

RISK MANAGEMENT MATTERS

news of southwest washington risk management insurance cooperative, workers' compensation trust, and unemployment insurance pool programs

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U. S. Supreme Court Limits Application of Americans with Disabilities Act

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The U.S. Supreme Court, in a landmark decision, dated January 8, 2002, has further limited application of the Americans with Disabilities Act (ADA). The implications for all employers, including school districts, are significant. The Court has signaled its intention to limit the number of people with physical impairments who will be entitled to reasonable accommodation under the ADA. This is consistent with the high court's trend to narrowly construe application of the ADA.

The case in question is Toyota Motor Manufacturing, Kentucky, Inc. v. Williams. Ms. Williams worked for Toyota Motor Company in Kentucky. She filed a workers' compensation claim and alleged that she had developed carpal tunnel syndrome and bilateral tendinitis as a result of repetitive work activity. Her physician placed lifting and carrying restrictions on her work activity and also recommended against repetitive use of her wrists and elbows in performing overhead work or in use of vibratory or pneumatic tools. Toyota reassigned claimant to various modified duty jobs. Claimant was unsatisfied with Toyota's attempts to accommodate her work restrictions and ultimately filed a lawsuit under the ADA and State Discrimination Act, in which she alleged that Toyota had not adequately accommodated her disability. She also filed a State workers' compensation claim. Toyota settled both the lawsuit and the workers' compensation claim.

Claimant returned to work and was placed on a Quality Control Inspection Operation team (QCIO). Her tasks included visually inspecting assembly paint, opening and closing car doors and trunk lids and hoods. She also had to use her hands to wipe each painted car with a glove. She was able to perform these tasks satisfactorily. Two years later, Toyota required claimant and other QCIO employees to rotate through additional inspection processes. Claimant was required to apply a highlight oil to various parts of the car and spread this oil on cars with a sponge attached to a block of wood. This enabled claimant and others to more easily detect surface flaws in the paint and body work. Claimant was required to process one car per minute. Shortly after starting this job, claimant experienced renewed physical symptoms in her arms, shoulders and neck. She was diagnosed as having myotendinitis, bilateral myositis with median nerve compression, and thoracic outlet syndrome. Claimant requested that Toyota accommodate her physical conditions by allowing her to return to a modified QCIO job. On claimant's last day of work at the Toyota plant, her physician placed her under a no-work-of-any-kind restriction. Toyota terminated her employment, citing claimant's poor attendance record. Claimant

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filed a charge of disability discrimination with the Equal Employment Opportunity Commission (EEOC). She alleged that Toyota had violated the ADA by failing to reasonably accommodate her disability and by terminating her employment.

The ADA requires private employers to provide reasonable accommodations to known physical or mental limitations of an otherwise qualified individual with a disability, unless the employer can document that the accommodation would impose an undue hardship. The Act defines a "qualified individual with a disability" as, "An individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." A "disability" is defined under the ADA as, "A physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such impairment; or being regarded as having such an impairment."

The Supreme Court took special care to underscore that merely having an impairment does not make one disabled for purposes of the ADA. Claimants also need to demonstrate that the impairment limits a major life activity. The EEOC regulations which further interpret the ADA note that, "substantially limited" means an inability to perform a major life activity that **the average person in the general population can perform, or a significant restriction as to the condition, manner or duration under which the average person in the general population can perform that major life activity.** (Emphasis added.)

The Court held that to be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities **"that are of central importance to most peoples' daily lives. The impairment's impact must also be permanent or long-term."** The Court further noted that it is insufficient for an individual proving

disability status to merely submit evidence of a medical diagnosis of an impairment. The Court underscored that an individualized assessment of the effect of an impairment on the person in question is particularly necessary when the underlying condition/impairment is one whose symptoms may vary widely from person to person (such as carpal tunnel syndrome, which was one of the conditions involved in this case).

The Court also emphasized that the central question must be **"whether the claimant is unable to perform the variety of tasks central to most peoples' daily lives, not whether the claimant is unable to perform the tasks associated with her specific job."** The Court commented that some manual tasks which are unique to a particular job are not necessarily important parts of most peoples' lives. This means that claimants now must prove not only that they experience certain limitations in their physical ability to perform job tasks, but that those limitations represent limitations which would prevent or hamper the average person from performing some fundamental tasks of daily living. The Court noted that household chores, bathing and brushing one's teeth are among the types of manual tasks of central importance to peoples' daily lives. The Court stated that the claimant's ability to perform these tasks should have been taken into account when determining whether claimant was substantially enough impaired to come under the protection of the ADA.

