

SUMMER 2017

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Mower & weed-eating safety & reducing liability claim risks

By: Thomas B. Danenhower, Risk Management Specialist

Over the years, the MMIA has received many claims originating from an employee injury during mowing and weed eating operations or, more common, a liability or property damage claim from alleged damage caused by mowing operations. These claims are highly preventable with some planning and forethought, and by following best practices for safe operations.

Safety during mowing and weed eating operations should start with comprehensive training geared to complete mastery of operations for new employees and an annual review for returning or permanent employees. Everyone needs to go through an operations refresher training before commencing operations for the season.

Mowers should be inspected for oil leaks, hydraulic leaks, and other possible equipment damage or wear, and returned to good working order before use. Items like a Roll-Over Protection System (ROPS), seatbelt and a properly maintained fire extinguisher need to

be in place. Weed eating equipment should be inspected for any leaks or repairs needed and tuned up before operations to assure good working condition. Mowers and weed eaters should never be fueled inside, and allow them to cool off for at least five to ten minutes before refueling for safety.

Mowing and weed eating operations can be performed without proper personal protective equipment (PPE), but it is unwise to do so. Most of our hand and foot/ankle injury claims in the Workers' Compensation Program originate in employees not using proper PPE like sturdy eight-inch high, hard-toed work boots and heavy leather work gloves. For mowing and weed eating, coveralls or at least jeans, a long-sleeve shirt, a helmet, eye and ear protection, work boots, and heavy gloves should be



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On private sector insurance & risk retention pools – the rest of the story

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

This article is a reprint from an article that was done a few years ago, but I feel it is a good reminder on the differences between Risk Retention Pools and Commercial Insurance. Below is a summary of the comparison that was made by a private insurance agency between insurance and pooling, along with my observations about the story not told in this comparison or...”The rest of the Story”.

Insurance is risk transfer

Your premium is guaranteed for the policy period no matter how many claims you have. The insured is not obligated to the insurer for anything else during the policy period; if the insurer loses money, it is a stockholder issue. The insured selects an agent and program and has no long term obligation.

Pooling is risk sharing

Members are assessed for their estimated share of pool losses. If losses exceed the assessment, members may have to pay an additional assessment. Pool members are jointly liable for pool losses. If the pool loses money it is the members’ problem. Member obligation to the pool can go on indefinitely; even if a member leaves the pool, they might continue to be assessed.

The Rest of the Story

With insurance the premium will not go up during the policy period, but what happens in the next policy period if you have a bad claims year, and the insurer loses money on your account. You will almost certainly face an increase in cost of insurance, and may be dropped from coverage. Look what happened to cities and towns in the mid-1980’s. You couldn’t find liability insurance in the commercial markets, which is why the MMIA was started. Insurers are profit driven and not in business to lose money. When an insured selects the insurer of their choice, profits, private sector salaries and sales commissions will always be a significant part of the costs.

With the MMIA pool, we do calculate assessments retroactively, but those retroactive assessments cut both ways, if you or the pool have performed better than expected in a given year, you get a credit are reimbursed. In fact, the MMIA has distributed over \$15M back to our members over the past five years in our liability program. What happens to your premium dollars paid to a commercial car-

rier if you perform better than expected?

In terms of calculating rates it is also important to note that losses are pooled but any one loss is capped so members do not suffer large increases in assessments like they can with insurers. MMIA has traditionally had stable, low rates our programs are extremely well reserved. MMIA is financially sound. MMIA is a non-profit organization and programs run at expense ratios in the 15% range; there are no commissions or extravagances. Private insurer’s expense ratios are usually significantly higher, and are motivated primarily by profit.

CEO’S CORNER



Insurance Risk Transfer

Insurance transfers risk and protects taxpayer money. Insurance companies are regulated by State insurance commissioners and subject to independent financial ratings. In the event of an insurance company failure, insureds have the right to recovery against the State guarantee fund

Self Funded Pools

Being a pool member might be entering into a long term speculative venture putting taxpayers’ money at risk. Pools are typically not regulated by State insurance departments, nor do they receive independent financial ratings. Pool members share the risk and cannot collect from the State guarantee fund; members might get an additional assessment to raise funds to pay claims.

