

**WINTER 2017**

- 1 Limiting risk in personnel management for newly elected officials
- 2 MMIA Board of Directors vacancy
- 2 Everyone loves an upgrade! Introducing the new MMIA web site
- 3 Mayors', chief executives', and city managers' Executive Forum March 28-30, 2018, in Polson
- 4 Conducting workplace alcohol and drug testing in Montana
- 5 Property renewal changes: FY2018 – 2019
- 6 2018 Directory of Montana Municipal Officials update
- 6 Municipal Government Resource 101
- 7 Beat the holiday stress with these proven steps
- 8 Calendar of Events



**Limiting risk in personnel management for newly elected officials**

*By: Angela Simonson, HR/Employment Practices Specialist*

**L**ocal elections frequently introduce a change in leadership and this change can often introduce risk. The MMIA has recently received a number of inquiries, anticipating such changes, in regards to what a newly elected official can or cannot do with existing personnel. It is important to ensure the municipal attorney and all newly elected officials understand risks associated with personnel management. This article will explore risk associated with newly elected officials terminating personnel without cause and newly elected officials serving dual roles of employee and elected official.

states that termination from employment, outside the prescribed probationary period, must be for good cause. Failing to have good cause when terminating could likely result in a wrongful termination claim.

In addition to WDEA, public employees have a constitutional property right to their positions. This affords them due process in regards to disciplinary action, including termination. Due process allows the employee to share their side of the story prior to the employer issuing discipline. These two laws make it nearly impossible for a newly elected official to legally terminate an employee without first establishing good cause and offering due process. A new mayor can work with their council to develop policy and then hold all staff accountable to the policy, disciplining as necessary and terminating—after offering due process, if needed.

**Mayor campaigned to “clean-house”/terminate staff**

The first scenario MMIA is often asked about involves a newly elected mayor who campaigned on promises to “clean-house” or terminate specific staff if elected. While most forms of government afford the mayor the power to appoint and terminate specific employees, the Wrongful Discharge from Employment Act (WDEA) MCA 39-2-901:915

What does this mean for the mayor who made campaign promises to “clean house” at city hall if elected? It means

*Continued on PAGE 3...*

**MMIA BOARD OF DIRECTORS**

- Ron Alles**  
Chair, City of Helena
- Anna Rosenberry**  
Vice Chair, City of Bozeman
- Doug Kaercher**  
Treasurer, City of Havre
- Lanie Gospodarek**  
Secretary, Town of West Yellowstone
- Mark Shrives**  
City of Polson
- Greg Doyon**  
City of Great Falls
- Ted Barkley**  
City of Belgrade
- Larry Bonderud**  
Member at Large, City of Shelby
- Doug Russell**  
City of Kalispell
- Doris Pinkerton**  
City of Forsyth
- Marlene Mahlum**  
City of Wolf Point
- Bruce McCandless**  
City of Billings
- Jim Nugent**  
City of Missoula
- Eileen Joyce**  
Butte-Silver Bow County
- Jerry Jimison**  
City of Glendive

# MMIA Board of Directors vacancy

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

The November election resulted in the MMIA losing a Board member who represents communities with a population less than 20,000, and as a result, there is an open seat available on the MMIA Board of Directors. This is your chance to get involved, and have a voice in how your Risk Retention Pools operate. By sitting on the MMIA Board of Directors you will have a say in shaping how future coverages, pricing, services, and programs function. I would encourage you to think seriously about getting involved in this organization that is owned and operated by the municipalities of Montana.

The MMIA Board of Directors consists of fifteen individuals representing member entities of the MMIA as a whole. Seven of the board seats are appointed by members with a population exceeding 20,000. Seven of the Board seats are elected to represent the members with a population less than 20,000 and the 15th seat (At-Large Seat) is elected by the seated 14 Directors. All terms on the Board are for two years. Terms are staggered and expire at the MMIA Annual meeting.

Individuals who are interested in being appointed to fill the vacant seat on the MMIA Board and are an official of a municipality with a population less than 20,000 may submit their name for consideration. This can be done by submitting a letter of interest to the MMIA Board of Directors. The Board of Director's will hold a conference call January 11, 2018 to appoint the new member.

The Board meets five to six times per year. Meetings are generally held on Fridays in Helena. The first meeting of

the calendar year will be January 26, 2018. By appointing the new member early January, it will allow the new member to attend that first meeting.

