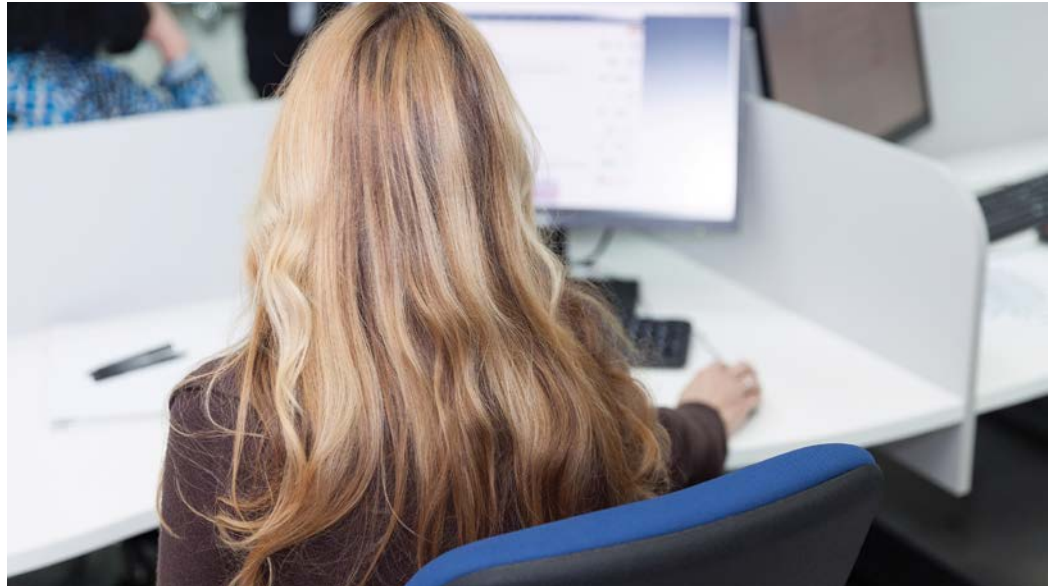




SUMMER 2019

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# NEWS & VIEWS



## New Occupational Injury Reporting Requirements for Montana Public Sector Employers

By Britani Laughery, CSP, ASP, CIC, CWCP, AU, Internal Operations Manager

Public sector employers in the state of Montana are subject to occupational safety and health rules, which are regulated and enforced by the Montana Department of Labor & Industry (DLI). These rules are collectively known as the Montana Occupational Safety and Health Act, and they are the minimum standards an employer must implement and follow to protect the life, health and safety of employees. For complete details of the act, please review MCA Title 50 Chapter 71 Part 1 and ARM 24.30.102 through 24.30.107.

Effective June 22, 2019, the DLI incorporated by reference the federal occupational safety and health reporting requirements found in the Code of Federal Regulations, as of July 1, 2018:

- 29 CFR 1904.4 through 1904.11;
- 29 CFR 1904.29 through 1904.33;
- 29 CFR 1904.35 and 1904.36; and
- 29 CFR 1904.39 through 1904.42

### Reporting Requirements

Under the newly adopted standards, public sector employers not only need to report any workplace fatality to the DLI, but they must also report any in-patient hos-

pitalization of one or more employees, any employee's amputation, or any employee's loss of an eye, as a result of a work-related incident.

Workplace fatalities must be reported within eight (8) hours of the death for any employee as a result of a work-related incident. Inpatient hospitalizations, amputations and loss of an eye must be reported within twenty-four (24) hours of the hospitalization, amputation, or loss of an eye.

For the purposes of reporting fatalities, hospitalizations, amputations, and loss of an eye, the employer is to contact the DLI by:

- electronic submission to the reporting application at the DLI's public web site at <http://erd.dli.mt.gov/safety-health>;
- or
- telephone at 406-444-6401 (during business hours of Monday – Friday 8 am to 5 pm)
- telephone at 844-669-5461 (after business hours)

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# Firefighter Workers' Compensation Presumption FAQ

By Alan W. Hulse, ARM, AIC, MMIA CEO

Following the passage of SB 160, the rate for the firefighter class code increased over 60%. MMIA staff and board took the decision to increase this rate seriously and with a great respect for the impact it could have on member cities and towns. Many questions and misunderstandings still exist surrounding SB 160 and the recent rate increase. Below are some of the most frequently asked questions.

