



RiskWatch

A Department of Administrative Services, Division of Risk Management Publication



The Purpose and Value of Implementing Enterprise Risk Management

by Brian Nelson, Assistant Director

Some of you know that Utah's Department of Administrative Services (DAS), under the direction of Executive Director Kim Hood, has been implementing Enterprise Risk Management ("ERM") for approximately 20 months now. It has been a remarkable experience in learning and collaboration. The intent of this article is to apprise you of the purpose and value of ERM.

* What is ERM?

The US Committee of Sponsoring Organizations of Treadway Commission ("COSO") has defined ERM as "a process, effected by an entity's board of directors, management and other personnel, applied in strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risks to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives."

* Why is ERM of value?

If properly understood and applied, ERM enables entities to reach their strategic goals by breaking down silos, identifying threats to organizational objectives, recognizing opportunities, and setting measurable goals.

* Who uses ERM?

ERM has been successfully implemented in the private sector by Wal-Mart, Unocal Corporation, General Motors, Toyota-USA, Cisco, and, more locally, by Questar, Rio Tinto, and the Workers Compensation Fund. ERM has also been utilized and lauded by many public sector organizations, such as the State of Washington, the University of North Carolina, Duke University, and the State of California's System of Higher Education.

"ERM enables entities to reach their strategic goals by breaking down silos, identifying threats to organizational objectives, recognizing opportunities, and setting measurable goals."

* What has DAS done?

Over the past 18 months, DAS has involved all of its employees in identifying threats to its strategic goals, ranking those threats, and implementing workgroups to mitigate those threats. More recently, all DAS divisions have identified and ranked at least one credible worst case scenario that threatens their critical objectives. Existing and new mitigating measures are being identified for implementation.

* Does it take time?

Of course, it does. After all, ERM is a continual process of threat identification, mitigation, and measurement that facilitates a collaborative crescendo of innovation and improvement.

* Why does it work?

It works when executive management is committed to knowing and mitigating significant threats to its strategic goals. It works because it values the input of personnel, identifies opportunities that threat mitigation presents, and aligns personnel with the key goals of their organization.

* Are you interested?

If your organization is interested in implementing ERM, we will gladly share the lessons we have learned and assist in customizing ERM for your organization. For more information, contact Brian Nelson or James Brown.

Online Self-inspection Survey Closes June 1, 2013

The online self-inspection survey is an annual report conducted for the Division of Risk Management. The survey is a tool for recognizing and eliminating hazards that can significantly affect the public, our co-workers, the property we are charged to preserve, and the Risk Fund. The timely submission of the online survey will qualify entities to a premium credit. As a coordinator you are responsible to assign each building to the appropriate surveyor who will fill out and submit the Self-Inspection Survey. You should also make sure the surveyors you have assigned buildings to are completing these surveys by the deadline.

Table of Contents

Shop Floor Marking

Are Water Heaters Boilers?

Large Property Loss

New Member of Loss Control

Law & Order

School Bus Rental

UPCOMING EVENTS



May 16 - Risk Management Symposium for Supervisors and Managers

June 1 - Self-Inspection Survey Ends!

June 30 - Safety Minutes and Sprinkler Flow Test Results must be submitted for discount



Points of Interest

Bruce Garner New AG in State Risk

Bruce graduated from the University of Utah law school in 1984 and was a trial lawyer and partner with the Salt Lake City firm Richards, Brandt, Miller and Nelson. In 1992 he joined the Attorney General's Office Litigation Division and has litigated cases on behalf of state agencies, universities, and school districts. (See page 4, *Law and Order for Bruce's article*)

More Stories

Shop Floor Marking

In Schools

by Thomas Merrill

The question frequently comes up regarding OSHA guidelines for shop floor marking in schools.

OSHA regulations have no floor marking requirements for shop areas, other than in certain tightly defined hazard situations. An example of a tightly defined hazard situation is an "unsafe travel area" on floors where robotics are used and unexpected motion by a moving robot arm can cause a struck-by injury. Another situation where shop floor marking is prudent is in a room with a laser beam coursing around in a defined, well-marked "hazard zone".

The main basis for school shop hazard zone marking can be found in ANSI Section 535. This standard deals specifically with "marking hazardous work areas or processes." The

Utah Office of Education has adopted these guidelines for secondary school wood and metal shops to establish a "hazard zone" around any potentially hazardous piece of equipment in a school shop area.

A rule has also been instituted by the Utah Office of Education requiring that "no more than one student at a time can be in the marked hazard area." The goal is to prevent horseplay or a distraction that can ultimately result in injury to the machine operator.



