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# Greater New York Contractors' NEWS



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MAY 2010

## President's Message



Anthony N. Carbone

**S**tatistics and economic experts indicate the U.S. economy is coming back. A return to consumer spending! Foreclosures are slowing, job growth is

occurring and businesses are forecasting increased sales. A light at the end of this dark tunnel may really be appearing. April has also had warm temperatures that cause structures and homes to become uncomfortable. This caused a flurry of phone calls; inquiries and service calls. New installation estimates, retrofit replacement equipment sales were occurring during these unseasonably warm temperatures. Some consumers that were unaffected by the economic

*Turn to President's Message on page 3*

## MAY 13th MEETING

# OSHA

## THE SAFETY RULES — AND HOW THEY AFFECT OUR INDUSTRY AND YOUR COMPANY — BOTH AT THE JOBSITE AND IN THE WORKPLACE

A key representative of the Occupational Safety and Health Administration and will be on hand to discuss your obligations and new initiatives to make your operation safe. This is a must-attend meeting for the safety of both management and your workers.

**At the LaGuardia Marriott  
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**Followed by the presentation.**

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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*

downturn were returning to normal spending habits. Many held on to their purse strings just for a wait and see attitude.

Upon one of my conversations, with a potential, customer I was informed by "Mrs. Smith" that a large oil company informed her that her compressor was indeed bad, the compressor had failed. She agreed that it needed to be replaced as it had been once before in 1995, approximately 15 years ago. The salesman said, that choice was not available. But in fact she would have to not only replace her compressor, but also her air handler and the line set attaching the two. Confused, Mr. Smith asked "why?"

Nothing was wrong with the air handler. The salesman explained there was a change in refrigerants and she would now need to install a system that uses the new R-410A refrigerant. He further went on to state the old refrigerant R-22 was now illegal and she could no longer use the old refrigerant. This was puzzling to Mrs. Smith. More than puzzling was the \$8,000 price tag that came with the new equipment and new refrigerant. She was also informed how much money she would begin to save due to the efficiency of this new equipment.

Not fully convinced that this was her only choice, she contacted my company. It happened to be that my company did indeed have a retrofit replacement condenser. For Mrs. Smith it didn't take more than 10 minutes to unravel the information the other salesperson offered her. In fact, R-22 refrigerant will

be in production in this country until the year 2020. The U.S. federal government has mandated that as of December 31, 2009 production of R-22 equipment will cease. Units produced prior to December 31, 2009 can be sold and installed. Many consumers are being confused. Some are replacing their old equipment because it has reached the end of its life cycle. But there is a percentage of customers that are candidates for just restoring or repairing their existing equipment. But to do that it requires an investment of time.

Some consumers may not even believe you! These are changing times. They require truthful explanations. Some have chosen to use fear as a sales strategy. What is your strategy? This is what makes NY Chapter of ACCA natural place for exceptional ideas. — **Anthony N. Carbone**

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## Contractors Survival Guide

By John Ottaviano  
Air Ideal

Like it or not, I have been pressed to provide more fodder for these pages. Since I wrote my last article on internet tools that can help contractors on an everyday basis, I received some good feedback via email and snail mail. As this type of article seems to have struck a chord with some, I will continue to follow up with some additional things I have learned while surviving three decades in this industry.

***"It is not the strongest of the species that survives, nor the most intelligent that survives. It is the one that is the most adaptable to change." ~ Darwin***

The quote above is particularly relevant in these uncertain economic times. If you are still doing the same things you did in the 70s, 80s and 90s, then you are probably not using the same corporate name anymore. I never believed in the corporate adage "grow or die", I always thought it should be "adapt or die". John Young and Ron Smith may be the heroes of the HVAC industry to some, but at least we can say that we have survived under the same corporate moniker while they have been through a myriad of company incarnations, both failed and successful. If there is one thing that this recession has taught us, it is that get rich quick schemes are not the way to ensure that you have a job and a bank account tomorrow. Building a company with stability, managed growth and, most importantly, adaptability is the way to make sure that you are in business tomorrow. Turning your small, profitable, closely held contracting firm into an unwieldy, unmanageable behemoth for the sake of an upwardly mobile revenue chart is not going to make you rich if it comes at the expense of gross profit. In fact, it may do just the opposite, unless you are able to sell it off to some gullible public corporate entity with limited due diligence. Wait, they're not in business anymore, are they?