## What is firefighter workers' compensation presumption?

SB 160, sometimes referred to as the Firefighter Health and Safety bill, is a newly passed state law. Starting July 1, 2019, it mandates workers' compensation coverage presume certain diseases, including several cancers, heart attacks, and lung disorders, are caused by the job for firefighters. The illnesses listed are presumed to be from the job, and therefore covered by workers' compensation. The way the law is written, there is limited ability to dispute the coverage.

## What was covered before presumption?

These same cancers, heart attacks, and lung disorders were covered under the workers' compensation act for all employees, not just firefighters, prior to the passage of SB 160. However, it was the responsibility of the employee to prove their disease had come from the job. The required proof was provided by their medical provider. Now, under SB 160, the diseases are presumed to be caused by the job, making it likely these diseases will be covered under the workers' compensation act for firefighters.

## What did MMIA do to minimize the impact of this legislation?

MMIA worked diligently through the legislative session to minimize the impact of this bill to Montana's cities and towns including narrowing the scope of qualifying presumptive illnesses. MMIA was unsuccessful in lobbying for the cities/towns to levy to pay for the additional cost of presumption, leaving SB 160 an unfunded mandate by the legislature.

## Why did the costs for firefighter coverage go up so much?

To understand the increase in firefighter rates, it is important to know a few key details.

- The MMIA is a local government entity, not an insurance company. We manage self-funded, pooled coverage for Montana's cities and towns. We are fiscally responsible for making sure the plan has enough money to pay for

the liabilities we incur this practice keeps the program solvent.

- MMIA rates are carefully managed in a way to provide security, affordability, and stability for our member cities and towns.
- We work with actuaries to develop rates each year. In this case, the actuaries needed to factor in the new exposure of presumption into the rate. Incident rates for the diseases covered by presumption were determined by actuaries using the same statistical data fire fighters brought to the legislature to prove they needed presumption coverage, as well as demographic information of the firefighters.
- Rates were unanimously approved by our 15-person board of directors, made of municipal representatives from across Montana.
- Rates took into account our reinsurance coverage threshold of \$750,000 per claim.
- Covering cancer claims through workers' compensation is more expensive than covering them as health insurance claims. In addition to the medical costs, workers' compensation must also cover lost wages, impairment awards, rehabilitation, burial, and survivor benefits, specific to each claim.

The firefighter class code rate was adjusted with the assumption there would be fewer than two claims per year among all 108 of our participating member cities and towns. This number could be higher or lower in any given year. For reference, we have received five claims in the Fy18/19 policy year (prior to the effective date of presumption) for firefighter cancer

claims which are currently being investigated to determine compensability based on medical evidence as to whether or not the cancer was caused by their exposures on the job.

## I heard other states passed presumption without raising rates. How did they manage it?

When people point to other states that did not see rate increases with similar presumption bills, it's like comparing apples to oranges. Typically, these comparisons have been drawn between the MMIA and State Funds in other states. This comparison is inaccurate for several reasons:

Alan Hulse, MMIA CEO



***MMIA worked diligently through the legislative session to minimize the impact of this bill to Montana's cities and towns including narrowing the scope of qualifying presumptive illnesses.***

# Health Benefit Education is Risk Management – and it Starts From the Top Down

By Amanda Burkhart, Communications Strategist

**W**e've all been there. Open Enrollment rolls around and employees get stuff in the mail about their health coverage. They receive emails inviting them to attend a presentation about their benefits. But the average employee figures their benefits seem fine, not much has changed, and they don't have any questions, so they don't need to go.

This common scenario plays out year after year in workplaces everywhere. However, the benefits the city/town pays on behalf of employees is a major part of the budget. If your city/town is part of the MMIA Employee Benefits pool or if your city/town has a self-funded plan, employees could be missing important risk management information that could save themselves and the city/town big dollars.

## Risk Management Benefits

Most cities/towns work hard to find ways to keep costs under control. Safety meetings, quarterly trainings, and other forms of risk management are common. You know if you can avoid a workplace injury or maintain a system before it malfunctions, you can save money in workers' compensation, lawsuits, and more. Despite this commitment to prevention, few workplaces think of their employee health benefits when they think risk management.

Employers should put time and effort into informing employees about their benefits and engaging in the management of their health and healthcare spending. They should also create a culture of wellbeing. Doing so can have big returns in things like employee productivity, retention, and reduced absenteeism, as well as the long-term cost of benefits.

