

RISK MANAGEMENT MATTERS

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

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Crossing The Threshold: When Does Behavior Create A Hostile Work Environment?

by Jeanie R. Tolcacher, Attorney

Federal and state anti-discrimination laws prohibit harassing or discriminatory conduct when it is based on a legally protected characteristic such as sex, race, age, etc. For example, Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000(e) *et seq.*) prohibits employment discrimination in the hiring, firing, compensation, and terms, conditions and privileges of employment on the basis of race, color, religion, sex, or national origin. The Washington Law Against Discrimination (Chapter 49.60 RCW) contains similar (but broader) prohibitions on an employer's actions that are taken on the basis of age, sex, marital status, race, creed, color, national origin, and handicap.

The term "hostile work environment" is best known as a form of sexual harassment or discrimination. Courts have applied the same principles that prohibit hostile work environment sexual harassment to other protected characteristics such as disability and race. Workplace harassment includes unwelcome and offensive verbal, physical or visual conduct related to a protected classification that is so severe or pervasive that it alters the terms, conditions, or privileges of employment. In determining whether harassing conduct is sufficiently severe or pervasive, the conduct must be judged by both an objective and subjective standard. In other words, an employee must find the harassment offensive and unwelcome personally, and the conduct complained of must be offensive and unwelcome to a reasonable person. Workplace harassment exists when words, conduct, or the display of materials unreasonably interferes with an employee's work performance and creates an intimidating, hostile, or offensive working environment. Workplace harassment can include such things as jokes, teasing, racial or ethnic slurs, literature, cartoons, and physical conduct.

While federal and state courts are constantly reshaping the definition of what constitutes a hostile working environment, many people, including lawyers, misconstrue what the term means. It is not uncommon for a person to identify his or her work environment as "hostile." This characterization is often based on the fact that their boss (or co-worker) is unfriendly, verbally abusive, rude, or obnoxious. Many times it turns out that they aren't the only people in the workplace being made to suffer; the boss or supervisor treats everyone in the same or similar fashion. In other words, the person is an "equal opportunity harasser."

"Equal opportunity harasser" is a term coined to identify those who generally treat everyone, both male and female, in a hostile and intimidating manner. In a recent Washington sex discrimination case, the court characterized the female plaintiff's male boss as a "rude, boorish, thoroughly obnoxious supervisor prone to outrageous temper tantrums." For example, when the plaintiff, a retail sales clerk, wished the supervisor a Happy Birthday, he said, "I don't have time for this crap." There was no evidence, however, that the conduct complained of was directed at the plaintiff

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Successful Employment Practices Liability Seminar

Over 130 school managers from 37 schools districts have "Sharpened Their Personnel Skills" by attending the four-hour employment liability seminar presented in March and April 2004 by Larry Ransom and Tracy Miller, attorneys with Karr, Tuttle & Campbell.

This training was offered because employment practices remain among the most costly liability claims experienced by Washington school districts. It focused on improving a manager's skills in the four most troublesome areas of employment practices for school districts: Hiring and Firing, Leaves and Accommodations, Evaluations and Corrective Action, and Preventing Workplace Harassment.

Evaluations showed that most attendees felt that this refresher provided "excellent information," was "worth my time," and was presented by "very knowledgeable instructors."

To meet all our members' needs, this training was offered in Vancouver, Yakima, Kelso, and White Salmon, with specific training for certificated and classified school managers.

Training such as this is part of the services provided member school districts by the Southwest Washington Risk Management Insurance Cooperative.

If you have any ideas or specific needs for future training, please contact Peggy Sandberg, Loss Control Specialist, at (360) 750-7504.



Crossing the Threshold, Continued from front page

because of her sex (or any other protected characteristic). In fact, the employer was able to show that the manager treated both men and women in the same abysmal fashion. While the manager's behavior was reprehensible, it was not legally actionable and the case was dismissed. This is not an unusual result. Both federal and state courts have routinely dismissed cases such as this because the plaintiff was unable to demonstrate that the harassment is based on a protected characteristic.

