

WINTER 2016

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Are You Prepared for an Unannounced DLI Inspection?

Public Sector Compliance Emphasis for 2016/2017

The Montana Department of Labor and Industry, Employment Relations Division recently announced their new public sector compliance emphasis program effective October 1, 2016. The new emphasis program will focus on two elements of the Montana Safety Culture Act: MCA 39-71-1505(1)(a)(ii) and MCA 39-71-1505(1)(b).

MCA 39-71-1505(1)(a)(ii) requires that employers (including public sector) provide documented job or task specific safety training to employees. The Department of Labor has indicated their focus will be on verifying employees have received documented task or job specific training on mobile equipment operations. This includes but is not limited to loaders, graders, tractors, skid steers, etc. In addition, they will also be verifying each employer has evaluated their processes and trained employees on specialized tasks including but not limited to herbicide and pesticide application, chemical handling operations, traffic control operations, etc.

- (b) provide job or task-specific safety training appropriate for employees before they perform that job or task without direct supervision. The department recommends this training:
 - (i) include specific safety rules, procedures and hazards
 - (ii) clearly identify the employer’s and employee’s responsibilities regarding safety in the workplace;
 - (iii) be conducted by personnel knowledgeable of the task being trained; and
 - (iv) be conducted:
 - (A) when the safety program is established;
 - (B) whenever employee job assignments change;
 - (C) whenever new substances, processes, procedures or equipment are introduced to the work place; and
 - (D) whenever a new hazard is identified.

What is task specific training?

Montana ARM 24.30.2521 (1)(b) further clarifies the following regarding job or task specific training.

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DLI Inspection (cont'd)

How do you create task specific training?

Resources

The best source of information for creating task specific training for mobile equipment and power tools are the owner's or operator's manual. These manuals contain critical information such as instructions on: safety, usage, maintenance, storage, and troubleshooting, as well as technical specifications.

Resources for processes such as herbicide and pesticide applications and chemical handling should include the application guides and manufacturer's Safety Data sheets.

Resources for traffic control operations include the Manual on Uniform Traffic Control Devices (millennium edition) and OSHA 29 CFR 1926 Subpart G, Signs, Signals, and Barricades.

Classroom and Field Practicum

Best practice for task training is to include both a classroom session and a field practicum. The classroom training should be designed to provide individuals with the technical skills and information required to perform a specific task. Remember that each person's learning style is different. Using a variety of communication methods such as lecture, group discussion, videos, etc. is a good way to cover the variety of learning styles and ensure the employees are learning the necessary knowledge and skills to safely complete their tasks.

The field practicum is a supervised practice in a non-production setting that is used to identify whether or not the employee can apply what they've learned from the classroom session. It is important for the employer to evaluate: the employee's knowledge of pre and post operation checks of the equipment; their ability to demonstrate proper start-up and shut down procedures of equipment, their ability to demonstrate safe operating procedures and proper procedures to address any change to the equipment, process or condition; their knowledge of any required maintenance and service of equipment, and their knowledge of how and where to report any problems or malfunctions. This field practicum allows for the trainer to provide critical feedback to employees on their ability to safely operate the equipment.

It should go without saying, but employees that do not demonstrate the necessary skills for safe operation of equipment during the field practicum should not be allowed to operate the equipment in a production setting until they can successfully demonstrate in the non-production setting (field practicum) that they have the necessary skills for safe operation.

Once the employees successfully complete the classroom and field practicum, it is still important to observe their operations in a production environment to ensure they have a thorough knowledge of safe operation and they are following the expectations set forth by the city/town.

Documentation

It is important to document the training and maintain training files. The documentation should include the date and time of the training, the specific training topic, participants of the training, a sign-in sheet, trainers name, and include via attachment any materials provided during the training. Training records should be kept in a training file by date and topic, not in personnel files.

Can a third party such as an equipment representative, consultant or insurance provider conduct the task specific training for employees?

