a federation of 60 state and local affiliated organizations, is the leading trade association representing the business, educational, and policy interests of the nation's heating, air conditioning, ventilation and refrigeration contractors. ACCA represents over 9,000 small businesses nationwide through its federation of affiliates.

PRESIDENT'S MESSAGE *Continued from page 1*

The idea of fines and penalties due to violations are of great concern to contractors. Lois Wallace, a 23 year veteran agent, gave a detailed presentation of what is required of contractors at the workplace. She described the inspector's process and shared some stories of her site inspections over the years. OSHA falls under the U.S. Department of Labor. If you missed this presentation you missed a wealth of information that could have saved you thousands of dollars!!!! Well worth the annual membership fee to be part of a premium organization like the Greater New York Chapter of ACCA.

Well, this is my personal invite to you for our June 3rd meeting at the Crescent Beach Club. This is a free cocktail party and hors d'oeuvres while gazing into the sunset on The Long Island Sound. This networking event to kick off the summer will provide contractors and suppliers an opportunity to share industry stories and get ready for the hot summer season ahead of us. You don't need to be a member to attend, bring your wife or your person of interest. Hope to see you there.

— Anthony N. Carbone



OSHA's Lois Wallace gives detailed presentation of workplace safety requirements at the May 13th meeting at the LaGuardia Marriott.

ACCA Greater NY Chapter

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Baseball Outing
Scott Berger
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Casino Night
Jim Carlson

Golf Outing
Ken Ellert

Holiday Party
Anthony Carbone

Membership
Ron Nathan

Political Action
Anthony Carbone

Scholarship
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Trade Show
Rich Staiano
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News From ACCA National

ACCA Releases "Mastering Gas Furnace Installation"

From Jim Carlson

ACCA has released a new four-part computer video training series in installing gas furnaces, the latest in its popular series of on-demand CD education for technicians and contractors.

"Mastering Gas Furnace Installation" is guided by instructor Jack Rise, one of the country's leading HVACR technical educators. This training is designed to help technicians and others prepare for, take and pass the NATE specialty exam in gas furnace installation. The resource is a must-have for the library of any contractor, school, distributor, or anyone interested in NATE certification for themselves or their employees.

The self-paced education program offers comprehensive instruction in an easy-to-understand manner, directing users through all of the parts with clear explanations and visual aids.

The CD series is broken down into the following four parts:

Gases, Burners and Combustion
Installation
Venting
Electrical

Mastering Gas Furnace Installation is the newest in ACCA's popular series, "NATE Essentials," which has become the organization's bestselling educational product for the industry. Information about the whole series may be found at www.natetraining.com. Other packages in the series include:

Mastering Core Installation
Mastering Core Service
Mastering Heat Pump Service
Mastering Air Conditioning Installation
Mastering Gas Furnace Service

"There simply isn't a more cost-effective way to provide employees with top-notch training from a leading trainer," says Paul Stalknecht, president and CEO of ACCA. "These NATE CDs allow users to progress at their own rate and during times convenient to them. You buy the sets once -- for much less than you would ever spend hiring a professional trainer to conduct a class for your employees -- and its yours forever."

The training, sold as a four-CD set with a list price of $299 or a discounted $199 to ACCA members, is available for purchase online or by calling 888-290-2220. Learn more at www.natetraining.com. •

National Grid USA Sells Service Subsidiary To HomeServ plc

As reported by The Wall Street Journal

LONDON -(Dow Jones)- HomeServe PLC (HSV. LN), a company engaged in the provision of insured repair solutions and emergency services to the home, said it has expanded its international operations and the development of its U.S. business with the acquisition of National Grid Energy Services', or NGES, service contract business from National Grid Energy Services LLC.

MAIN FACTS: -Home Service U.S.A has also entered into a marketing agreement with National Grid U.S.A to use the National Grid Energy Services name. -The net consideration payable on completion is expected to be $14 million (GBP9 million), with gross consideration of $30 million (GBP19 million) reduced by net liabilities of approximately $16 million (GBP10 million). -The consideration will be funded from existing facilities.

National Grid Energy Services is a subsidiary of National Grid U.S.A, one of the largest utilities in the U.S. serving 6.7 million customers including over 5 million residential households. -The contract business provides heating, cooling and water heater repair services to residential customers across four northern U.S. states comprising Massachusetts, New Hampshire, New York and Rhode Island.

The business has 365,000 annual service contracts across 186,000 customers and delivers its services through a network of directly employed repair technicians and operations support personnel. -These employees will remain with the companies that Home Service U.S.A is acquiring as part of the transaction.

In the year to Mar. 31 2009, the contract business generated profit before tax of $6.3 million (GBP4 million) and as at Sept. 30 2009 had gross assets of $7.2 million (GBP4.5 million).