Persons interested in this position should be available to attend regular meetings and a two to three day Board retreat held in August. The MMIA Board is a dynamic organization charged with directing the activities of a statewide interlocal agency that provides essential risk retention and management services to Montana cities and towns. Through regional and national training, Board members obtain a broad understanding of the varied aspects of the liability, workers' compensation, property and employee benefits risk retention industries. Board members participating in meetings or training are reimbursed for lodging and receive per diem and mileage payments.

Individuals interested in this seat on the MMIA Board are encouraged to send notice of their interest by Friday, December 22, 2017 to:

## MMIA Board Appointment

Attn: Sandy Lang

PO Box 6669

Helena, MT 59604-6669

800-635-3089, ext. 123

slang@mmia.net ■

CEO'S CORNER



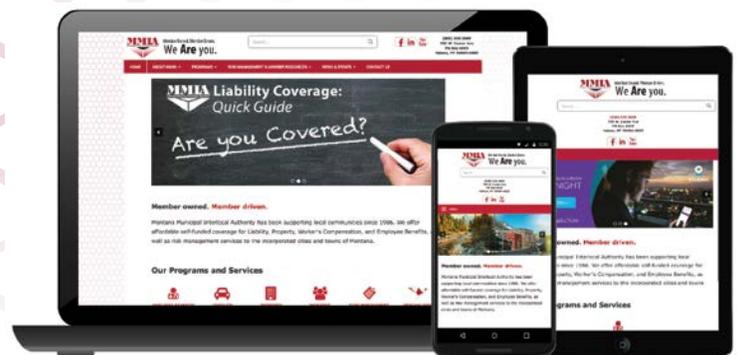
# Everyone loves an upgrade! Introducing the new MMIA web site

By: Janel Favero, Communication Specialist

We would like to announce our web site upgrade. With the new design, we hope to serve our members like never before, with easy to navigate menus, complete mobile capability, clean links that are easy to read and share, and a clean, new design.

We are adding new sections to our web site regularly, and we hope we can service our members with this value-added content. You can view the newly designed site at our web address, [www.mmia.net](http://www.mmia.net). Can't find what you are looking for? Visit the sitemap at [www.mmia.net/site-map](http://www.mmia.net/site-map).

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



# Mayors', chief executives', and city managers' Executive Forum March 28-30, 2018, in Polson

The MMIA, the MSU Local Government Center, and the Montana League of Cities and Towns would like to invite all mayors, chief executives, and city managers to the 2018 Executive Forum. The Forum will take place March 28 - 30 at the Red Lion Ridgewater Inn and Suites in Polson. You may reserve your room now by calling (406) 872-2200.

The event this year will feature a Local Development tour of Polson area businesses on Wednesday, followed by a social hour on Wednesday night. On Thursday, our participants

can expect a full slate of presenters on topics specific to their needs. On Friday, we will have a half day session, with round-table discussion.

Please register to attend the Executive Forum at [www.mmia.net](http://www.mmia.net). Although registration is free; we need an accurate attendee count to adequately plan the event. If you have any questions, please contact Janel Favero at 406-495-7016 or [jfavero@mmia.net](mailto:jfavero@mmia.net). We look forward to seeing you in March!

---

## Limiting risk in personnel management...(cont'd)

that taking such action may introduce legal risk to the municipality. It is wise to consult with the municipal attorney for guidance on case law that can be found in Montana which speaks to WDEA applying to all employees, even those "appointed" in a local municipality. MMIA can direct the municipal attorney to specific cases if need be.

## Councilperson campaigned to terminate staff

The second scenario MMIA is often asked about is very similar to the first, but involves a campaigning councilperson making promises to "clean-house" at town hall. Under the roles and responsibilities set forth under Montana Law, council members do not have the power to terminate or supervise employees. They are a member of the legislative branch which, as a body, sets policy and directs the executive of the municipality (mayor or city manager) to uphold these policies. It is the executive who supervises, disciplines and terminates staff.

What does this mean for the council person who campaigned on promises to make such changes at town hall? This council person would be wise to obtain roles and responsibilities training through the Local Government Center to better understand what a council person can and cannot do within the course and scope of their position, then work with the council to ensure appropriate personnel policies are in place to guide the executive. They may also want to seek guidance from the municipal attorney.

## The new mayor is a city/town employee

The third scenario MMIA staff receives inquiries about involves current municipal employees successfully winning the seat of mayor. There is an AG opinion your municipal attorney can reference to offer guidance in this area. MMIA believes from this opinion, that having a mayor also serve as

an employee, may not be allowed under the law.