## Creating a Culture of Wellbeing – As easy as 1, 2, 3!

1. **Set an example.** – Our data shows cities and towns where the city leadership takes part of, and champions benefit education and wellness activities tend to have better employee participation in the MMIA Wellness Program. This increased participation helps to manage risks and keep costs under control.
2. **Encourage department heads to do the same.**  
**Department heads set the tone for most workplaces.** Giving employees work time to attend benefit presentations, get their health screening, and participate in other wellness activities makes a world of difference in perception and participation in the program.
3. **Make it fun.** Create a positive culture around wellness. Assign a wellness champion to help spread the word about wellness initiatives. Start a walking group or competition. Raffle off something like a premium parking space, paid day off, or another perk for those who attend

a benefit meeting. Offer snacks at the health screening. There's no need to spend much or any money. Anything that makes benefits more fun can help create a positive association between the employee, wellbeing, and their benefits.



If you want more suggestions of how to encourage employees to participate in their health and wellness, contact the MMIA Employee Benefits Program. We have printable materials, drafted letters of support from leadership, and much more. Reach us at [www.mmiaEB.net](http://www.mmiaEB.net), [ebgroup@mmia.net](mailto:ebgroup@mmia.net), or call 1-800-635-3089 option 4. ■

## Presumption FAQs...(cont'd)

- Many of the entities with the largest exposure for firefighter claims are self-insured, not with a state fund, so their data isn't captured in the comparison.
- The exposure for firefighter claims for these state funds is insignificant compared to MMIA where firefighters make up 26% of our workers' compensation exposure.
- These state funds have significant assets and can absorb these losses more easily than MMIA.
- The workers' compensation laws and presumption laws vary from state to state.

## Will these rate increases be re-evaluated?

All rates are evaluated on a regular basis. In addition to our regular rate analysis, MMIA will be closely monitoring the impacts of presumption and the corresponding rate increases. We are separately tracking the firefighter class code rate increase for presumption as well as tracking any associated claims to be sure we are collecting enough to cover the expenses and remain solvent.

## Are volunteer firefighters covered by presumption?

The new law only mandates coverage for paid firefighters, and lets both the carrier and the employer choose whether or not to offer this coverage to volunteer firefighters. The MMIA board decided to allow individual cities and towns to choose whether or not to add presumption coverage for their volunteer firefighters. If a city would like to add this optional coverage for volunteers, they must complete an application and provide specific information from their firefighters in order to receive a custom quote. To date, six cities have requested such a quote and three of those are moving forward with offering presumption coverage to their volunteers. ■



## Policy Highlight: Leave Policies

By Angela Simonson, PHR, SHRM-CP, *Human Resource/Employment Practices Specialist*

This part two of a series on personnel policies intends to clarify leave policies that generate a number of questions on the listserv and questions coming directly to MMIA.

The types of leave mandated by Montana Code Annotated (MCA) include Annual Leave, Sick Leave, Holiday Leave, Public Office Leave, Military Leave, Jury Duty Leave and Maternity Leave. This article will highlight Annual, Sick, Holiday and Military Leave. All personnel policies should align with MCA. Collective Bargaining Agreements (CBA) may afford a greater benefit than what is listed in MCA.

### Annual Leave

#### Who earns annual leave?

MCA 2-18-611 states that each full-time (FT) employee will earn annual vacation leave credits from the first day of work yet they are not entitled to use such leave until they have been continuously employed for a period of six calendar months. Permanent FT, permanent part-time (PT), seasonal, and temporary employees all earn annual leave based on the hours they work per pay period. Short term workers do not earn leave.

#### How much leave do employees earn?

MCA 2-18-612 lists the accrual rates for FT employees based on years of employment, with any agency whether the employment is continuous or not. Prior service credit from other Montana cities, towns, counties, state agencies, or the University System should be verified and counted toward years of employment. PT employees earn on a pro rated basis.

#### Accrual is as follows:

- **Date of hire to year 10:** 15 working days per year,
- **10th anniversary date to year 15:** 18 working days per year,
- **15th anniversary to year 20:** 21 working days per year and
- **20th anniversary and beyond:** 24 working days per year.

#### How much annual leave can an employee accrue?

MCA 2-18-617 clearly states that accumulation of annual leave cannot exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. This means the first pay period in January, annual leave balances must be compared to the max accrual for that employee. Example—if an employee has worked for 5 years, they earn a total of 120 hours/year. They can have 240 hours or less as of the review date in early January. If employee has 280 hours, they must use the excess 40 hours within the first 90 days of the calendar year or have the hours forfeited.