At what point does an "equal opportunity harasser" cross the threshold between purely obnoxious behavior to behavior that is discriminatory and subject to legal action? While it is well settled that conduct need not be overtly sexual or racial in nature to be actionable, harassing conduct is not illegal unless it is based on sex, race, or some other protected characteristic. In addition, with few exceptions, harassment must be pervasive or severe to be actionable. Courts will examine the frequency and severity of the conduct, as well as whether the conduct was physically threatening. Generally speaking, simple teasing, offhand comments and isolated incidents, unless extremely severe, will not amount to discriminatory changes in the terms and conditions of employment.

It must also be kept in mind that a hostile work environment can occur even if the harassment is not targeted at a specific individual (or group of individuals). Environmental harassment can be characterized as harassment other than direct harassment. For example, a hostile work environment may be created for the individual who overhears or witnesses harassing behavior directed at another individual. Even joking behavior or other banter between two individuals or a group of individuals can adversely affect those who may overhear such conversations if the topic relates to a protected characteristic such as sex, religion, or the like. Other examples of

environmental harassment would be visual materials such as posters, cartoons, or other literature that denigrates or has the effect of denigrating an individual based on a protected characteristic.



The United States Supreme Court has stated that anti-discrimination laws are not meant to be expanded into "codes of civility" in the workplace. Anti-discrimination laws do not generally protect employees from abusive or hostile employers or supervisors. Whether an environment is "hostile" or "abusive" can be determined only by looking at the totality of the circumstances. Equal opportunity harassment, while in some instances not illegal, is still a morale destroyer and can lead to the loss of valuable employees. The employer's anti-harassment policy should prohibit employees from engaging in all forms of inappropriate verbal or physical conduct, not just conduct directed at protected characteristics. All complaints should be taken seriously and thoroughly and promptly investigated. Appropriate discipline should be imposed when necessary. Remember, an ounce of prevention is worth a pound of cure!

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Playground Accessibility Information Available

BACKGROUND

The Americans with Disabilities Act is a comprehensive civil rights law which prohibits discrimination on the basis of disability. Titles II and III of the ADA require, among other things, that newly constructed and altered state and local government facilities, places of public accommodation, and commercial facilities be readily accessible to and usable by individuals with disabilities. Recreation facilities, including play areas, are among the types of facilities covered by Titles II and III of the ADA.

The Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for developing accessibility guidelines to ensure that new construction and alterations of facilities covered by Titles II and III of the ADA are readily accessible to and usable by individuals with disabilities. The Access Board initially issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in 1991. (A copy of ADAAG can be downloaded from the Access Board's website at www.access-board.gov/adaag/html/adaag.htm.)

In November 2000, ADAAG was amended by adding a new special application section for play areas

(ADAAG 15.6) that includes scoping and technical provisions for ground level and elevated play components, accessible routes, ramps and transfer systems, ground surfaces, and soft contained play structures.

The Department of Justice, who is responsible for issuing regulations to implement Titles II and III of the ADA, has adopted ADAAG as the Standard for Accessible Design for Title III of the ADA.

PLAYGROUND ACCESSIBILITY GUIDELINES

A copy of ADAAG playground accessibility standards – "Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Play Areas" (36 CFR Part 1191) can be found on the Access Board website at www.access-board.gov/play/status.htm. You may want to look at the more palatable "a guide to these requirements" being sure to print all the sections. There is also "a summary of the final guidelines," and "answers to frequently asked questions."

SCHOOL DISTRICT RESPONSIBILITIES

Schools with playgrounds need to ensure that newly constructed and altered play areas meet the requirements of the ADA and are readily accessible to and usable by individuals with disabilities. If your district has not done so already, be sure to plan for accessibility when adding to or building a new playground.

If you have any questions about playground accessibility, please call Peggy Sandberg, Loss Control Specialist, at (360) 750-7504.