The reasons for such a practice being against the best interest for self and the municipality are as follows:

- (1) Under the Commission-Executive form of government (council-mayor), the mayor is the executive of all employees. The executive directly and indirectly supervises all staff of the city/town. If an employee is also the mayor, then he/she is essentially their own boss. This is true even if their role as an employee is not that of a department head who reports directly to the mayor. If mayor, they would be supervising the person who serves as their manager.
- (2) Commission-Manager form of government may be less black and white. MCA 7-3-304 grants supervisory authority to the city manager in this form of government. If there is a mayor, he/she is a member of the council with no supervisory powers, who must remember their role is to provide guidance to the manager, as a legislative body, not as an individual. Incompatibility of office may not be as direct a concern, but a conflict of interest issue could still exist if the council were voting on personnel matters that directly affect the mayor as an employee, including voting on the proposed budget. The municipal attorney should address this.

All situations listed above need to be closely reviewed by the municipal attorney, who has the role of offering legal advice to the city/town. Failing to follow such guidance could cause complications should a claim arise.

MMIA does not offer legal guidance, but instead offers suggestions for best practice. MMIA can direct city/town attorneys to specific cases and AG opinions for their review, to assist in making legal opinions to the Municipality. ■

# Conducting workplace alcohol and drug testing in Montana

By: Angela Simonson, HR/Employment Practices Specialist

Conducting alcohol and drug testing on employees can be an effective risk management tool to limit risk for injury. However, performing such tests also brings risk of its own. Did you know that Montana State law has clear parameters on which positions an employer can test as well as the types of testing an employee can be subject to? It is important for all employers who might be considering a testing program and those who currently have a program to fully understand the limitations Montana Code Annotated has set for Workplace Drug and Alcohol Testing Programs.

The 2015 Montana Workforce Drug and Alcohol Testing Act can be found under MCA 39-2-205 to 39-2-211. This act helps employers understand who they can test, what can be tested for, how specimens can be collected, which types of testing can be performed and much more. This article will explore common questions many of the MMIA members have asked regarding testing programs, but is not intended to cover the entire act. Please work closely with your city/town attorney for guidance regarding drug and alcohol testing.

## Are all positions requiring a Commercial Drivers License (CDL) subject to testing?

If the position is required to have a CDL under Department of Transportation (DOT) standards, then yes they are subject to all testing programs—Pre-employment, Random, Reasonable Suspicion and Post Accident.

## Are there positions besides those requiring a CDL that are REQUIRED to be tested?

No. Montana's Workplace Act does not require certain positions to be tested. Such testing is the choice of the employer. However, if an employer chooses to have a program, there are only certain types of positions that can be subject to testing.

Montana state law speaks to testing of employees outside

those with a CDL. MCA 39-2-206 states that covered employees can be those engaged in the performance, supervision or management of work:

- in a hazardous work environment
- security position or a position affecting public safety or public health
- a position in which driving a motor vehicle is necessary as party of work duties
- a position involving a fiduciary responsibility for the employer.

This same MCA states that independent contractors and elected officials of a local government cannot be tested.

I strongly recommend municipalities work closely with their city/town attorney to ensure all positions subject to testing can meet the standards of a covered position as defined in MCA.

## Can we test all employees?

MCA is fairly clear that only those fitting into one of the categories of covered positions may be tested. It is important that your organization justify how each of your tested positions fits into one of these categories.

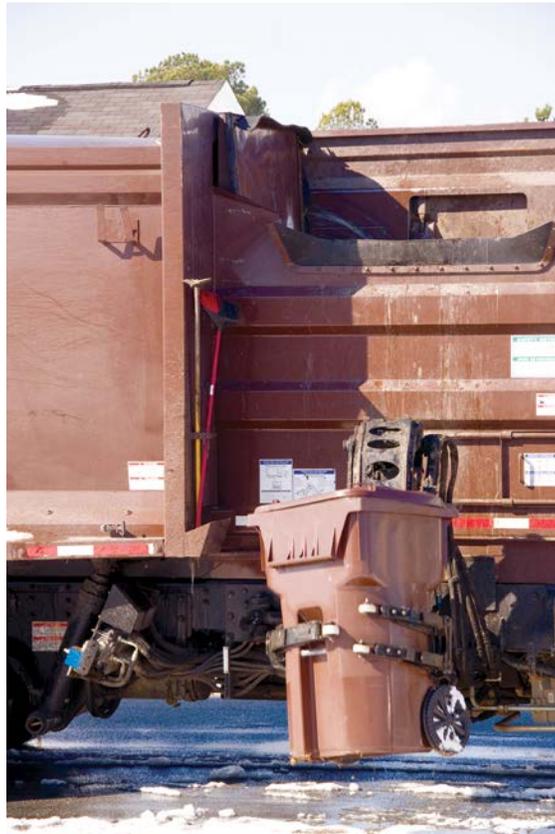
## Does an employer need to have a written policy or give advance notice of a testing program?