It is best practice for the payroll clerk to notify all employees with excess leave (as well as their supervisors), in writing immediately after the first pay period of the year.

#### Can an employee have their annual leave paid out to them?

An employee can be paid out only at time of termination. At which point, they are to receive 100% of the leave balance they have. If the employee belongs to a Voluntary Employees Beneficiary Association (VEBA), then the VEBA rules regarding transfer of annual leave must be followed. Transfers to a new position do not equate a termination unless the employee takes a leave of absence greater than 5 working days.

### Sick Leave

#### Who earns sick leave?

MCA 2-18-618 states that FT permanent, seasonal and temporary employees accrue eight hours of sick leave per month. PT employees are entitled to pro-rated benefits. An employee must be continuously employed for 90 days before they can use their sick leave. There is not a maximum accrual for sick leave.

*Continued on Page 5...*

## Policy Highlight...(cont'd)

### Can an employee have their sick leave paid out to them?

An employee who terminates employment is entitled to a lump sum payment equal to one-quarter of their sick leave balance. If the employee belongs to a VEBA, then the VEBA rules regarding transfer of sick leave must be followed.

### Holiday Pay

#### What days are considered holidays?

Under the definitions of MCA Title 2, Chapter 18, holiday is defined as, "a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except for Sundays". Your personnel policy handbook should clearly define what days the city/town has adopted as official holidays. Typically, if a listed holiday falls on a Saturday, it is observed on the Friday before and if it falls on a Sunday, it is observed on the following Monday.

#### Who receives holiday pay?

MCA 2-18-603 states that short-term workers do not receive holiday pay. All other employees receive holiday pay. PT employees receive pay on a pro-rated basis.

#### What if the holiday falls on an employee's regular day off?

MCA 2-18-603 addresses how to handle an observed holiday falling on an employee's day off. This is not a scheduled vacation day, but instead an actual day off within the week. If a holiday falls during annual leave, the employee will be granted holiday pay for that day, unless your policy or CBA states differently.

If a full time employee is scheduled for a day off on a day that is observed as a legal holiday, except Sundays, they are entitled to receive a day off with pay on either the day preceding the holiday or on another day following the holiday in the same pay period, or as scheduled by the employee and their supervisor.

#### Must we pay an employee extra if they work on a holiday?

MCA is silent in regards to working on a holiday. Some members offer extra pay for the work the employee does on a holiday. Some members offer an employee who is scheduled to work on a holiday a different day off with pay. At minimum, the employee must receive payment for the hours worked on the holiday PLUS eight hours of holiday pay. Payment for the holiday may be accomplished by providing eight hours of pay or providing another day off with pay.

**Example** – An employee is called in to work four hours on Thanksgiving. If the policy or CBA is silent on how to handle working on a holiday, the employee would be paid eight hours for the holiday PLUS four hours for the time they performed work. If all other shifts that week were eight hours worked, they would not earn overtime unless the city policy states overtime is paid if hours **PAID** are beyond 40 in a work week. Per wage and hour law, overtime is paid for hours **WORKED** beyond 40, not hours paid.

### Military Leave

#### Who qualifies for Paid Military Leave?

MCA 10-1-1009 requires public employers in Montana to offer paid military leave at a rate of 120 hours per calendar year to any qualifying military personnel who has been an employee of the city/town for a period of six months or greater. Employers can ask for the military orders prior to approving the leave.

#### Can an employee use more than 120 hours of leave in a year?

An employee can technically use more than 120 hours IF they have leave rolled from the prior calendar year. Up to 120 hours of unused Military leave can roll over to the next year, not to exceed a total of 240 hours for the entire year.

**Example** – An employee has 80 hours of leave remaining as of 12/31. This will roll into the next calendar year, giving the employee a total of 200 hours they can use for military leave in that current calendar year.

#### Can we ask the employee to use their annual leave for military training?

An employer cannot ask an employee to use their annual leave in lieu of paid military leave.

#### Is military leave paid out at termination?

Military leave is not cashed out at time of termination.

