



County Connection

News from the Washington Counties Risk Pool

March / April 2013

CONFERENCE NEWS



*WASHINGTON COUNTIES RISK POOL
2013 Summer Conference and 25th Anniversary Celebration
Enzian Inn, Leavenworth, WA
Wednesday, July 24– Friday, July 26*



There is a block of rooms reserved at the Enzian Inn. If you plan to attend the Summer Conference, make your room reservation now. The room block may fill out completely, call the Enzian Inn at 800-223-8511 to reserve your room(s).



Spring Conference - Governing for the Future

The WCRP Spring Conference took place at the Lodge at Suncadia in Kittitas County at the end of March. The theme of the Spring Conference was Board Development and this year we partnered with the Washington State Association of Counties in a joint training session. Aimed primarily at new Commissioner/Council members, the session focused on managing the challenges of multiple governance boards. The challenges come in many forms and in many ways. Frank Martinelli, a leading national expert on the art and science of governance, began the session by challenging the group on their respective roles as elected leaders. He then provided a thoughtful discussion on the nature of governance, the traditional and emerging shape governance is taking and what the public expects from their community elected leaders. Each participant was provided with a resource manual to help them as they waded into the unfamiliar waters that local leadership may represent.

Switching from County governance to community and special interest governance, the group explored the many conflicts that can arise from being appointed to boards and commissions which are either required or desirable to maintain and enhance the community. Round table exercises were designed to discuss when and where conflicts can be anticipated and what to do about them.

In a follow-up survey, the whole experience was highly rated by participants. The session provided one of those rare opportunities to think about governance in context with the busy day to day activity of governing.



David Goldsmith, Member Specialty Services

It's that time again when Executive Director Vyrle Hill and I come to visit each of the County Commissions or County Councils making up the Washington Counties Risk Pool. We find this effort very rewarding as we get an opportunity to tell the Pool's story and discuss with the elected leadership liability issues and the self-insured protection provided by the Pool.

Due to the large number of newly elected leaders, this year we will be making ourselves available to conduct a new commissioner/councilmember orientation in addition to our annual reporting. Our intent is to provide a background for new commissioner/councilmen on the benefits of pooling, what membership means, how the Pool operates, and the language of the Pool before the annual update with the Board or Council.

These yearly visitations are not merely geared for the legislative authority and risk managers of each member county, other elected and appointed officials can benefit from these visitations as well and

often add to the conversation. In addition to contact with our membership, these road trips allow us the opportunity to market the WCRP to eligible non-members. We continue to put a "face" on the Pool in an attempt to further assist counties throughout the state protect their constituencies from the adverse financial burden of claims, lawsuits and property losses.

To our member counties, we look forward to seeing you 'on the road'.



POOL NEWS - EXECUTIVE COMMITTEE AND OFFICER ELECTIONS

The WCRP Executive Committee, acting in the capacity of the Pool's Nominating Committee, has begun formulating nominating recommendations for the available Executive Committee positions and for the 2013-14 officer candidates.

Member-appointed Directors and Alternate Directors are eligible to serve on the Executive Committee - limited to one committee member per county - for staggered, 3-year terms.

The Pool's Executive Committee is comprised of 11 members. Four (4) positions will be filled during the 2013 Annual Meeting in late July, and nominees are currently being sought for these positions. Those members whose terms expire 9/30/2013 are: Bryan Perry, Steve Bartel, David Alvarez, and Drew Woods. The WCRP Bylaws require that Executive Committee members represent the diversity and interests of its member counties - both elected and appointed officials; east and west locations; large, medium and small deductible classes.

And in accordance with the Pool's Bylaws, its officers are to be chosen annually from the Executive Committee members by its Board of Directors. The President's position will be filled by the current Vice President, Tammy Devlin. The Vice President position and Secretary/Treasurer position will be elected at the 2013 Annual Meeting.

Please contact President (Nominating Committee Chair) Mark Wilsdon at (360) 397-2025 #5 or Mark.Wilsdon@clark.wa.gov by Tuesday, June 18th with your interest in serving and/or to suggest recommendations for nomination to the Executive Committee, and for the 2013-14 officers. The Nominating Committee will select at least one nominee per open position, and nominations will be accepted from the floor during the 2013 Annual Meeting in late July.

