



Risk Watch

A Quarterly Publication from the **Division of Risk Management**



Special points of interest:

- Auto accident claims have historically outnumbered every other type or class of claim since the Risk Fund was created.
- Risk Management has developed and launched a new Driver Safety Training program, which can be accessed at www.risk.utah.gov.
- Risk Management welcomes your ongoing input to reduce auto-related claims, injuries, and deaths.

Inside this issue:

Performance, Conduct, & Disabilities	2
At-Will Employment	2
At-Will Employment (cont.)	3
Ergonomics & Economy	3
Risk Happenings	4
Working in the Heat	4

Volume 3, Issue 1

July 2009

Driver Safety Training - Roger Livingston, State Risk Manager

Because auto accident claims have outnumbered any other type or class of claim every year since the Risk Fund was created, Risk Management has required all covered entities to implement approved defensive driving training. Notwithstanding those cooperative efforts, we are experiencing an increase in crash-related claims. Some of



those claims have been heartbreaking.

Given the recent trend, I invite all of you to redouble your efforts to reduce the costs and effects of these incidents. If your entity is not holding regular and effective accident review committee meetings, please start today. To assist you in your loss control endeavors, we have developed and launched a new Driver Safety Training program, which can be accessed via the "Driver Video and Test" link on the left menu of our website's main page (www.risk.utah.gov).

All drivers are expected to view a 14-minute video **and** complete a multiple choice test with a score of 70% or greater. Those who fail the test will be permitted to re-test, but with a different set of questions.

The video portion of the training was a collaborative effort involving resources and representatives from the University of Utah and the Departments of Administrative Services; Public Safety; Transportation; Natural Resources, Technology Services, and the Tax Commission. Critical insight was provided by Dr. David Strayer of the University of Utah and Dr. Howard M. Leaman of the Intermountain Sleep Disorders Center. Thanks to all who participated.

Please note that the multiple choice test covers only a small portion of the information provided in the video. In order to provide a greater learning experience, most of the test questions were selected from the Utah Driver Handbook for the express purpose of reviewing important safety standards and rules of the road that all of us had to master in order to get our driver's licenses.

To help your organization track the testing process, please ensure that online test-takers enter their employee ID number, email address, and the email address of their supervisor or entity designee. Upon completion, the test results will be emailed to test-takers and their supervisors or entity designees. Test-takers can also print a certificate of completion for their personnel files. If you have employees who do not have Internet access, please contact Lisa Adams via email (lisaadams@utah.gov) or telephone (801.538.9560) and she will send you a DVD, testing materials, and certificates of completion.

Because our license to use the Coastal Safety DVD and Video and workbook expired on June 30, 2009, please destroy all copies of the workbook and return all DVD's and VHS tapes to our office at your earliest convenience.

Based upon your input, we have decided to eliminate the ambiguity between "frequent" drivers, who were previously required to undergo annual training, and "infrequent" drivers, for whom training was required every three years. Hereafter, **all** drivers will be expected to undergo Driver Safety training every two years.

Thanks for your ongoing, proactive efforts. Please continue to give us input, so we can improve our services to you and your associates.

The ADA does not require an employer to lower or change its quality, quantity, or production standards.

Performance, Conduct, and Disabilities—Melissa Frost, ADA Coordinator

The Equal Opportunity Employment Commission has recently issued guidelines for applying performance and conduct standards. The following is a summary of those guidelines.

- An entity need not lower or change its quality, quantity, or production standards as an accommodation.
- It is generally preferable for the employee, rather than the employer to raise a disability issue.
- It is generally inappropriate for employers to focus discussions about a performance or conduct problems on an employee's disability. Rather, the focus should be on correcting the problem.
- Accommodation requests are prospective. Generally, discipline for an employee's previous actions or inaction does not need to be rescinded simply because an employee has subsequently made an accommodation request.
- Employers can and should take appropriate

action to prohibit violence or threats of violence; stealing; destruction of property; insubordination; disrespect to clients, customers, or the public; inappropriate behavior between co-workers; and alcohol or illegal drug use.