Executive Committee Highlights

Southwest Washington Risk Management Insurance Cooperative

The next Executive Committee meeting is scheduled for May 6, 2004.

Southwest Washington Workers' Compensation Trust Executive Committee Meeting of January 29, 2004

Kevin Wick from PricewaterhouseCoopers went over the actuary report for FY 2002-2003 and shared with the committee some comparison and bench marking of loss rates for the eight ESD Workers' Compensation pools in the state of Washington. The committee approved a \$1,500,000 refund and ratified the 2002-2003 financial statements. Shaun Mettler reviewed with the committee the current budget compared to actual expenditures for year-to-date expenditures as of 12/31/03. The next meeting is set for May 5, 2004.

Southwest Washington Unemployment Compensation Pool

The next Executive Committee meeting will be in spring 2004.

WORKERS' COMPENSATION SELF-INSURANCE VERSUS THE L&I WASHINGTON STATE FUND

Industrial insurance coverage (workers' compensation insurance) protects both workers and employers from the financial impact of a work-related injury or occupational disease. Generally, Washington State employers must provide industrial insurance coverage.

There are two ways to provide this coverage, depending on the size and financial resources of the business. Most businesses participate in the state's industrial insurance program — the Washington State Fund managed by the Department of Labor and Industries. The largest, most financially secure companies in the state and some governmental entities qualify for self-insurance. A self-insured employer assumes all risks and costs of industrial insurance coverage and pays all benefits out of company funds.

The Southwest Washington Workers' Compensation Trust (the Trust) provides industrial injury accident insurance coverage for its membership. RCW 51.14 provides the authority for local governmental entities to individually or jointly self-

insure risks, jointly purchase insurance or reinsurance, and to contract for risk management, claims, and administrative services. An agreement to form a pooling arrangement was made pursuant to the provisions of Chapter RCW 39.34, the Interlocal Cooperation Act.

The Trust was formed January 1, 1983 when school districts in the State of Washington joined together by signing an Interlocal Governmental Agreement to pool their self-insured losses and jointly purchase insurance and administrative services. Twenty-nine school districts and the Educational Service District 112 have joined the Trust. The Trust is fully funded (paid for) by its member districts.

The Trust offers several advantages over the State Fund:

- Pooling offers group purchasing power for favorable coverages, terms, conditions, and limits for excess insurance tailored to the specific needs of its school district members.
- District insurance costs are generally more stable, since the Trust is somewhat insulated from the regular fluctuations of the insurance market and Labor & Industry's funding decisions.
- Pooling spreads the risk of a severe financial loss over a group, rather than being borne by one district.
- Trust participants have ownership in any equity that the Trust accumulates.
- Trust members have a significant voice in how the Trust is operated, since the policy-making board is composed of district representatives.
- Loss data is provided to members on a regular basis for informational and loss prevention purposes.
- Loss control services are tailored to school district needs.

The Southwest Washington Workers' Compensation Trust is one way that school districts in southwest Washington have taken control of their individual and collective industrial insurance destiny.

HOMEMADE FOOD AT SCHOOL? PLEASE THINK AGAIN

In the past, it has been a common practice for parents to bring in homemade treats (usually baked goods) to school for special events, such as class parties, holiday celebrations and bake sales. This may no longer be a wise practice.

There have been several high-profile outbreaks of foodborne illnesses in recent years, particularly from E. Coli and Hepatitis. A school that has an outbreak of foodborne illness not only has to deal with ill students and negative publicity, but also may incur sizeable medical claims and clean-up costs.

Besides the possibility of transmission of disease in homemade foods, other harmful substances may be found in food products. There have been instances of drugs being intentionally put in foods brought to school.

As ingredients in homemade foods may be unknown to the consumer, there are potential food allergy concerns with mass distributed homemade foods.

Finally, there could be an inequity issue if a school allows some parents (those they know) to bring in homemade food and not allow others to do so.