After reviewing the above Q&A, it is my hope that all members understand the requirements of offering leave and some specifics on how to properly manage it. If you have questions or concerns about leave policies and procedures, please contact me at [asimonson@mmia.net](mailto:asimonson@mmia.net) or call 406-495-7017. ■

## DO YOU WANT MORE MMIA NEWS?

You can sign up to receive the quarterly newsletter by contacting Janel Favero, MMIA Communication Specialist, at [jfavero@mmia.net](mailto:jfavero@mmia.net). When signing up for this quarterly communication, you may elect to receive it electronic, hard copy, or both. This is a great way for you to stay up-to-date on upcoming events, policy changes, and information on how we are working to serve Montana's municipalities.

If you would like to view our past issues archive, visit [mmia.net/news-events/archive/](http://mmia.net/news-events/archive/). ■





## Frequently Asked Questions

### **Do I have to report the fatality, inpatient hospitalization, amputation, or loss of an eye if it resulted from a motor vehicle accident on a public street or highway?**

If the motor vehicle accident occurred in a construction work zone, you must report the fatality, in-patient hospitalization, amputation, or loss of an eye. If the motor vehicle accident occurred on a public street or highway, but not in a construction work zone, you do not have to report these incidents to the DLI. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records.

### **Do I have to report the fatality, inpatient hospitalization, amputation, or loss of an eye if it occurred on a commercial or public transportation system?**

You do not have to report these specific incidents to DLI if it occurred on a commercial or public transportation system (e.g., airplane, train, subway, or bus). However, these incidents must be recorded on your OSHA injury and illness records.

### **Do I have to report a work-related fatality or in-patient hospitalization caused by a heart attack?**

Yes, the DLI will decide whether to investigate the event, depending on the circumstances of the heart attack.

### **What if the fatality, in-patient hospitalization, amputation, or loss of an eye does not occur during or right after the work-related incident?**

You must only report a fatality to the DLI if the fatality occurs within thirty (30) days of the work-related incident. For an in-patient hospitalization, amputation, or loss of an eye, you must only report the event to the DLI if it occurs within twenty-four (24) hours of the work-related incident. However, the fatality, in-patient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records.

### **What if I don't learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye right away?**

If you do not learn about a reportable fatality, in-patient hospitalization, amputation, or loss of an eye at the time it takes place, you must make the report to the DLI within eight (8) hours for a fatality reported to you or any of your agent(s), and within twenty-four (24) hours for an in-patient hospitalization, an amputation, or a loss of an eye reported to you or any of your agent(s).

### **What if I don't learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident?**

If you do not learn right away that the reportable fatality, in-patient hospitalization, amputation, or loss of an eye was the result of a work-related incident, you must make the report to the DLI within eight (8) hours for a reportable fatality you or any of your agent(s) learned of and within twenty-four (24) hours for a reportable in-patient hospitalization, an amputation, or a loss of an eye you or any of your agent(s) learned of.

### **How is "in-patient hospitalization" defined?**

According to CFR 1904.39 (b) (9), it is defined as a formal admission to the in-patient service of a hospital or clinic for care or treatment.

### **Do I have to report an in-patient hospitalization that involves only observation or diagnostic testing?**

You do not have to report an in-patient hospitalization that involves only observation or diagnostic testing. You must only report to the DLI each inpatient hospitalization that involves care or treatment.

### **How is "amputation" defined?**

According to CFR 1904.39 (b) (11) it is defined as the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached. Amputations do not include avulsions, enucleations, degloving, scalping, severed ears, or broken or chipped teeth.

### **What information do I need to give to the DLI about the in-patient hospitalization, amputation, or loss of an eye?**

You must give the DLI the following information for each incident type:

- The establishment name;
- The location of the work-related incident;
- The time of the work-related incident;
- The type of reportable event (i.e. fatality, in-patient hospitalization, amputation, or loss of an eye);
- The number of employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;
- The names of the employees who suffered a fatality, in-patient hospitalization, amputation, or loss of an eye;
- Your contact person's name and phone number; and
- A brief description of the work-related incident.

## Occupational Injury Reporting...(cont'd)

### Who must keep OSHA injury and illness records?

All public sector employers are required to keep records of fatalities, injuries, and illnesses that are: work related, and a new case, and meet one or more of the general recording criteria of CFR 1904.7 or the application to specific cases of CFR 1904.8 through CFR 1904.12.

### Are public sector employers with less than 10 employees exempt from keeping the OSHA injury and illness records?

No. The DLI did not adopt the partial exemption for employers with 10 or fewer employees found in CFR 1904.1. All public sector employers must keep a record of fatalities, injuries, and illnesses.