- If an employee's disability does not cause the misconduct, the individual may be held to the same conduct standards.
- If an employee's disability causes the misconduct, an entity may apply discipline, provided the discipline is applied uniformly and consistently to all employees who engage in such misconduct.
- If termination is appropriate for the misconduct, the employer may usually terminate an employee with a disability, and without further consideration of the request for accommodation after approval from Risk Management.

As you confront these issues, it may be helpful to consider the following list of best management practices.

- Recognize accommodation requests—no magic language is required.
- Promptly refer all health related issues to your ADA Coordinator.
- Review and update job descriptions and physical demands annually.
- Provide honest performance appraisals.
- Address performance issues, not health conditions.
- Protect essential functions by never granting long term "unofficial" accommodations.
- Closely monitor transitional work assignments to ensure they are effective and temporary.
- Avoid and eliminate any form of retaliation.
- Maintain confidentiality.
- Do not make assumptions regarding an employee's health issues.
- Research options and be creative in identifying and evaluating possible workplace accommodations.

For additional information, please visit our webpage at www.risk.utah.gov.



At-Will Employment—Sol Garcia, HR Consultant for Charter Schools

Employment at-will is a common-law principle which accords employers the right to hire, fire, demote, and promote for any reason, absent a law or contract to the contrary. Employees also have the right to quit a job at any time and for any reason. Still, employers and employees may not sever their relations with impunity.

Employment-at-will protections have been significantly eroded over the years by state and federal legislation, court decisions, and legally recognized public policies.

Employers who are unaware of the many exceptions to employment-at-will tenets tend to assume that they can terminate

at-will employees for any reason without any repercussions. The costs and consequences of those erroneous assumptions can be substantial.

In order to maintain at-will status and avoid significant liability, employers must

(continued, top of page 3)

At-Will Employment by Sol Garcia (continued from page 2)

- Be familiar with employee rights and protections, including, but not limited to, Title VII of the Civil Rights Act, the ADA, FMLA, and USERRA.
- Be familiar with public policy exceptions.
- Be familiar with “just cause” exceptions—created by law and/or unintentionally created by management.
- Understand what constitutes an explicit contract and an implied contract.

Prudent employers bolster their at-will employment relationships by:

- Including an at-will disclaimer in any employment

agreement or document that highlights the terms of employment.

- Including an at-will policy in the employee handbook and being explicit that no one can alter that relationship.
- Including an at-will statement in job descriptions and employment applications.
- Reiterating the at-will relationship to employees, particularly when applying corrective action or discipline.
- Including at-will statements in all employee communications, such as newsletters and Intranet pages dedicated to employees.

If your organization intends to

dismiss an at-will employee, take the time to gather and review all of the facts and evidence. Ensure the decision to terminate is not based on unlawful reasons. Review your organization’s rationale and decision with legal counsel.

If management cannot articulate a legitimate non-discriminatory reason for the proposed termination, stop and re-evaluate. Clarify issues and expectations. Then, set a timeline for improvement with clear consequences.

Lastly, review these matters with us, so that we can help you avoid liability and protect the Risk Fund.



Ergonomics and Economy—Tim Villnave, Ergonomics Consultant

As budgets get tighter, managers reassess the allocation of resources to identify expenditures that can be cut. Ergonomic programs can look like an unnecessary or luxury activity. But, much like viewing an iceberg, only part of the story is seen at the surface.

According to a United States General Accounting Office analysis, ergonomic programs:

- Reduce the incidence of work related injury/ illness;
- Lessen workers’ compensation costs;
- Improve worker productivity;
- Increase work performance/quality; and
- Heighten worker morale.

Further, an ergonomic program can assist you in avoiding dis-

crimination charges and potential lawsuits associated with the expanded definition of disability created by the ADA Amendments Act of 2008. Although still a work in progress, Congress has clearly indicated that the definition of disability will encompass more individuals than in the past.

