

OHIO PLAN REPORT

ROUTING SLIP

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WINTER 2010

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Ohio Plan Report is published three times a year by the Ohio Plan Administrator-Hylant Administrative Services.

If you are interested in learning more about the Ohio Plan, visit www.ohioplan.org. If at any time you have suggestions or insights on how we can serve you, please feel free to contact us.

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Letter to the Membership: Ohio Plan Healthcare Consortium



By E. Thomas Ault
President, Ohio Plan Healthcare Consortium

November 2010

Dear Ohio Plan Member,

In 2006 the Ohio Plan Board of Directors set out to create an affordable health insurance pool for Ohio's public entities. The Ohio Plan Healthcare Consortium (OPHC) was born in August 2007. Since its inception over 60 groups have joined the pool.

Earlier this year the Ohio Plan Board of Directors changed OPHC administrators to the Hylant Group, which is headquartered in Toledo, Ohio. Hylant has been the administrator of the Ohio Plan property & casualty program since 1994. We believe using one administrator for both programs will provide the Plan greater efficiency and will enable you to receive additional member benefits and competitive pricing.

We have already witnessed several positive changes to the OPHC. The January 2011 renewal includes a smaller rate increase compared to other programs. Our goal of providing the most comprehensive benefit program and affordable renewals is taking shape.

As a current Ohio Plan member I strongly urge you to consider the OPHC as an option for your entity's benefit program! The quoting process has been simplified to allow your entity to receive pricing with a simplified application and a 5 workday turn-around time.

You do not have to wait until your next renewal to receive a proposal and join the OPHC. Our representatives are ready to work with your group immediately.

It is a pleasure providing Ohio's public entities with the strongest property and casualty program in Ohio and we look forward to sharing our "up and coming" Ohio Plan Healthcare Consortium.

Please contact your current Ohio Plan local representative for more information. Also feel free to contact Jason Chapman, Ohio Plan Sales Manager, at 419-230-5790 or jason.chapman@hylant.com.

Sincerely,

E. Thomas Ault
City of Louisville
Board of Directors OPHC



Celebration of Service



John P. Applegate

The Ohio Plan proudly recognizes John P. Applegate, City Manager for the City of Union, Montgomery County, for 45 years of local government service and 21 years as a board member of the Ohio Plan!


John began his local government career in 1965. He worked in maintenance operations and served as superintendent of water and wastewater before he was hired for his current position in 1982. John has been a board member of the Ohio Plan since 1989. He served as Chairman of the Board from 1997 through 2002. He is presently serving as the Vice President of the Ohio Plan Healthcare Consortium, Inc.

You can read more about John's background at www.ohioplan.org/applegate_op.html

Contact Us!

We want to hear from you! Please use any of the following methods to contact us:

 1(800) 249-5268 x1923

 www.ohioplan.org/contactus/index.html

 ohioplan@hylant.com

Ohio Plan Healthcare Consortium



By Ken Barber

Hylant Group, Client Service Specialist

Following is a brief history of the Ohio Plan Healthcare Consortium (OPHC):

In 2007 the OPHC was created in response to members' concerns about rising healthcare costs. It was formed to provide cost-effective, quality healthcare benefit options for employees and their families and offers group medical, prescription drug, dental and vision plans. The program was designed to achieve rate stability and cost savings through the strength of the collective membership of the Ohio Plan.

As we move into 2011, I want to take this opportunity to detail some of the web-based resources the Ohio Plan is bringing to it's OPHC member entities.

First is the new OPHC Human Resources Navigator. This online resource center will provide tools such as an human resources collaboration community, compliance guidance, employee communications materials, and much more.

The Navigator will provide:

- access to a library of thousands of downloadable articles and employee communication pieces covering a variety of topics;
- easy-to-use legislative guides with Q & As and quick reference sections;
- legislative information and updates on such things as COBRA, HIPAA, Section 125, FLMA and OSHA; and
- links and articles to benefits and HR-related web sites.

With both time and resources at a precious premium, we understand how difficult it can be to juggle the numerous demands you face. The Navigator will prove to be a valuable guide in an environment getting more complicated every day.

