

State Risk Manager's Message	1
Risk Year in Review	2
SIS Review	3
Unknown? I Don't Know...	4
The Journey of a Claim	5
Game Change: Barneck v. Utah Department of Transportation	6
A Certificate of Insurance: What it is And What it Ain't	7
Before a Violent Critical Incident or Active Shooter Event	7
FMLA Reminder for HR Administrators!	9
Avoiding Frozen Pipe Losses	9

State Risk Manager's Message



*Tani Downing
Division Director*

We've made a few changes here at Risk. Last January, Kamron Dalton joined us from Department of Technology Services as our Administrative Support Manager.

He jumped into the world of premium billing without hesitation and is a wonderful addition to our team.

We also added two new team members, Camille Richins as an Office Specialist and Wes Escalante as an eLearning Developer and Analyst. This brings our staff total to 30. This relatively small staff takes on the challenge of managing over 2000 claims a year and endeavoring to reduce claims. This is a considerable task considering we insure over 6,000 buildings worth more than \$26 billion, over 13,000 vehicles valued at \$183 million, and over 120,000 employees (who are priceless, of course). See James Brown's article on how these people and assets fared last fiscal year.

One task that we undertake every year is a review of our insurance policy. We gather feedback from our insureds and take that into account when making any chang-

es. Several significant issues have been brought to our attention and rather than make the changes this year, we plan on studying them this fiscal year, gathering more input and making a change next year. Specifically, we are looking at modifying language in our policy relating to student interns, coverage for commercial activities, requirements for construction equipment lease/rental, and some others. Again, these did not change this year, but we will continue to solicit feedback from you over the coming year.

Some things did change this year. Our premium for charter school liability was reduced to \$10 per student due to a favorable claims history. Due to an unfavorable claims history, our auto deductible has increased to \$750. We will also start enforcing our deductibles more strictly. If two of your vehicles hit each other, a deductible will be assessed for both vehicles instead of just one as we had done in the past.

We hope you find the following information useful and informative. We enjoy the opportunity to work with you in reducing risk and protecting our collective assets. We appreciate the work you do!

Don't miss the PUBLIC SECTOR LAW & RISK SYMPOSIUM on Tuesday, January 5th, at the Karen Gail Miller Conference Center in Sandy, Utah. Click [here](#) to see the agenda. Click [here](#) to register.

Risk Year in Review

A lot can happen in 525,600 minutes. One moment can change lives for better or for worse. Relatively speaking the Risk Pool had a pretty good year. In looking at all claims filed in FY15, to date none are “caps” cases (i.e. State Risk has not had to pay out any caps for a claim incurred in FY15.). Sure, we had our six-figure flooding claims (several of those actually) and our always technical general liability claims, and too many auto accidents, but overall it was a good year. For FY15 Risk covered over 6,147 buildings valued at nearly \$27 billion dollars.

Our claims adjusters do a wonderful job managing the claims and keeping those costs as low as possible. Ideally, we would prefer the claims don’t happen at all. That’s why we have our loss control team available for our insureds. We provide a variety of consultations and trainings. This past year we logged over 3,000 consultations, inspections, trainings, and client meetings. All included in your premium at no additional cost. We would like to see the claim numbers go down and here are a few ways that can be accomplished:

Early intervention/Loss Control Collaboration

Let our loss control staff help you. We love coming out and reviewing activities, in-progress construction, HR files, and pretty much anything else! When you involve us from the beginning, we are able to provide constructive guidance on the process. Remember, we are on your side and not here to criticize, we are here to be helpful and provide recommendations and best practices.

Timely notice of charges/claims

The sooner you let us know about a claim, administrative charge, Notice of Claim, potential claim – the better. We have claims adjusters standing by to take your claim and help you through the process. The best part is - we do all the adjusting for you! We also help coordinate with the Office of the Attorney General in defending your claim.