The short answer is no. Although third parties can be a good resource for gathering information to include in the training, state and federal statutes require the employer to conduct the training. The term "competent person" is used in many OSHA standards and documents, which are enforceable by the Montana Department of Labor and Industry. An OSHA "competent person" is defined as "one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them." Third parties would not meet the definition of "competent person".

Why is task specific training important?

When employees know how to do a task correctly, it minimizes the risk of injury. Employees are the most valuable asset of an organization. Ensuring they are injury free reduces:

- 1) Excess costs such as overtime wages for other workers to make up for the injured employee's lost work.
- 2) Costs of finding and training a replacement for the injured employee.
- 3) Increased assessment costs due to a higher mod; and
- 4) Costs for damaged equipment or other capital assets. A safe work environment also improves employee morale.

So what's the second element of DLI Safety Bureau's emphasis program this year?

MCA 39-71-1505(1)(b) and ARM 24.30.2521 (e) specify that employers are required to conduct a documented self-inspection or hazard assessment of each of their workplace facilities at least annually. The employer must also identify corrective actions needed and document the progress and actions taken to abate the hazards found during the self-inspection.

So what types of hazards should we look for and address?

Key areas to focus on should include, but are not limited to: electrical hazards, machine guarding, housekeeping, and fall hazards.

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Cyber Risk, Fact or Fiction?

By: Alan W. Hulse, CEO

We live in an increasingly complex and technological world. While the expansion of technology continues to make our lives more convenient, efficient, and productive, it also comes with a cost. As we continue to expand our reliance on the internet for such things as banking, records access through website portals, communication through e-mail and social media, and shopping, we read and hear news stories daily of people having their identities stolen, and bank accounts drained. We see continually major corporations and government entities being hacked and people's private information being stolen. We see on the nightly news stories of cyber espionage and cyber terrorism being perpetrated against us by other countries such as China, Russia, or North Korea. Cyber Risk is real and it is growing with our expanded use and reliance on the internet.

Living in Montana, one might be lulled into a false sense of security that these criminals aren't going to waste time with us, they are after the big fish, the major corporations, banks, the federal government. Living out here in rural Montana, I don't have to worry, these criminals aren't looking at me, I'm too small. Let's evaluate that premise for a moment, criminals by nature are opportunistic, they target vulnerabilities. The weaker the better. According to Beazley, which is a leader in the insurance industry in insuring Cyber Risk, Public Entities are perceived to be easier targets for criminals because: they tend to have older more vulnerable systems, they are less vigilant at protecting their data and they possess valuable data.

Living in Montana does not exempt us from this threat. The State of Montana has had multiple breaches over the past few years, the largest being the Department of Health and Human Services being hacked and allowing access to private records of 1.3 million people. This type of breach triggers legal obligations on the State to:

- 1) Provide notification to everyone involved.
- 2) Credit monitoring, and
- 3) Hiring the computer forensic experts to determine how the system was breached and shore up the weakness.

DLI Inspection (cont'd)

Are there resources to assist with self-inspections?

Yes! There is no need to reinvent the wheel. There are many existing checklists and action plans available for you to customize to meet your operations. One free resource with more than 50,000 templates for inspection checklists is IAuditor. This free app is for mobile devices and your PC. This powerful tool allows you to build templates or select from thousands of existing templates, conduct audits and capture your data, analyze your

This can cost significant money for the entity that was breached.

The reality is, Cyber Risk is not fiction, it is a fact of life, even here in rural Montana, and like any other challenge we encounter, we need to develop and implement strategies to deal with it. Fortunately, if you participate in the MMIA Property Program, we provide cyber coverage through Beazley as an add-on to the program. This is a standalone separate insurance underwritten and administered through Beazley, but it is provided to participants in the MMIA Property Program at no extra cost. If you would like

CEO'S CORNER



details of that coverage, please contact the MMIA for more information. Having this coverage is a great way to protect your entity financially in the event you have a breach, however, implementing strategies to mitigate the risk of having a breach is critical.