Next will be OPHCRx. An online search engine to maintain information on discount generic drug programs and will direct you to the lowest out of pocket price in your area. Simply enter the drug name, dosage and zip code and OPHCRx will do the rest, searching through a database of thousands of generic drugs at over 60,000 pharmacies! When the medication is on a discount or free generic drug program, OPHCRx will provide a list of the nearest locations where the drug is available, pricing and even map you to the location.

Watch for more information on how to access both of these exciting new resources in January 2011!!!!

Workplace Investigations: Are the reports **public records?**

By Teresa Grigsby and Spengler Nathanson P.L.L.

An employee of the water department comes to her supervisor, alleging a co-worker has bullied her through improper e-mails and Facebook postings. A newspaper contacts city council, seeking comment on reports that police officers used excessive force on minority arrestees. A parent calls a school superintendent, accusing a principal of inappropriate discipline, or a coach of improper locker room behavior. These scenarios are every public body's worst nightmare. And unfortunately, they happen nearly every day.

Faced with such allegations, the affected public body must respond. The public has the right to expect that allegations of misconduct by public employees will be investigated, and if wrongdoing is found, appropriate action taken. On the other hand, the accused public employee also has a right to expect an impartial review and that his reputation not be sullied if the allegations are false.

Responding to allegations of employee misconduct, then, requires a delicate balance of competing interests, often in a highly sensitive, emotionally-charged setting. Frequently the investigation is fraught with legal implications involving employee/employer rights, contract interpretation, defamation issues, public records and open meetings concerns, and even possible tort and criminal liabilities. Of course the allegations usually demand an immediate, efficient and thorough investigation. But the resulting investigation report, itself, can create another set of problems.

Interested parties and the media, aware an

investigation is ongoing will inevitably request a copy of the report. Is it a public record, which must be produced? Doing so may create real dilemmas. False or embarrassing allegations may become public. Identities of witnesses may be exposed. And, most important, if the report is prepared by an attorney, privileged communications by the attorney and client may be revealed.

Until recently, the issue of whether written reports of investigation of workplace misconduct must be produced in response to a public records request was murky. However, a recent Ohio Supreme Court ruling has clarified the subject, at least when the report is prepared by an attorney.

In *State ex. rel. The Toledo Blade Company v. Toledo Lucas County Port Authority*, 2009-Ohio-1767 they held that investigation report concerning alleged workplace misconduct prepared by an attorney for a public body was exempted from public records production because it was protected by the attorney-client privilege. The Court specifically rejected the view that there is a distinction between fact-finding and lawyering, and refused to adopt the principle that the attorney-client privilege does not apply when the attorney is engaged to engage in a factual investigation. Rather, the critical factor is simply that the report was related to the rendition of legal services. This ruling is a win for public bodies who must carefully balance the public's right to know with the legitimate need to assure that sensitive personnel investigations be conducted confidentially.

This issue and the recent Court ruling have provoked some questions, like these:

Q Does this ruling mean that an investigation report prepared by a supervisor and submitted to a governing board is exempt from production when a public records request is made?

A No. The ruling is grounded on the existence of the attorney client privilege. Unless the document is prepared by an attorney retained by the public body to provide legal advice, the ruling will not apply.

Q Does the report have to contain legal conclusions and recommendations about the outcome, instead of factual findings, for the report to be exempt?

A No. The critical issue is not whether the lawyer was retained to conduct a factual investigation instead of a legal report, but whether the investigation was related to provision of legal services.

Q Can the report be kept confidential if prepared by a law director or prosecutor instead of a private lawyer?

A Yes, so long as the law director or prosecutor is the authorized legal counsel for the public body involved.

The lesson to be learned from this ruling is that using lawyers to conduct investigations of workplace misconduct is the most effective way to avoid future public records and privacy topic associated with the investigation itself. Believe it or not, lawyers can be your friends, and this issue is one reason why that is so.

Public Officer's Bonds



By Laura Hamman
Hylant Administrative Services Underwriting



By Brian Cromly
Hylant Administrative Services Underwriting

Now that the November election results have been tabulated, there are both new and familiar faces that will be taking public office in the coming months. We extend our congratulations to each of you in your successful campaigns! As you get ready to take office, it is especially important to take note that many public office positions require a bond be obtained prior to taking office. Some bonds are required by statute while others are necessary because of an ordinance passed by the entity's legislative authority.