Proactive employee performance management

No one likes to be the one to deliver bad news to an employee, and most supervisors don’t like to have to discipline employees. However in the event termination is warranted this documentation will be crucial to supporting your decision and make your life immeasurably easier in the event a discrimination/wrongful termination claim is filed.

Let’s keep the favorable claims history going! Don’t hesitate to contact us and click the link here to see the amazing services we provide as part of your premium.

James Brown
Loss Control Manager

Insured Group	# of Buildings	Value	Total Sq. Feet
Charter Schools	84	\$ 409,979,000	2,168,000
Higher Education	1411	\$ 7,687,356,000	38,869,000
School Districts	2373	\$ 15,245,623,000	87,920,000
State Agencies	2203	\$ 3,735,567,000	18,145,000

SIS Review

FY 2015 was a great year for the Self-Inspection Survey (SIS). Of all our insured entities, only 12 chose not to participate and complete the survey. This is twice as good as our last two years and we hope it keeps improving. Before I discuss the year-end data, let's quickly review why we do the SIS.

While our Administrative Rules (R37-1-7, R37-1-8) require it and you may be assessed a non-compliance penalty for failing to complete it, it's still one of the quickest and easiest ways to identify potential hazards. For over 15 years, Risk has realized that we cannot be everywhere at once. We rely heavily on you to be our eyes and ears when it comes to proactive risk management. We created the SIS to encourage our insureds to get out and inspect facilities and address the most common reasons we see claims occurring. In 2008 we computerized the process to make it easier for our insureds to participate.

The SIS provides an opportunity for our Risk Loss Control staff to train new employees on the most common reasons claims occur in our insured facilities. It provides our insureds a tool to identify and justify a need to correct safety hazards in a thoughtful, proactive approach. This reduces claims.

In fiscal year 2015, 1,806 of the 150,000 survey responses indicated that corrective actions were needed. These corrective actions were broken down into four categories: Priority 1 - Life Safety/Code Compliance, Priority 2 - Project Currently Critical, Priority 3 - Project

Necessary/Non-Critical, and Priority 4 - Programmatic change. Nearly half (46%) of the corrective actions were placed in the Priority 3- Project Necessary/Non-Critical, while 26% of them were listed as Priority 1 - Life Safety/Code Compliance.

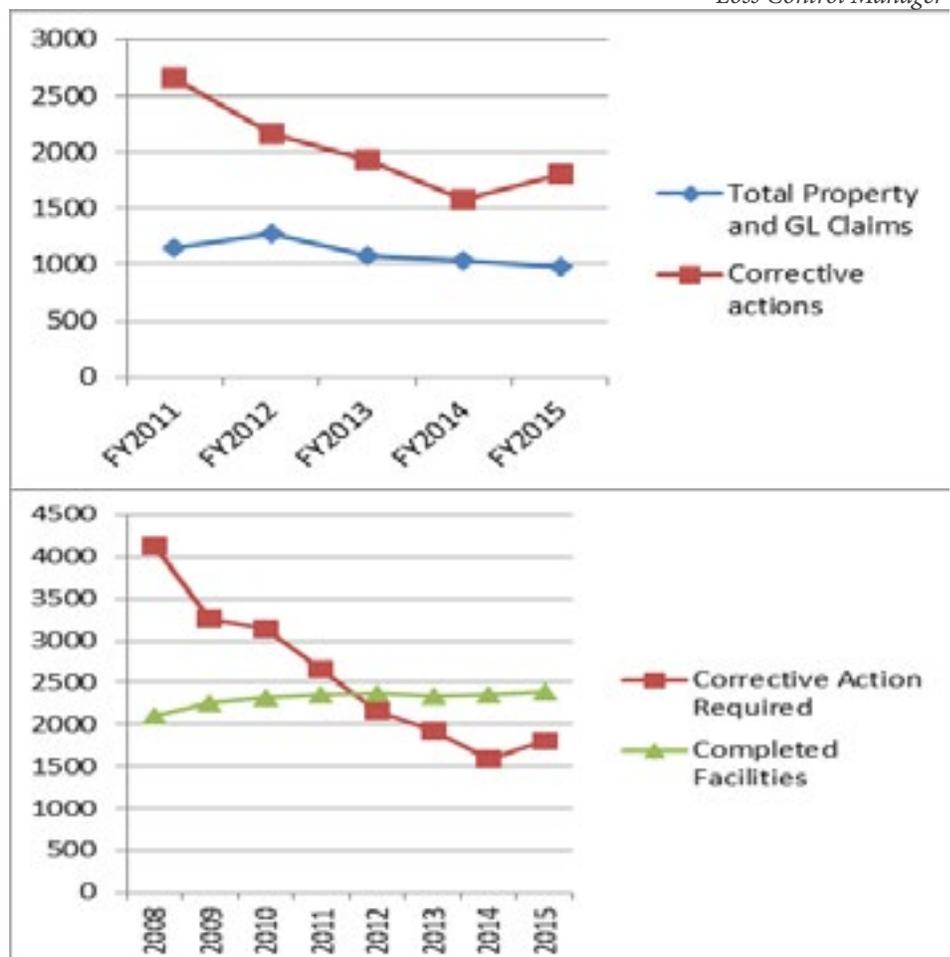
Our facility completion rate has steadily increased as the number of insured buildings has been increased and as more insureds have completed the SIS. Over this time the number of corrective actions needed has decreased as well as the number of overall property and general liability claims.