Home Service U.S.A has also entered into a 10 year marketing agreement with National Grid U.S.A allowing Home Service U.S.A to use the National Grid Energy Services brand to market home assistance policies to over 5 million households across National Grid's U.S. service areas.

By Elliott Ball, Dow Jones Newswires; 44-20-7842-9314; elliott.ball@dowjones.com. •

WELCOME NEW MEMBERS

New Contractor Members

Breezin HVAC Inc.
106B Wakefield Avenue
Staten Island NY 10314
718-761-2700

DJH Mechanical Services Inc.
155 Kingsbridge Road East
Mount Vernon, NY 10550
914-699-6767

New Associate Bronze Member

SAGEQUEST, LLC.
Primary contact: ***Leslie Gross***
Alternate contact: ***Paul Stancil***
31500 Bainbridge Road, Suite 1
Solon, OH 44139
216-896-7243
fax 440-528-9801
email lgross@sage-quest.com

Make a habit of checking the Greater New York Chapter Website at www.accany.org

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

Disability Accommodation and Poor Work Attendance

A common question for employers is to what extent they must accommodate employee absenteeism when the employee is disabled or taking certain types of medical leave. The Second Circuit recently issued a decision in favor of employers on this very subject. This decision found that where regular attendance is an essential job function of a position, the Americans with Disabilities Act ("ADA") and the Family and Medical Leave Act ("FMLA") do not protect employees who are chronically absent from work.

The lawsuit involved a Plaintiff who was terminated by his employer due to his excessive absenteeism and violation of internal policies regulating sick leave. At the time of his termination the employee was undergoing treatment for alcoholism. The Plaintiff sued under the theory that he was terminated in violation of the ADA and FMLA because of his underlying condition as an alcoholic and because he took medical leave to treat his alcoholism.

The Second Circuit held that the Plaintiff, who was a boiler utility operator at a power plant, was not "otherwise qualified" for the job because he was repeatedly absent from work. Although regular attendance is an essential job function for most positions, the Court noted that it was particularly important to this employee's job because reliable employee attendance was essential in preventing power outages and ensuring workplace safety for other employees. The Court also found the Plaintiff failed to show the employer terminated him for taking FMLA-protected medical leave. Rather, the evidence showed he was terminated because he repeatedly violated the employer's "no call/no show" policy. Accordingly, the Court affirmed the dismissal of the Plaintiff's ADA and FMLA claims.

This decision provides guidance to employers as to how they should handle ADA and FMLA claims in conjunction with their internal attendance policy. The decision also lends support to employers who terminate individuals where the underlying issue is absenteeism and derogation of job duties, not the disability. Although this decision is good for management, an employer considering terminating an employee for attendance problems should be prepared to demonstrate the specific reasons regular and reliable attendance are essential to job performance. Employers should also make sure to consult with employment counsel to determine whether and how their policies may be affected by this decision before taking adverse action against an employee.

Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act (PPACA) was signed into law in late March of 2010. The law includes a large number of health-related provisions to take effect over the next four years, including, providing incentives for businesses to provide health care benefits, prohibiting denial of coverage/claims based on pre-existing conditions, establishing health insurance exchanges, and support for medical research. One key change of interest to employers is the expansion of health care to dependants up to the age of 26.

The Department of Labor has issued interim final regulations implementing the dependent coverage provisions of the PPACA, as amended by the Healthcare and Education Reconciliation Act.

The new regulations provide that effective for plan years beginning on or after September 23, 2010, any group health plan or group health insurance issuer which provides coverage to dependent children must make coverage available to dependent children until they have attained the age of 26.

Prior to the child's 26th birthday, the plan may not restrict coverage of children based on financial dependency, residency, student status, employment status, or any combination of those factors, nor may plans vary the level or terms of coverage based on age until the child reaches age 26, if the plan provides coverage after that date. For example, the plan may not charge a higher premium, or limit children of a certain age to a specific benefit option, such as an HMO, based on any age below age 26.

The regulation also provides a transitional rule for children who lost coverage, were never eligible, or who never enrolled for coverage, and were not eligible under the plan's existing age limits as of the effective date. For these dependent children, if the child is under age 26 on the effective date, the child is effectively treated as a new dependent under the HIPAA special enrollment rules, and must be provided with a special notice of enrollment rights on or before the effective date, and 30 days to enroll retroactively to the effective date. To comply with the new requirements by the effective date, sponsors and administrators of plans covered under the new rule should begin planning now to draft the notice

and identify dependent children who must be given the notice.

Employers should be aware of this change in federal policy so that they can appropriately field questions from employees.

At the ACCA meeting of May 13, 2010 an OSHA spokesperson presented current OSHA information for the construction trades. Should you or your safety director have any questions concerning OSHA compliance please contact me. As the attendees found out at the meeting, you can't have an OSHA inspector come into your plant and tell you what is right or wrong. However this office has worked closely with two consulting firms who are OSHA experts in case you need a "walk through" to discern whether there are obvious violations.