Of course, if you really were looking to become rich, you never should have chosen this industry to begin with. However, with managed growth and the ability to adapt to new technology and industry changes, you can survive, provide well for your family and for those of your employees. Here are 10 simple keys to contracting business survival that I think are necessary:

**Don't rush to be an early adopter.** This may seem counter-intuitive to being adaptable, but the earliest adopters are those who work out the bugs in new technology for everyone else. Those who are the second adopters get to take advantage of the fixes and the lower prices. This was true of everything from Nextel push-to-talk to GPS tracking. The early adopters got all the problems and the higher initial costs.

**Embrace change.** It is inevitable and you don't want to be left in the dust. If you keep trying to do things the way you've always done them and shy away from learning new methods and new technology, you are doomed. It amazes me that there are still companies dispatching via the T-card system because that is what they've always done.

**Know your limitations and acquire talent.** Perhaps you cannot embrace change because you cannot figure some of it out, even though you've tried. You've taken every course and read everything you can get your hands on, but you still can't get the handle on it. Then hire the talent you need to make it work. It is more important to know how to acquire and manage talent than it is to know and do everything yourself. That is the hallmark of an effective manager (and even a President).

**Don't micromanage.** The one way to kill someone's creativity, efficiency, morale and work ethic is to be in their back pocket telling them what they are doing wrong all the time. It is also the way to make sure that you'll never be able to retain talented people. People need to be able to make

*Continued on page 6*

### Thursday June 3rd... An ACCA Networking Event!

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## Contractors Survival Guide

From page 4

mistakes, learn from them and to be accountable. That does not mean you should not train them, give them direction and reel them in when they go too far off track.

**Delegate and don't sweat the small stuff** If you micromanage, you probably also have to be involved in every little decision. That is a sure way stalemate your company's progress and to make sure that you never keep talented people or take a needed vacation. If you get embroiled in the minutiae, you will never have time for the bigger decisions that really matter. Let managers make the decisions that fall under their job title. You can still ask to approve larger expenditures and ask for their research back-up that led to their decision.

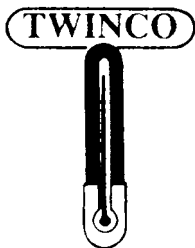
**Know your bottom line.** Daily cash flow reports and monthly financial statements are the everyday keys to solvency.

If you run your company by the seat of your pants, you will soon lose it, especially in this economy. If you can't read and understand a financial statement, make damn sure you have a comptroller who can and whom you can trust. You cannot figure out where you are going if you don't know where you are. Financial reports are your solvency GPS.

**Find a healthy way to relieve your anxiety** If you cannot adequately manage stress, you are in the wrong business. You had better be eating right, exercising, meditating, or finding some other healthy, stress reducing activity. If you are suffering from anxiety, depression or mood instability without seeking help or healthy endorphin producing outlets, you and your business will eventually suffer the consequences. The after-work cocktail may help temporarily, but you are in serious trouble if it is your only answer.

**Get away from it all** Why should everyone but you get to take a vacation? If your business cannot survive a week or two without you, then you haven't done a very good job hiring people you can trust. Everyone needs a break to recharge. When you do, resist the urge to call every day. They can handle it.

**Network, seek help and mentor** ACCA is the perfect outlet for all three. As I've stated in the past, what little I know, I learned from others, as well as from my own curiosity. Continually educate yourself in whatever way you can and benefit from the experience of others. Get involved and make



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a point of meeting those who are open to exchange. Know your competitors and help them become better contractors. It will come back to you and, if it doesn't, you will know that you've made the industry better and reduced the possibility of giving contractors a bad name.

**Give back and embrace volunteerism** I'm not just talking about to this industry, although that is a good place to start. Find a cause that you care about and volunteer. I have found that giving of your time will be even more fruitful than giving of your purse. It will help add perspective to your life and minimize the bumps in the road by making them seem less noticeable. It will help you refocus and to be thankful for what you do have. *"We make a living by what we get, but we make a life by what we give."* ~ Winston Churchill •

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## Coming This Fall

**A Technical Webinar will be held in September.** Sponsored by our ACCA Chapter, this will feature interactive presentations from Honeywell, Belimo America and Siemens. Details are currently being developed. Information and links will be provided shortly.