While we can't say for certain that the reduction in claims is a direct result of the SIS survey, we like the

trend and want to see it continue. The more we all get out and look for hazards and proactively address them, the better.

Please keep up the good work and continue completing the SIS. Use it as a tool to address the critical safety issues and identify a plan of action for the less critical issues. It opened again on October 1st. As a reminder, covered entities are only entitled to premium discounts if the surveys are completed by June 1st. As we all strive to eliminate claims our collective rates go down and we all save taxpayer dollars. If you have any general SIS questions you can email sis@utah.gov. You can also contact me at jamesbrown@utah.gov or 801-538-9591.

*James Brown
Loss Control Manager*



Unknown? I don't know...

Each year Risk sees a large number of unknown accidents. We understand that there is an occasional instance where damage suddenly appears on a vehicle and the cause is truly unknown. However, many “unknown accidents” result from the failure of an employee to report known damage, because the employee wants to avoid consequences, doesn't want to take the time to submit the report, or considers the damage to be minor. Hit-and-run accidents should actually impel us all to report their associated damages. What is a hit and run?

A hit and run accident is defined by Utah law (see [here](#) and [here](#)) as one where the driver of a vehicle has reason to believe they have been involved in a collision with another vehicle, property or human being and fails to stop to give his/her name, license number, and other information to the injured party, a witness, or law enforcement officers.

For example - your vehicle is parked in the agency parking lot over the weekend. There was no damage on it when you left the vehicle on Friday (and you know this because you did your post-trip inspection). When you arrive Monday morning, you notice that the left rear bumper is crunched in. There is no note and no one knows what happened. Someone hit your vehicle, and ran. You do, however, know the precise location and the approximate date (over the weekend). This is the easy part... YOU must contact law enforcement to file a hit and run report. The police report is the big difference between a hit and run and an unknown. The perpetrator

