

SUMMER 2015

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What Are Your Obligations Under the ADA's Interactive Process?



By John Cummings, PHR, CIC

In the reasonable accommodation context, the Americans with Disabilities Act envisions an interactive process by which employers and employees work together to assess whether an employee's disability can be reasonably accommodated. The interactive process is an informal practice in which the covered individual and the municipality as the employer determine the precise limitations created by the disability and how best to respond to the need for accommodation. Because unique and challenging situations can arise with respect to disabilities in the workplace, municipalities must understand their obligations to engage in the interactive process and reasonably accommodate individuals with disabilities.

What should a municipality do once it receives an accommodation request?

Once an accommodation has been requested, or the need for an accommodation becomes obvious, the municipality should start an interactive process with the employee in question. Courts generally have held that the interactive process requires employers to:

- First and foremost involve your City/Town Attorney early in the process;
- Analyze job functions to establish the essential and nonessential job tasks;
- Identify the barriers to job performance

by consulting with the employee to learn the employee's precise limitations; and

- Explore the types of accommodations which would be most effective.

Municipalities can demonstrate a good faith attempt to accommodate by meeting with the employee, requesting information about the limitations, considering the employee's requests, and discussing alternatives if a request is burdensome. As part of municipal best practices regarding the interactive process the municipality should:

- Document in writing its receipt of the request for accommodation, providing a copy to the employee and retaining a copy for the municipality's records. This allows the municipality to show that it took the request seriously and responded in a timely fashion.
- Ask the employee for information about the extent of the impairment, including notes from doctors or other health care providers, and request medical testing relevant to the accommodation being requested.
- Talk with the employee about accommodation alternatives (if necessary), which includes listening to the employee's preference and then present potential alternatives.
- Document in writing the discussion about the accommodation and the final determination.

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MMIA WELCOMES NEW BOARD MEMBERS

By Alan W. Hulse, *MMIA CEO*

Mark Shrives grew up in California and completed his undergraduate work at the University of California at Santa Barbara and later in his career, completed his Master's degree in Public Administration. After graduation from college, he was commissioned a 2nd Lieutenant

in the Army and served for 20 years, retiring at the rank of Lieutenant Colonel. Hamilton, Montana is where he started his career in city management, serving as the Hamilton City Administrator for six years. He then moved to Creswell, Oregon where he served as the Creswell City Administrator for nine years. During his time in Creswell, Mark took one year

CEO'S CORNER



The MMIA welcomes Mark Shrives and Anna Rosenberry to its Board of Directors



off and worked in Africa as the US State Department Advisor to the President of the Economic Community of West African States, where he focused on military and political affairs. On October 15th of 2013, he began as the Polson City Manager and in October of 2014 he became a member of the MMIA Board of Directors.

Anna Rosenberry is the City of Bozeman's Administrative Services Director, leading the Finance, Human Resources and Information Technology departments. Anna is a Certified Public Accountant and graduate of Montana State University's College of Business. She's a native of Montana—along with numerous generations of family—and enjoys raising her 11-year old daughter. Anna enjoys Bozeman for the great summertime events downtown and the wonderful skiing in the winter. Anna joined the MMIA Board of Directors in 2014. ■

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nation about how the accommodation request is resolved, including any undue hardship analysis.

- Have all documentation reviewed by your City/Town Attorney prior to making a final decision.

Municipalities should be aware that the obligation to provide a reasonable accommodation is ongoing. Municipalities may be required to provide more than one accommodation to a cov-

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ered individual, and the municipality may be required to provide a different accommodation if the disability or other circumstances change.

Please note that a municipality is not obligated to provide the specific accommodation requested by the employee; rather, the municipality is required to provide a reasonable accommodation. Although the ADA provides a right to a reasonable accommodation, it does not provide a right to any specific requested or preferred accommodation.

Also, under the ADA, the municipality is not required to make reasonable accommodations that would impose an "undue hardship" on the municipality. The burden is on the municipality to prove an undue hardship. Whether an accommodation will impose an undue hardship is determined on a case-by-case basis. ■

Many resources are available to your City/Town in this process including, but not limited to the following:

Montana Human Rights Bureau
Rocky Mountain ADA Center
www.adainformation.org
1-800-949-4232

Job Accommodation Network
www.askjan.org

Montana Department of Labor & Industry
Montana Human Rights Bureau
<http://dev2.erd.dli.mt.gov/human-rights>
1-800-542-0807