The Risk Cooperative recommends that districts not allow mass consumption of home prepared foods at school.

Advise parents to bring only commercially prepared food to school, and leave food in its original packaging until consumed. (Be especially careful of products that spoil readily when not refrigerated.) Serve foods with serving utensils or disposable gloves.

Another potential area of concern is food that is prepared by school staff or parents for special occasions, such as school barbecues, appreciation lunches, fundraisers, etc. If this food is not prepared by food services staff (with current health department issued food handler's cards), it may not be prepared, served or stored following the best food handling and sanitation guidelines. Consider involving trained food services staff in the school's occasional food preparation activities.

The Risk Cooperative's Recommendation Concerning Open Gyms in Schools

Schools sometimes allow the unsupervised use of their gymnasiums by individuals for recreational basketball (or similar activities), which has been a cause of property damage and physical injury for which the school district may have to pay. This article will address how to better protect the district's resources while still allowing community members to use school facilities. Some background in the area of facility use is in order.

USE OF SCHOOL FACILITIES BY NON-SCHOOL GROUPS

The district's primary mission is educating students. The district also has duties to protect its property, which was provided by taxpayers, and to protect the district's financial assets, which are used to provide educational services to students. District facilities may be used for non-district activities when not required to provide for the education of its students. The district establishes criteria for the use of district facilities for non-district related activities in order to minimize the risk and potential for loss from such use.

The use of district facilities beyond the established educational programs of the district may be granted to responsible persons, groups or organizations as community, cultural or recreational centers for purposes of entertainment, personal development and civic welfare. The district, in granting an outside user permission to use district facilities, establishes reasonable, non-discriminatory criteria that will be met before granting district permission for the use of the facility in its building usage policy. Use will be in accordance with the policies, procedures and rules established by the district, and appropriate laws and regulatory agencies.

In no case should the district grant permission to persons under the age of

18 for use of its facilities for non-district related activities. Permission for the use of district facilities must be issued to a responsible adult. The user must be aware that they are responsible for adequate adult supervision, adequate participant, crowd and traffic control, and for the protection of district and private property.

FACILITY USE AGREEMENTS

When granting the use of district facilities to outside individuals and/or groups, the district should require the user to enter into a formal facilities use agreement that incorporates a hold harmless agreement. Individuals or groups will be required to hold harmless and indemnify (protect) the district from any and all claims, costs and liabilities arising out of or in connection with their use of district facilities, except to the extent such liabilities arise from the district's own negligence. Signing of the application and/or facilities use agreement form will constitute an acknowledgment by the individual, group or organization of its acceptance of responsibility for any bodily injuries or damage to the building or equipment resulting from such use.

To ensure financial support for the indemnification, the district establishes criteria concerning insurance requirements of individuals, groups and organizations applying for permission to use the district's facilities for non-district related activities. We recommend requiring a certificate of insurance from potential outside users evidencing comprehensive general liability coverage with minimum limits of \$1 million per occurrence.

Special events insurance is an option that outside users may be able to use to offer financial protection for the school district. (See the article on Special Events Insurance Coverage in this newsletter.)

The district may waive the insurance requirement where such requirement would represent an undue hardship on the individual, group or organization, or if the requirement is determined not to be in the best interests of the

district. In cases where the district elects to waive the insurance requirement, the district should undertake direct supervision of the activity.

OPEN GYMS

By definition, open gyms allow undirected recreational use of the school gymnasiums. Being unsupervised, damage to school property, personal injury of participants, and illegal activities are sometimes associated with open gyms.

Without a responsible party in charge of the open gym, with the financial backing of insurance should injury or damage occur, the district is often left financially responsible for losses from this activity. So, although the school district would like to be able to provide the use of its facilities for such recreational use, it may not be in the best interest of the school district to do so.

THEREFORE, IT IS THE RECOMMENDATION OF THE RISK COOPERATIVE THAT MEMBER SCHOOL DISTRICTS NOT ALLOW OPEN GYMS UNLESS SUPERVISED BY A SCHOOL DISTRICT EMPLOYEE.