YES! Employers must have a written policy that complies with MCA—this MCA is very specific in what must be included in a testing policy. Staff are to be given 60 days notice before a testing program is put into place.

## What types of testing can covered employees be subject to?

An employer can establish a testing program that includes any or all of the following types of tests:

- Pre-employment
- Reasonable Suspicion



# Property renewal changes: FY2018 – 2019

By: Laura Wigen, *Property Program Specialist*

## You've asked, and we've listened!

New this year, the MMIA Property Renewal is moving to January – March annually. Beginning January 2, 2018, Property Renewal will open. Be on the lookout - you will receive an email initiating the renewal process.

This is your opportunity to inform the MMIA of changes, additions, and removals that will be used to calculate your annual assessment for the FY18-19 period. Thorough review and auditing of your real/personal property, contractors/mobile equipment and vehicles is encouraged.

For those members that receive a \$0 stated value memo, please review for accuracy and make any updates and return the signed memo to Laura Wigen.

Property Renewal will close 3/30/2018. For questions, please contact Laura Wigen at 406-495-7024 or via email at [lwigen@mmia.net](mailto:lwigen@mmia.net).



## Drug testing in Montana...(cont'd)

- Random
- Post Accident

Montana allows collection of specimens to be done in a non-invasive manner. This normally means urine or breathalyzer testing, not blood draws.

### Can an employer require applicants and/or employees to pay for the testing?

No. The only time the employer can shift the cost is if the employee believes the positive test is incorrect and ask for a second test to be run on the split sample. If the second test is also positive, then the employee pays for the test. If it is negative, then the employer will pay for the second test.

### Can results of tests be reported to our police department or other officials within our city/town?

Absolutely not! All test results are confidential. The Medical Review Officer, testing Administrator within the city/town, the employee and their manager will know the test results were positive, but results should not be shared with others in the organization or with outside organizations such as employment references, etc.

MCA 39-2-211 Confidentiality of results, says,

- (1) "Except as provided in subsection (2) and except for information that is required by law to be reported to state or federal licensing authority, all information, interviews, reports, statements, memoranda or test results received by an employer through a qualified testing program are confidential communications and may not be used or received in

evidence, obtained in discovery or disclosed in any public or private proceeding.

- (2) material that is confidential under subsection (1) may be used in a proceeding related to (a) legal action arising out of an employer's implementation of 39-2-205 through 39-2-211 OR (b) inquires related to a workplace accident involving death, physical injury or property damage in excess of \$1500 when there is reason to believe that the tested employee may have caused or contributed to the accident."

### We are a small organization, how can a random testing program work with such few employees?

Many small organizations join a testing consortium. Testing consortiums typically offer many services for their clients. Services include assistance with policy and education, managing pools for random testing, ensuring labs are certified for DOT drug and alcohol testing and much more. Contact MMIA for more information on consortiums available in Montana.

In conclusion, drug and alcohol testing offers good risk management, but mishandling how testing occurs can at times introduce more risk for your organization. It is important that you fully understand the requirements of the Montana Workforce Drug and Alcohol Testing Act and those set by DOT for all employees required to hold a CDL. Your city/town attorney and MMIA can offer guidance on steps to take for limiting risk in this area.

Do you have any questions? Contact Angela Simonson at 406-495-7017 or [asimonson@mmia.net](mailto:asimonson@mmia.net). ■

# Municipal Government Resource 101

Presented to you on behalf of your Municipal Resource Organizations  
Montana Municipal Interlocal Authority, Montana League of Cities and Towns, and  
Montana State University Local Government Center

FOR  
NEWLY ELECTED  
OFFICIALS!