MMIA Property Coverage: Part 3 of Series

By Linda Coombs, AIC, CIC

Sr. Liability/Property Claim Adjuster

How losses are paid out to our members

SECTION III: PROPERTY DAMAGE LOSS PAYMENT BASIS/VALUATION

► On all Real and Personal Property, including property of others in the care or control of the Member, at the Replacement Cost at the time of the loss without deduction for depreciation; provided the member has elected Replacement Cost coverage at the last annual Declaration renewal. Using the lesser amount of:

- the Replacement Cost on the Summary of Values on file with the MMIA
- the cost to repair the item
- the Actual Cash Value in the event the property is not repaired or replaced within a reasonable period of time

► On all Real and Personal Property, including property of others in the care or control of the Member, at the Stated Amount at the time of the loss without deduction for depreciation; provided the Member has elected Stated Amount coverage at the last annual Declaration renewal. Using the lesser amount of:

- the Stated Amount on the Summary of Values on file with the MMIA
- the cost to repair the item
- the Actual Cash Value in the event the property is not repaired or replaced within a reasonable period of time

► On antique, restored or historical buildings, the cost of acquisition, relocation to the site and renovation or reconstruction. In the event of a partial loss, replacement cost for antique, restored or historical buildings shall mean the cost of repairing, replacing, constructing or reconstructing (whichever is less) the property on the same site using materials of like kind and quality necessary to preserve or maintain a buildings' historical significance without deduction for depreciation.

► On Vehicles and Contractors / Mobile Equipment, where Replacement Cost (New values are specified on the Summary of Values on file with the MMIA, loss or damage shall be

based on 100% of the Replacement Cost (New) at the time of loss. Partial losses shall be based on the cost of repairing or replacing the damaged portion, whichever is less, up to the Replacement Cost value of the Vehicle and/or Contractor Equipment. If not repaired or replaced, the basis of recovery shall be Actual Cash Value.



► On Vehicles and Contractors / Mobile Equipment, where Stated Amount values are specified by the Member, loss or damage to Insured Vehicles and/or Contractor / Mobile Equipment / Unlicensed Vehicles (as per Summary of Values on file with the MMIA) shall be based on repairs or substitution in like-kind and quality not to exceed the Stated Amount limits as declared by the Member. If a Summary of Values is provided by the Member for Vehicles / Contractors' Equipment / Unlicensed Vehicles provides a valuation based Stated Amount, and then recovery will be on the same basis if physically repaired or replaced. If cash payment is elected in lieu of physical repair or replacement or substitution, the recovery shall be actual cash value.

► On Landscaping, sand traps, tees, putting greens and athletic fields; the Actual Replacement Cost of sod, shrubs, sand, plants and trees; however the MMIA's liability for replacement of trees, plants and shrubs will be limited to the actual size of the destroyed plant, tree or shrub at the time of the loss up to a maximum size of 25 gallons per item but not to exceed US Dollars \$25,000 per item.

SECTION VI: FINE ARTS FLOATER

Property of the Member shall be covered for and valued at the current fair market value of each article indicated on the books and records

of the Member prior to loss, according to the Member's valuation of each object covered.

Property of others loaned to the Member and for which the Member may be legally liable, or which the Member has been instructed to cover, shall be covered for and valued at the amount agreed upon for each article by the Member and owner(s) as recorded on the books and records of the Member prior to loss. Otherwise, in the absence of recorded current fair market values or agreed values for each article covered, the MMIA shall not be

liable beyond the fair market value of the Property at the time any loss or damage occurs. Said value shall be ascertained by the Member and the MMIA or, if they differ, then the amount of value or loss shall be determined as provided in the following appraisal clause.

► On Fine Arts, on or off premises, where Stated Amount values are specified, loss or damage shall be based on the lesser of:

- the Stated Amount on the summary of values filed with the MMIA

- the Actual Cash Value in the event the property is not repaired or replaced within a reasonable period of time
- the cost to repair the item

SECTION IX: BOILER AND MACHINERY BREAKDOWN EXTENSION

The MMIA will pay the Member the amount the Member spends to repair or replace the property directly damaged by an Accident. The MMIA payment will be the smallest of:

- the Limit of Insurance;
- the cost at the time of the Accident to replace the damaged property on the same site with other property:
 - of like kind, capacity, size and quality; and
 - used for the same purpose
- the amount the Member actually spends that is necessary to repair or replace the damaged property.

As respects any Object if the cost of repairing or replacing only a part of the Object is greater than:

- the cost of repairing the Object; or
- the cost of replacing the entire Object on the same site;

The MMIA will pay only the smaller of (a) or (b). The repair parts or replacement Object must be:

- of like kind, capacity, size and quality; and
- used for the same purpose.

