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Greater New York Chapter
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Greater New York Contractors' NEWS



www.accany.org

MARCH 2010

President's Message



Anthony N. Carbone

FEBRUARY'S PROGRAM AT THE WESTBURY MANOR brought a huge interest from contractors and associate members. The program was concentrated on roundtable discussions pertaining to software programs that are current and the evolution of older programs. We discussed the powers of existing and new programs and their shortcomings. Mainly concerns revolved around the
Turn to President's Message on page 3

OUR MARCH 4th MEMBERSHIP MEETING

LEARN WHERE TO FIND THE MONEY!

At our March 4th Meeting experts from J.P. Morgan Chase and the New York Business Development Corp. will discuss Conventional and SBA Loans and what they can mean to your business. You won't want to miss this!

At the LaGuardia Marriott
Cocktails at 5:30 pm; Dinner at 6:30 pm
Followed by the presentation.

See details on page 8 and then 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.

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"Large enough to deliver, small enough to care."

PRESIDENT'S MESSAGE *Continued from page 1*

integration of many of these programs meaning dispatch, service chronology, GPS, accounts receivables, inventory, and customer relationships for selling were of interest.

Most interesting was the fact that many contractors came to participate and share their experiences. It was one of the best attended programs in ACCA history. We have a diverse crowd of commercial and residential contractors, which provided for a well rounded discussion. These experiences and history in our industry cannot be replicated anywhere but at the ACCA Greater New York Chapter.

The board of directors voted to donate \$1,000 to the American Red Cross to be specifically allocated to the Haitian relief fund.

We are also discussing the educational aspect of ACCA in regards to providing Webinars to our membership. If you have any experiences or comments regarding this topic please contact myself or John DeLillo with information.

March's program should be of interest to HVAC companies looking to borrow working capital with the Small Business Administration's (SBA) presentation in conjunction with a representative from Chase Bank. These are lean times and banks are being careful in every way they look at companies and if they are willing to lend credit. Here is an opportunity


to learn what the SBA and banks are looking for.

Can you afford not to be part of this relevant, dynamic group of HVAC captains.... I don't think so.

— Anthony N. Carbone

What Do You Think About WEBINARS?

Some love 'em. Some hate 'em. Some don't think they have time for 'em. And some have simply never tried 'em. ACCA National has a successful online webinar program called Comfort U. Our Chapter is considering offering some too. Let us know your thoughts. Call the Chapter office at 516-922-5832.



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technical advice. Accordingly, the Association cannot warrant the accuracy of the information contained in this newsletter and disclaims any and all liability which may result from publication of or reliance on the information provided herein. If legal advice or other expert assistance or advice is required, the services of a competent, professional person should be sought.

Technology on the Cheap

By John Ottaviano

Last month's meeting with software roundtables was very well attended. It made me realize how computer hardware, software and other technologies have taken over our businesses and our lives. I remember my first full-time job after college with General Electric and I was working in an office with one of the first fax machines commercially available. Wow! Now fax machines are anachronistic. We email our documents in PDF format instead. So the fax will now go to the same techno-dump as the BetaMax, VHS, 8 Tracks, Cassettes, CD players and Bag Cell Phones. Sometimes I wonder if we're better off not adopting the next communication technology because an even newer one will show up in a nanosecond.

We have all become hand-strung by technology and we can't seem to get along without it. How many times has your office freaked out when your "system" goes down? Everything comes to a halt. You are constantly glued to your 'Crackberry' waiting for the next email, text message or tweet. The world has become one massive ADHD clinic. You would think that we had never lived without the digital age. Has productivity really improved? Not when you figure in all of the time spent on email, Facebook, YouTube and other office digital distractions.

That being said, there is an awful lot of creativity going on with technology that can help you become more productive, especially if you are willing to pay the price. I'm pretty cheap and I won't be an early adopter if there is a significant price tag involved. I have, however, found a number of things that have helped me with work at little or no cost. You probably use many of them, but if not, I'm willing to share my top 10:

Google Earth (earth.google.com/) is an amazing tool. It helps me qualify leads by viewing a building before my appointment. It gives me routes and directions. It gives me a street view of the location. It gives me a close up shot at a rooftop for rigging assessment. It even lets me measure a building (with limited accuracy). It is free.

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eTakeoff (www.etakeoff.com/) is a tool I use every day. It lets me do takeoffs on my computer screen from any PDF drawing file. I can measure length, area and do counts and all for free. It will do a hell of a lot more for me if I am willing to spend a few bucks. Some of you probably have expensive digitizers and estimating programs, but this is fine for my purposes.

Property Shark (propertyshark.com/) lets me get even more detail on a property. I can find out who the actual owner and tenant are, what the market value is, what the taxes are and what the zoning is. It gives me every property detail that is public record.