The Rest of the Story

Although insurance companies do transfer risk it is at a price (sometimes significant) for their efforts. They also can and do fail despite rating agencies and State Insurance Commissioner oversight. If this happens, a municipality is out of insurance. Recall how badly rating agencies failed in the recent Collateralized Debt Obligation crisis – financial institutions with very high ratings failed and or became worthless. Insured’s cover the costs of State guarantee funds adding to premium costs.

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Classifying employees part 1: permanent, seasonal, temporary or short term worker. What is the difference?

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

When it comes to public employers in Montana, statute clearly defines various employee classifications. While statute may define these, an employer has some room to determine how they wish to classify. It is important to understand the different classifications of employees and how accrual of leave plays into each one. This article will highlight definitions and statutes regarding leave for each employee classification.

The four different classifications of employees are Permanent, Seasonal, Temporary, and Short Term Worker. These classifications can be either Full-Time or Part-Time. The differences in each classification are found in the definitions under Montana Code Annotated (MCA) 2-18-101. These definitions are as follows:

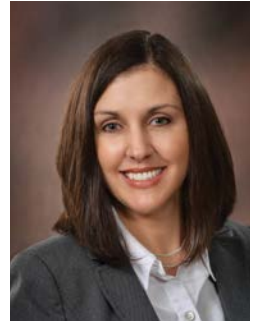
- (17) "Permanent employee" means an employee who is designated by an agency as permanent and who has attained or is eligible to attain permanent status.
- (18) "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period.
- (22) "Seasonal employee" means a permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.
- (23) "Short-term worker" means a person who:
 - (a) is hired by an agency for an hourly wage established by the agency;
 - (b) may not work for the agency for more than 90 days in a continuous 12-month period;
 - (c) is not eligible for permanent status;
 - (d) may not be hired into another position by

the agency without a competitive selection process; and,

- (e) is not eligible to earn the leave and holiday benefits provided in part 6 of this chapter or the group insurance benefits provided in part 7 of this chapter.
- (26) "Temporary employee" means an employee who:
 - (a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;
 - (b) performs temporary duties or permanent duties on a temporary basis;
 - (c) is not eligible for permanent status;
 - (d) is terminated at the end of the employment period; and ,
 - (e) is not eligible to become a permanent employee without a competitive selection process.

Permanent employees serve a probationary period from the date of their initial hire with the organization. Under MCA, they are eligible for holiday, annual, and sick leave. MCA requires 100% of annual leave and 25% of sick leave to be cashed out upon termination for these employees, assuming they have met the qualifying periods for use of leave. Qualifying period for annual leave is six months and sick leave is 90 days from date of hire.

Seasonal employees also serve a probationary period, with



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On private sector insurance & risk retention pools...(cont'd)

The MMIA has been in existence for 31 years and is financially strong and stable. The MMIA pool is not a long term speculative venture. Our organization is extremely transparent and is regulated by members. Detailed financials, accounting and actuarial reports publicly available and you or any member of the public are invited and can attend MMIA board meetings. Coverage disputes can be and often are resolved informally at no cost by an appeal to your Board. The MMIA has high levels of reinsurance coverage and thus direct risk to members is strongly limited.