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What Non-Technical Employees Need to know about HVAC in the real world. This will provide a better understanding of all the aspects of the HVAC business for non-technical employees. Time and place will be forthcoming.

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# 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

## New Federal HIRE Act

In an effort to spark hiring, the Federal Government has created a tax incentive encouraging employers to hire new employees and keep them for at least one year. The new Hiring Incentives to Restore Employment ("HIRE") Act was signed into effect in March of 2010. The HIRE Act provides both immediate and deferred tax benefits to private, tax-exempt and public higher (post-secondary) educational institutions. HIRE will provide qualifying employers with both short and long term benefits.

Immediate tax benefits are in the form of relief from certain employer Federal Insurance Contribution Act ("FICA") wage taxes normally imposed on wages paid after March 18, 2010 and prior to January 1, 2011, to certain qualifying employees. Each year, employers pay their share of employee social security FICA taxes. These taxes consist of the 6.2% federal Old Age Survivor Disability Insurance ("OASDI") tax and the 1.45% Medicare Hospital Insurance ("HI") tax. The HIRE Act provides immediate payroll tax relief to qualified employers by eliminating entirely the 6.2% OASDI employer tax on wages paid to each qualifying employee with respect to employment after the date of enactment and prior to January 1, 2011.

Employers are further rewarded if they retain these new hires for a full year. Additional federal income tax business credits are granted for each qualifying employee employed for a minimum of 52 consecutive weeks. To qualify for the credit, employers must pay 80% of the taxable wages during the second half of the 52-consecutive-week period that were paid during the first half (26 weeks) of that period. The tax credit is equal to the lesser of \$1,000 or 6.2% of taxable wages. The \$1,000 maximum credit applies for wages paid in excess of \$16,129.03. The additional business tax credit is claimed for the employer's taxable year that includes the end of the 52-consecutive-week period of employment for each qualifying employee.

The HIRE Act outlines the eligibility for receiving tax credits. Employers are eligible so long as they are not a federal or state governmental entity, or their political subdivisions or instrumentality. A qualifying employee is any employee who:

- a) Is hired by a qualified employer after February 3, 2010 and before to January 1, 2011;
- b) certifies by affidavit, signed under penalties of

perjury, that he or she has not been employed for more than 40 hours during the 60-day period ending on the date employment begins;

c) is not employed by the qualified employer to replace another employee, unless the other employee separated from employment voluntarily or for cause; and

d) is not a "related person" (e.g., having a pre-defined close family relationship with either the [self-employed] employer or "related" majority owners of a corporate employer as described in Section 51(i) of the Internal Revenue Code).

All employers should still take action to preserve the tax credit opportunity. Employers should start documenting employee terminations and whether terminations are voluntary, involuntarily, or for cause. Employers should also track whether new hires or rehired employees are replacements either eligible or ineligible for the payroll tax relief. Changes to both pre-employment and post-employment procedures to screen new and rehired employees will be necessary to determine eligibility for payroll tax relief and for obtaining affidavits concerning the employees' unemployment history during the 60-day period prior to hire or rehire.

## DOL's "We Can Help" Campaign: Are more lawsuits coming your way?

Are you sure that you have correctly categorized your exempt and non-exempt employees? Are you running afoul of DOL overtime rules? When was the last time you conducted a pay equity analysis? These areas will become the focus of more audits than ever before, given the new "We Can Help" campaign that was recently launched by the Department of Labor.

Secretary of Labor, Hilda L. Solis, launched the Department of Labor's "We can Help" Campaign on April 2, 2010. In her speech, Ms. Solis told the audience that the Department of Labor is focused on protecting every working man and woman in America who has been taken advantage of, but has been too afraid to come forward. The DOL has added more than 250 new field investigators nationwide to help with this effort. Through the use of Spanish/English bilingual public service announcements and the launch of a new website, the department is renewing its emphasis on reaching workers, regardless of immigration status, who may be denied the pay legally guaranteed by law.