In this case, the claimant acknowledged that she was still able to perform two of the four different inspection jobs which were a part of the QCIO job assignment. She also was still able to brush her teeth, wash her face, bathe, tend her flower garden, fix breakfast, do laundry and pick up around the house. Claimant testified that she had some restrictions in how she was able to perform those activities, but was still able to perform many of those activities. As a result, the Supreme Court remanded claimant's case to a lower Federal Court for further fact finding to determine if claimant's medical conditions truly constituted the type of impairment which would affect the average person in performing fundamental tasks of daily living,

whether related to work or off work activity.

The Supreme Court's decision highlights the necessity of obtaining detailed and accurate medical documentation regarding the nature and extent of a person's medical limitations before a school district terminates a worker's employment. This inquiry may ultimately need to include a Performance-Based Physical Capacities Evaluation as well as vocational rehabilitation expert analysis. The Supreme Court in the Toyota case noted that claimant's primary physical restrictions at work involved inability to work with her hands repetitively at shoulder level and above. The Court was careful to point out that this did not necessarily represent a substantial impairment for the average person in daily living activities because there were many jobs and off work activities which would not require that type of prolonged, repetitive work with one's hands and arms in that type of position.

The most important points to keep in mind about this decision are:

1. No employee is automatically entitled to accommodation under the ADA simply by virtue of the diagnosis of a medical condition which has produced permanent physical restrictions.
2. A school district must be thorough in its investigation of the nature of the physical impairment and how that physical impairment does or does not impact this particular employee's ability to perform the types of physical activities which the average person in the population in general would be required to perform as a part of daily living activities both on and off the job.

The Court's decision gives hope to school districts that not everyone with a physical or mental impairment will automatically need to be accommodated. By the same token, it also places continued responsibility upon school districts to thoroughly investigate and analyze the facts of each particular request for accommodation before making an impairment employment decision.

Builder's Risk Insurance: What Is It and When It Is Needed

Several member school districts are planning capital improvement projects or already have them underway. With the exception of small remodeling or additions projects, the Risk Cooperative recommends that the district purchase Builder's Risk Insurance or require the contractor to provide this coverage.

The Risk Cooperative's property policy does provide limited coverage for a builder's risk exposure. However, the intent of the Risk Cooperative's Coverage is to provide for small projects, such as remodeling a classroom, or adding storage space, or a similar small project, but not to provide for the large capital projects such as major school renovation or new building construction. Excess insurance underwriters set rates for conventional property coverage on the basis of school operations. Relying upon the Risk Cooperative's property coverage for Builder's Risk for major construction activities will dramatically increase the cost of all the member school districts' property coverage regardless of whether they have major construction projects.

A Builder's Risk policy covers a building or structure in the course of being built or remodeled, and extends from the foundations to the completed structure. Included are materials intended to become a permanent part of the building, while located on the premises or within 100 feet of the premises. This would include such items as fixtures, machinery and any equipment to service the building, as well as materials and supplies owned by the district. Temporary structures, such as cribbing, scaffolding and construction forms, are also insured if they are not covered by other insurance.

Most Builder's Risk Insurance policies are written on a "Special Form" which means that all perils are covered except those that are specifically excluded or limited by the policy language. Lesser degrees of coverage can be obtained which cover only the specific perils that are

enumerated in the contract of insurance. The Risk Cooperative recommends "Special Form".

Additional coverages included in most Builder's Risk policies are debris removal, preservation of property, fire department charges, and pollutant clean up and removal. These additional coverages are subject to some limitations. Optional coverage available with most Builder's Risk policies includes coverage for building materials in transit, building materials located off premises (beyond 100 feet), flood insurance and earthquake insurance.

The typical term of a Builder's Risk policy is from the date that actual construction begins until the date of "substantial completion" or the owner occupies it. Courts have viewed the owner's acceptance as the termination of the Builder's Risk policy and have viewed the owner's possession as a termination, even though the contractor may still have some items to complete.

There are two basic types of Builder's Risk policies. One, the reporting format, requires the insured(s) to make periodic (usually monthly) reports of completion of the project. The insured is charged a premium based on the reported completion amount. The second type is a completed value format. In the completed value format, the insured is charged a premium based on the total completed value of the project as determined at the onset of the project. Both the reporting format and the completed value format can have "co-insurance" provisions that require that honest reporting or declaration of an accurate value is made. In the event of a loss the insured may be required to absorb a portion of a loss if inaccuracies are determined when the project reports or values are audited.

An important aspect of Builder's Risk Insurance is that the owner is named as an insured as well as the general contractor, sub-contractors and sub-subcontractors. An owner may be covered for builder's risk exposure under their own commercial property insurance, however, in this instance, the contractor would most likely purchase a Builder's Risk policy naming himself and his sub-

contractors to protect his interests in the event a loss occurs. The contractor more than likely will charge this cost back to the owner. If the contractor is not named on, or has a Builder's Risk policy, it greatly reduces the property insurance carrier's ability to recover what they have paid on a loss if the contractor is the one responsible for the loss.