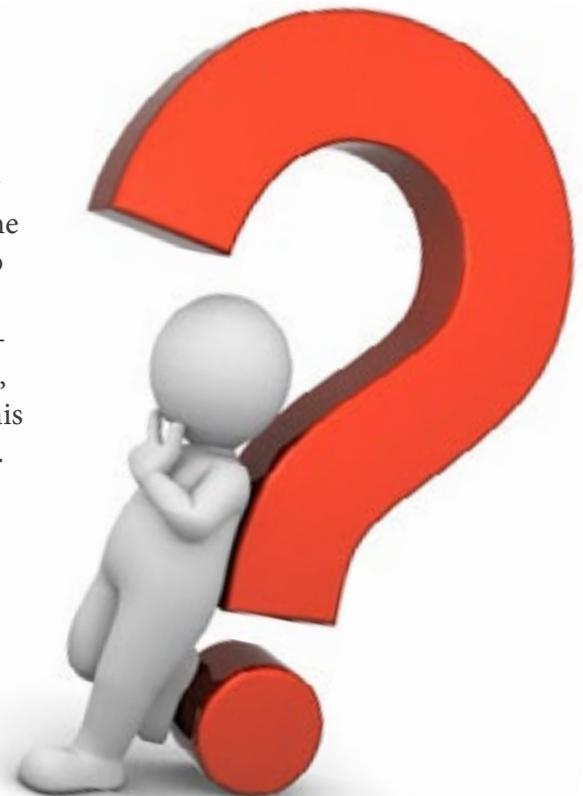


may be unknown, the exact date/time may be unknown, but we do know that someone or something hit the car and left the scene of the accident. Law enforcement may not even dispatch an officer to the scene to file the report, but you will get the case number, the identity of the pertinent law enforcement agency, and/or the name of the officer to whom the report was made. Holding all employees accountable to following this procedure helps ensure that the “unknowns” are truly unknown and not the result of someone trying to avoid accountability. Remember, [there is a penalty](#) for providing false information to the police on an accident report – so if an employee refuses to file a police report, work with your in-house counsel, human resources, and administration to address this appropriately with the employee.

We expect accountability and responsibility from all drivers. Don't let someone else take the blame for your accident. Use a trip inspection log, before you get into a vehicle and after each trip. That inspection is a critical process to ensure that damages are identified and reported in a

timely manner. This brief check, along with an accident reporting policy that is enforced, will help decrease the occurrence of unknown accidents. When you see damage and report it, you can help hold the correct driver accountable. Let's be responsible, let's get rid of “unknown” accidents.

*Cerena Withers
Vehicle Loss Specialist*



The Journey of a Claim

How Risk Issues Travels from Loss Control Consultant to Claim Adjuster

Unlike many insurance companies, Risk Management takes a two-prong approach to addressing risk and insurance issues. Our Division has two sections -- Loss Control and Claims. The Loss Control team's goal is to work with you to prevent claims and minimize losses. We take a proactive approach in assessing your systems, infrastructure, policies and practices. We share best practice information and provide support as you navigate complex employment issues that could lead to liability. The Claims team's goal is to quickly adjust a claim, make appropriate and reasonable payments to resolve a claim and get you back up and running. The Claims and Loss Control teams frequently collaborate in the area of employment claims.

When does an HR issue become a claim?

By way of consultation, we make recommendations to help you document employment decisions that are job-related and consistent with business necessity. Loss Control specialists are available to guide you every step of the way in managing the employment issue. In many instances these are challenged by employees. Employees can challenge you on the basis of your decisions and because of your written and unwritten policies. Take, for example, employees who are terminated because of performance or conduct problems. They could easily allege that the termination was undertaken in retaliation for filing an internal complaint,

rather than the justified result of poor performance or misconduct. Employees could also allege that you, as the employer, did not afford them with all the rights guaranteed through your policies, i.e., you did not follow your own stated procedures.

Once the decision has been made and a tangible employment action has been taken, the employee may challenge your decision and actions using available internal or external remedies. This is when the interplay between HR Loss Control Specialists and Claims Adjusters begins to ramp up. Employees may file a charge of discrimination with government entities such as the federal Equal Employment Opportunity Commission (EEOC) or the Utah Antidiscrimination and Labor Division (UALD). They may also request a Right to Sue letter from these entities and file a lawsuit against you. Once you receive notice of these charges, a notice of claim or lawsuit, you have an obligation to notify us within 10 days and send copies of the notices. At this point the issue is set up as a claim and an adjuster is assigned. The Loss Control Specialist continues to serve in a supporting role for the Adjuster who is managing the claim.