The MMIA will not pay:

- a. if the loss or damage is to Covered Property that is obsolete or useless to the Member; or
- b. for any extra cost if the Member decides to repair or replace the damaged property with property of a better kind or quality or of larger capacity,

If the Member does not repair or replace the damaged property within 18 months after the date of the Accident then the MMIA will pay on the smaller of the:

- a. cost it would have taken to repair; or
- b. actual cash value; at the time of the “accident.”

Paragraph (4) does not apply to any time period beyond the 18 months that the MMIA agrees to in writing.

Replacement Cost shall mean the cost of repairing, replacing, constructing or reconstructing (whichever is the least) the property on the same site, using new materials of like kind and quality and for like occupancy without deduction for depreciation, subject to the following:

- Until the property is actually repaired, replaced or reconstructed, the maximum amount recoverable shall be the actual cash value of the lost or damaged property;
- Replacement shall be effected by the Member with due diligence and dispatch;
- Replacement need not be on same site or of same or similar construction or occupancy provided that the MMIA shall not be liable for any additional costs that are directly attributable to the inclusion of this provision.

- For historical buildings as more specifically defined in Section III: PROPERTY DAMAGE.
- In no event shall the MMIA’s liability exceed the amount actually and necessarily expended in repairing or replacing (whichever is less) Covered Property or any part thereof.

It is understood and agreed that as respects replacement cost, the Member shall have the option of replacement with electrical and mechanical equipment having technological advantages and/or representing an improvement in function and/or forming part of a program of system enhancement provided that such replacement can be accomplished without increasing the MMIA’s liability. The MMIA shall be allowed to dispose of, as salvage, any non-proprietary property deemed unusable by the Member.

In the event the Member should fail to comply with any of the foregoing provisions, settlement shall be made as if this Replacement Cost provision had not been in effect.

Stated Amount represents an agreed value between the member and MMIA on real property and personal property and specified on the Summary of Values on file with the MMIA.

This information is not to be construed as complete but simply a brief overview. There are obviously coverage exclusions and conditions within the actual Memorandum of Property and we encourage you to review your coverage documents, however, should you have specific questions about the property coverage MMIA staff can assist you. ■



EMPLOYEE SPOTLIGHT:
BRITANI LAUGHERY
CSP, ASP, CIC, CWCP, AU

Britani joins MMIA after being with the Montana State Fund for 11 years where she served as a safety consultant and a project manager for strategic business plan initiatives. Prior to working at Montana State Fund she worked as a safety professional in the manufacturing industry for Wilson Greatbatch Technologies – Sierra Division in Carson City, NV, the oil & gas industry for Conoco in Midland, TX, and the construction industry for Granite Construction Company in Watsonville, CA.

She earned both her B.S. in Occupational Safety & Health and her Masters in Project Engineering and Management from Montana Tech of the University of Montana. She is professionally designated as a Certified Safety Professional (CSP) and an Associate Safety Professional (ASP) from the Board of Certified Safety Professionals, a Certified Insurance Counselor (CIC) from the National Alliance for Insurance Education & Research, a Certified Workers’ Compensation Professional (CWCP) from Michigan State University, and holds an Associate in Underwriting (AU) from the Insurance Institute of America.

Originally from Libby, Montana, Britani has called the Helena area home for the last decade. She looks forward to sharing her passion and energy with MMIA and its members.

It’s time to start thinking about the upcoming wellness screenings!

Your support of the MMIA Employee Benefits Wellness Program is vital to its success. By encouraging your employees to participate, you are helping them to take responsibility of their personal health. This will help reduce claims costs for the entire pool and, ultimately, premiums. Please share all wellness information with your employees and show your support of the program! If you’re not sure if it’s worth it, don’t forget that everyone is eligible for up to \$300 in incentives this year!

Please note that all wellness screenings will need to be completed between July 1 and September 30, 2015 in order for participants to be eligible for this year’s wellness incentives. Locations with a Montana Health Center available will complete screenings there. All other locations will be notified of their local It Starts With Me screening date.



HR Toolbox: Employee Assistance Programs (EAP)

On occasion the MMIA is contacted by municipal Mayors, Managers, Supervisors and Human Resource staff with concerns about employees who may have personal problems that are starting to impact their on the job performance. These calls run the gamut from concerns about employee substance abuse, marital difficulties, financial challenges, medical conditions, mental health issues or even how to handle disputes between employees.

Many of these calls revolve around the City or Town trying to figure out how to address one of these sensitive personnel issues in the hope that the issue can be resolved before more formal personnel action needs to be taken.

One of the tools that municipalities and their staff have in managing these types of issues would be their EAP Program. Employee Assistance Programs (EAP) are an employer based program designed to assist organizations in addressing productivity issues and assist employees in identifying and resolving personal concerns including, but not limited to, health, marital, family, financial, alcohol, drug, legal, emotional, stress or other personal issues that may be impacting job performance.