If the district is planning a capital project, contact the Risk Cooperative for assistance in securing a Builder's Risk Insurance Coverage quote for the construction project. In the past the Risk Cooperative has been able to assist members in the purchase of Builder's Risk Insurance Coverage, saving the district money. Builder's Risk coverage is generally an item included in a construction bid, that the district can elect to have as an optional item in the bid. When the district elects to have this as an option in the bid, the district can seek its own coverage or at least obtain a competitive quote.

Please call Jim Rochel if you have any questions regarding Builder's Risk Insurance Coverage, or if you have need for a competitive quote for that coverage.

Unemployment Seminar Successful

On February 8, 27 Business Managers, Payroll Clerks, and Human Resources staff from 18 school districts came to the ESD 112 for a three-hour "Unemployment Compensation Insurance Seminar." District staff received good information about the Southwest Washington Unemployment Compensation Pool, unemployment claims filing, and the appeals hearing process. Attendees were impressed with the presenters, who included a Senior Administrative Law Judge from the Office of Administrative Hearings, and a Lead Adjudicator from the Employment Security Department. Training such as this is part of the services provided member school districts by the Southwest Washington Unemployment Compensation Pool. If you have questions about unemployment benefits, please call Shaun Mettler.

Ergonomics Update

On March 5, 2002, Governor Gary Locke directed the State Department of Labor and Industries (L & I) to implement the State's ergonomics rule but asked that enforcement action be delayed two years from its implementation date.

Employers covered by this rule must comply with its requirements by the dates shown" (see table).

Labor and Industries adopted an ergonomics rule in May 2000 to reduce pain, disability and cost of work-related musculoskeletal injuries. While Governor Locke supports the ergonomics rule he also understands that there is opposition as well. He wrote, "There is fear in some industries that these new rules might require costly investments in new equipment, ergonomic consultants, and detailed studies. I

believe these fears are unfounded. However, as the national leader it is incumbent upon us to proceed carefully." He also stated "I understand that one or more bills are under consideration in the Legislature that would repeal the Department's new ergonomics rule. I oppose such bills, and will veto any that reaches my desk."

So what does this mean to a school district? The Workers' Compensation Trust recommends that each school district proceed with the implementation of the ergonomics standard and to be in compliance with its requirements by the dates specified regardless of the fact that there is to be no enforcement activity for a two year period.

The Southwest Washington Workers' Compensation Trust is working with Labor and Industries and will be providing information about the specific requirements of the standard to member districts in the future. L & I will assist in employee education by providing materials such as booklets, videos and web-based training. The ESD staff will assist districts in the ergonomic job hazard assessments.

Copies of the final ergonomics rule and other ergonomics documents are available on L & I's web site, <http://www.lni.wa.gov/wisha/ergo>.

For more information about the new ergonomics standard or other WISHA compliance issues, please call Scott LaBar, ESD 112 WISHA Compliance Loss Control Specialist.

INITIAL IMPLEMENTATION SCHEDULE				
<i>Employer</i>	<i>Awareness Education Completed and Hazard Analysis Completed</i>	<i>Penalties Enforced</i>	<i>Hazard Reduction Completed</i>	<i>Penalties Enforced</i>
Employers with 50 or more annual full time equivalents (FTEs)	July 1, 2003	July 1, 2005	July 1, 2004	July 1, 2006
Employers employing 11-49 annual (FTEs)	July 1, 2004	July 1, 2006	July 1, 2005	July 1, 2007
All other employers employing 10 or fewer	July 1, 2005	July 1, 2007	July 1, 2006	July 1, 2008

Boiler and Pressure Vessel Inspections

The Southwest Washington Risk Management Insurance Cooperative purchases excess boiler and machinery (B&M) insurance from the Chubb Group. This is a new insurance carrier for the Risk Cooperative as of September 1, 2001, replacing Hartford Steam Boiler Insurance Company.

The excess carrier performs boiler and machinery object inspections that are required by law, and generates inspection and recommendation letters. The carrier also provides claims services related to boiler and machinery objects including pressure vessels.

Pressure vessels in schools needing State of Washington jurisdictional inspection every two years include boilers, air tanks, and hot water heaters and tanks.

Chubb is responsible for scheduling and conducting required boiler and machinery inspections with district staff. It is the district's responsibility, however, to monitor inspection compliance of its pressure vessels. If Chubb does not schedule a timely inspection, or a boiler certificate is near expiration, contact Chubb or the Risk Cooperative and an inspection will be arranged.