If you have staffed situations with our loss control specialists, you will most likely be in a position to easily prepare a chronology of events with supporting documents for the adjuster. You will also be in a better position to prepare a response

to the allegations which will be reviewed by the loss control specialist for feedback and recommendations. If you have not involved a loss control specialist, you might find it more difficult to prove the legitimate reasons for the adverse employment action that are job-related and consistent with business necessity. Along those lines, once an employee has filed a charge with EEOC/UALD, filed a Notice of Claim, or filed a lawsuit, you must immediately implement a litigation hold to protect all related electronic data and paper documentation. This may include coordinating with your information technology team to suspend any automatic delete functions in your email or document storage system. Any documentation that existed and was not saved, even inadvertently, can be used against you during litigation.

You can expect to be contacted by the adjuster trying to get the agency's side of the story. Be prepared to send the adjuster the investigation report (if there is one), the response to charge/allegations and any supporting documentation that may be required to support your response. Both the Loss Control Specialist and Adjuster are happy to review your response prior to sending it to the investigating agency.

With every EEOC/UALD charge there is a chance to mediate a resolution between the parties. Many times this can resolve the situation

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quickly and does not always require a monetary agreement. If there is some truth or perceived truth to the claim we may want to settle during mediation rather than incur the expense of litigation. This will be a discussion between Risk and you before mediation takes place. In order to facilitate an effective mediation, the representative

attending the mediation should have the authority to agree to terms of settlement and speak on behalf of the agency. Even though Risk Management is statutorily authorized to settle claims on its own, we choose to work closely with you to make sure that you understand our reasoning and generally approve of the settlement. The loss control

team collaborates with the claims adjusters to identify red flags and weaknesses in a claim that need be addressed. We follow up with you, discuss concerns, share best practices, and provide any requested training. Each situation is a learning experience, and we can help you avoid the inherent liabilities of your employment decisions.

Sol Garcia *Helen Maw*
HR Consultant *Adjuster*

Game Change:

Barneck v. Utah Department of Transportation

On Jun12, 2015 the Utah Supreme Court significantly altered the legal landscape in regards to the Governmental Immunity Act. In *Barneck v. Utah Department of Transportation*, 2015 WL 3646863 (Utah 2015), the Court changed the way the Immunity Act is interpreted, and thereby placed additional costs, expenses, and burdens of litigation upon all Risk insureds.

Among other things, the Immunity Act specifically identifies twenty immunities for governmental entities (including all state agencies, school districts, and charter schools) designed to offer protection from extensive litigation and adverse judgments. The immunities work to protect important state functions (like education, law enforcement, and incarceration) from debilitating litigation and substantial adverse verdicts.

Prior to *Barneck*, the immunities were broadly interpreted. The Act provides that in any instance where there is a claim, “if the injury arises out of, in connection with, or results from” a granted immunity,

e.g., incarceration in a state prison, discretionary functions, or granting or refusing to grant a permit, the immunity will protect the entity. Where state claims were asserted in a Complaint alleging injury where an immunity applied, the Complaint would typically be subject to early dismissal by the trial court and, as to those immunity protections, the litigation would cease.

However, in *Barneck*, the Supreme Court determined to make immunities more difficult to access. It decided to “repudiate” the established notions of broad immunity, and replaced them with a proximate cause standard. In other words, in order to secure immunity, Risk insureds must now prove that the Plaintiff’s injuries were proximately caused by the immunity. This new requirement enhances the burden of proof placed upon governmental entities.