TRAINED VOLUNTEERS TO SUPERVISE?

In lieu of having a paid school district employee supervise the open gym (or other non-school sponsored activities), a school district may choose to use trained volunteers. These volunteers need to clearly understand their role in representing the district's interests – to protect district property and address liability hazards (not directing the running of the activity itself).

District training, given by a knowledgeable district employee and properly documented, should include:

- Building opening and closing procedures, including locking/unlocking doors/windows and setting/disarming alarms
- What to do in an emergency (medical, fire, threat, etc.)

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Open Gyms, Continued from Page 5

- How to report building problems, including property damage
- Dealing with non-compliant participants
- School rules and related school district policies
- How to recognize and address hazards
- How to serve as the school district's agent and look out for the district's interests

KEY CONTROL

An issue related to open gyms is the providing of school building keys to non-school district employees for approved purposes so that the protection of the district's assets continues.

School staff may have provided keys to routine users to facilitate access without clearly specifying the terms of use. School supporters may have had keys issued to them years ago.

Some community members feel that school facilities are public buildings that should be available for their use when not used by the school, for activities such as lifting weights or playing basketball in the gym. School facilities may even be being used without the school's knowledge or consent! This arrangement offers no protection for the school district should injury or property damage occur.

Traditionally, districts are liable only for injury or damage caused by *facility hazards* during non-school use of district facilities. If the district allows unsupervised use of its facilities, or there is use without the district's knowledge or consent, the district may be held partially liable for any related injury or damage.

The Risk Cooperative urges its member districts to tightly control school building keys (including access cards). School building keys should be given to non-employees for a specified, approved purpose, and be returned to the school after the approved use.

For questions about facility use, open gyms or key control, please contact Peggy Sandberg, Loss Control Specialist, at (360) 750-7504.

Students Working Off Campus - Insurance & Safety Considerations

The Risk Cooperative is often asked to provide a "Certificates of Insurance" (or "Evidence of Coverage," for self-insurance) to sponsors who will host a student as part of a school-to-work program, senior project or other community-based learning opportunity. The host sponsor wants financial protection from the school district in case of injury or damage related to the student's work.

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 for its member school districts. The school district's general liability coverage protects the school district, its employees and volunteers in the event of a claim for damages *alleging negligence* arising from a school's actions (subject to specific exclusions and limitations).

In order for the school district's liability coverage to respond to a claim for damages, *the school district* must be potentially liable for the injury or damage (the district has breached a duty that causes the injury or damage). The school district cannot make a gift of its liability insurance coverage to other organizations or individuals, even well intentioned ones.

Here's an example of a school-to-work accident. A student working in a hardware store is stacking gallon cans of paint as instructed by the employer. (The school is providing no direct supervision of this student.) The paint cans fall, injuring a customer. What action by the district caused this accident? What could the school have done to prevent it? What duty did the district breach?

When the employer/sponsor controls the student's training and supervision as well as the facilities and equipment, the sponsor assumes the duties that the school usually has. (This becomes even clearer when each party's responsibilities are spelled out contractually.) The school has little control over the student's sponsor, even though monitoring the student's placement is prudent.

Injury or damage caused by the student under the direction of the sponsor would most probably be covered by the *sponsor's* liability insurance. However, in case of student injury, the district may want to require students who participate in such a program to (1) carry student accident insurance or (2) be named under their parent's medical insurance coverage.

If the potential sponsor does not want to assume responsibility for the student, then this may not be a good placement for the student. As an alternative, the school may want to send a staff member to supervise the student(s).