Chubb boiler/pressure vessel inspectors

To arrange a B&M, inspection, contact the following Chubb inspectors:

School location	Chubb Inspector	Cell phone number
<ul style="list-style-type: none"> • Clark County north of Vancouver • Cowlitz County • Pacific County • Wahkiakum County 	Ed Parry, Risk Consultant	206-550-5499
<ul style="list-style-type: none"> • The Vancouver area • Klickitat County • Skamania County 	Ed Pitzrick, Risk Consultant	503-705-7858
For general questions or service concerns	Don Carpenter, Unit Supervisor, NW Region	360-731-3963

Please tell them that you are a Southwest Washington Risk Management Insurance Cooperative member.

New fees for boiler/pressure vessel installations or reinstallations

As of January 1, 2002, for all new boiler and pressure vessel installations or reinstallations, the State of Washington requires owners and/or contractors to obtain an installation permit and submit it to the Department of Labor and Industries, Boiler Division. (Reportedly, the purpose of this permit is to limit the number of pressure vessels that are installed without the state or insurance company knowing about it.) A \$50 fee is charged for this installation permit, and the certificate fee still applies. (The inspection fee is waived if the vessel is inspected by a Chubb inspector.) The completed "Boiler/Pressure Vessel Installation or Reinstallation Permit"

form should then be posted by the pressure vessel. These permit forms are available on line at <http://www.lni.wa.gov/scs/boilers/>. A copy of the revised law (296-104 WAC) can also be found at that website.

For questions or further information, call Peggy Sandberg at the Risk Cooperative.

Guidelines for Pesticide Use in Schools



In our last newsletter, information was provided on a new law concerning the posting and notification of pesticide applications at schools. This law takes effect July 1, 2002.

This new law has three important requirements for schools and day care centers:

1. Written annual notification to parents and employees of the school's pest control policies and methods
2. Specific notifications, at least forty-eight hours before a pesticide application
3. Required pesticide application records, and an annual summary, accessible to interested persons

The Washington State Department of Agriculture (WSDA) is assisting schools by providing a "How to Comply" manual for schools. This manual will be available on-line at www.wa.gov/agr/pmd. WSDA will also mail this manual to all school districts and school maintenance organizations.

Further information is available on the WSDA website (www.wa.gov/agr/pmd) or by calling their toll-free number for general pesticide information and services at 1-877-301-4555.

Retired Employees Receive Unemployment Compensation

A retired school employee may be eligible to receive unemployment compensation. If a retiree accepts employment after retiring from a school district, and later that employment is terminated through no fault of his own, the individual can be eligible for unemployment benefits. Two examples:

- At the end of the school year, a teacher retires. In August, he accepts a position in the technical service field. In October, the company downsizes its workforce, laying off the employee.
- The teacher retires, and the following August the school district signs the individual to a one-year contract. At the end of the school year the district does not renew the contract.

In both cases, the person is unemployed through no fault of his own, and has worked at least 680 hours in the last four quarters, so he will be eligible for unemployment benefits (as long as he is able to work and is making an active work search). The last employing school district will be charged for a portion of the unemployment benefits, because the district is one of the base year employers (that employed the individual within the previous four quarters).

This individual will be required to report the funds received from retirement, and these dollars will reduce the amount of unemployment benefit received. So if a retiree shows up on your quarterly unemployment claims report, please do not be alarmed.

If you have any questions about unemployment compensation insurance benefits, please call Shaun Mettler.

Insurance Programs Website

Take a look at the new ESD 112 website at www.esd112.org. You can find the Insurance Programs' web pages from the ESD 112 web site by clicking on "Programs | Services", then "Operations Support" and then "Insurance Programs."

In the Insurance Programs pages you can explore who we are, read the director's message, review a brief history of each self-insured program, study the financial health of the programs, and review an outline of coverage. Plus, you can read the most current "Risk Management Matters" newsletter, peruse a catalog of past newsletter articles and choose and read those articles you are interested in. You can also contact Insurance Programs staff via email if you have questions or concerns to discuss.

In the future, Insurance Programs will provide a means for members to electronically report claims and student accidents directly to Insurance Programs through the website. Mark these pages with a "Bookmark" or "Favorite Page" for ease of future access.

Please call Insurance Programs if you have any questions or comments about our new website.



Tracey Usher, Workers' Compensation Claims Adjuster

Tracey Usher is the Trust's newest workers' compensation adjudicator, handling workers' compensation claims filed by school employees. Her territory includes those districts located east of Vancouver (previously served by Sharon Elgin, who has retired).

Born in St. Helens, Oregon, Tracey comes to us with over 17 years of workers' compensation adjusting experience, working for a trucking company and a public utility. She has handled multijurisdictional claims and both short and long term disability claims.