For reference, the Auditor of State for Ohio publishes the Ohio Compliance Supplement. Chapter 7, Appendix B of this publication provides extensive information and guidance on this very important requirement. Appendix B lists the public officer's bonding requirements for county, city, township, school, and library officials. This document can be obtained through the Auditor of the State of Ohio's website at (www.auditor.state.oh.us/default.aspx). For positions not listed in this document, it is important to review your entity's ordinances to determine if a bond is required for your position.

The Ohio Plan does include some bonds at no additional charge for its' members and we can place additional bonds that are not included as well. As always, please contact your Ohio Plan representative for assistance with this very important State mandated requirement. We are available to assist you with any questions you may have as well as placement of your bond needs.

Developing Your Risk Management Plan

Part three of a three part series

By Claire Reiss *the Deputy Executive Director and General Counsel and*
Mary Stewart *the Director of Research and Development for the Public Entity Risk Institute*

NOTE: This article originally appeared in the February 2010 issue of **Public Risk**, the member magazine of the **Public Risk Management Association (PRIMA)**. For more information, visit www.primacentral.org

- Special events
- Volunteers
- Workplace injury/worker's compensation
- Workplace safety

Step Four: Develop risk action plans and incorporate existing risk control and financing plans; assign responsibilities. The previous three steps developed the "blueprint" for the risk management plan. Step four is where the "house is actually built. The entity uses the procedures and forms developed in Step Three to identify, analyze, prioritize and develop action plans to control and finance its risks. These risk action plans become part of the entity's risk management plan. Other relevant plans may already exist, such as fleet management, building maintenance, building security, worker's compensation, and self-insurance plans. Incorporate those plans into the risk management by reference. This is also a useful opportunity to work with the appropriate parties to make necessary adjustments or additions to existing plans.

Examples of Risk Action plan Topics can include

- Claims management
- Crisis management and business continuity
- Internal controls
- Fleet management
- Personnel/human resources
- Risk communication
- Risk financing
- Risk management reporting
- Risk management training
- Security for premises

Each risk action plan should also identify the responsible personnel, establish milestones and deadlines for completions of individual tasks, and have a back-up plan for assigned personnel and non-personnel resources. Assign responsibility and accountability to specific job titles. Adopt performance measures for each risk action plan to help you Step Five.

Step Five: Monitor and Revise the Plan. Step Five keeps the risk management relevant. Public entities are constantly generating new risk exposures and some risk control techniques do not work as well expected. Include in the risk management plan a procedure for ongoing monitoring and adjustment of the plan, at least annually. Build in mechanisms to alert the risk coordinator or other responsible party to interim changes. Such changes include new activities (risk management ideally begins when an activity is in the planning stages) and change in the outcome of performance measures. A monthly review of losses, inclusion of risk management planning committees and a good risk management network within the entity can all help flag changes that warrant an update to the plan.

Your final risk management plan will look like an umbrella. It will bind together the relevant documents that address specific events and operations throughout the entity. An electronic format is ideal, because you will not have to republish a paper document whenever an update is required and it can be easily accessible to all who need it. By making updates easier, it is likely that your plan will stay more current.

What's that you say?



By Michael D. Ugljesa,

Vice President – Operations Administrator: Ohio Plan Risk Management, Inc.

Ahh...as the seasons around us have come and gone – from Fall and the vibrant foliage on trees and the cool

crisp days, to the harsh reality of Winter and the snow and cold temperatures it brings – so too has the Ohio Plan's reinsurance renewal. What a great time of year!

What's that you say?

Yes, I included reinsurance renewal in my list, and no, it was not a mistake.

For those involved in the Ohio Plan's reinsurance renewal, the Fall marks the completion of a months-long process of data exchange, analysis, and negotiation. The result of this process allows the Ohio Plan to offer the premier coverage form in the most cost effective manner.

There are many factors which impact the outcome of this process. The first of these are high quality, willing reinsurance partners. We are pleased to report the Ohio Plan continues to be supported by the stalwarts of the reinsurance industry. It is this type of quality reinsurance behind the Ohio Plan that provides you, our members the security and protection you have come to expect and deserve from the Ohio Plan. Several factors come into play during the reinsurance negotiations and below are some important ones.