[www.MTMunicipalHelp.org](http://www.MTMunicipalHelp.org)

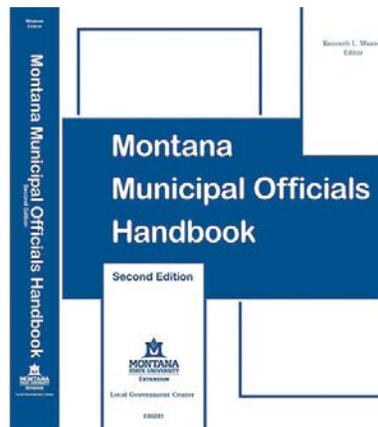
The Montana Municipal Interlocal Authority, the Montana League of Cities and Towns, and the MSU Local Government Center are working closely together to make sure Montana's newly elected municipal officials get off to a great start. For this, we have created a new web site, [www.MTMunicipalHelp.org](http://www.MTMunicipalHelp.org). This site is designed to connect elected officials to a few important resources that will help them be successful in office from the start.

you make it available to them, and if you can't find your copy, visit <https://store.msuextension.org> to purchase a new copy.

Encourage your newly elected officials to go to <http://bit.ly/2BUsOSI> and fill out the contact information form so we will be able to reach out to them directly regarding important municipal information, trainings, etc.

## On the site, we have easy to follow steps to identify:

1. Municipal Government Roles/Functions/Responsibilities
2. Conduct of Council Meetings
3. Municipal Budget/ Finance
4. Learn what your Municipal Resource Organizations can do for you
5. Topic Resources List, Laws and Contacts



Thank you for all the hard work you do for our cities and towns!

Sincerely,

Alan Hulse – MMIA Chief Executive Officer

Tim Burton – MLCT Executive Director

Dan Clark – MSU LGC Executive Director

A vital resource to your newly elected officials is the Montana Municipal Officials Handbook. Please make sure that

## 2018 Directory of Montana Municipal Officials update

The MLCT and MMIA will be teaming up to compile the 2018 Directory of Montana Municipal Officials for publishing in the spring of 2018. In order to offer this invaluable tool to our members, we need your city/town's information. Each municipality will be contacted via telephone and asked for updates on items such as mayor, city council, and department



head information including names, phone numbers and email addresses. We will also be verifying office hours, council meetings dates and web site addresses. Please expect a call between January 3 - 31, 2018. If you wish to complete your town's profile electronically ahead of time, please visit <http://bit.ly/2BfcQp0>

# Beat the holiday stress with these proven steps

**Y**ou and your employees may face added stress during the holidays. What can you do to help yourself and your employees stay happy, healthy, and productive when winter brings on anxiety, relationship issues, money problems, grief, and illness? The following steps can be useful at work and home. Feel free to share these tips and ideas with your employees.

## STEP 1 – Get organized!

If you can plan ahead, you can avoid a lot of holiday stress. Here is a great tip for making a to-do list that will give you plenty of time to enjoy the season.

Draw five small boxes on a sheet of paper—mark each for one day of the week. Add six or seven lines within each box. Add your to do items in Monday’s box and focus on completing them. Unfinished items move to the next day’s box. This strategy improves focus, gives you a global view of accomplishments, prompts more action, and reduces procrastination. Don’t expect perfection, but see whether you notice an up-tick in getting more done and less negative self-talk about what you don’t get done.

## STEP 2 - Remember the four As of Stress Management

**Avoid:** Manage stress by planning or making different choices that steer you clear of stress and strain. (Example: You decide to do your tax return early to help avoid the stress of last-minute number crunching and any feelings of panic over the deadline.)