In conclusion, it is important to remember the MMIA is

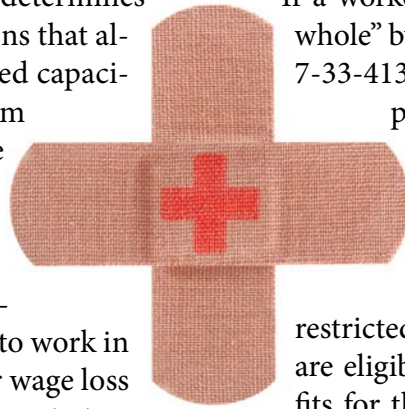
owned by our members and run by a board made up of our members and changes at MMIA are made with members in mind, not profits. In short, members control the programs. It is important to keep in mind this was not the case in 1986 when due to market conditions Montana's municipalities had difficulty finding insurance. The MMIA came about as a result of this crisis. The MMIA risk retention pools are not a fly-by-night operation and our liability and all of our programs have excellent reserves and are on very sound financial footing. The MMIA was created by Montana municipalities, is run by Montana municipalities for the benefit of Montana municipalities! ■

Workers' compensation wage loss: wait period and leave benefits

By: Katie Koehler, *Workers' Compensation Claims Examiner*

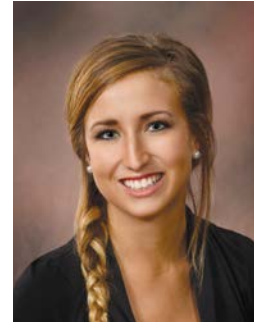
When a worker is injured and has filed a workers' compensation claim, one of the benefits they may qualify for are wage loss benefits. In order to qualify for wage loss benefits, the injured employee must be seen by a medical provider who determines that they have specific physical restrictions that allows them to return to work in a modified capacity, or that temporarily preclude them from returning to work in any capacity. The worker must provide documentation of those restrictions to their employer and their workers' compensation examiner. In the case that they are given specific restrictions that may allow them to return to work in a modified capacity, they may qualify for wage loss benefits if their employer reviews the restrictions and determines they do not have any work available (either within or out of the employees regular department) that fall within the employees designated restrictions.

Once it is determined that an employee qualifies for wage loss benefits, MCA 39-71-736(1)(a) states that wage loss benefits are not paid for the first 32 hours or four sched-



uled shifts. For these first four days, the injured worker may elect to take sick leave, vacation benefits, or they may choose to take leave without pay.

If a worker is required to be "made whole" by their employer per statutes 7-33-4133 or 7-32-4132, the employer must pay them regular wages during the wait period without requiring the employee to draw sick leave or vacation.



The statute continues to say that if the worker is restricted from work for 21 calendar days or more, they are eligible to receive retro-payment of wage loss benefits for the wait period. If the worker received vacation pay for the wait period, they are still eligible to receive the retro-payment from workers' comp, without having to repay the vacation leave. If they chose to take sick leave, they must either repay the sick leave taken to their employer in order to receive the retro-payment, or they can waive their

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Mower and weed-eating safety...(cont'd)

worn. Employees need to stay properly hydrated and use sunblock and insect repellent as needed.

If trailering equipment to a work location, mowers need to be secured to the trailer and the trailer properly attached to the vehicle (safety chains in place & correct hitch size and type). Vehicle mirrors should be adjusted to minimize blind spots. While transporting, keep speed to the minimum and allow for extra following and stopping distance; this should be at least three to five seconds behind the nearest vehicle in front of the transporting vehicle. Mower and weed eating equipment unloading should take place on low traffic streets adjacent to the park or work area. If mowing or weed eating on a street with heavy traffic, an attenuator vehicle with warning signs should be used between the oncoming traffic and the mowing or weed eating operation. It is also best to conduct operations during times of lower traffic flows. Mower decks must be treated like a lock-out-tag-out operation. You must shut down power and use cribbing before working underneath them.

It is a good idea to walk over a new work area or in areas that are not developed before commencing mowing oper-

ations. This assures that debris and rocks that might tangle in mowers or be thrown into adjacent vehicles or houses can be removed. Weed eating and mowing operations need to be conducted in such a way that rocks, gravel, and other items are contained in the work area and not thrown into adjacent vehicles and houses. Use three-point contact when climbing into and out of mowers, and assure foot placement is secure. While mowing, be mindful of possibly unsafe slopes; these might be mowed using a diagonal pattern to lessen the danger of a rollover. When weed eating on sloped areas, have a planned strategy and use the proper equipment to minimize the chances of fall injuries.