Executive Committee

Py 2013 President

Mark Wilsdon, Clark County

Py 2013 Vice-President

Tammy Devlin, Thurston County

Py 2013 Secretary/Treasurer

Steve Bartel, Spokane County

Other Members

Bryan Perry, Benton County

Keith Goehner, Chelan County

Drew Woods, Columbia County

Thad Duvall, Douglas County

Dean Burton, Garfield County

David Alvarez, Jefferson County

Lisa Young, Kittitas County

F. Lee Grose, Lewis County

Risk Pool Staff

Administration

Vyrle Hill, Executive Director

Sue Colbo, Accounting Officer

Stacey Spears, Assistant/Editor

Claims

Susan Looker, Manager

Mike Cook, Senior Analyst

Tammy Cahill, Analyst

Lisa McMeekin, Representative

Carli Easter, Assistant

Member Services

David Goldsmith, Specialty Services

Jill Lowe, Loss Control

To access *County Connection's* e-version, go to www.wcrp.info

To receive by email, send your email address to stacey@wcrp.wa.gov or call (360) 292-4490. Have story/photo ideas? Please submit them to the email address above.

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WASHINGTON COUNTIES RISK POOL

Created by Counties for Counties



The **Jefferson County** Prosecutor's Office recently renovated their conference room by removing shelves, buying new chairs and painting an otherwise drab room with a new light colored coat of paint. The new conference room was recently enjoyed for a staff meeting and lunch. All attendees commented on how much bigger the room seems.



Jill Lowe, Loss Control Coordinator

DRIVER ABSTRACT MONITORING

Automobile liability is serious business. Several years ago, legislation was passed allowing local government risk pools to obtain drivers' abstracts from the Department of Licensing. A handful of member counties have traditionally collected driver's abstracts for employees who drive as part of their routine job duties. Recently, more counties have begun collecting abstracts in an effort to decrease liability.

Last year, Benton County began participation in an abstract collection program developed by the Washington State Transit Insurance Pool (WSTIP). The following is the experience Benton County has had with this program, as reported by Bryan Perry, Safety and Training Coordinator for Benton County.

In the autumn of 2012, **Benton County** entered into an interlocal agreement with the Washington State Transit Insurance Pool (WSTIP) in order to have a third party, Data Driven Safety, Inc., perform monthly driver monitoring reports for Benton County. So far our experience using Data Driven Safety has been a positive one, and I would like to highlight some of the problems that have been solved by going with Data Driven Safety versus running abstracts independently through the Department of Licensing.

Efficiency

The staff time involved trying to compile "county driver" lists from each department every year and ensuring license information is accurate has been reduced by deciding to monitor all employees, and by being able to manually add or remove employees that are to be monitored on a regular basis. If a license number is invalid or a date of birth doesn't match, we receive notification from

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either Will Mann of Data Driven Safety, Inc. or Tracey Christianson of WSTIP, which prompts us to contact the employee and get updated license information. Many times someone will have a change in marital status and not report it immediately to the Personnel Resources Department, which will result in an invalid license search. The names that are entered into the system, usually by the 27th of the month, are the names that will be run. We receive reports at the beginning of the month. Keep in mind that with a basic subscription, if there are no incidents for an employee you will not receive a report.

Effectiveness

By monitoring all employees and receiving reports of any driving incidents on a monthly basis, it helps risk management identify an employee that may have lost their license and provide notification to that employee's manager or elected official in the rare event that the employee failed to self-report to their employer. This can be a big issue if the employee is required to have a driver's license as part of their job. The driver monitoring can also help prevent the obvious issue of the employee getting into an auto accident while conducting County business and not having a valid driver's license.

Cost Savings

Benton County usually runs about 640 names per month, but could possibly run up to 750 with temporary or seasonal help. With the basic subscription we pay \$1 per employee per month. If we were to run an annual abstract through the Department of Licensing we would pay \$13 per employee each time we ran their record.