Claims experience is an aspect that influences the Ohio Plan's reinsurance renewal. The Ohio Plan, as with other coverage related programs, has had its share of claims. Our claims range from the high profile, devastating tornado loss to the customary fender-bender. Maybe it is a sign of the tough economic climate or just merely bad luck, but the Ohio Plan has experienced some large law enforcement and public official liability losses recently. As we all know, as claims rise so does the pressure on the rates being charged to the Ohio Plan by our reinsurers, and in turn, our rates to the membership.

Service and expertise are two more key factors that play into the reinsurance renewal process. The Ohio Plan's reinsurers place a great deal of emphasis on the fact that our underwriters understand our membership and have a firm grasp on the risks the Ohio Plan is covering. The reinsurers recognize the HAS

Claim Services staff as "best in class" in their knowledge, understanding, and application of the defenses and immunities afforded to the membership under the Ohio Revised Code. Our reinsurers also rely on the surveys performed by risk management. The reinsurers acknowledge the quality of the service and advice being provided to the membership. From their review of risk management's surveys, they recognize the Ohio Plan is doing its part to help the membership mitigate and manage risk. The reinsurers weigh these factors throughout the reinsurance renewal process.

Just as Fall can produce harsh weather conditions one year and mild conditions the next, the reinsurance renewal can produce varying conditions too. The 2010 reinsurance renewal presented challenges. As stated previously, those challenges related to the Ohio Plans loss experience, specifically law related claims, which is why the timing of the Ohio Plan's involvement with Lexipol is fortuitous. The Ohio Plan's proactive involvement in helping our members mitigate the exposure to law related claims provided the reinsurers assurance that the Ohio Plan is taking necessary steps to assist the membership.

Furthermore, the Ohio Plan increased its self insured portion of the casualty line. This allows the Ohio Plan to continue to offer a consistent and stable product in these tough economic times. Couple this with the quality and experience of the administrative staff and the reinsurers recognize that the Ohio Plan has its fingers on the pulse of the membership and is taking proactive steps to ensure the long-term success of the program.

As you can see, the reinsurance renewal is a time of change, anticipation, expectation and challenges... just like the Fall marks the transition from Summer to Winter. The Ohio Plan Board of Directors and Administrator embrace these challenges and change knowing that by maintaining the correct balance of risk and retention, staying true to our service model, and focused on our members, we will remain warm and safe through the cold winter months and emerge in the Spring refreshed and better than ever.

Thank you for your continued membership!

Lexipol Launches Policy Manual and Daily Training Bulletin Service in Ohio

Lexipol is proud to launch our Law Enforcement Policy Manual and Daily Training Bulletin service in Ohio on November 22, 2010. Lexipol is America's leading source of risk management resources for public safety organizations, delivering its services through a unique, web-based development system and an integrated training component. Lexipol offers the most comprehensive solution for managing policy and procedure in law enforcement agencies.

Lexipol is uniquely qualified to provide our Policy Manual and Daily Training Bulletin service to the State of Ohio. For the past 10 years, we have created proven, court-tested law enforcement policy. Actuarial data shows Lexipol's unique, cost-effective policy and training system reduces the numbers of claims and claims paid – typically by 69% over previous years. We have a 100% defense record of our policies in courtrooms across America.

In addition, Lexipol provides a highly cost-effective model and powerful, easy-to-use web-based tools that support your agencies and provide:

- Policies and procedures that reflect up-to-date, applicable industry standards and best practices;
- Customized content for the State of Ohio;
- Daily scenario-based training that reinforces your approved policies and procedures;
- Regular updates to your policies and procedures as statutes, case law, and regulations change

Lexipol offers more than 140 core policies based on federal standards and state statutes and case law, regulatory actions, and law enforcement best practices are available with our intuitive tool set. In addition, Lexipol provides regular updates in response to legislative mandates, case law and evolution in best practices. We also provide client alerts in response to precedent-setting court decisions or events that call for immediate changes to policy. These updates are customized to each agency and mission.

The integrated Daily Training Bulletin component is a customized, scenario-based daily training program that links directly to the policy manual. The Daily Training Bulletin program is standardized, verifiable, realistic, ongoing training that links directly to your policy manual. Archiving of training records provides verifiable evidence of achieving specific learning objects. Each version of your manual is archived on the Lexipol system. This is an invaluable resource in defense litigation or personnel matters that call for authenticated copies of policy or training records years after an incident.