The MMIA has weed eating and mowing safety audit/checklist tools posted on the risk management portion of the web page; these can be helpful to assure best practices for these operations are being adhered to. For more information, contact Thom Danenhower at tdanenhower@mmia.net or call us at (800) 635-3089. For free safety consultation and help with safety inspections of parks department facilities where mowers and weed eating equipment are stored, contact the State Department of Labor Safety Bureau Safety Consultation Office located in Butte, at (406) 494-0341. ■

Workers' Compensation wage loss...(cont'd)

eligibility to the retro-payment and keep the sick leave pay.

MCA specifies a difference between vacation leave and sick leave in all circumstances, not just during the wait period. It states that receipt of vacation pay does not affect an injured employee's eligibility to wage loss benefits, whereas sick leave and wage loss benefits cannot be paid during the same period. If the worker elects to take sick leave at any

Classifying employees part 1...(cont'd)

months working counting toward the established period. An employee who is seasonal normally is expected to return season after season. Under MCA, they are eligible for holiday, annual, and sick leave. They are not terminated at the end of a season, so their accruals would only be cashed out following the same schedule as previously stated, when their employment with the organization ends.

Seasonal Employee Example:

Employee is hired on 5/15 as a seasonal parks worker. They work until 9/15. Annual and sick leave have accrued from day one. This employee returns to work the next season on 5/20. As of this date, they are qualified to use sick leave they have accrued from the prior season, but are not yet qualified to use Annual Leave, which requires a 6 month waiting period for use. They continue to accrue leave season after season, until their employment ends with the organization. They do not re-apply each season.

Short Term Worker employees are allowed to work up to 90 days in a continuous 12 month period. Days are not necessarily 8 hour days. This is not 90 calendar days of employment. Every day they come to work counts as a day toward their 90 days. On-call employees in positions that will not require working more than 90 days are often classified as Short Term Workers. These employees do not accrue leave of any type.

Short Term Worker Example:

Employee is hired to work as a lifeguard. Their first day of work is 6/1. They may work a maximum of 90 days and then must be let go. They cannot work again until 12 months from their date of hire. In this example, the pool season ends on 8/20 and the pool is open 5 days/week. If this employee worked every day of every week for the season, they would only work 60 days.

There may be benefits to classifying employees who work

time while they are off work due to a work-related injury, they may not also receive wage loss benefits for that same period. Statute also precludes augmentation of wage loss benefits with sick leave, unless specifically allowed by a collective bargaining agreement with their employer.

As always, if you have any questions throughout this process, contact your designated workers' compensation examiner, or Claims Manager Ann Komac at 406-495-7011 or via email akomac@mmia.net. ■

seasonally, as Short Term Workers. These employees do not accrue leave, therefore limiting the financial liability the organization must account for. However, some positions that work seasonally may require more than 90 days of work. In these situations, the organization will need to determine if they wish to classify the employee as a temporary employee or a seasonal employee.

Finally, temporary employees are only allowed to work a maximum of 12 months from date of hire. If you wish to rehire a temporary employee, they must have a break in service. Under MCA, they are eligible for annual and sick leave. MCA requires cash out of accrued leave upon termination if they have served the qualifying periods listed previously.

Temporary Employee Example:

Employee is hired to work as a parks worker. They are hired on 5/15 with the expectation of working the summer season through approximately early September. Their last day of employment is 9/15. At time of termination, they would receive 25% of sick leave accrued, but would not receive a cash out of annual leave because they did not meet the qualifying period of 6 months. If this employee applies and is hired again next summer, they would start accruals for sick and annual leave over from day one of hire.

Public employers in Montana are held to certain standards found in MCA, including classification of employees and the associated leave accruals. While your policy and/or Collective Bargaining Agreements may offer greater benefits than statute requires, they may not offer benefits less than what is defined in statute. Best practice for limiting risk is to document classification in all offer letters and to ensure employees who qualify are accruing leave and receiving cash-out of leave in accordance with MCA.