Zaba Search (www.zabasearch.com) helps me not only search and find someone's name and address; it also gives me their birth date and gives me links to other personal information. Stalkerish, yes, but pretty effective.

LinkedIn (www.LinkedIn.com) is a very effective networking tool. It is to business networking what Facebook is to social networking. Its database is growing exponentially and I can usually find most business contacts I am looking to make a connection with. If they have taken the time to develop their profile, it allows me to see an entire resume with work history, current position and education. This is all fodder for making a connection.

EFax (EFax.com) allows me to have my own separate fax number resident elsewhere that will email my faxes to my Outlook desktop so that I can store all of my faxes on my computer. I have WinFax too, but that actually uses the fax modem in my computer. With Efax, you could essentially operate from a netbook with only access to email and no other hardware.

Scribd (Scribd.com) is an online repository and library for PDF files. I don't want to take up my hard drive with all sorts of articles, submittals, marketing material, etc. I can upload them to Scribd.com and I can also search for other things like owner's manuals, instructions, etc.

Intellicast (Intellicast.com) gives me live looped weather radar images that are very accurate. The GPS tells me where the techs are, but this tells me if they can actually work outside and get something accomplished as well as estimates to when the bad weather will hit and the level of precipitation.

Kayak.com (www.kayak.com) is one of those airfare congregators, but seems to always get me the lowest airfare and allows me to change parameters easily.

HopStop (hopstop.com) if you are cheap like me, environmentally conscious or don't like driving in Manhattan anymore, this is a great tool to tell you how to get anywhere by train, subway or mass transit and how long it will take. •

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Let the Games Begin: Registration Relays

By Kelly Hiner/Enterprise Fleet Management

For businesses that manage their own fleets, registering vehicles can be a complicated and exasperating process, especially for companies whose drivers are scattered across multiple states and counties.

The excitement begins with different states having different names for their regulatory agencies, which may be known as DMV (Department of Motor Vehicles), BMV (Bureau of Motor Vehicles), MVA (Motor Vehicle Administrators), DOT (Department of Transportation), and many others. The confusion continues with requirements and terminology that vary state-by-state or county-by-county for emissions, license plates, taxes and insurance.

The following examples highlight some of the most common variations:

- Emissions testing may be required by individual states or counties, and criteria may include any combination of model year, vehicle weights and/or mileage. This can be confusing for drivers who may ask, "Where can I get tests done?" or "Do I have to?"

- License plate requirements also can be complicated. Because each county may have its own plates, relocating from one county to another can involve more than just updating an address. A new set of plates may be required. In addition, states can use different terminology and criteria to determine plate type categories such as standard, commercial, combo and truck, to name a few. Because individual states may have special regulations for commercial vehicles regarding where they can park and what roads they can use, having an incorrect plate type can be an inconvenience, costing money and causing headaches for drivers.

- Taxes go beyond the typical sales tax and may also include county, city, excise, tire, ad valorem and personal property taxes. And, although time frames for paying various taxes can range from the time of registration, to monthly or even annually, forgetting to pay one of these taxes can result in penalties, and can hold up registrations until payment has been received.

- Proof of insurance varies from state to state and can delay registrations. Some states require an insurance card

with the appropriate VIN displayed, while other states look for an insurance certificate. In some places, electronic insurance submission is mandatory and in others, the only requirement is the insurance carrier's name and policy number. Occasionally, there is no insurance requirement at all.

The consequences of not keeping vehicles properly registered can be significant, from paying extra charges because of penalties to reducing drivers' productivity if their vehicle is impounded for being improperly registered.

Because there may never be a uniform way to register vehicles across the nation, working with a fleet management company that has the knowledge and expertise to handle vehicle licenses and titles for each state can make the process go much more smoothly for drivers and their companies. In addition to taking full responsibility for the time-consuming, labor-intensive process of renewing vehicle registrations, turning over the responsibility to a fleet management company frees up drivers, relieving them from spending time standing in line at the department of motor vehicles when they could be servicing customers. It also eliminates driver out-of-pocket expenses and the related costs of processing reimbursements.

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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Improving Communications

By Richard J. Atkins, Ed.D.

Communication is a Process

When writing or speaking to others, communicators have specific goals: to solve problems, provide new information, or persuade others to take action. In this process, there is a sender, receiver(s), and the message. Senders' choices can create understanding or confusion. How does your communication leave your audience – ready for action, or completely baffled?

Audience Awareness

Audiences are composed of people, all of whom have different perceptions. Receivers filter and interpret information from the senses to create a meaningful picture of the world. These questions will yield a variety of answers, simply because perceptions differ

- What is a lot of money?
- What is tall?
- What is hot?

