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May 2011

President's Message



Michael Newman

I THINK IT IS A MIRACLE. It finally hit 70 degrees!! Spring is here and air conditioning season is in full effect. We need to prepare for working longer days, weekends and doing what we have to do to keep our clients cool. I hope everyone has a prosperous spring.

If you did not make it to the April event you missed out on a great time! This month we had our annual ACCA casino night. It was a fun night where

Turn to President's Message on page 3

May 5th Membership Meeting FLOW METERS

How to Select and Install the Right Flow Meter

- ▶ Applications for Hot Water, Chilled Water, Steam, Condensate Return, Cooling Towers, and others
- ▶ What are the different flow meter technologies for these applications?
- ▶ What's new including ultrasonic clamp on?
- ▶ Meters will be on display
- ▶ How to pick the right meter, and what are the questions to ask?
- ▶ Installation considerations
- ▶ BTU meters for energy monitoring
- ▶ How to interface these meters with Building Management Systems, including "Wireless"

OUR PRESENTER BILL HOPLER has worked for Industrial Controls for (15) years and with Honeywell for (13) years. His specialty is instrumentation, with a heavy focus on flow meters. Bill has conducted flow seminars for commercial and industrial customers in the NY & NJ areas.

**May 5th, 2011
LaGuardia Marriott
Cocktails at 5:30 pm; Dinner at 6:30 pm
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PRESIDENT'S MESSAGE *Continued from page 1*

members participated in black jack, poker and other various gambling games. There was a magician and a paper cutter artist who shocked us with their talents. The prizes were generous and the food was delicious. We thank Jim Carlson for putting together this amazing night and all his hard work that went into it. Thank you Jim!!

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? Are there any issues or topics you want to hear about 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! – **Mike Newman**

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Editor's Notes

by Anthony N. Carbone

Rising gas prices will put the squeeze on businesses to raise prices and will cause consumers to think twice about spending discretionary monies. Alternatively, the Middle East unrest has caused oil speculators to buy oil futures with the anticipation of more chaos, and with a reduction in oil product, prices will rise.

This tinderbox is nothing but uncertainty for the American economy.

In these fragile times with some economic recovery in sight, one thing the United States doesn't need is uncertainty. The patchwork network of allies in the Middle East can go sour real quick. Friends of the U.S. for over 30 years, dictatorship or not, when it comes to crude oil we like stability. The idea of inserting new governments with the word "democracy" tied to them may backfire and cause devastation to the American economy. Not even the strategic oil reserves will be able to stabilize a major upheaval in the region. Hence the terms "renewable energy"

and "alternative energy" are not just buzzwords anymore. They are a certain reality that will cause American ingenuity to kick into high gear. The new American muscle cars just may be produced by G.E. with an electrical motor driving them. (I was hoping for something more along the lines of the "Jetsons.")

What is your opinion of how this energy crunch will impact the HVAC systems of the future. What advancements besides the Inverter Compressor or the Lennox Solar Panel Condenser will emerge as the next game changer for the HVAC contractor and the consumers' ever-thirsty interest in saving money and turning back the utilities' grasp on their pocketbooks and wallets?

Do you see the future? Are you George Jetson, with ideas that will change the future of the HVAC industry? OR, are you stuck in Bedrock? Let us know at ACCA!

— Anthony N. Carbone



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By Alan B. Pearl,
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Cat's Paw: A New Discrimination Theory For Employee-Plaintiffs

The Supreme Court of the United States recently reviewed a new theory of employment discrimination known as the "cat's paw." Under this theory, an employer may still be held liable for the discriminatory attitude of a supervising employee even if that supervisor did not make the termination decision. In *Staub v. Proctor Hospital*, a unanimous Court endorsed the "cat's paw" theory of discrimination liability, and in turn reversed a lower decision.

Staub sued for discrimination under the Uniformed Services Employment and Reemployment Rights Act (USERRA). This statute prohibits employment discrimination based on military service. The employer was initially granted summary judgment in the court below because there was no evidence that the person ultimately making the

termination decision held a discriminatory attitude towards Staub because of his military service.

The Supreme Court reversed, holding that the employer in this case was liable even though the ultimate decision maker held no antimilitary bias. Instead, an employer is liable for the acts of non-decision making supervisors which are the proximate cause of the adverse employment action so long as these supervisors were motivated by an antimilitary bias and intended to cause an adverse employment action. Staub's supervisors had written "bogus" warnings to his file because of their antimilitary bias.

Simply stated, if the decision maker is influenced by and relies on reports and memorandums issued by supervisors with antimilitary biases, the employer will be held liable.

Employers need to be aware that proper training of supervisors is crucial to protecting the company from discrimination lawsuits. Employers can now be held responsible for the discriminatory actions of supervisors who act on their biases but who don't necessarily make any termination decisions. Let PMP review your disciplinary procedures and set up training to help supervisors understand the most effective way to do their jobs and limit exposure.

Labor Law 195 Takes Effect in April

Since October 26, 2009, employers have been required under Section 195 of NY's Labor Law to provide certain information to new hires on their first date of employment and before the employee begins any work. This has commonly been referred to as a "new hire form." Effective April 9, 2011, employers are required to update the new hire form to conform to the New York Wage Theft Prevention Act. The Act also requires employers to revise the wage statements provided with every paycheck.

The updated 'new hire form,' formally known as a "Notice and Acknowledgment of Pay Rate and Payday" form, must be given to all new hires on their first date of employment before the employee begins any work. In addition, this "Notice and Acknowledgment of Pay Rate and Payday" form must be given to each employee annually, on or before February 1st of each year, starting February 1, 2012.