The MMIA is working with Beazley's loss control personnel and Alliant to put together training and resources for MMIA Members to help you better safeguard your systems and operations to mitigate against the risk of being hacked or breached. We plan on rolling our training and resources out this spring. It is my hope that our members will take this issue seriously and will take advantage of these resources. While these incidents can be expensive financially, the embarrassment and loss of trust and credibility when one of these events becomes public cannot be measured in dollars and cents, and could continue to cost your community for years. ■

data and send reports. For more information, visit <http://www.safetyculture.com/iauditor> or contact MMIA's risk management specialist Thom Danenhower at 406-495-7025 or tdanenhower@mmia.net ■



Police and Firefighters

When injured on the job and unable to work, who owes what in wage loss?

By: Ann Komac, Claims Manager



Many of you are aware when a police officer or firefighter are injured while in the course and scope of their duties and unable to return to work, Montana statute requires cities and towns to supplement their workers' compensation benefits. MMIA staff have received numerous inquiries recently regarding the application of these statutes.

Firefighters

MCA 7-33-4133 reads:

Payment of partial salary to firefighter injured in performance of duty. (1) A member of a fire department of a first-class or second-class municipality who is injured in the performance of duty must be paid by the municipality the difference between the member's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the firefighter must require medical or other remedial treatment and must be incapable of performing the firefighter's duties as a result of the injury.

It is important to note this statute only applies to Class I and II municipalities. When a firefighter is injured while on duty and is unable to return to work they are entitled to temporary total disability benefits per the Montana Workers' Compensation Act. The MMIA will pay two-thirds of the gross wages up to a maximum of the state's average weekly wage at the time of injury as established by the Department of Labor & Industry. The difference between the workers' compensation benefit and the firefighter's net salary must be paid by the Member until they are able to return to work or for up to one year, whichever occurs first.

The least complicated way to handle this and the approach many MMIA Members choose to take is continuing to pay the worker their full salary and require the worker to sign over temporary total disability checks from the MMIA to the Member.

Police Officers

MCA 7-32-4132 reads:

Payment of partial salary amount of officer injured in performance of duty. (1) A member of a municipal law enforcement agency of a municipality contracting for

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Police and Firefighters (cont'd)

retirement coverage pursuant to 19-9-207 who is injured in the performance of the member's duties and who requires medical or other remedial treatment for injuries that render the member unable to perform the member's duties must be paid by the municipality the difference between the member's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the member of the law enforcement agency must be unable to perform the member's duties as a result of the injury.

While the firefighter statute previously discussed applies to only to Class I and II municipalities, the statute applicable to members of a municipal law enforcement agency only requires contracting for retirement coverage under MCA 19-9-207.

19-9-207. Election to join retirement system -- transfer of assets. (1) Cities other than those participating in the statewide police reserve fund administered by the board in accordance with Chapter 335, Laws of 1974, as of June 30, 1977, may elect to join the retirement system by passing an ordinance stating the election and the consent

Apply Today – Risk Management Training Endowment

In our fast-paced world, the risks we have to manage evolve quickly. We need to make sure we manage risks so that we minimize their threats and maximize their potential. Risk management involves understanding, analyzing, and addressing risk to make sure organizations achieve their objectives.

To assist our members in this great endeavor, the MMIA established the Risk Management Training Endowment. The endowment is designed to assist municipalities with training efforts and to encourage training partnerships among Montana cities and towns. Any MMIA member can request up to \$2000 per initiative and up to \$4,000 per fiscal year from the endowment.

To qualify for funding, the following requirements must be met:

- Requests must identify a risk management initiative that includes registration of at least 10% of MMIA's member entities.
- Request must be made by formal application and will be accepted on a first come, first served basis. Visit the MMIA website for the application at: [MMIA>Risk](#)

of the city to be bound by the provisions of this retirement system. Upon the enactment of an ordinance, the provisions of this retirement system become applicable to the city. Any city enacting an election ordinance shall send a certified copy of the ordinance to the board and shall, as soon as possible, deposit all cash and securities held by it in its local police reserve or retirement fund into the municipal police officers' pension trust fund. The value of the securities must be determined by the board.