Moreover, “proximate cause” is a legal term and, most importantly, a subject specifically reserved to the jury in the event of litigation. As a practical matter, it means

trial judges who heretofore routinely dismissed Complaints early in the litigation, will now defer “proximate cause” issues to a jury. Accordingly, governmental entities will no longer have Complaints dismissed at the beginning of litigation. Risk insureds can expect immunity cases to be litigated for three years or so to obtain a ruling from a jury.

Barneck places a higher burden of proof upon agencies, colleges, and schools to establish Immunity Act protections and significantly extends the process required to get an immunity ruling. The decision will increase costs, delay resolution of cases, escalate legal fees, and force entities to endure prolonged litigation.

Bruce R. Garner
Assistant Attorney
General

A Certificate Of Insurance:

What It Is And What It Ain't

A certificate of insurance (COI) is generally defined as a document used to demonstrate the existence of insurance coverage for any particular party. The COI lists the insurer, the insured, effective date of the policy, the types of insurance held, and the limits provided. It can be particularly helpful when working with outside vendors/providers in order to get a snapshot of what coverage they have procured. Usually, the COI is provided pursuant to contractual arrangement with the vendor/provider where insurance is required.

A COI has inherent limitations. It is a certificate of insurance, not an insurance policy in itself. This can be crucial since most often the certificate is informational only: it advises a third party of the existence and amount of insurance, but does not describe exclusions, limiting conditions, policy sub-limits or definitions.

A key concept to remember is that COI's cannot modify coverages or change the actual terms of an insurance policy.

The certificate itself will normally provide that it is "issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter coverage afforded by" the actual insurance policies. Moreover, certificates usually provide that any "policies described are subject to all the terms, exclusions and conditions of such policies" and that "**limits shown may have been reduced by paid claims.**"

When questions arise, don't be shy about asking for a copy of the insurance policy itself. This is especially true where contracts include activities that present a significant risk of injury or damage. In most cases, the vendor/provider will be willing to provide a copy of its insurance policy for your review. If the insurance policy doesn't conform with your contractual expectations, work with the vendor/provider to provide insurance as agreed upon in the contract. And understand that in many situations, the vendor/provider itself may not be aware of limiting provisions in their own insurance policy.

Certificates of insurance are a necessary component of doing business in a financially responsible manner. They are a widely used, and in many instances, meaningful device that enables projects and activities to move forward.

TIPS

The picture painted by the COI may be distorted:

1. Where circumstances may warrant, review the actual insurance policy in addition to the COI;
2. Compare the policy to the original contract between the parties, and;
3. Work with the vendor/provider to produce a policy as previously agreed upon.

In many instances, you may discover that obtaining the COI represents a beginning point rather than a final destination.

*Bruce R. Garner
Assistant Attorney
General*

Before an Active Shooter Event

One thing we benefit from on any active shooter review is 20/20 hindsight. Organizations tend to develop numerous active shooter prevention trainings using this hindsight. They train individuals on what to do if they find themselves in a violent critical incident

or an active shooter situation. Most of the training options are similar and give bits of advice that could save our lives. While we can reconstruct these violent events after the event, we often don't address the Survival Mindset.

What we now call an active shooter or violent critical incident at work used to be called workplace violence. If a person enters a theatre and starts to shoot at people, the theatre is still someone's workplace.

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In the past, these situations were often started by an upset employee or bullied student, or they may have resulted from a robbery or an individual's mental illness. The best place to start is focusing on effective methods for predicting and preventing workplace violence. This includes looking for suspicious or out-of-the-ordinary activity and saying something when you see something. This "see something, say something" concept is currently used to thwart terrorist activities, but we can use this same concept to help stop violent critical incidents in the workplace.

Much of our communication with others is through non-verbal cues, e.g., the tone, inflexion, and other physical elements of our body language. We see these cues on a daily basis and categorize them accordingly using our own mental references. Take, for example, someone with clenched fists and a red face. We may tend to perceive that person as angry and wait for this perception to be confirmed or contradicted by subsequent visual cues.