Her hobbies include wildlife and nature photography (and the associated nature hiking) and reading horror novels.

We welcome Tracey to the ESD 112 Insurance Programs staff!

New School Field Trip Procedures Available

In response to many inquiries about field trips, the Southwest Washington Risk Management Insurance Cooperative has issued sample School Field Trip Procedures to its member school districts.

The School Field Trip Procedures provide easily accessible detailed guidance for many aspects of planning and executing field trips. The first section of these procedures contains related forms that are designed to be copied and used by staff for field trips.

If your school is a Risk Cooperative member and has not received a copy of the procedures, please call the Risk Cooperative.

PTO Coverage Issues



The Risk Cooperative is periodically asked if the district's liability insurance coverage extends to Parent Teacher Organization (PTO) volunteers who are involved in fund raising activities that benefit the school district. In order for a school district's liability coverage to extend to protect PTOs and their individual members, three conditions must be met:

1. The group or organization cannot be a separate legal entity from the district. If the organization is a separate legal entity, like a Parent Teacher Association (PTA) versus a PTO, the district's coverage cannot extend to cover the organization, its activities or its members.

2. The volunteer members of the group must be "acting at the direction and under the supervision" of the district. If the volunteers are not being directed and supervised by a district employee, they are acting independently, even if those actions benefit the district, and the district's coverage cannot extend to cover that activity, organization or those volunteers.

3. The district must have a material interest in all funds raised by the group. The Risk Cooperative would prefer that funds generated by the organization go directly into a district fund (like ASB). If a separate fund is maintained outside the district, all or most of those funds must be intended for or be expended to benefit the

district. If monies are expended primarily for administration of the organization or for activities not directly benefiting the district, then the district's coverage will not extend to the organization or its activities and volunteers.

In summary, if the organization is not a separate legal entity from the district, if the members of the organization are acting at the direction and under the supervision of the district, and if the district either receives funds raised by the organization or has a substantial interest in those funds, then the district's general liability will likely extend to those individuals in that organization under those circumstances.

The Southwest Washington Risk Management Insurance Cooperative is a self-funded and self-administered program which provides property and liability coverage, and group-purchases excess insurance coverage to its member school districts. It is important to remember that the school district cannot make a gift of its liability insurance coverage to well intentioned school patrons.

If you have any questions, please call Peggy Sandberg at the Risk Cooperative.

Mark Your Calendar for Safety Training!

During the past two summers, the Southwest Washington Workers' Compensation Trust has presented "Safety Training for Maintenance, Custodial and Grounds School Staff." The training has been well attended and well received. It will be provided again this year on July 29 - August 2, 2002, at ESD 112 in Vancouver.

The purpose of this program is to provide required, valuable information and to increase awareness about safety issues in an effort to reduce injuries. This training would be beneficial for all those who were unable to attend last year, for new employees, or for those who would like some refresher training.

Topics last year included:

- Hazard Communication/MSDS
- Fall Protection and Ladder Safety
- Personal Protective Equipment
- Control of Hazardous Energy (Lockout/Tagout)
- Fire Prevention
- Forklift Training
- Asbestos Awareness
- Respiratory Protection
- Indoor Air Quality
- WISHA Compliance/Inspection
- Lifting and Back Safety.

Most of these classes will be presented again this year, and some new topics are being considered. If you have a specific safety-related topic that you encounter in your job and that you feel would be of interest to others, please call Scott LaBar. Final course schedules and registration forms will be available in June.

July 29 - August 2, 2002

Athletic Liability Seminar for Coaches

This seminar will be held on Friday, **May 31, 2002**, at ESD 112. More information will be sent to athletic directors.

Workers' Compensation Program Compliance Audit Due

Periodically the Washington State Department of Labor and Industries performs an audit of the Southwest Washington Workers' Compensation Trust's self-insurance program. Part of that process includes the auditing of Washington Industrial Health and Safety Act (WISHA) standards pertaining to employee health and safety with visits to randomly selected buildings of a dozen or so member districts. The WISHA inspector will arrive at a building without an appointment to interview staff and conduct a walk-through investigation. Typically this audit occurs once every three years. It has now been five years since the last audit, which means the Trust is certainly overdue for a visit!

A review of the last audit reveals the auditors examined specific areas for compliance. In particular, the maintenance of an accident prevention program tailored to the needs of the district and to the types of hazards found in the district was analyzed. Their examination included a review of the general, educational (training), medical and first aid requirements but did not constitute a complete safety inspection, nor was it intended to serve as a substitute for a safety and health inspection.