The Lexipol system has helped public safety agencies reduce risk and stay ahead of litigation trends, while communicating clear and concise policy guidance to their employees. Lexipol is often recognized for our proactive approach in decreasing liability exposure backed by Lexipol's technical and legal expertise.

For additional information, sample policies and pricing please visit www.lexipol.com or call 949-484-4444.



New Law Enforcement Resources

The Ohio Plan introduces Lexipol and their Policy Manual and Daily Training Bulletin Service to the membership!



By Jason Chapman
State Sales Manager

The Ohio Plan Board of Directors welcomes Lexipol LLC and their

services to Ohio! Lexipol is the leading risk management program for law enforcement agencies across the country and will prove to be a valuable tool for your law enforcement departments. Their services include over 150 state level model policies for law enforcement agencies as well as a series of daily training bulletins that will reinforce an agency's adopted policies. Refer to the Lexipol public press release elsewhere in this newsletter.

The Ohio Plan board of directors recognizes the dilemma many entities face in balancing shrinking budgets with the need to offer professional law enforcement services to their communities. **To assist Ohio Plan members with the Lexipol subscription costs, the Board of Directors has taken the following actions:**

- They have negotiated a 5% discount off of the Lexipol subscription cost for Ohio Plan members.
- They have created the Lexipol Subscription Subsidy Program to further assist members with the Lexipol subscription cost for the first three years, as follows:



- **1st year Lexipol subscription**
50% reimbursement of the subscription fee
- **2nd year Lexipol subscription**
30% reimbursement of the subscription fee
- **3rd year Lexipol subscription**
20% reimbursement of the subscription fee

For more detailed information as to how this program will work, Ohio Plan members can go to the Ohio plan website at www.ohioplan.org. There you will find administrative instructions for subscribing with Lexipol for their service offerings. There will be links to the following:

- The Lexipol 'Online Services Agreement' (OSA) www.lexipol.com
- The Ohio Plan Risk Management, Inc. 'Lexipol Subscription Subsidy Program' Participation Agreement

Remember, the agreement for the subscription for Lexipol services is between the individual member/agency and Lexipol. Lexipol's

subscription costs are based on the number of full-time sworn officers in a department. And by identifying yourself as a member of the Ohio Plan, you will receive the aforementioned 5% discount automatically from Lexipol.

Once you have a subscription for Lexipol services, you may then submit a completed Ohio Plan Risk Management, Inc. 'Lexipol Subscription Subsidy Program' Participation Agreement and proof of payment of the Lexipol subscription to the Ohio Plan Administrator for review and evaluation.

In the meantime, if you have any immediate questions about this Program, please contact Bill Balmat, at 419-724-1923 or bill.balmat@hylant.com.

REMEMBER – as the Ohio Plan continues to grow – so do the BENEFITS of membership!

Natural Disasters



By Bill Petro,
Vice President, HAS Claim Services

Everything you've ever heard about tornados is true – they actually DO some really strange things! When the recent northwest Ohio tornados hit two of our Ohio Plan members on June 5, 2010, I was able to be on site within a few hours. As Vice President of Claims, I witnessed firsthand not only the power and destruction but also the unpredictable nature of tornados. For example, they may pick up and destroy one vehicle twisting it around a tree like a pretzel while leaving untouched the vehicle parked next to the first. I saw one huge tree uprooted, splintered and carried away while next to it a fruit tree with a bird's nest and chicks was not touched. I saw where the pressure of the tornado literally sucked in steel doors while blowing out brick walls. And unfortunately there was death separated from life literally by inches.

Everything you've ever heard about how an insurance carrier responds to a disaster is true – "Some claims are handled very well while others are not". Some carriers have proper coverages for public entities while others do not. While on site I observed how "unpredictably" claims can be handled by different insurance programs. I won't detail the negatives I heard and saw in regard to the other carrier here, but you can easily read about it in the news-media.

I do want to tell you how the Ohio Plan and we handled this tornado claim and what you can expect - or should expect from other carriers.

We have two clients in the Toledo area that were hit by the June 5 tornado; Lake Township and the Village of Millbury both in Wood County. Lake Township's administration building was destroyed. This was their main building which housed the police department, 911, EMS, fiscal officer and administration. While dozens of homes in Millbury were destroyed and damaged, the Village of Millbury suffered only damaged trees.