With the goal of predicting or preventing a violent critical incident, what are some physical cues of someone that is nervous or despondent and wanting to cause harm? First, we need to check their hands for any objects that might harm us. Second, we should watch that person's face and actions. You

might see a flushed face, a "blank stare", or rapid, roving glances. While physically present, he or she may have mentally come to terms with what they are going to do. Additional non-verbal cues are sweating, fidgeting, and bulges around the waistband. Look for ill-fitting clothes or attire that is unsuited for the venue or season, such as a heavy parka in the middle of summer. Individually these cues might not mean anything but together they can let you know that you only have seconds to act. Sometimes we see these cues and our intuition says something is wrong. Rather than follow up on that intuition, we use conscious reasoning to dismiss what we are seeing. Conscious reasoning is not bad but rationalizing away these danger cues could be deadly.

Your life and the lives of others around you are worth far more than the minor inconvenience of following your instincts. You may need to leave a line or your desk to call 911 or notify building security. If you have determined it is not safe then you should also notify the proper authorities. This is the essence of the "Survival Mindset"--determining that you will survive. A University of Pennsylvania Study looked at 4122 patients who had been admitted to a level three emergency room for gunshot or stab wounds. They found that the survival rate was 72.6 percent for these critical injuries. Knowing

that we can survive, believing that we will survive and being aware of dangerous critical incidents can keep us alive. At this point, we need to trust ourselves, not second guess ourselves or seek secondary approval of our thoughts. We need this survival mindset to help prepare us for action. Sometimes that action is as simple as leaving that situation. We need to remember that security is not a destination it is a journey, and one we need to continue.

Jeff Rose
Workplace Security Specialist



FMLA Reminder for HR Administrators!

If you have not already done so, take some time to review and update your FMLA policy. After the Supreme Court of the United States' June decision and the Department of Labor's Final Rule to revise the FMLA, your policy's definition of "spouse" needs to be updated.

We recommend you use this language:

Spouse means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State.

As explained by DOL, this means that eligible employees, regardless of where they live, will be able to take FMLA leave to care for their lawfully married same-sex spouse with a serious health condition, take qualifying exigency leave due to their lawfully married same-sex spouse's covered military service,

or take military caregiver leave for their lawfully married same-sex spouse. The change entitles eligible employees to take FMLA leave to care for their stepchild (child of employee's same-sex spouse) regardless of whether the in loco parentis requirement of providing day-to-day care or financial sup-

port for the child is met. It also entitles eligible employees to take FMLA leave to care for a stepparent who is a same-sex spouse of the employee's parent, regardless of whether the stepparent ever stood in loco parentis to the employee.

*Sol Garcia
HR Consultant*

Avoiding Frozen Pipe Losses

During fiscal year 2015, State Risk claim adjusters paid out more than 1.5 million dollars in covered water-loss-related claims. While the cause of some of those losses may be something sudden and unavoidable, many of those losses were the result of ruptured frozen pipes and resultant uncontrolled water flow.

The number and severity of frozen pipe related water losses could be significantly reduced if risk pool members would take a few precautions.

Here are some suggestions for avoiding frozen water pipe related claims:

- Maintain heat in buildings throughout the winter. Water lines can begin to freeze if the temperature drops below 20 degrees.
- Inspect all pipes located in unheated areas or outdoors. Drain them if possible. Properly insulate them whenever possible.
- Drain all outdoor water supply lines. Hoses, sprinkler systems and "swamp cooler" lines are examples of outdoor water supply lines.
- Inspect the building's HVAC system to ensure it is functioning properly and maintaining heat in the structure.
- Leave a small trickle of water flowing from a sink faucet (always check to make certain the drain is functioning properly).

These suggestions are just a few that might help you avoid the expense and inconvenience of a water-loss claim caused by water escaping from pipes that have been damaged by freezing.

*Jeff Coates
Claims Manager*