The number of small businesses facing similar suits has exploded since 2004, when the U.S. Department of Labor revised the FLSA to clarify which workers are exempt from overtime laws. In doing so, it boosted the number of protected employees. In 2006 the department collected \$172 million in back wages from employers - up 3.6 percent over



its take in 2005. In 2007, the DOL announced judgments and settlements in the millions against small businesses, which often have more exposure because they lack in-house legal teams or HR departments. A New Orleans security company was assessed \$185,385. A small oil-and-gas outfit in Houston owes \$1.1 million. A Las Vegas construction firm owes \$1.2 million.

Are you confident that your records can pass the audit? Many employers have not been pro-active in keeping up with the FLSA changes and have their employees improperly classified. Or they may be classifying workers as "Independent Contractors" when, in fact, they are employees. Yes, time and budget must be allocated in order to get this accomplished but it will be far less than what it may cost once the Department of Labor is at your door.

Portnoy, Messinger, Pearl and Associates can help you conduct an internal audit. Of course, any questions about the above topics can be addressed to me at ABPearl@pmphr.com. •

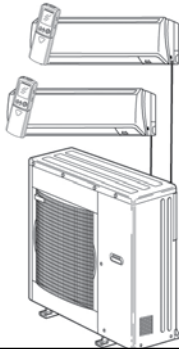


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# ACCA's Night Out with the METS!



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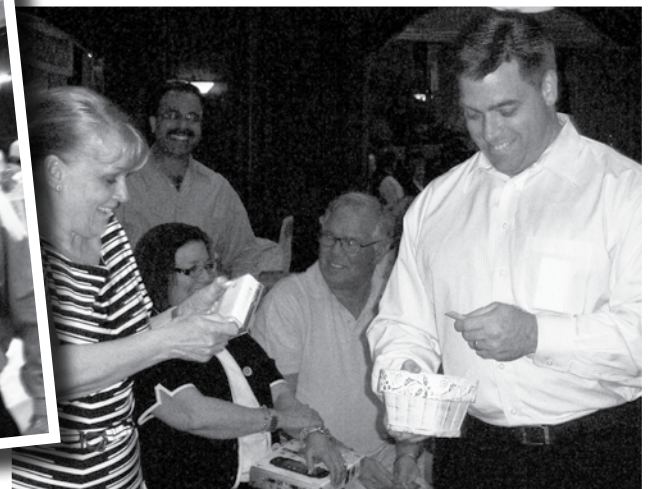
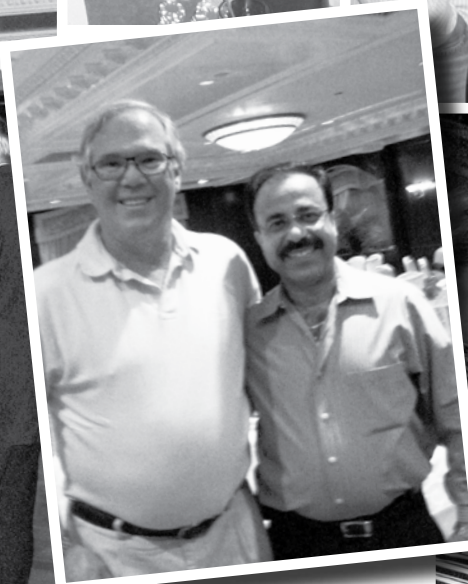
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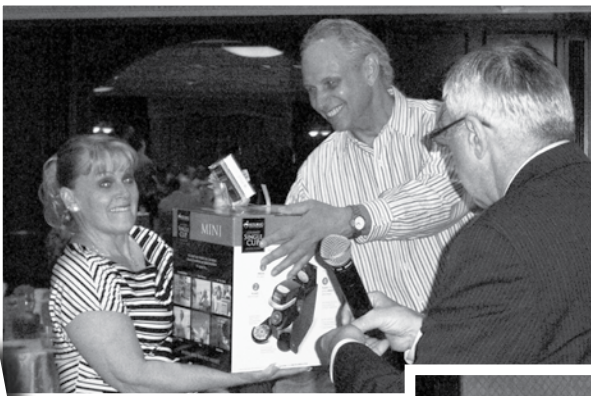
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And a special thank you to Nito Mehra of  
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## Checklist For Choosing Aftermarket Equipment

By Kelly Hiner/Enterprise Fleet Management

Purchasing a vehicle may be easy compared to the choices for upfitting the vehicle with the necessary equipment to meet your needs. Proper upfitting depends on closely examining your payload, annual mileage and lifecycle. For example, if you plan to replace a vehicle after 24 months in service, you'll want to avoid spending thousands of dollars in Aftermarket Equipment (AME) that can't be transferred to the next vehicle. Furthermore, you want to make sure any Aftermarket Equipment you add to your vehicle is designed to handle the weight and physical size of your cargo, and that it also has some way to secure your cargo during transit.