After the tornado struck around 11:20PM Saturday, we initiated making phone calls to the Township trustees, fire chief and police chief. At the same time, they were calling our 24/7 claims hot line. As you can imagine, phone lines at their building were down. A disaster restoration specialist/contractor was contacted and he was able to meet me at the site within hours. Before the sun was up, the restoration company and I attended a meeting with Township officials and other governmental officials- including, three trustees, police chief, fire chief, sheriff, two State Representatives from the area and even Governor Strickland.

Immediately triage began to determine what was needed to get operations up and running for the Township. Because their police and fire departments had been trained in how to handle a disaster situation, they were able to work effectively with other safety agencies to move police, 911 and EMS operations to other locations, while we were able to concentrate on other day-to-day activities. Early Sunday morning the contractor was authorized to begin gathering and removing certain computers and documents from the remaining section of the buildings. That was the beginning of a day-to-day recovery process that resulted in the ground breaking on October 15, 2010, for the construction of their new Township building.

In the wake of the June 5, September 15 and October 26 tornadoes, I have been asked many times, "If a tornado hit our buildings, what could we expect?" This is a fair question from a public entity who has read numerous northwest Ohio articles condemning an insurance carrier's slow response to a high school destroyed by a tornado. I have also been asked, "Why is the process going so well for the Township while it is not going well at the School."

The answer to these questions has everything to do with how well the claim is handled. When

you have a severe claim – premium paid, carrier name, and local politics do not matter. When you buy insurance you are buying claim service. Nothing else matters except how the claim is handled.

First and foremost, to handle a claim properly, we are onsite when needed. Woody Allen said, "Eighty percent of success is showing up." While he probably knows nothing about insurance claim handling, the concept is very important. Without being there, the claim just cannot be handled properly. All of the Ohio Plan adjusters are Ohio-based. They are not out of Michigan, Indiana, Chicago or San Antonio as are adjusters for other insurers.

Second, our adjusters only handle public entity claims. This is very important! Other carriers adjusters may handle all kinds of commercial claims and do not specialize in public entities. Some days they may handle a drycleaner claim while the next day they handle a home owner claim. You wouldn't go to a generalist attorney or doctor when you have a severe sickness or legal issue. Since we only handle your specialized claims, we know public entities!

Lastly, we retain the full authority to handle the claim without the bureaucratic layers that exist throughout other insurance carrier organizations. With that in mind we are able to make decisions, hire contractors, purchase equipment and help transferring operations getting the entity up and running as best we can long before the other carriers are even on site.

As mentioned above, everything you've heard about how an insurance carrier responds to a disaster is true. Some respond exceptionally well while others respond poorly. As a member of the Ohio Plan, you can rest easy knowing the right claim people are in place to properly respond to all of claim needs!

Snow and Ice

are part of wintertime life in Ohio.

By Peter J. Krembs
Hermann Cahn & Schneider LLP

It's that time of the year again and Ohio courts are fond of reminding us that "snow and ice are part of wintertime life in Ohio." In a case decided just a few weeks ago, the Eighth District Court of Appeals revisited and provided a good overview of a political subdivision's obligations with respect to snow and ice removal from streets and sidewalks. See *Grimmer v. City of Rocky River*, 2010-Ohio-4683 (Ohio App. 8th Dist., 9/30/2010).

Ohio political subdivisions with road maintenance responsibilities can be held liable under certain circumstances for injuries resulting from snow and ice on roadways and sidewalks. Because there is an affirmative statutory duty for certain political subdivisions to maintain their roads and sidewalks, this kind of claim is an exception to the rule of municipal immunity from suit. ("Political subdivision" in this context includes municipal corporations, villages and townships). O.R.C. 2744.02(C)(3); O.R.C. 2744.01(F).

The standard in Ohio for municipal liability in connection with road maintenance and repair is negligence--a failure to use reasonable care under the circumstances. However, in the context of snow and ice removal, what amounts to negligence for anyone, including a political subdivision, is limited. Three things are required for a finding of negligence in this context, if snow or ice accumulation cause an injury.