The following program elements were evaluated during the last audit:

- Written accident prevention program
- Safety orientation
- Safety committee
- Safety bulletin board
- Personnel with valid first aid certificates
- First aid requirements
- Training in safety
- Investigation of injuries
- Maintenance of an OSHA 200 log

At the last inspection, several districts were deficient in the following:

1. Lack of a written accident prevention program.
2. Failure to have written programs for specific hazards. This would include Hazard Communication, Fall Protection, Control of Hazardous Energy, Respiratory Protection Plan, and Exposure Control Plan (Bloodborne Pathogens).

3. How and when to report injuries.
4. How to report unsafe conditions and practices.
5. The failure to establish a safety committee or to follow the specific requirements of a safety committee.
6. Failure to have a safety bulletin board.
7. Failure to have personnel with valid certificates of first-aid training.
8. Failure to post the location of first-aid facilities.
9. Failure to provide new hires basic safety orientation training.
10. Failure to provide job specific safety orientation training.
11. The use and care of personal protective equipment.
12. Actions to take in the event of an emergency, including routes of exiting.
13. Identification of hazardous materials including instructions on use and action following exposure.

It is important to realize that Labor and Industries claims representatives, not WISHA compliance officers, conducted the last audit. WISHA compliance officers are expected to conduct the next safety and health audit. They may not only look at your general programs similar to the last audit, but they may also use the opportunity to conduct a more comprehensive inspection of your workplace. They may examine maintenance shops, bus garages, vocational education classrooms, food service, administrative offices, and other sites.

Since the last audit, the Trust's loss control staff has identified safety and health issues for which districts are accountable, cited applicable standards, and provided "WISHA-type" inspections. These inspections consisted of evaluations of written safety programs and evaluations of equipment and facility safety. The Trust's courtesy inspections are similar to the type of inspection you may be subject to during the next audit.

Take time to review the district's safety and health programs so that your district is not only prepared for the next audit but is also a safe place for staff and students alike.

If you have any questions regarding health and safety programs or WISHA compliance issues contact Scott LaBar with the Trust's loss control staff.

Special Events Insurance Coverage

Special Events Insurance Coverage is available to groups who do not have liability coverage of their own and that use member school district facilities to hold fund raisers, political rallies, dances, shows, swap meets, community voting, plays, union meetings, and other activities. Special Events Coverage can also be used to provide liability coverage for parent-sponsored graduation parties. Special Events Coverage protects the member school district as well as the event holder from financial loss that may result from the negligent acts of the event holder while conducting the event.

Special Events Coverage provides liability coverage for general liability and products liability to a \$1,000,000 limit, personal and advertising injury to a \$250,000 limit, fire legal liability to a \$50,000 limit and medical payments to a limit of \$2,000 per event. Additional limits of liability are available up to a \$5,000,000 optional excess limit of liability. This coverage is a primary coverage with the district's own liability coverage being an excess and noncontributing coverage. The standard Occurrence Commercial General Liability Form also will provide coverage for liquor liability. Coverage for Vendors, Exhibitors and Concessionaires at an event can be added as additional insureds at an additional premium charge.

Special Events Coverage can be obtained through the Southwest Washington Risk Management Insurance Cooperative (Risk Cooperative) by completing an application and submitting it to the Risk Cooperative a few weeks in advance of the event.

Types of events that can be insured through Special Events Coverage are divided into five hazard classes, from low minimum hazard to moderate-high hazard class. Examples of a low minimum hazard, or Class I event, would be art festivals, bazaars, luncheons, pageants and trade shows. Examples of moderate hazard events, or Class III hazards, would be animal acts, carnivals (without rides) flea markets, street fairs and union meetings. Class I through Class III events can be rated and the cost for coverage determined by the Risk Cooperative, which speeds up the application process

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Special Events Insurance Coverage continued from page 8

considerably. However, events that fall in Class IV and Class V hazards, such as baseball, basketball, and other similar sporting events, marathons, overnight camping, and ski events, must be rated and the costs determined by the insurance carrier. Applications for Class IV and V events require that the application be submitted to the Risk Cooperative at least three weeks prior to the event.

Events are rated based on the hazard exposure (Class) and on the number of participants in attendance. The following are approximate costs for illustration purposes. A Class I event, the lowest hazard class, can cost from \$100 for an event with fewer than 50 participants to \$900 for an event with 5,000 to 10,000 participants. A Class III event, which is the highest class of event that can be rated by the Risk Cooperative can cost from \$140 for an event with fewer than 50 participants to approximately \$1,300 for an event with 5,000 to 10,000 participants. Class IV and V events are rated by the participating insurance carrier with the premium charge reflecting the degree of hazard and number of participants. Most Class I through III events cost less than \$350.