If you are interested in using a service such as this for your organization, here are some thoughts about what to have or what to expect:

Policy – Have a clear policy indicating that you will be checking records of employees and/or county drivers. There will probably be some level of paranoia by employees and management, having a policy in place helps explain the purpose and reasoning behind monitoring driver records.

Designate an administrator – You will need to appoint someone that can manage records, input new drivers, communicate with all levels of management throughout your organization, and maintain confidentiality.

Have a sense of what types of violations a driver receives that will be reported to the manager or elected official. You will receive every driving violation that gets reported to the Department of Licensing with the basic service; reporting violations that pertain more to the employee's driving status or organization policy makes this service more of a risk management tool and reduces the perception that it is a method to snoop. If you use the Premium service you will receive not only driving record information but also judicial records for an employee.



TRAINING & EVENTS



Upcoming Training Schedule

The training season is underway, and our new class, *Staying Out of Court on Employment Claims* has been well received. Here are a few comments from recent attendees: “I learned a great deal regarding personnel policies and procedures.” “I truly enjoyed the class - it was a real eye opener.” “A very informative and somewhat scary class.”

There are still some dates available for this informative class taught by Mike Bolasina with Summit Law Group.

Staying Out of Court on Employment Claims

An all new class this year! See the class flyer on the next page of this newsletter.

May 3 – Benton County (Benton Franklin Health Building)

May 6 – Clallam County (Clallam County Training Room)

May 8 – Clark County (Public Service Center)

May 30 – Chelan County (Confluence Technology Center)

Conducting Effective Performance Evaluations

May 29 – Spokane County (Spokane County Sheriff’s Office)

Risk Management Webinar

Watch for more information coming soon about an upcoming “Risk Management Basics” Webinar with John Chino from Arthur J. Gallagher Risk Management Services. The webinar will take place on Tuesday, June 11 from 10:30-11:30 am.

Our classes and webinars do not have a registration fee for member county attendees! For more information or to register for a class, see the WCRP webpage at www.wcrp.info and click on the Training tab. Class descriptions can be found under the More Information link. Registration is quick and easy, just click on the registration link and fill out a short form.

Staying Out of Court on Employment Claims



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Created by Counties for Counties

Mike Bolasina, a labor and employment law attorney, will present this new class.

About this Course:

This employment law class will focus on the 10 most prevalent employment-related claims that counties face in 2013. The class will include information on how to avoid lawsuits through knowledge and understanding of the law, implementing and following proper policies, and dealing with employee issues as they arise, legally and factually. ***This class is not for managers or supervisors who seek out the drama, extraordinary expense, burden, and hassle that lawsuits always involve.***

The Instructor:

Mike Bolasina is an attorney with the Seattle law firm, Summit Law Group. He received his law degree from New York University in 1989. Mr. Bolasina has a general employment practice that involves consulting, investigating employee harassment, discrimination, and retaliation complaints, and defending employment-related lawsuits.

2013 Class Dates & Locations

Tuesday, April 9—**Skagit** County
Thursday April 11—**Mason** County
Tuesday, April 23—**Spokane** County
Tuesday, April 30—**Kittitas** County
Friday, May 3—**Benton** County
Monday, May 6—**Clallam** County
Wednesday, May 8—**Clark** County
Thursday, May 30—**Chelan** County

The class is from 9:00 am - 3:00 pm.
Lunch will be provided.

4 CPO Core credits 5 CLE credits

Registration

Please register *online* at www.wcrp.info: click on the Training Link, then select WCRP Events & Training Online Registration Form. Site address and driving directions will be provided with your online registration confirmation.

Fee

This class is *free* for Member County Employees.

Questions?

Contact Jill Lowe: 360-292-4492 or jill@wcrp.wa.gov



Helpline NEWS



Here is the latest risk management Question of the Month from the HR Risk Management HELPLINE for WCRP Members' HR Express Update:

March Question:

We have a pregnant employee who has, and continues to have, performance issues. The performance issues have been discussed with her and are documented. She was given a performance warning in mid-January and in this warning it was noted that any more performance issues could result in termination. Early in February it was discovered that she had made significant mistake prior to the last warning she received. We want to terminate her employment. Can we do this?