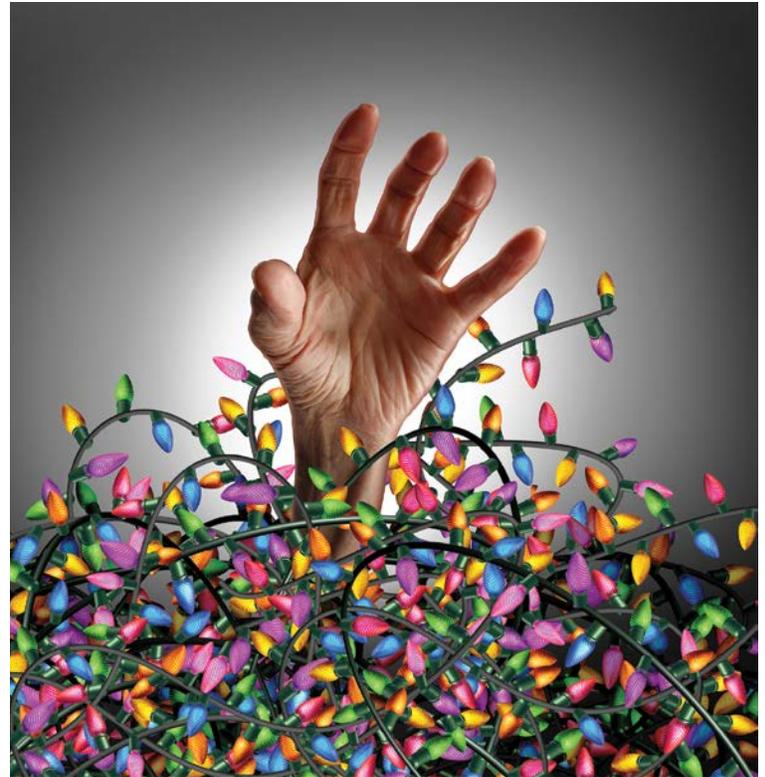
**Alter:** Act to create change right now regarding the stressful situation. (Example: Take a different way to work to avoid a traffic jam that will stress you out even if it takes a few minutes longer.)

**Adapt:** Adjust the way you think about a stressor you can’t avoid. (Example: You make a decision to look on the bright side of a problem or situation that would otherwise be more distressful.)

**Accept:** Stop fighting a stressor you can’t control. Find internal ways of coping with it to minimize its harmful effects. (Example: You experience a loss or fail a test, and decide to talk it over with a friend, counselor, or advisor.)

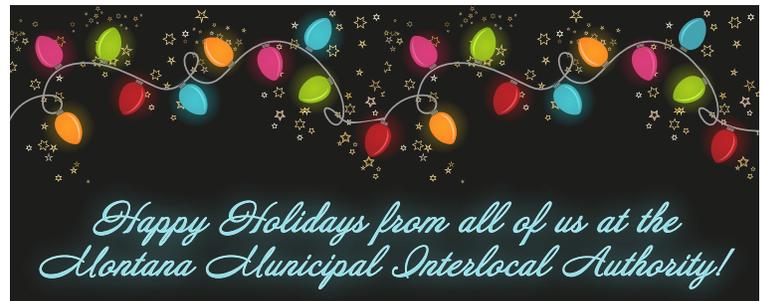
## STEP 3 – Reach out if you get overwhelmed and encourage your employees to do the same.

Don’t avoid seeking help because you think “no one’s got the answer.” The Employee Assistance Program (EAP) available



through MMIA and professional counselors can help! They have many resources to help you regain your wellbeing. Counselors will help you in two ways: first, they will help you get relief from your immediate bad feelings; second, they will help you find practical strategies to resolve the issues you face.

Now is the time to start taking steps toward a calmer season and happier employees! Participants of the MMIA Employee Benefits Program can contact the EAP at 866-750-1327 for assistance and resources. ■



### MMIA Newsletter Staff

**Editors:** Janel Favero, Sandy Lang, Britani Laughery, and Angela Simonson

**Contributing Writers:** Janel Favero, Alan Hulse, Angela Simonson, and Laura Wigen

**Design and Layout:** Janel Favero

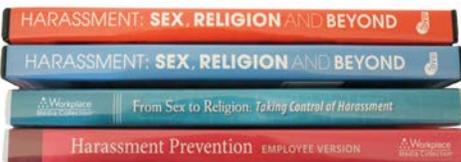


**Montana Municipal  
Interlocal Authority**

PO Box 6669

Helena, MT 59604-6669

## MMIA Risk Management Library!



We are happy to announce that MMIA will now have a limited, in-house resource library for our members. Currently, we have four DVD's to help with your Harassment Prevention Training. Please contact Angela Simonson, Employment Practices Specialist [asimonson@mmia.net](mailto:asimonson@mmia.net) or 406-495-7017, for details on the DVDs and the process for checking these items out. ■

## Calendar of Events

### December

25 Christmas Day, Holiday

### January

1 New Years Day, Holiday

11 MMIA Board of Directors' Conference Call

15 Martin Luther King Day, Holiday

25 Employee Benefits Committee Meeting

26 MMIA Board of Directors' Meeting

### February

8-9 GEM Board of Directors' Meeting, Naples FL

16 Employee Benefits Program Early Rate Indication

19 President's Day, Holiday

### March

23 MMIA Board of Directors' Meeting

28-30 Executive Forum, Polson