Spring each year generally sees a higher degree of interest in this coverage for off premises graduation parties that are sponsored by parent groups. Off premises graduation parties are usually not school sponsored and school supervised, and therefore are not covered by the school district's liability policy. Parent groups should include in their planning the cost for liability insurance coverage to cover its liability exposure and the liability exposure that may be inferred to the school district. This can be done through the Special Events Coverage program or through some other source for liability coverage.

If there are questions regarding Special Events Coverage for an event, or if an application is desired, please call Jim Rochel at the Risk Cooperative.



Executive Committee Meeting Highlights

SW WA Risk Management Insurance Cooperative

Executive Committee Meeting of April 11, 2002

Loy Dale reported that the February 2002 actuarial review of the Risk Cooperative's financial status established that the Risk Cooperative continues to maintain a 95% confidence level which represents a high degree of financial stability.

Mike Croke of Willis of Seattle, broker for the Risk Cooperative, reports that the insurance marketplace is going through some tough times as a result of the September 11, 2001 terrorist attack and also because of the Enron Debacle. However, the Risk Cooperative expects to maintain the increase in rates to its membership at a low 5.5% increase.

Peggy Sandberg presented a new program, Nonstructural Earthquake Hazard Mitigation, to the Executive Committee. This program encourages member districts to upgrade their facilities to make them safer in the event of an earthquake. Grant money from Project Impact will provide training for district personnel to assist in the implementation of this program.

The Risk Cooperative has been approached by a local school district to provide property and casualty insurance coverage to them in the 2002-2003 school year. The Risk Cooperative Staff has been directed by the Executive Committee to review the district's request and report back to the Executive Committee.

The next meeting date for the Risk Cooperative is scheduled for Friday, May 24, 2002.

SW WA Unemployment Compensation Pool

A meeting date will be scheduled for review of the actuary's solvency report.

SW WA Worker's Compensation Trust

An Executive Committee meeting is scheduled for April 30, 2002, to be held at the ESD Office.

Personal Vehicle Use for School District Business: Insurance Coverage

District staff and volunteers who drive their own vehicles on school business sometimes ask school principals and business managers the following questions; here are the Risk Cooperative's responses:

- *"Am I covered by the district's automobile insurance if I am involved in an accident in my own vehicle while on school business?"*

The short answer is not usually, because an automobile's insurance coverage follows the vehicle. Currently, the district's coverage with the Southwest Washington Risk Management Insurance Cooperative provides that when employees or volunteers use their privately owned vehicles for district business, in the event of a claim, their personal auto liability insurance is primary (will pay first) and the district's auto liability coverage is excess (pays only after the vehicle owner's insurance limits are exhausted). This refers to liability coverage only. Damage to the employee's privately owned vehicle remains entirely with the employee; there is no district property coverage (comprehensive or collision) from the Risk Cooperative for privately owned vehicles.

- *"Do my personal automobile insurance rates increase because I drive my own car on school business?"*

Employees who drive their own vehicles on school business should explain the business use of the vehicle carefully to their personal insurance agents - occasional use (less than three times per week) of a personal vehicle is not normally considered "regular business use." When staff transport students in their personal autos occasionally as needs arise, they should not be expected to pay increased auto premiums. Employees who drive their own vehicles for the district and receive reimbursement for mileage already

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receive money for insurance coverage. According to the IRS, a portion of the reimbursed cost (currently \$0.345 per mile from the State) for use of personal vehicles is the insurance coverage.

What can a school district do to limit its exposure to liability when employees and volunteers drive their own autos on school business?

Make sure those vehicles are insured and inspected!

As a reminder, the Risk Cooperative recommends that member districts require that their employees and volunteers who drive their own vehicles on school business carry a minimum of \$100,00/\$300,000 automobile liability limits. (Washington State law requires liability limits of \$25,000/\$50,000).

In addition, drivers of vehicles transporting students should complete a vehicle inspection checklist and offer proof of insurance prior to the trip. An easy-to-use, sample vehicle inspection form, part of the "Volunteer Driver Checklist," is available from the Risk Cooperative.

If you have questions about this, please call Peggy Sandberg at the Risk Cooperative.

Non-Student Travel in School District Vehicles

Occasionally districts ask the Risk Cooperative if there is insurance coverage for non-students who travel aboard school district vehicles. This may come in the form of bus drivers who bring their own children along on the bus on an emergency basis (such as when no sitter is available) and on extra trips, or a coach bringing along his/her children to a game.

Liability coverage is provided through the Risk Cooperative for member districts transporting anyone "authorized" by the school district in a district vehicle.