It is important to note that this form must be given to



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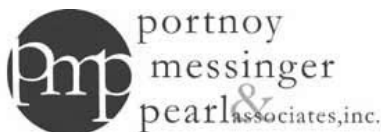
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the employee in English as well as in the language identified by each employee as his/her primary language. However, if the DOL has not provided a model notice in the language identified by the employee, an employer may provide the form in English only. The employee must acknowledge receipt of this form in writing, preferably using the DOL form to ensure full compliance. There are currently six (6) separate model notices for the "Notice and Acknowledgment of Pay Rate and Payday" form (LS-54 through LS-59) on the New York DOL's website. Furthermore, any time the information in this form changes, the employee must be given a new form at least seven (7) days before the changes take effect.

Each time wages are paid, employers are also obligated to provide certain financial data to each employee. This information includes the name of the employee and employer, address and telephone of the employer, rates of pay and basis thereof, whether paid hourly, shift, weekly, etc., dates of work covered by paycheck, any deductions, gross wages, net wages, allowances claimed, and the overtime rate of pay, plus the number of regular hours worked and overtime hours worked. Any time the information in the wage statements should change, such as a wage increase, the employee must be given at least seven (7) days advance notice **unless** the next wage statement will reflect the changes.

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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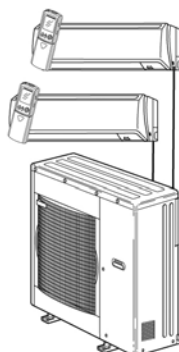
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Aftermarket Equipment for Medium-Size Fleets

By Kelly Hiner/Enterprise Fleet Management

Matchmaking is never easy. With rapidly changing engineering and design of light and medium duty trucks, it is more challenging than ever to select the right aftermarket equipment for a specific vehicle. Furthermore, it is virtually impossible to effectively transfer aftermarket equipment between vehicle models. As in every relationship, compatibility is the main issue.

Over the last few years, it seems as if each manufacturer has customized each model with a unique set of characteristics. For example, variations in positioning of the fuel tank and exhaust system can create serious interference and clearance issues. As a result, some equipment that fits one model just won't fit another. With no standard layout, spec-ing aftermarket equipment requires experience, expertise and advance planning.

When installing aftermarket equipment, original equipment manufacturer upfit modification restrictions must always be followed. There is no viable alternative to doing it right the first time. Accurate selection and proper installation of aftermarket equipment impacts everything from vehicle performance, maintenance costs, resale value and compliance with various Federal Motor Vehicle Safety Standards (FMVSS).

Manufacturers continue to downsize vehicles to maximize fuel efficiency and improve performance. As

a result, most pre-engineered, turnkey products, such as shelving, racks and bins, are generally not compatible with the height, width and space limitations of every make and model. For long-term satisfaction, quality control is critical and requires working with qualified vendors approved by manufacturers to guarantee the final product meets all final certification standards.

Businesses with medium-size fleets can save time and money by working with a fleet management professional who can arrange for a vehicle to go directly from the manufacturer to the aftermarket provider before taking delivery. In addition to being more efficient and ensuring the vehicle is delivered in the best possible condition, this approach avoids downtime for a company that might otherwise have to send one or two employees to drop off and pick up a vehicle for aftermarket equipment instead of spending their time serving their customers.

If there is a problem with the aftermarket equipment installation, using an approved vendor that has built-in quality control and checkpoints makes it easier to determine responsibility. An actual case in point occurred when a company ordered a truck with a refrigeration unit but did not discover until several months later, when they tried for the first time to turn on the unit, that it had never been installed. Because the work had been done by a qualified vendor, there was a documented file and the problem was fixed immediately.

There is always the temptation to find a "deal" for aftermarket equipment. But for long-term satisfaction, optimal performance and best resale value, the best advice is to consider aftermarket equipment needs at the same time an order is placed for a new truck. A professional fleet management company will know what components work well together for different model vehicles, help anticipate wear and tear for company's particular needs, and provide a solid quote.

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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2011 Education & Energy Efficiency Expo Will Be Held June 22nd at Leonard's

The Greater New York Chapter, ACCA, in conjunction with National Grid, Con Edison, the Master Plumbers Council and PHCC will hold the 2011 Education & Energy Efficiency Expo at Leonard's of Great Neck on June 22, 2011 from 3 pm to 8:30 pm.

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Statement From Stuart S. Zisholtz, Esq.

Change Orders And Additional Completion Costs

Recently, I was contacted by a perspective client who performed work directly for an owner in New York.

The contract between the owner and the contractor contained a specific completion date. During construction, however, the contractor was delayed various times due to changes in the work requested by the owner. The contractor requested an extension of time from the owner which the owner refused to grant. As the completion date approached, the owner demanded that the project be completed on time or cost over run charges would be back-charged against the contractor.

As such, the contractor was required to perform the work in a shorter period of time than the time extension would have granted him and he incurred additional costs and expenses due to the acceleration. These costs included additional workers, overtime, etc.

Now, after the project was completed and approved by the owner, the contractor was seeking the additional costs associated with the acceleration.

The question is, can the contractor who performed the work and completed the project recover the additional costs associated with the work even though those additional costs were not signed and approved by the owner?

The general answer to that question is yes. A contractor can recover from an owner the additional costs associated with accelerating the work by showing that the contractor was ordered to accelerate and the owner refused to grant additional time, any delays in not meeting the completion date were excusable and that the Contractor did, in fact, incur additional costs.

In some instances, the contractor may have to prove that he was specifically ordered, directly or indirectly, to accelerate. What constitutes an order to accelerate usually depends upon the facts and circumstances of each case.

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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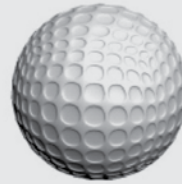
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