To avoid having messages misperceived, misconstrued, or misunderstood, choose language that will be understood by most (preferably all) of your recipients. Think of your audience before you communicate with them. Ask yourself:

- Why am I presenting?
- What do I want my audience to know or do?
- What does my audience want to achieve?

To deliver information or a call to action to your recipient, it must be planned. Just like painting a room, most of the time is spent in preparing the surface for the paint. To plan for written or spoken communication, determine your purpose. After considering your audience's background, level of understanding, and desired outcomes, think about what they want to read about or hear from you. Then, decide on the medium (business letter, email, instant/text message, phone call, speech, face-to-face conversation, etc.).

As a sign of respect for the recipients, organize your information! People love numbered lists ("Seven easy steps to..." or "The three things you need to know about..."). Deliver your message to them in a neatly-packaged, understandable format. Develop your ideas in a linear presentation. Organization can be based on time (first, second, etc.), top to bottom, inside to outside, and a number of other different ways. Present data so that it makes sense to your audience.

Creating the Document (or Speech Plan)

Use the information compiled during planning and write freely and quickly. Writers must realize that writing a document is not a one-time happening. It will undergo revisions

later, so in the first stages, write everything you want on paper (or screen, in most cases). Like planning for a party, it's always better to have more than less. It will be edited later.

Revising

Writing needs to be read by the writer (and others) before it is delivered to the intended audience. The same holds true with a speech. Read your document, or if it's a speech, present it (to a small group or recorder, if possible). Check for

- Tone consistency – the attitude toward the subject and audience
- Conciseness – imagine each word costs you .75¢ to

use (practice word economy)

- Clarity – after reading or listening, will the audience know what to do?
- Correct word choice – "their," "there," or "they're"?
- Style – have you spoken to the level of the group in your own voice, expressing your personality?

Now, go back and reread, or re-present the speech. For goodness' sake, be brief! About public speaking, Teddy Roosevelt said, "Be sincere; be brief; be seated." Improving Communications builds on that mantra encouraging all to be sincere, accurate, and brief. •

<p>WHEN COMMUNICATING, ASK:</p> <p>IS THIS TRUE? WHAT DO I MEAN? DOES THIS MAKE SENSE?</p> <p>THEN, PROOFREAD!</p>	<p>PROOF READING CHECKLIST</p> <ul style="list-style-type: none"> • Read as reader • Look for tone consistency • Look for concise writing • Check for clarity • Verify word choice <ul style="list-style-type: none"> • Check: <ul style="list-style-type: none"> • Punctuation • Sentence structure • Spelling • Improve style • Read as reader—again
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Richard J. Atkins, Ed.D. is the founder of Improving Communications, and offers public and private classes to develop Business Writing, Public Speaking, Customer Service, and Leadership. Visit www.improvingcommunications.com or call 516.317.2900.

March Membership Meeting

On March 4th

Learn Where To Find The Money

In This Economy

Business representatives from both J.P. Morgan Chase and the New York Business Development Corp. (NYBDC) will discuss what conventional and SBA loans are available to HVAC companies and how they can qualify for both types of lending.

Additional discussion concerns the government's economic stimulus package which has reduced the cost of SBA loan products such as the 504 loan for mortgages and the SBA Express line of credit for working capital needs.

At the LaGuardia Marriott – Cocktails at 5:30 pm; Dinner at 6:30 pm
Followed immediately by the presentation.
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People & The Workplace

By Alan B. Pearl,
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Website: www.pmpHR.com

Watch Out for Increased IRS Audits

The Internal Revenue Service ("IRS") is gearing up for a significant increase in employer audits. The IRS will soon begin its first Employment Tax National Research Project since 1984. This study will involve the audit of a significant amount of companies and will be completed within three years. The focus of this audit will be on four employment tax compliance initiatives: 1) worker classification 2) tip reporting compensation 3) officer compensation and 4) fringe benefits.

Of these four areas, worker classification is the most confusing issue for employers and one of the most common errors. Many do not know the key differences between who is an "employee" and who is an "independent contractor." Identifying these misclassifications is the focus of the first initiative under the audit. Because employers do not pay taxes on independent contractors, the IRS is concerned about the tax revenue lost due to misclassification.

The courts have found that no single factor or group of factors conclusively define an employer-employee relationship. Rather, all factors must be examined to determine the degree of supervision, direction, and control. Generally, an employer relationship is found when the company has a sufficient level of control over the individual and controls what will be done and how it will be done. Although there is no bright line test, the following factors support a finding of an employer/employee relationship when the company:

- determines when, where and how services will be performed;
- provides facilities, equipment, tools and supplies;
- directly supervises the services;
- stipulates the hours of work;
- requires exclusive services;
- sets the rate of pay;
- requires attendance at meetings and/or training sessions;
- requires oral or written reports;

- reserves the right to review and approve the work product;

- evaluates job performance;
- requires prior permission for absences; or
- reserves the right to terminate the services.