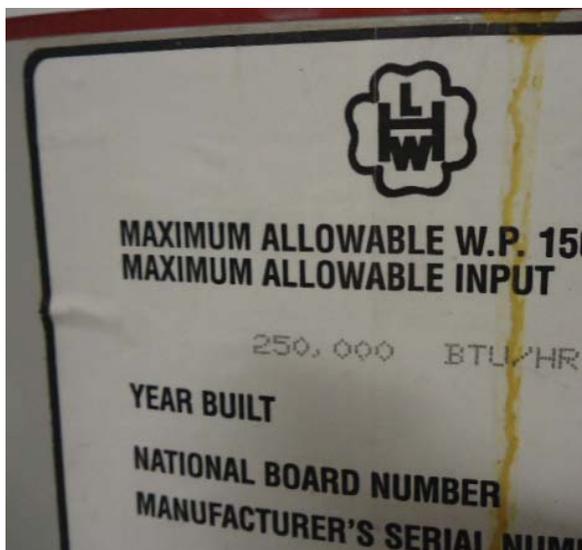
Are Water Heaters Considered Boilers?

by Thomas Merrill

Water heaters are equipped with a special safety device to prevent over-pressurization that could lead to an explosion. Under normal circumstances, water discharged from a bathroom or cafeteria kitchen water heater should never become hot enough to produce steam.

Because of the potential hazards, the State of Utah Boiler Safety Division of the Utah Labor Commission requires that very large water heaters receive a safety inspection once every two years, the same as required for boilers. These inspections are completed either by state employees, or by an insurance subcontractor hired to perform this service.

All water heaters come with a small data plate that specifies their BTU capacity, and any water heater with an output greater than 199,999 BTU must receive these special safety inspections. The corresponding inspection document that is received should be posted in the work area adjacent to the equipment. The inspection expiration date should be closely monitored and the certification should never be allowed to expire.





A LARGE PROPERTY LOSS... WHAT DO I DO?

By Jim Christensen

It seems like sooner or later you will experience a large property loss to one of your buildings or property. These large losses can be caused by fire, lightning, wind, hail, vandalism, explosion, flood, mechanical breakdown, employee dishonesty, etc.

After the initial shock wears off what should you do?

The Property Policy lists the "Duties of the Insured". These include:

1. Give immediate notice to Risk Management;

2. Protect the property from further damage; make reasonable temporary repairs required to protect the covered property, and keep an accurate record of repair expenditures;
3. Prepare an inventory of the damaged personal property showing in detail, quantity, description, replacement value, and amount of loss and attach to the inventory all bills, receipts and related documents that substantiate the figures in the inventory;
4. Keep the damaged property available for inspection (don't throw anything away until approved by the adjuster);
5. Give immediate notice to the proper police authority if the loss is due to a violation of law (i.e. vandalism, arson, malicious mischief, employee dishonesty, etc.).

Some other suggestions include, setting up a separate accounting code for anything that has to do with the large loss. This will help keep invoices, documents, etc. segregated and be easier to account for when trying to establish the statement of loss. Also, keep track of the time and activities of your employees as related to the large loss.

Depending on the type of loss, copies of contracts, leases, certificates of insurance, project specifications, as built drawings, security videos, names of witnesses, etc. may be helpful in adjusting the loss.

Be assured that State Risk Management is committed to assisting you through this trying time and making the adjustment process as easy as possible.

Julie Clark New Member of Loss Control

by Brian Nelson

We are pleased to announce that Julie Clark is now officially a member of the Loss Control Group here at State Risk. Julie will continue to administer Certificates of Insurance for our insureds and is preparing to replace James Brown as our Workers' Compensation Coordinator in the near future. Parenthetically, James will continue to serve as our HR Consultant for our Executive Branch Agencies.

Before joining State Risk, Julie worked as the Workers' Compensation Coordinator and Senior Casualty Claims Adjuster for Central Refrigerated Service, Inc., a nationwide trucking company. Prior to that she worked as a Property/Casualty Adjuster for GAB Robins NA Inc.

Julie has earned two insurance designations: an AIC (Associate in Claims) and an ARM (Associate in Risk Management) through The Institutes, formerly the Insurance Institute of America. Needless to say, we are excited to have Julie join us.





LAW & ORDER

with Bruce Garner
Assistant Attorney General

With Eyes Wide Open:

Indemnity Agreements and Defined Contracts

Be very careful when a person or entity with whom you are contracting asks you to include an indemnity agreement in their favor. Your entity can face significant liability and have no coverage from Risk Management.

Your general liability policy with Risk Management specifically excludes contracts from coverage. This is a standard exclusion that enables you to contract as necessary without interference. The exclusion also contributes to keeping premiums low. And since you have entered into an agreement, your agency is responsible for honoring its contractual commitments. If a claim or lawsuit is filed against you for breach of contract, Risk does not defend or participate in any settlement.

There is a limited exception to the contract exclusion. Occasionally, it may make sense for you to contractually assume liability of others arising out of the performance of the contract. This typically occurs when a contracting party insists that you include an indemnity agreement transferring liability to you. Even in these circumstances,

there is no coverage from Risk unless the contractual provision transferring liability “has been approved by the Director of the Utah Division of Risk Management.” A duly approved contractual provision is identified as a “defined contract” in the Risk policy and entitles you to coverage.