An effective EAP can contribute to solutions to top workplace concerns, including, but not limited to:

Personal issues	Job stress
Relationship issues	Harassment
Balancing work and family (e.g., eldercare, childcare, parenting)	Workplace violence prevention
Underemployment	Substance abuse
Legal issues	Separation and loss
Family violence	Financial issues
Trauma	Retirement concerns
Stress from extended business travel	Work environment issues
Downsizing/ redundancy concerns	

By addressing these issues, the EAP can assist your city or town in a variety of ways:

- Assisting employees deal with on or off-the-job stressors before they impact job performance
- Lower absenteeism
- Savings in workers' compensation claims
- Lower health care costs
- Decreased use of medical and insurance benefits

- Fewer accidents
- Safety and security issues addressed
- Fewer grievances
- Employee retention
- Lower employee replacement costs

It is important for both the city or town and the employee in question to know that all EAP services and corresponding records are confidential and private. In addition, the use of an EAP is voluntary and a city or town cannot force an employee to seek assistance through the EAP. However, the process of a city or town recognizing problem situations and responding with an EAP referral should become a normal and expected supervisory task. Your city or town, and your supervisors, have a responsibility to maintain a productive work environment and to promote employee development. Referrals to EAP helps accomplish both of these goals.

Supervisors can assist employees in accessing the EAP in several ways. First, make sure your employees are aware that the EAP is available to them at no cost. Post and distribute information on how to reach out to the EAP. Keep EAP information handy so that you can provide written materials to an employee that is facing issues when you address the employee. And finally, you as the supervisor can also contact the EAP for assistance and information on how you can best aid employees that may benefit from EAP services.

It is very important to know that all EAP services are kept entirely confidential. While a supervisor may refer an employee to the EAP, no information is shared back to the employer. Employees may resist utilizing their EAP out of fear that their private information will be shared

with their employer; however that cannot happen due to privacy laws such as HIPAA. ■

EAP services for Members of the MMIA Employee Benefits Program

The MMIA EB Program provides EAP services to all participants of the self-funded medical plan. This service is provided as a resource to employees to help manage stress, which also helps save costs for everyone. We currently work with Reliant Behavior Health (RBH) to provide confidential EAP benefits. Enrolled employees and their household members receive up to 6 free face-to-face counseling sessions, per issue, per year. Participants can also access 24-hour crisis help and online resources.

There are also several other benefits to be accessed through the EAP:

- **Legal Services** Free half-hour consultation with 25% discount for additional legal fees.
- **Financial Services** Free phone support for up to 30 days for each new financial issue.
- **Mediation Services** Request free consults for personal issues or disputes.
- **Will Preparation** Receive a free will template to complete, sign and notarize.
- **Home Ownership Program** Free support and info for buying or selling a home.
- **Identity Theft Services** Support in planning for recovery after an incident.

To contact RBH, call 866-750-1327

Bob Worthington Risk Management Achievement Award: Brian Hensel, City of Missoula

Over the years, Brian Hensel, Missoula Streets Superintendent, has proved to be a cost savings innovator with an emphasis on safety and risk management. Once again Brian has made an outstanding effort to help prevent a claim against the city of Missoula and the MMIA pool. Recently he went above and beyond in claim investigation by simulating the same incident a claimant alleged property damage to his vehicle occurred from a City sanding vehicle. Brian set up the scene with a sanding vehicle and a City truck. He took photos before and after the truck was sanded, showing the City vehicle was undamaged. Brian also took video of the simulation that they performed twice. This was instrumental in our claims process. Thanks Brian! ■



MONTANA MUNICIPAL INTERLOCAL AUTHORITY

Montana Municipal
Interlocal Authority

PO Box 6669
Helena, Montana 59604-6669

www.mmia.net

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MONTANA MUNICIPAL INTERLOCAL AUTHORITY

Montana Municipal
Interlocal Authority

3115 McHugh Dr.
Helena, MT 59602

Phone (406) 443-0907
Toll Free (800) 635-3089
Fax (406) 449-7440

www.mmia.net

Calendar of Events

June 19 MMIA Board of Directors Meeting, Helena

July 3 Holiday

22-24 GEM Board Meeting, Portland OR

August 19 EB Committee Retreat, Chico

20 MMIA Board of Directors Retreat, Chico

21 MMIA Board of Meeting Retreat, Chico

September 15 Defense Counsel Summit, Helena

October 7 MMIA Board of Directors Meeting, Bozeman

9 MMIA Annual Meeting, Bozeman