Response:

Federal and state pregnancy discrimination statutes do entitle pregnant employees to be free from discrimination, or adverse treatment, on the basis of their pregnancies. This means that if the employer would be terminating the employment relationship because the employee was pregnant, such action runs squarely afoul of federal and state discrimination statutes and is ill advised.

On the other hand, if the employer has a legitimate, non-discriminatory reason for seeking to terminate the employment relationship and the employer would be effectuating the same as to the subject employee whether or not she was pregnant, we are aware of no reason why the employer could not go forward with such decision. Indeed, while employees who are pregnant are statutorily protected against discrimination and retaliation, their pregnancy status does not immunize them from every decision the employer would otherwise seek to make. Thus, a pregnant employee is not entitled to any better or more preferential treatment. This means that employers can go forward with employment decisions, such as termination for not meeting performance expectations or for policy violations, if the employer would have done so regardless of her pregnancy status so long as the employee's pregnancy status was not a factor in the employer's decision affecting the relationship with that particular individual.

Of course, the employer should not mention the employee's pregnancy when conveying the decision to her (but if she raises it, the employer can rebut any erroneous accusations) and should treat her as the employer would any other employee who was pregnant or not. If she challenges the termination of employment as discriminatory, the employer will need to show evidence that its decision was made without regard to her pregnancy. The defense will be stronger if other employees who were or are not pregnant have been terminated for similar reasons. However, if the employee would not have been terminated but for her pregnancy and the employer at this point discharges her, there could be exposure to a claim (that may be difficult to defend) if there is not a legitimate justification for visiting more harsh treatment upon the subject employee (i.e., dismissal) than she might have received had she not been

pregnant. For more information on pregnancy discrimination issues, please see:

<http://www.eeoc.gov/laws/types/pregnancy.cfm>

April Question:

Can a polygraph be requested when there is suspicion of theft? My company is a private company. If yes, what if an employee refuses to take a requested polygraph?

Response:

The Federal Employee Polygraph Protection Act (EPPA) expressly precludes an employer from requesting, suggesting or even causing an employee to take or submit to any lie detector test, including polygraph. Further, employers cannot use, accept, refer to, or inquire about the results of any lie detector test of an employee, even if such test is given (although as noted, in most cases it is prohibited). The EPPA also prohibits employers from discharging, disciplining, discriminating against, denying employment or promotion, or threatening to take any such action against an employee for, among other things, refusing to take such a test or on the basis of the results of a test. Basically, the EPPA makes it virtually impossible for an employer to lawfully require and use polygraph tests, and as such, it is not something we advise or recommend. Admittedly, there is a limited exemption that permits an employer to administer a polygraph -- but not any other lie detector -- test to employees who are "reasonably suspected of involvement in a workplace incident that results in economic loss to the employer and who had access to the property that is the subject of an investigation." That said, for this exemption to apply, a number of criteria must be met and the impacted employee(s) must be afforded a number of rights, not the least of which include the right to have written notice of the test, the right to refuse to take it (without penalty), and the right not to have the results disclosed without their consent if they agree to take it. The EPPA is thus rarely applicable or useful, but for more information on the Act, please see:

www.dol.gov/compliance/laws/comp-eppa.htm.

Having said all of this, we should point out that an employer does not have to have "iron clad" proof that an employee engaged in misconduct in order to terminate the employment relationship (assuming there is no employment contract governing reasons for discharge). If the employer reasonably believes that an employee has engaged in misconduct or violated company policy, the best practice is to conduct an internal investigation. If the employer has a good faith, reasonable belief that an employee violated company policy or engaged in misconduct that is grounds for discipline or discharge, it is generally within its rights to discipline the employee or terminate the employment relationship (absent a contract), even without polygraph proof that it occurred, so long as such action is consistent with employer policy and past practice (if any).

Source: HR Risk Management HELPLINE, www.hrhelpline.com/wcrp, March/April 2013
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