### How should public employers keep records of fatalities, injuries and illnesses?

Public employers must use OSHA 300, 300-A, and 301 forms, or equivalent forms, for recordable injuries and illnesses. The OSHA 300 form is called the Log of Work-Related Injuries and Illnesses, the 300-A is the Summary of Work-Related Injuries and Illnesses, and the OSHA 301 form is called the Injury and Illness Incident Report.

### What is an equivalent form?

An equivalent form is one that has the same information, is as readable and understandable, and is completed using the same instructions as the OSHA form it replaces. Many employers use the workers' compensation first report of injury form instead of the OSHA 301 Incident Report.

### Where can I get more information on record-keeping and reporting for occupational injuries and illnesses?

- Visit the DLI's website at: <http://erd.dli.mt.gov/safety-health>
- View the Montana Occupational Safety and Health Act: [https://leg.mt.gov/bills/mca/title\\_0500/chapter\\_0710/part\\_0010/sections\\_index.html](https://leg.mt.gov/bills/mca/title_0500/chapter_0710/part_0010/sections_index.html)
- <http://www.mtrules.org/gateway/Subchapterhome.asp?scn=24%2E30%2E1>
- View the Code of Federal Regulations: <https://www.osha.gov/laws-regs>



## Stronger Communities Through Strategic Engagement Registration is open for the 88th Annual League Conference

By Janel Favero, Communication Specialist

Please register to attend the 88th Annual Montana League of Cities and Towns (MLCT) Conference. This event brings together more than 400 municipal elected officials and employees from across Montana. Attendees have the chance to collaborate, learn, and engage with their peers and subject matter experts.

This year's conference takes place October 2-4, 2019, at the Billings Hotel and Convention Center in Billings, MT. Our draft agenda and links for registration are available on our website at <https://mtleague.org/annual-mlct-conference/>.

### Highlights from this conference include:

- **Networking Opportunities**
  - President's Reception at [Zoo Montana](#);
  - Social Hour at the [Billings Depot](#);
  - [Golf scramble](#) at the [Exchange City Par 3 Golf Course](#);
  - [Heritage Biking/Walking Tour](#) from the [Yellowstone Kelly Interpretive Site](#) at the Swords Rimrock Park; and
  - For the first time, the full [Montana Association of Chiefs of Police](#) is joining our conference.

- **Educational Opportunities**
  - 15 breakout sessions on topics important to your community
- **Keynote presentations include:**
  - Clarence Anthony, Executive Director of the National League of Cities
  - Tim Pollard, CEO of Oratium and author of "The Compelling Communicator: Mastering the Art and Science of Exceptional Presentation Design"



To register for the conference, visit [www.mtleague.org](http://www.mtleague.org). Registration must be completed by September 25, 2019. We look forward to seeing you at the conference.

If you have any questions, please contact Janel Favero, Communication Specialist at 406-495-7016, or [jfavero@mmia.net](mailto:jfavero@mmia.net). ■



**Montana Municipal  
Interlocal Authority**

PO Box 6669  
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**Nominate your city for the Bob  
Worthington Risk Management  
Achievement Award (BWRMAA)**

The BWRMAA award identifies a person, group, department, or member that has demonstrated an exceptional effort to manage risk or prevent losses. The award can acknowledge risk management efforts within any of our coverage programs: Liability, Workers' Compensation, Property or Employee Benefits.

Nominations are not only a great way to recognize exceptional work but also encourages members to learn from each other in regards to effective risk management efforts.

Nominations are accepted from MMIA members and MMIA staff, with the winner announced during the annual Montana League of Cities and Towns Conference. **Make your nomination before September 11, 2019**, by completing the BWRMAA nomination form on our website at [www.mmia.net/riskmanagement/awards/](http://www.mmia.net/riskmanagement/awards/). ■

**Calendar of Events**

- Sept 2** **Labor Day**  
MMIA office closed
- Sept 11** **Defense Counsel Summit**  
Great Northern Hotel, Best Western Premiere, Helena
- Oct 2-4** **MLCT 88th Annual Conference**  
Billings Hotel and Convention Center, Billings
- Oct 6-9** **AGRIP Fall Educational Forum**  
Cleveland, OH
- Oct 14-16** **NLC RISC Staff Conference**  
Madison, WI
- Oct 21-25** **PRIMA Institute 2019**  
San Diego, CA

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**We Are you.**