First, the ice or snow has to be an unnatural accumulation on the regularly traveled part of the road or sidewalk. An "unnatural" accumulation is one that is "caused by a person doing something that would cause ice and snow to accumulate in an unexpected place or way." *Grimmer*, at ¶16. This can be from such things as a broken hydrant, a drainage system that is in violation of local codes, or plowing. It is distinct from natural things like wind, drifting snow, and natural thaw and freeze cycles. See *Lawrence v. Jiffy Print, Inc.*, 2005-Ohio-4043 (Ohio App. 11th Dist.). According to the court in *Grimmer*, unnatural accumulations of ice and snow on a roadway do not necessarily have to be caused by things under the political subdivision's own control; someone else's broken water line spewing freezing water onto the political subdivision's right of way is still an "unnatural accumulation."

Second, the political subdivision has to have been on prior notice of the problem, before the injury occurred. Ways of establishing prior notice include the length of time that a problem has existed; temporary warning signs being put out; incomplete, targeted efforts to mitigate the problem (like salting or spreading sand); or prior complaints. *Grimmer*, at ¶17.

Finally, the particular condition cannot have been so "open and obvious" that the injured party ought to have noticed and avoided it. This question is rarely resolved in snow and ice cases by the court; courts tend to want the jury to hear all of the facts. The adequacy of temporary warning signs put out to alert people of a dangerous situation often has to be debated before a jury. *Grimmer*, at ¶¶19-23.

NIOSH Update:

NIOSH Backgrounder on Distracted Driving:

Work-related Hazards and Resources for Safety

Contact: Fred Blosser, (202) 245-0645

October 5, 2010

Distracted driving is a danger under any circumstances. Drivers are a risk to themselves and others when they take their eyes off the road, their hands off the wheel, or their mind off what they are doing. According to the National Highway Traffic Safety Administration, nearly 5,500 Americans were killed (16 percent of all traffic crash fatalities) and 448,000 were injured in motor vehicle crashes that reportedly involved distracted driving. When someone is behind the wheel while on the job, distracted driving becomes an occupational hazard.

Motor vehicle crashes are the leading cause of work-related death. While it is not known with certainty how many of those incidents involve distracted driving, there is no reason to think that the role of distracted driving in fatal work-related crashes is any less than in fatal crashes in the general population.

Mobile workers routinely communicate with offices and dispatchers through cell phone calls and text messaging. The work environment may impose additional risks through in-vehicle telematics: systems that provide information on clients, schedules, and inventory. The desire to increase productivity and efficiency, as well as pressures created by tight schedules and unforeseen delays, can provide incentives for workers to make calls, send text messages, or access in-vehicle information systems while driving.

"While the basic distractions of cell phone calls or text messaging are similar whether one is driving on work time or on personal time, there are sources of distraction and incentives to engage in distracted driving behaviors that are unique to the workplace," noted John Howard, M.D., Director of the National Institute for Occupational Safety and Health (NIOSH). "Someone driving on personal time has the leisure of waiting to return a friend's call or text message. In these situations, minimizing risk

is a matter of changing personal behavior and habits," Dr. Howard said. "Workers, however, may be required or pressured by job demands to engage in distracted driving behaviors. Strong employer policies to curb the use of cell phones and in-vehicle technologies while driving are an important tool in creating a safe driving culture within an organization."

Dr. Howard added, "NIOSH applauds the efforts of the Departments of Transportation and Labor to highlight the important role public and private employers can play in reducing distracted driving. We join them in urging employers to set policies to prohibit text messaging while driving. In addition, NIOSH will continue to work with our federal and other partners to support further efforts to reduce distracted driving in the workplace."

NIOSH resources for reducing risks of distracted driving and other factors associated with work-related motor vehicle injury and death include:

"Work-Related Roadway Crashes: Prevention Strategies for Employers"
<http://www.cdc.gov/niosh/docs/2004-136/default.html>

"Work-related Roadway Crashes: Older Drivers in the Workplace"
<http://www.cdc.gov/niosh/docs/2005-159/>

NIOSH Topic Page: Motor Vehicle Safety
<http://www.cdc.gov/niosh/topics/motorvehicle/>

Source of statistics:
National Highway Traffic Safety Administration [2010]. Distracted driving 2009
(Publication No. DOT HS 811379)
<http://www.nrd.nhtsa.dot.gov/Pubs/811379.pdf>