It works like this: once an indemnity agreement has been approved by Risk, coverage will be extended for claims within the scope of approval and in accordance with the Risk policy. Risk will defend and fund a settlement arising from the indemnified claims. Absent prior approval, there is no “defined contract” coverage from Risk for contractual provisions assuming liability.

The bottom line: be wary of indemnification provisions requiring your entity to assume the liability of others. Contact Risk to inquire whether such contractual provisions can become covered “defined contracts” through prior approval from the Risk Manager.

New Certificates of Insurance Program Coming Soon!

by Julie Clark

Within the past 18 months State Risk Management has implemented a new data platform in which we have consolidated several systems that had previously been independent of each other. This new program now allows us to manage claims, share various databases, and issue invoices to our insureds for auto comp/collision, liability and property premiums.

We are now in the process of building an application within this data platform for administering Certificates of Insurance. This will decrease the turn-

around time for entities requesting them. This new program is planned to be a paperless process that will use email as the exclusive distribution mechanism. The LDS Church has recently put this process in place and has had positive results. State Risk Management is excited to be working on this project which will greatly improve this service to our insureds.

Because this will be an automated process, our insured entities will need to become more knowledgeable about the purpose of Certificates of Insurance, Insurance Requirements, and the new way of requesting them. It will be imperative for those people making the request to thoroughly review the insurance requirements given them by an

outside entity that requires proof of insurance before making the request so they understand exactly what is required. They will then need to follow the steps outlined in the request form exactly, completing each required field, in order for them to receive a correct Certificate. In short, our insureds will no longer be able simply to attach insurance requirements to requests.

State Risk Management should be implementing this new application by July 1st if all goes well. We will be making available detailed instructions in the request form itself. If you have any questions, please don't hesitate to call or email the Program Administrator, Julie Clark, at 801-538-9583 or julieclark@utah.gov.

School Bus Rental – Just a Reminder

by Tani Downing, Director

Risk Management insurance does not cover school buses rented or provided by school districts to private entities. Your school district will be responsible if a loss occurs and that could add up to millions of dollars. Risk Management insurance may cover buses rented or provided to another governmental entity (county, city, charter school). Please contact Risk Management to discuss the process for approval for these situations.



By law, the State Risk Fund insurance covers government entities and their property and employees, but does not cover private entities and their property. The school district is a governmental entity which is protected from liability by the Governmental Immunity Act which limits the damages that can be obtained against governmental entities.

One of the reasons the risk pool works, and we are able to economically insure all of the agencies of State government, school districts, higher educational institutions, and 70 of 80 charter schools (together with their almost 120,000 employees), is because we are protected by, and our exposure is limited by, the Governmental Immunity Act's caps. (Those caps are currently \$674,000 per person and \$2,308,400 per occurrence, and are adjusted periodically based on the Consumer Price Index.)

When a school district rents out a school bus, it is not acting like a school district but is acting more like a private rental company. A court could conclude that the school district is no longer covered by the Utah Governmental Immunity Act. If an accident were to then occur, the sky could be the limit for damages if there are multiple injuries or deaths due to improper maintenance, driver neglect, or some other school district negligence. This unacceptable risk would apply even if the school district rents out school buses at a nominal fee or even no fee. In either case, the school district is still not performing its central mission of educating students and thus is potentially subject to a finding that the Governmental Immunity Act does not apply. See *Laney v. Fairview City*, 57 P.3d 1007 (2002). In *Laney* the Utah Supreme Court held that Fairview City had no governmental immunity when it came to an electrical power system it ran because the City was operating more like a private business than a governmental entity. So the damages for the injury caused by the power company were potentially unlimited.

We have only approved the use of school buses when another governmental entity is involved and willing to take on the liability and indemnify the school district and the State. For example, for the St. George Marathon, St. George City is the sponsor (another governmental entity covered by the Utah Governmental Immunity Act and subject to immunity caps) and they provide an indemnity agreement that covers the school district and the State in the event they are sued. This agreement has to be approved by the State Risk Manager before our insurance applies.

The Value of Safety

If you could save money, improve productivity, and increase employee morale, would you? Businesses spend \$170 billion a year on costs associated with occupational injuries and illnesses - expenditures that come straight out of company profits.

Workplaces that establish safety and health management systems can re-

duce their injury and illness costs by 20 to 40 percent. In today's business environment, these costs can be the difference between operating in the black and running in the red.

Safe workplaces provide the consistency and reliability needed to build a community and grow a business. Workplaces with active safety and health leadership have fewer injuries, are often rated

"better places to work," and have satisfied and more productive employees. These employees return to work more quickly after an injury or illness and produce higher quality products and services. The Utah Safety Council is dedicated to helping you provide a safe working environment at your organization.

Source: OSHA.gov