### Consider Original Equipment

Original Equipment Manufacturer (OEM) restrictions should always be taken into account when installing AME. Manufacturers have maximum dimensions that are published in Body Builders Guides that need to be followed because they affect the vehicle's center of gravity and gross axle weight.

The center of gravity is affected by the height and width of the body. Properly securing the load on your vehicle will reduce the potential for vehicle rollover. The gross axle weight rating is most affected by the body length. For example, a body that is too short will tend to overload the front axle when loaded, and a body that is too long will do the opposite by overloading the

rear axle.

Another common request is to have a dock high truck with a lower Gross Vehicle Weight Rating (GVWR). The problem with this is the manufacturers also post a maximum floor height, which ultimately affects the center of gravity because it not only moves the weight of the AME higher off the ground, but it also moves the weight of anything you load into the back of the truck. If you do install AME on a truck in a manner other than that approved by the manufacturer, you face an added liability exposure by producing an unsafe vehicle. In addition, this could void the manufacturer's warranty.

### Towing Equipment

If your needs require towing, trailer towing capability needs to be examined when upfitting your vehicle. You need to make sure the vehicle has the capacity to tow the maximum weight you plan to tow and that the proper towing equipment is installed. For instance, make sure the hitch you are using is rated higher than the max trailer weight you will be towing, and review the manufacturer's guidelines to determine when a trailer brake control should be used. A good rule of thumb to use, is when the max trailer weight exceeds 40 percent of the total weight of the towing vehicle, an electric brake control should be used, and in some cases is required by law.

### Power Take Off

Although used in very specific applications and on a limited basis, Power Take Off applications (PTO) should be considered carefully. You need to make sure the vehicle PTO has the torque



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rating needed along with the proper Revolutions Per Minute (RPMs) at the right time.

#### Pickup Box Removal

Today, the increase in manufacturer restrictions has made Pickup Box Removal increasingly more difficult. In some instances the AME being installed is limited to a maximum weight that will only allow for a body and bumper, not leaving any additional capacity to install a hitch or ladder rack. In extreme circumstances other manufacturers have forbidden the removal of the pickup box all together.

#### Suit Your Needs

Ramps lift gates, cranes and winches are examples of additional equipment that can be included in the AME upfit. These items can make your job easier, and in some cases are required to do your job. Customizing a truck properly can also reduce job related injuries caused by a worker loading heavy or bulky products. For example, the cost of adding a lift gate to assist with loading large or heavy objects doesn't come close to a hospital and physical therapy bill from a worker injuring his or her back.

A little prep work will go a long way when upfitting your vehicle.

*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](http://www.enterprisefleet.com) or call toll free 1-877-23-FLEET. •*

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## ***Statement From Stuart S. Zisholtz, Esq.***

### **Prompt Payment Act Ammended**

In 2002, New York State enacted the Prompt Payment Act for construction work on private projects. The purpose of the Act was to provide contractors with certain rights in order to recover monies owed for work performed and materials furnished.

Unfortunately, as I wrote in the past, the Act was unsuccessful because there were numerous loopholes available to owners and no weapons available for the contractor.

Recently, the New York Legislature amended the Act. Now, the new amended Act establishes the maximum time period of thirty days in which an owner may make payment on an interim or final invoice which cannot be changed by contract.

Moreover, the new Act prohibits contractors and subcontractors from withholding anticipated liquidated damages from subcontractors, tradesmen or material men.

Finally, the Act provides for a binding, expedited arbitration proceeding in the event an owner and/or contractor fails to make payment of an invoice within the

required time period. The contractor and/or subcontractor may resort to an expedited binding arbitration to resolve the late payment dispute.

As always, in order to establish a claim and support your position, you must maintain proper documentation and records. Without the documentation or records, your claim could be jeopardized.

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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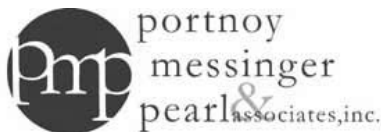
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