Risk Management's

Public Playground
Safety Handbook

Top 3 Observed Exposures



By Bill Balmat,
Director – Risk Management Services

Beginning with this edition of the Ohio Plan Report, I will be reporting the Top 3 risk exposures that have been observed by the Ohio Plan's risk management team. If you feel that your organization has an exposure in any of these areas and you are uncertain as to how to mitigate or implement corrective action – please contact your sales representative or risk management representative for assistance. Uncertain as to who to contact? Submit a request to have someone contact you either by:

Telephone 1 (800) 249-5268 x1923
Website www.ohioplan.org/contactus
Email ohioplan@hylant.com

Top 3 Exposures:

- 1 Playground safety and general maintenance
- 2 Failure to review Motor Vehicle Record (MVR) checks for employees on a regular basis
- 3 Incomplete or outdated Employee Personnel manuals

What makes each of these three exposures so potentially dangerous for both the general public and public entities?

In the case of playgrounds, this is one of the most used activities by the general public and yet it is one that seems to be most often overlooked for general maintenance and repair activity and adherence to national safety standards. From failure to replace a 50 cent S-hook on a swing set that resulted in a \$500,000 claim for two brain surgeries for a teen-age girl – to sharp edges on a broken merry-go-round causing severe lacerations on a young child's legs when she slipped and fell under the revolving unit. In these tough financial times, parks and recreation departments are being hit with shortages of both funds and manpower. And while there are strong immunities for public entities – there is no immunity for negligence! A public entity must remember – if you are going to provide an activity, you then have an obligation to provide a SAFE activity! While there are not any specific laws that govern playground safety, there are two

resources that are recognized as the leading sources of playground safety. They are –

- The Consumer Product Safety Commissions Handbook for Public Playground Safety , publication # 325
- The American Society for Testing & Materials Standard F1487-01

You may ask yourself the question, “Why is checking the MVRs of my employees who drive a vehicle in the performance of their job duties important?” Imagine if you will, one of your employees is in an accident on public roads while driving an entity vehicle in the performance of job related duties. Your employee is ‘at-fault’ in the accident and innocent individuals are seriously injured or worse. And after the fact it is discovered that your employee has had some combination of traffic moving violations and driving under the influence citations over the last three years. Think deep pockets! Think winning the lottery! Not for you the entity – but for the injured party(ies) and/or their families. The entity is not defensible in this scenario. You are responsible for your employees! And part of this responsibility is to know whether or not they are a potential threat to the public.

Finally why are Employee Personnel manuals and/or handbooks important to you? They are important because they are the primary way that you the entity/employer have to communicate to your employees how you expect them to behave and conduct themselves. From hiring to firing, from promotion to demotion, from available benefits, to specific behavior both in an employee's assigned job responsibilities to other areas such as use of entity owned property, electronic use policies, dress code , etc. You cannot expect a certain behavior from your employees if you have not shared with them your expectations, rules, policies, procedures and the ramifications if this expected behavior is not met. Over the last two years, the incidences of employment liability claims and lawsuits have risen dramatically. A well written employee manual, that has been communicated and shared with your employees (you should require each employee to sign an acknowledgement annually that they have been presented with and read your employee manual) will go a long way in your defensibility in the event an employee alleges some form of un-fair behavior on your part as the employer.

OSHA Takes an Aggressive Position

Employee Driving and Texting

OSHA is taking an aggressive position on employee driving and texting. The attached OSHA Web site is a good place to become better educated on this matter.

An excerpt from this site states: “Most employers want to do the right thing and protect their workers, and some have already taken action to prohibit texting while driving. It is your responsibility and legal obligation to create and maintain a safe and healthful workplace, and that would include having a clear, unequivocal and enforced policy against the hazard of texting while driving. Companies are in violation of the Occupational Safety and Health Act if, by policy or practice, they require texting while driving, or create incentives that encourage or condone it, or they structure work so that texting is a practical necessity for workers to carry out their job.

To combat the threat of distracted driving, we are prepared to act quickly. When OSHA receives a credible complaint that an employer requires texting while driving or who organizes work so that texting is a practical necessity, we will investigate and where necessary issue citations and penalties to end this practice.”



The full article can be read on OSHA's website at:
www.osha.gov/distracted-driving/index.html.

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