For your information, following is a brief list of areas to address to help prevent losses in community-based learning opportunities:

- Screening students (placement suitability)
- Screening and preparing potential sponsors
- Supervising students (or ensuring appropriate supervision)
- Preparing students
- Having a contractual agreement between the school and the sponsor that outlines each party's responsibilities
- Obtaining parental permission and informed consent for student participation and transportation
- Monitoring student activities

The district also needs to check proposed activities against the "prohibited and

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hazardous employment for minors" list found in WAC 296-125-030 and -033. If Labor & Industries has determined these activities to be too hazardous for minors to do for paid work, we would recommend that they not be included in a community-based learning opportunity either.

A good resource for insurance and safety considerations in community-based learning opportunities is the *Washington State Work-Based Learning Coordination Manual/ Guidelines* (found on OSPI's website [www.k12.wa.us] under "Career and Technical Education" and "Work-Based Learning"). This 105-page document contains good insurance information in the Legal section (starting on page 30), and several good forms, including:

- Sample Worksite Learning Agreement
- Orientation to Business
- Sample Safety and Health Checklist
- Sample Worksite Pre-Qualification Form
- Sample Work-Based Learning Coordinator Job Description

It is in the district's best interest to do what it can to help ensure a safe and healthy community-based learning opportunity for its students.

If you have questions or for more information, please contact Peggy Sandberg, Loss Control Specialist, at (360) 750-7504.



SPECIAL EVENTS INSURANCE COVERAGE

Special Events Insurance Coverage is available to entities who use member school district facilities to hold fundraisers, political rallies, dances, shows, swap meets, community voting, plays, union meetings, and other activities, and who do not have their own liability insurance. Special Events Coverage can also be used to provide liability coverage for parent-sponsored graduation parties. Special Events Coverage protects the 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 activity.

Special Events Coverage includes liability coverage for general liability and products liability up to a \$1,000,000 limit, personal and advertising injury to a \$250,000 limit, and fire legal liability to a \$50,000 limit. Additional limits of liability are available. This coverage is a primary in the event of a loss. Special Events Coverage is written on a standard Occurrence Commercial General Liability Form that includes premises liability, products and completed operations liability, personal and advertising injury liability, and contractual liability. Host liquor liability can be obtained for an additional premium. Coverage for vendors, exhibitors and concessionaires at an event can be added as additional insureds for an additional charge.

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 priced by the Risk Cooperative. Events that fall in Class IV and Class V hazards, such as baseball, basketball, 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.

Special Events Coverage is not available for more hazardous events such as balloon rides, boxing, wrestling, hockey, karate, martial arts events, bungee jumping, diving, hang gliding, kayaking, rafting, or canoeing in greater than Class 3 rapids. For a complete list of excluded activities, please contact us.

Events are rated based on the hazard exposure (class), the number of participants in attendance, and the number of days the event lasts. The following are approximate costs for illustration purposes. A Class I event, (such as a wedding reception) the lowest hazard class, can cost from about \$112 for an event with fewer than 50 participants to about \$350 for an event with up to 3,000 participants. A Class III event (such as a union meeting) can cost from \$230 for an event with fewer than 50 participants, to about \$900 for an event with up to 3,000 participants. Most Class I through III events cost less than \$400.

The spring season brings interest in this coverage for off premises graduation parties that are sponsored by parent groups. Off premises graduation parties are usually not school sponsored or 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. This can be done through the Special Events Coverage program.

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. Please call Jim Rochel at (360) 750-7504 to discuss the event and to obtain an application form.

Fatal Shock From Electric Drill

Two workers were installing shutters on the windows of a building. One was about six feet above the ground on a scaffold. The other began to climb a metal ladder so he could hand an electric drill to his co-worker, but reaching the third rung, he received a fatal electrical shock.

Investigators found the drill and extension cord were defective. The third prong, required for grounding, was missing from the extension cord. The frame of the drill was not double-insulated. A conductor on the grounding wire was making occasional contact with the energizing wire. This contact caused the grounding wire and the drill's frame to become energized.

Pre-inspection of all tools should be a routine procedure. Make sure you examine power tools for damage and defects. These include frayed cords, loose or bent plugs, missing third prongs, damaged insulation and other problems that could lead to electric shock. An electrical power tool must either be grounded with a three-prong plug or double-insulated. Use only correctly grounded equipment. Never use three-pronged cords which have had the third prong broken off. Make sure grounding connections are secure.