No matter class size, if a MMIA Member has elected to join the Municipal Police Officers Retirement System (MPORS), the Member is responsible to pay the difference between the workers' compensation benefit and the officer's net salary---this applies to police officers only. MMIA staff have received inquiries regarding other municipal law enforcement center employees and because MPORS is only available to police officers, other staff are not eligible.

Once again the least complicated way to handle this and the approach many MMIA Members choose to take is continuing to pay the worker their full salary and require the worker to sign over temporary total disability checks to the Member.

If you need more information or have questions about this part of the workers' compensation statute, please contact Ann Komac, (406) 495-7011 or akomac@mmia.net ■



[Management>Risk Management Training Endowment](#)

- Endowments will be awarded in increments up to \$2,000 per initiative
- Only one endowment per member department and no more than \$4,000 total to a single member per fiscal year.

What ideas do you have for better understanding risk? Let MMIA help turn your ideas into action. Apply for a risk management training endowment today! ■



Employee Assistance Program – A Tool for Supervisors

The Employee Assistance Program (EAP) through Reliant Behavioral Health (RBH) is made available to participants of the MMIA Employee Benefits Program. In addition to providing many resources to employees that include counseling, legal services, financial services and more, there are also tools and resources to assist supervisors. RBH offers worksite and supervisor resources on their website www.myrbh.com (use access code: MMIA) or call 866-750-1327. As a supervisor, please also know that you can direct employees to the same website or phone number as a resource for them.

Here are some supervisor tips from RBH:

Q. How can supervisors play a role in helping employees not bring their problems to work, and separating their home life from their work life so productivity is not affected?

A. The EAP adage that employees do not leave their problems at the front door when they come to work is a rallying cry for the growth of EAPs, but another part of this reality is that employees must be appropriately confronted when personal problems interfere with their productivity, attendance, quality of work, availability, and attitude. No supervisor will be able to prevent an employee from bringing his or her personal problems to work. However, supervisors can play a powerful role in helping employees seek help earlier before interference occurs. The promotion of the EAP to supervisors is crucial, allowing these managers to feel empowered in confronting employees and confident that the EAP is a viable resource. Avoiding any delay in supervisor referrals is also key.

Q. I am a new manager and in my first job as a supervisor. What problems might I encounter early that I can prepare for now? If I feel overwhelmed, can the EAP help me?

A. Becoming a manager can be exciting, but be sure you understand your role and responsibilities. Have this discussion and nail down the details early. This will prevent many problems you would otherwise face from overlooking important aspects of your job. Be prepared for difficult challenges that lead you to question your ability to do the job. This is normal. If your employees are performing well, do not see this as a signal to ignore them until they need you. Be proactive and engage with them regularly. The supervisory role includes influence projected by your knowledge and abilities, and leverage naturally linked to your authority. Both dynamics influence employee productivity. The EAP can help you with time and stress management; tips on organizing work; consulting on how to manage difficult employees and how to coach; education on conflict resolution and managing teams; support when faced with tough decisions like terminating an employee; and, counseling to help you avoid burnout.



Q. Supervisors are supposed to play a role in reducing workplace stress. What areas of workplace stress most affect employees? Knowing what they are would help me consider strategies to at least deal with the most important issues. I know I can't intervene in everything.

A. You are correct. You won't be able to intervene in every issue, but there are broad categories of stress worth knowing about that can help you stay attuned to relationship and workplace dynamics with which interventions could reduce the impact of stress. Stress research usually focuses on 1) conflicts with supervisors, 2) complaints about the work culture and factors associated with it, and 3) dissatisfaction with making too minimal a contribution, not feeling like one belongs, is included, or fits in. This includes a feeling of not being valued for one's contributions to the achievements of the work unit. Keep these categories in mind in conversations with employees and when dealing with normal workplace conflict. They can alert you to take action, and this can reduce turnover if you jump on problems quickly and resolve them. Turn to the EAP to help you, as needed.

Q. I don't want performance of my employees to suffer if a personal problem does not get resolved with help from the EAP. If I have ideas and advice to share that can help the employee, shouldn't I play this role, offering advice or counsel to protect the bottom line?