Although there are no formal guidelines in this area, it is not a good practice for non-students to travel aboard school district vehicles. There are several reasons for this:

- *The employee's attention is further divided*
A driver's attention is already divided since the driver has to pay attention to both the road and the passengers. Having his/her own child in the vehicle adds another supervision concern for the driver. (Preferential treatment of the employee's child may also become an issue.) There is a similar concern with a school coach who has to watch his/her own child as well as supervise students.
- *Non-students do not receive school bus safety and emergency training*
Non-students do not receive the same training in school bus safety and emergency procedures as do district students, and may not behave appropriately. How do non-students learn the rules for proper behavior on the bus as well as safety around the bus?
- *The district is exposed to additional potential liability*
Transporting children other than those the district is required to transport is an additional liability loss exposure for the district. If an accident were to occur, the district may become liable for those injuries.
- *Car seats may be needed for younger and smaller children in cars or vans*
Special child passenger restraint devices (infant, child or booster seats) are required for children under six years of age or sixty pounds (see RCW 46.61.687). (An exception is made for school buses that do not have seat belts.)

The district should adopt a policy on whether it allows the transportation of non-students in school district vehicles. If the district allows this, have it on a case-by-case exception basis only, with a specifically designated employee who can authorize this. If this is done on a recurring basis (and the Risk Cooperative discourages this), it should be authorized by the school board or superintendent.

Remember - "Just because it's covered doesn't mean that it's a good idea." Think carefully before allowing employees to bring their own children along, and weigh the benefits and the risks.

CI aims Lesson - Property/Casual ty Torqued Driver Not Nuts



The incident

A high school auto shop changed the tires and wheels on a pickup truck and failed to properly tighten all of the lug nuts on a rear wheel. The wheel came off during the operation of the vehicle.

There were no injuries. As a result of the wheel coming off of the vehicle, two lug bolts were broken off and damage occurred to the side of the pickup bed. Total damage was \$700. Fortunately, the loss of the wheel occurred at a low speed - if it had happened at a higher speed or in busy traffic, more severe damage and injuries could have occurred.

Background

At this school, shop students are given both written and practical tests on shop equipment. The shop teacher was very experienced. There was no repair order signed by the vehicle's owner authorizing the work.

The student who worked on the vehicle was a first year auto shop student and had not used the air wrench previously. The student probably used the air wrench to mount the tires (tighten the nuts onto the bolts), but failed to use the manual torque wrench to ensure proper tightness.

According to shop procedures, a second year auto shop student should have checked the work of the first year student before the vehicle was released, but there was no record that that occurred. Neither did the shop teacher check the student's work before releasing the vehicle. If the teacher had double checked the student's work to ensure that it was to industry standards, this incident likely would not have occurred.

We recommend that shop teachers check all student work and sign off that he has approved it before the repair work is returned to the owner. The shop teacher is responsible for supervision of all aspects of auto shop.

Product Liability

In the last newsletter, the article "Cutting Your Losses in the School Shop" pointed out that: "Schools need to be aware that the products they sell or the services they render can cause liability problems after the sale. If the product the school sells causes or contributes to damage or injury, the school district could be judged liable. Districts should consider product liability issues before selling shop products."

A school auto shop, when doing work on vehicles belonging to others, owes a duty to complete the work in a



workmanship like manner (to industry standards). In this case, by not properly tightening the lug nuts on the wheel, the school fell short of providing proper service.

Hold Harmless Agreements in a Shop

Even though the district appears to be legally liable for the damages in this case, there is a risk financing technique that could have saved the district or its insurance cooperative (which may affect the district's future insurance rates) from paying the bill for the loss.

A hold harmless agreement is a legally binding agreement (between adults) in which one party agrees to hold the other without responsibility for damage or other liability arising out of the transaction. This type of agreement could be used in an auto shop because the owner is receiving work on his/her vehicle at a reduced cost and knows that students will be working on the vehicle.

In this case, if there had been a repair order with an appropriate hold harmless clause signed by the adult vehicle owner, the cost of the loss could have been tendered back to the adult who signed the hold harmless agreement.

Hold harmless agreements for auto shop repairs are a viable risk financing technique available to school districts. However, if a serious loss were to occur, this shifting of financial responsibility may have public relations repercussions if the community views the school district as responsible. The district may want to weigh the financial benefit against the possible negative community costs.

Prevent shop losses by having the shop teacher check the student's work

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Emergency Paging

Member districts need to report emergencies at the time of the event.

Off Hours Access to ESD Insurance Programs is available by paging (360) 408-0373.

Contact Insurance Programs

During normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., call (360) 750-7504, 568-SCAN, or 1 (800) 749-5861.

Contact us on line at:
www.esd112.org/insurance_programs

Objective

The objective of *Risk Management Matters* is to provide useful information to our member districts. Your contributions and comments are welcome! Please call Loy Dale, Executive Director, with comments.

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