Independent contractors, on the other hand, are free from supervision, direction, and control in the performance of their duties. They are in business for themselves, offering their services to multiple companies.

Employers may genuinely believe that they have engaged independent contractors, only to discover that these individuals are considered employees under the law. This will lead to liability for underpayment of unemployment taxes and interest.

Ultimately, the goal of these audits is to identify employers who do not keep accurate tax records, collect for deficiencies, and deter future violations. Now is the time to analyze worker classification, as well as other issues that impact your company tax return, so that you can successfully avoid an expensive audit.

FMLA Leave and Retaliation

The Family and Medical Leave Act ("FMLA") provides certain employees with up to 12 weeks of unpaid, job-protected leave per year for certain qualifying events. It is well established that an employer cannot terminate the employee in retaliation for exercising their FMLA rights. However, it was unclear what protections were afforded to employees who asked for FMLA leave, but did not take it before their termination.

A federal court recently ruled on this issue. The employer hired an employee who began working part-time in order to care for her daughter, who was born with Downs Syndrome. Eventually the employee was offered a full time position. After she accepted the full time position, the employee requested FMLA leave, several months in advance of the time requested off. The purpose of this leave was to care for her daughter when the fall school season was scheduled to start. The employer terminated the employee, citing previous attendance and performance issues.

In its defense, the employer argued that the employee could not recover on a retaliation theory because she did not actually take FMLA leave, and that she was terminated for separate issues months in advance of the requested time off. The Court rejected this argument as "patently absurd." Further, they explicitly found that the mere request for FMLA leave effectively invokes FMLA rights and therefore gives rise to a cognizable FMLA

retaliation claim, whether the employee had taken the leave before the termination or not.

The lesson employers should learn is that they should review and understand the impact of their termination decision before taking an adverse employment action against any employee who is on FMLA leave or who has requested such a leave. While employers are entitled to impose disciplinary actions based upon violation of company policies and procedures, such actions cannot be based upon an employee's FMLA leave. Importantly, an employee's FMLA-related absences or intermittent-leave schedule does not provide a sufficient legal basis for disciplinary action against that employee.

Of course, if you have any questions regarding this article, you can reach me at ABPearl@pmpHR.com. •



Software Roundtable Meeting

The February 4th ACCA membership meeting drew a large turnout to the Westbury Manor. The Software Roundtable was one of the best attended in Chapter history, with members participating and sharing their experiences operating businesses with both old and new, state of the art software. It was a very informative evening.

The March 4th meeting will be held at the LaGuardia Marriott and will feature Small Business Loans, a most important topic considering our present business climate. You are invited to attend.

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Statement From Stuart S. Zisholtz, Esq.

“No Damage For Delay” Clause

As many of you know, construction projects can be long and tedious. Numerous delays, changes, etc., can extend the project for months and sometimes years.

Many contracts with a municipality contain a “No damage for delay” clause. The clause may contain language similar to the following:

“Contractor agrees to make no claim for damages for delay in the performance of this contract occasioned by an act or omission to act of (owner or general contractor) or any of its representatives, agents, trade contractors and/or subcontractors and agrees that any such claim shall be fully compensated by an extension of time to complete the performance of the work as provided herein.”

A delay claim is recoverable in certain circumstances and may recover from the owner additional costs for an extended period of time. Many contracts, however, contain a clause similar to the “No damage for delay” clause set forth above which would prevent a recovery by a contractor against the owner for delays.

There are, however, certain exceptions to the rule which would permit recovery by the contractor even if the contract contains a “No damage for delay” clause. These exceptions include that the delays were caused by (1) owner’s bad faith

or its willful, malicious, or grossly-negligent conduct; (2) unanticipated delays; (3) delays so unreasonable that they constituted an intentional abandonment of the contract by the owner; (4) delays resulting from the owner’s breach of a fundamental obligation of the contract.

The contractor has the burden of proof of establishing that it fits one of the exceptions to the “No damage for delay” clause applies to it. If it is shown that the delays were contemplated by the original contract, then the likelihood of success in recovering under the exceptions to the “No damage for delay” clause is minimal.

For instance, many times a contractor, when bidding a project, anticipates certain delays. This may be due to the approval process, other trade contractors, submittals, plans, etc. Where the parties contemplate various delays in the completion of the project, it precludes recovery of delay damages.



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It is imperative, therefore, when preparing a bid and executing a contract, you are aware of the various circumstances that may exist in the project. If there is a possibility that the project would be delayed for an indefinite period of time, you must address that issue at the onset of the project. Otherwise, you run the risk that you may be waiving your right to future delay damages.

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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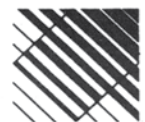
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