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. •

Company Fleets Going Biodiesel

By Kelly Hiner/Enterprise Fleet Management

In early March 2010, the United States Senate restored the $1-per-gallon biodiesel tax credit. Assuming the House and Senate reconcile their versions of the bill, the legislation will provide a one-year retroactive extension of the tax incentive. The National Biodiesel Board believes the decision reflects an increasing understanding that this "incentive will help America realize the job creation, energy security and environmental benefits associated with biodiesel."

Biodiesel is a clean burning alternative fuel, produced from domestic, renewable resources such as plant oils, animal fats, used cooking oil and even new sources such as algae. Designed for use in diesel engines, with different properties and benefits, biodiesel is distinctly different from ethanol, which is a renewable biofuel made primarily from corn and intended for use in gasoline-powered vehicles such as cars.

Although it can be used alone, biodiesel is usually blended with diesel fuel according to strict industry specifications approved by the Environmental Protection Agency. The most common blends are 5 percent biodiesel/95 percent petroleum diesel, known as B5; and 20 percent biodiesel/80 percent petroleum diesel, known as B20. Biodiesel is legal for use at any blend level in both highway and non-road diesel vehicles.

While the tax incentive is important, most companies that switch to biodiesel are driven primarily by a sense of corporate responsibility and environmental stewardship. In addition to reducing reliance on fossil fuels and depleting our supply the benefits of biodiesel include reducing emissions of: carbon; particulate matter, which has been shown to be a human health hazard; and hydrocarbons, which contribute to the localized formation of smog.

Although no new equipment or equipment modifications are necessary, switching to biofuels requires some advance preparation:

- B20 biodiesel fuel can be stored in existing diesel fuel tanks and pumped with diesel equipment. However, companies with their own tanks must clean them to remove sediment and water. Guidelines include checking for water and draining regularly if needed and monitoring for microbial growth, treating with biocides as recommended by the biocide manufacturer.
- When used for the first time, because of its superior cleaning capability, biodiesel can release deposits accumulated on tank walls and fuel lines from previous diesel fuel, causing the fuel filter to clog. Therefore, the fuel filter should be changed after the first tank of biodiesel has been used. Over the long term, the cleaning properties of biodiesel will keep the fuel tank and fuel system cleaner.

• In very cold weather, particularly northern climates, biodiesel can cloud up. Therefore lower blends of biodiesel are recommended to avoid starting and drivability problems, such as B5 instead of B20. Local area fuel providers are the best resource for this information.

Hundreds of fleets use biodiesel coast to coast. A guide for fleet managers created by the National Biodiesel Board and available at www.biodiesel.org includes locations of distributors and retailers in the U.S., handling and use guidelines, warranties and OEM standards, fuel quality and performance troubleshooting, user testimonials and links to additional resources and tips. The NBB is the national trade association of the biodiesel industry and the coordinating body for biodiesel research and development in the U.S.

Earlier this year, Enterprise Holdings, the parent company of Enterprise Fleet Management, announced plans to start using biodiesel for its entire fleet of more than 600 airport shuttle buses for Alamo Rent A Car, Enterprise Rent-A-Car and National Car Rental across more than 50 North American markets. In addition to embracing biodiesel and other alternative fuels as they become commercially viable, Enterprise Holdings provides strong support for leading–edge renewable fuels research.

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. •

Statement From Stuart S. Zisholtz, Esq.

Know The Terms Of Your Contracts

Almost every public contract contains a clause requiring the contractor to remit a Notice of Claim to the public agency prior to instituting an action. In addition, many of the AIA Contracts require a pre-requisite notice be sent to the owner, architect and/or construction manager prior to a claim being instituted.

It is vital that you understand the terms and conditions of your contract before signing the agreement. Once you execute the agreement, you are bound by the terms of the agreement. While certain clauses may be modified or amended by the actions of the parties, you are jeopardizing your ability to collect an outstanding balance due by relying upon such waivers.

Recently, there was a decision rendered by the Appellate Division, First Department, upholding the contract requirement that a written Notice of Claim had to be provided by the subcontractor to the construction manager within 15 days of the occurrence. Failure by the subcontractor to give the appropriate notice resulted in the claim being dismissed.

In the past, the Courts have held that on a public project a contractor must strictly comply with all terms and conditions of an agreement. However, on a private project, the Courts were more lenient. Recently, the trend has been to direct strict compliance with private projects. This turn of events has resulted in claims being dismissed which, in the past, the courts were more lenient and permitted the parties more flexibility.

Before you have your case dismissed, it is imperative that you review your contract, know the particular terms and conditions necessary to institute a claim and follow the mandates strictly and completely.

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. •

On The Move/ People In the News

If you are "on the move" or your company is doing something that will be of interest to other members, let us know. We'd like to publish it. Email the information (photo too if available) to Don Gumbrecht at dgumbrecht@aol.com.