A. A supervisor can be very knowledgeable about an employee's personal problem, including how it originated, its historical progression, and perhaps where it will lead. It's tempting to step in and offer your counsel, but pass information and knowledge to the EAP so your role as a supervisor does not become one of dual purpose—insisting on accountability, while also advocating tolerance and patience. When this happens, employees choose the role you will play, and it is predictably the latter one. This will lead to postponing important decisions crucial to maintaining workplace productivity, which will affect the bottom line. Talk to the EAP. The professional will consider your recommendations, and they are more apt to be followed. ■



Calling All Bob Worthington Risk Management Achievement Award Nominees (BWRMAA)

Do you know of a person, group, or department within your city/town that demonstrates an exceptional effort to manage risk or prevent losses in liability, worker's compensation, property or employee benefits?

If so, then be the first to share their efforts with the MMIA membership by nominating them for the Bob Worthington Risk Management Achievement Award! You can nominate a candidate by simply going to the [MMIA Website>Risk Man-](#)

[agement>BWRMAA](#) and completing the form.

Sharing their efforts is not only a great opportunity to recognize their exceptional work, but also encourages members to learn from each other in regards to effective risk management efforts.

Each year the MMIA staff reviews the nominations and announces the winner during the annual MLCT conference. Don't delay, nominate today! ■

Save the Date! The 2017 Executive Forum is Just Around the Corner

By Janel Favero, *Communication Specialist*

Mayors, Chief Executives, and City Managers! We are pleased to invite you to the upcoming Executive Forum in Helena, which will be March 1-3.

We will start Wednesday afternoon with a Legislative Update (provided by our friends Tim Burton and Kelly Lynch at the Montana League of Cities and Towns (MLCT)), followed by an afternoon of breakout sessions focused on Budgets, Wage and Hour, a facilitated conversation for Mayor to Mayor and Manager to Manager discussions. On Thursday, we will talk about Safety, Cyber Security, Planning, Ethics, and conclude the day with Table Topics - where you will have the opportunity to talk to subject matter experts on topics such as: Robert's Rules, the ADA, Sign Codes, Marsy's Law, Roles and Responsibilities, and more.

On Friday, we will give a tour of the State Capitol, and give you an opportunity to meet with your representatives. We will meet in the Rotunda at the Capitol at 9:00 AM. We recommend looking into the Capitol area Park and Ride system, which has a regular bus route during the Legislative Session.

The Forum will be held at the Holiday Inn (22 N Last Chance Gulch, Helena MT 59601). Look for the Agenda to be posted on our website soon! To reserve a room, please call 406-443-2200, and use the code "2017 Executive Forum"

The 2017 Executive Forum is proudly brought to you by the MMIA, MLCT, and the Local Government Center. ■

Risk Management: Proper Vacation/Annual Leave Accrual

By Angela Simonson, *Human Resource/Employment Practices Specialist*

Full-time and Part Time Regular, Temporary and Seasonal public employees must accrue vacation/annual and sick leave. It has come to the attention of MMIA that some cities/towns may have an accrual table for Vacation/Annual leave that differs from MCA 2-18-612. This statute reads as follows:

Years of Employment	Working days credit/year
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years or more	24

It is important that accrual rates increase as of the anniversary dates for 10 years, 15 years and 20 years.

Questions? Please reach out to Angela Simonson, Employment Practices Specialist 406-495-7017. ■



Happy Holidays!
from the **The MMIA** staff



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Calendar of Events

December

- 25:** Christmas Day
- 26:** Christmas Day, holiday

January

- 1:** New Year's Day
- 2:** New Year's Day, holiday
- 16:** Martin Luther King Jr. Day, holiday
- 26:** Employee Benefits Committee meeting, Helena
- 27:** MMIA Board of Directors meeting, Helena

February

- 20:** President's Day, holiday

March

- 1-3:** Executive Forum, Helena
- 23:** EB Committee meeting, Helena
- 24:** MMIA Board of Directors meeting, Helena