If you have questions about proper employee classification, feel free to contact me at 406-495-7017 or asimonson@mmia.net. ■

MLCT 2017 legislative session wrap-up

Kelly A. Lynch, Deputy Director and Legal Counsel, MLCT

The 65th Regular Session of the Montana Legislature adjourned Sine Die on April 28th, 2017, and Montana's cities and towns had a successful session. The League actively tracked over 160 bills during the session dealing with revenue and finance, infrastructure, tax increment financing, land use and planning, water and wastewater regulation, law enforcement, and an array of local control issues.

The League voted at the 2016 annual conference to sponsor four bills, all of which passed and were signed into law by the Governor. SB 16 (Sen. Llew Jones) fixes the amounts required to be held in fire relief association disability and pension funds, tying fund levels to actual benefits paid (effective March 1, 2017). HB 83 (Rep. Bryce Bennett) reinstates the authority of a self-governing municipality to place an amendment to its charter by resolution of the governing body – this authority was inadvertently omitted as part of the 2015 elections bill (effective May 3, 2017). SB 151 (Sen. Dee Brown) creates a legislative local government interim committee, separate and distinct from the education committee (effective April 7, 2017). SB 200 (Sen. Ed Buttrey) provides authority for local governments to adopt ordinances providing a process for the disposal of lost, abandoned, and found tangible personal property held by local law enforcement agencies (effective May 4, 2017).

The League benefitted immensely from its participation in the Montana Infrastructure Coalition. Through the relationships formed with other public, private, and non-profit organizations across the state, the League was able to make serious gains in infrastructure investments for cities and towns in Montana. With the passage of HB6, HB7, and HB11 (all Rep. Jim Keane), cities and towns will receive \$11.5 million in TSEP funds, \$875,000 in RRGL funds, and \$775,000 in RDGP funds for the 2019 biennium beginning July 1, 2017. Increased funding to the Coal Board at the current rate of 5.8% was extended to the end of the 2019 biennium with the passage of HB 209 (Rep. Barry Usher). Other bills provide increased access to funding for accessible playground equipment (HB 294, Rep. Jean Price), shared-use paths (HB 225, Rep. Ed Greef), and source watershed improvements (HB 424, Rep. Zach Brown). While the infrastructure bonding bill again fell short, cities and towns will see a doubling of their current gas tax revenues for funding local road projects with the passage of HB 473 (Rep. Frank Garner). In coordination with these infrastructure funds, SB 278 (Sen. Steve Hinebauch) raised the local bid limit for

professional engineering, surveying, and architectural work to \$50,000, and authorized municipalities to enter into on-call multi-year contracts with a firm to perform project-specific work as the need arises without further procurement.



Both Governor Bullock and the Legislature struggled with falling revenue estimates and cuts were made across the board in the administration of state programs, availability of grant and loan funding, and in the distribution of funds to local governments and school districts. As part of those reductions, HB 565 (Rep. Rob Cook) enacted a reduction in the local government entitlement share growth of .5% in FY18 and 1.87% in FY19. As a result, cities will lose an estimated \$2.3 million and \$3.6 million in estimated growth for FY18 and FY19, respectively. The League's and MACO's amendments to the bill made these growth reductions one-time-only, so that they do not reduce future growth by adjusting the base for future growth calculations.

Much of the League's work this session was focused on defense, helping to modify or kill a variety of bills that would have undermined or removed local control and decision-making in the areas of special purpose districts, tax increment financing, subdivision review, regulatory takings, water rights, cell phone driving restrictions, bathroom access, federal immigration law enforcement, unpaid municipal utility bills, and landlord-tenant disputes. The League worked cooperatively with the Attorney General's office, victim's rights groups, and law enforcement agencies to support HB 600 (Rep. Frank Garner) and SB 250 (Sen. Nels Swandal), which will help municipalities implement the Marsy's Law constitutional amendment passed by the voters last fall and provide qualified immunity to local law enforcement, prosecutors, and governments when implementing the new law.