Don't forget to inspect your extension cords on a regular basis. These cords are regularly exposed to physical damage. Frequently the damage is only to the insulation, exposing energized conductors. It is not unusual for a person to handle the cord often, with the possibility of contacting the exposed wires while in contact with a conductive surface. Watch for wires and connections that are damaged, worn or broken.

Under some conditions, neither double insulation nor grounding will

protect the user from electrical shock. Often workers use electrical equipment where there is moisture or wetness. Although the person is insulated from the electrical wiring and components, there is still a possibility that water can enter the tool housing. Water is a conductor of electricity. Therefore, if the water contacts energized parts, a path will be provided from inside the tool housing to the outside, bypassing the double insulation. When a person holding a wet hand tool touches another conductive work surface, an electrical shock could result.

Since neither insulation nor grounding can provide protection under this condition, it is necessary to use other protective measures. One acceptable method is a ground fault circuit interrupter, commonly referred to as GFCI. Use a GFCI when using electrical equipment outdoors or in a damp area. Do not use electrical equipment which is damp or which may have been submerged in water. Do not handle any electrical equipment, including cords and plugs, with wet hands.

Once a tool has been determined to be defective it must be removed from service. Workers should be instructed how to tag a tool to remove it from service, where to deliver it for repair by a qualified person and how to obtain a replacement.

Another dangerous work practice contributed to this fatality - using a metal ladder for electrical work. When working near or with electricity use a ladder that does not conduct electricity, such as fiberglass or wood. Never use a ladder made of aluminum or one with metal reinforcement when doing any electrical work, including changing a light bulb.

School Safety Patrol Badges - Where to Find Them

A badge is a required part of the school safety patrol standard uniform, according to WAC 392-151-090. But where can these badges be obtained?



School Safety Patrol Badges can be ordered from KCDA (look in "Health & Safety"), or directly from AAA. Contact Mary Ostermeyer at AAA in Spokane at 800-456-3222. Cost is \$5.50 plus tax and shipping and handling for five badges. AAA has several school safety patrol items which are listed in its "Driver & Traffic Safety Catalog" or can be found online at www.aaapublicaffairs.com.



This is a road we hope you don't take. Do you know where this road is located? The folks in Wahkiakum County probably do!

Grounded Plug	Double Insulated
	<p>Double Insulated</p>
<p>Hand held tools and some other types of equipment must use a 3-wire plug or the tool label must show the tool as insulated by words or symbol.</p>	

MERCURY SPILLS AT SCHOOL

SCHOOL INCIDENTS

In March 1999, 20 people were treated at the hospital and 88 others were forced into decontamination showers when exposed to a health hazard at a Green Bay Wisconsin high school. The bill to clean up after this incident topped \$200,000.

In October 2003, a high school in Washington D.C. and more than 100 homes were tested for contamination. Contamination was discovered in 11 homes and resulted in 69 residents being displaced and moved to local hotels. The school's 1,300 students were forced to take classes at other locations. The cost of cleaning the school and homes, buying supplies for temporary classrooms, and providing lodging, food and transportation for displaced residents ran into millions of dollars.

In Florida, 500 students were potentially contaminated and more than 20 families had to be evacuated while their homes were decontaminated.

And more recently, in January of this year, a middle school in northern Nevada was closed for two weeks, and more than \$100,000 was spent on decontamination efforts.

What do all of these incidents have in common? All these cases began with students either bringing from home or finding at school some MERCURY.

In the incident in Nevada, dozens of the middle school students were exposed to mercury and the vapors it gives off after a quarter cup of the substance was brought to school by a student. Not only were students and classrooms contaminated, but so were a school bus and the clothing and belongings of more than 50 students.