Federal OSHA is expected to become more active under President Obama’s administration. In late February, Hilda Solis, a worker advocate, was confirmed by the Senate as Secretary of Labor. It is expected that an OSHA Ergonomics Standard will be a priority for the department, along with an increase of related citations.

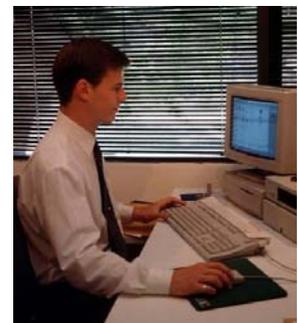
In a broader perspective, ergonomic programs have been seen by a national physician association as promoting fiscal soundness in the economy,

health care system, and entitlement programs of Medicare and Social Security.

In a recent Guidance Statement by the American College of Occupational and Environmental Medicine, an association of Occupational Medicine physicians, the workforce is called “the engine that drives the economy”. The white paper concluded that prevention programs, such as ergonomics, improve workers’ health and optimize the global competitiveness of the United States.

Risk Management encourages every covered entity to develop and implement an effective ergonomic program that recognizes the value of “the engine that drives its unique economy.” Remember that investing in the health and well-being of our employees will yield significant dividends.

“Prevention programs, such as ergonomics, improve workers’ health and optimize the global competitiveness of the United States.”





We're on the Web
www.risk.utah.gov

DIVISION OF RISK MANAGEMENT

5120 State Office Building
Salt Lake City, UT 84114

Phone: (801) 538-9560
Fax: (801) 538-9597
URL: www.risk.utah.gov



RISK HAPPENINGS

Risk Quarterly Training

- **State Office Building Auditorium**
- **Tuesday, September 15, 2009 from 9:00 a.m.—12:00 noon**
- **There will be a general session followed by four breakout sessions for charter schools, school districts, higher education institutions, and state agencies. Come prepared to discuss your challenges, issues, and solutions.**

Working in the Heat—Karen Peterson, Property/Life Safety Specialist

During our hot summer weather, many employees end up in the emergency room due to heat injuries—most of which are totally preventable.

Heat injuries occur when one's body temperature rises above normal, or when the body is no longer able to regulate heat loss. Heat injuries are generally defined in three stages.

- **Dehydration:** This is the first stage of a heat injury. It's the mildest form of heat injury in which your body simply suffers from a lack of fluid.

- **Heat Exhaustion:** This is the next step beyond dehydration. If not treated immediately, serious injury and even death can result.

- **Heat Stroke:** This is the worst stage of a heat injury. Without proper medical attention a victim can die within minutes.

There are a number of contributing factors that increase the chances of suffering a heat

injury—some more obvious than others:

- High temperatures;
- High humidity;
- Sun exposure;
- Excessive activity and exertion;
- Coffee and alcohol;
- Medications, especially diuretics; and
- Illness, especially vomiting and diarrhea.

There are plenty of warning signs that dehydration is setting in. Unfortunately, most people tend to ignore them until it's too late. The following signs and symptoms are outlined from mildest to most severe.

- Thirst
- Headache
- Nausea
- Cramps
- Dizziness
- Weakness, no energy
- Confusion
- Hot, dry skin
- Weak, but rapid heart rate
- Low blood pressure
- Rapid breathing
- Unconsciousness

Prevention is critical with heat injuries. When one begins to experience dizziness and weakness, it may be too late. Take the following steps to prevent heat injuries:

- Drink water often before, during and after exerting. Don't wait to become thirsty.
- Wear loose fitting clothing that doesn't restrict your movement and also allows for good air circulation.
- Avoid the extreme heat of the middle of the day.
- Avoid sunburn at all costs. Sunburn draws fluid from all areas of your body to replenish moisture in the skin.
- Use a work-rest rotation when working in the sun is unavoidable.
- Avoid caffeine, alcohol and sugary drinks.
- Lastly, use a bit of common sense and don't ignore the warning signs.

Watch out for one another. If you or your co-workers begin to experience more severe symptoms, get medical help immediately.