To read the full detailed report on all of the bills tracked by the League this session, visit <http://www.mtleague.org/category/2017-legislative-resolutions/>. ■

'17 Regional Trainings/District Meetings are coming to your area

By Janel Favero, Communication Specialist

The MMIA, MLCT, and LGC would like to invite you to the Regional Trainings and District Meetings. We are partnering to bring FREE municipal training to your region. Come ready to discuss with your colleagues interesting scenarios that will give you greater insight in to municipal management and governance.

Topics include:

- MLCT 86th Annual Conference Update
- Overview of Bridge and Road Safety and Accountability Act (Gas Tax) and Implementation
- Infrastructure Coalition Update
- Dialogue with the Governor's Executive Team
- MMIA: Liability 101
- LGC: Governance and Professional Development

The dates are as follows:

July 11 – Anaconda: Anaconda Community Service Center, 118 East 7th, 3rd Floor Conference Room

July 12 – Missoula: Jack Reidy Conference Room, 140 W. Pine

July 13 – Kalispell: Flathead Valley Community College, 777 Grandview Dr

July 18 – Helena: MACO, Basement Conference Room, 2715 Skyway Dr

July 19 – Three Forks: Three Forks Community Center, 223 North Main St

July 20 – Columbus: Columbus Fire Hall, 944 E Pike Ave

August 2 – Wolf Point: Fort Peck Community College, 301 Benton St

August 3 – Miles City: Miles City Community College, 2715 Dickison St, Room 106

August 7 – Lewistown: Lewistown Fire Hall, 305 W Watson St

August 8 – Great Falls: Civic Center, Gibson Room, 2 Park Dr S

Meetings are from 9:00 - 4:00, lunch will be provided.

Please register online at

<https://form.jotform.us/62975442407158> ■



GET WELLTHY 2017!

Summer is here and the MMIA Employee Benefits Program is gearing up for this year's wellness initiative. Screening dates have been posted Online at www.GetWELLthyMT.com, so make sure to encourage your employees

to plan ahead to make it to the scheduled screening. Don't forget that members near a city with a Montana Health Center can schedule screenings at those locations for any time between July 1 – September 30.

Get WELLthy MT has made a few changes to the wellness program this year. As in the past, MMIA participants will be screened for health factors including Body Mass Index (BMI), blood pressure, HbA1c (glucose levels), and LDL cholesterol. While we still encourage participants to be nicotine-free, we are no longer incentivizing non-use. Dependents on the plan between ages 18-26 will also no longer be eligible to earn incentives. We still want our participants

to have a chance to earn up to \$300, so we have added an 80% employee participation incentive for this year. This means that if at least 80% of a city's eligible employees attend a screening, all employees, retirees, and spouses that completed the screening will earn an additional \$50.

Flyers with registration codes will be distributed to cities & towns about six weeks prior to the scheduled screening dates. Please be sure to get the flyers out to employees and encourage them to participate.

Also, make sure to like [Get WELLthy MT on Facebook](#). We use this page to keep you updated on current happenings, as well as remind you of all of our great resources. Those of you that like our page will be entered for a chance to win a Sonicare toothbrush sponsored by Delta Dental. ■



**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 or 406-495-7017, for details on the DVDs and the process for checking these items out. ■

Calendar of Events

June

23: MMIA Board of Director's Meeting, Helena

July

11 Regional Training: Anaconda

12 Regional Training: Missoula

13 Regional Training: Kalispell

18 Regional Training: Helena

19 Regional Training: Three Forks

20 Regional Training: Columbus

August

2 Regional Training: Wolf Point

3 Regional Training: Miles City

7 Regional Training: Lewistown

8 Regional Training: Great Falls

6-9 Annual AGRiP CEO and Senior Staff Institute, Charleston, SC

17 MMIA Board Retreat, Great Falls

18 MMIA Board of Director's Meeting, Great Falls