ABOUT MERCURY

Mercury has many names: quicksilver, liquid metal, and mercurio. It is number 80 on the periodic table of elements and looks like silver paint that doesn't melt. Describe it however you want, but make no mistake about it: elemental mercury isn't pretty and it isn't neat.

There are legitimate and safe uses for mercury, though many industries such as mining and paper production are moving away from mercury processes. Still, the silver liquid is found

in thermometers, thermostats, fluorescent lamps, barometers and car switches. A typical barometer contains 1 pound of mercury and poses a significant spill risk. For example, vandalism of a barometer cost one school district \$7,000 to clean up. But many people are not aware of the extreme danger of mercury when it is no longer contained in a thermometer or airtight container.

RELATED LEGISLATION

To help address this issue, the state of Washington has passed RCW 70.95M.040 which prohibits a school from purchasing bulk elemental mercury or chemical mercury compounds. Also by January 1, 2006, all primary and secondary schools in the state must remove and properly dispose of all bulk elemental mercury, chemical mercury, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers. Of course this doesn't prevent a student from bringing mercury to school from home.

SPILLS AND WHAT TO DO

All mercury spills, regardless of quantity, should be treated seriously. Metallic mercury slowly evaporates when exposed to the air.

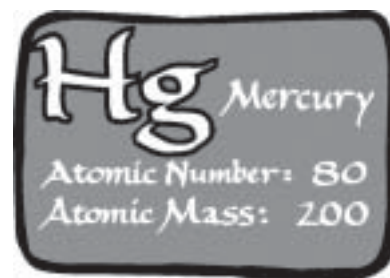
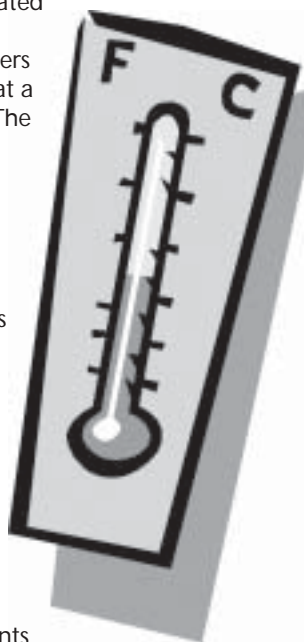
The air in a room can reach contamination levels just from the mercury in a broken thermometer - just a few drops. When

liquid mercury is spilled, it forms droplets that can accumulate in the tiniest of spaces and then emit vapors. Health problems caused by mercury depend on how much has entered your body, how it entered your body, how long you have been exposed to it, and how your body responds to it.

THE SYMPTOMS OF MERCURY POISONING CAN INCLUDE:

- impairment of peripheral vision
- disturbances in sensations - that "pins and needles" feeling as well as numbness - usually in the hands feet and sometimes around the mouth
- lack of coordination of movements, such as writing
- impairment of speech, hearing, walking
- muscle weakness
- skin rashes
- mood swing, memory loss, and mental disturbances

Coming into contact with too much mercury this way can damage a growing brain, harming the way unborn and young children will be able to think and learn. It can also harm anyone's heart, kidneys, lungs, and immune system.



Commercially available mercury spill kits can be purchased that will provide the materials needed to effectively deal with a small spill. You can also make your own kit with the following supplies:

- gloves
- plastic dust pan
- small sponge
- box or tray lined with plastic wrap
- plastic trash bags
- zip lock plastic bags
- wide-mouth plastic container with lid
- eyedropper or syringe aspirator
- index cards, playing cards, or other disposable heavy paper
- mercury absorbent powder or zinc flakes
- tape
- flashlight

DO'S AND DON'Ts FOR SMALL SPILLS, SUCH AS A MERCURY THERMOMETER BREAKING:



DO call your local health department and inform them of the situation.

DO immediately remove children from the area.

DO clean up the silver mercury beads by pushing small mercury beads together with a card or other stiff paper to form larger droplets. Push them into a plastic dustpan or working over a box or tray to catch any spill, lift the beads of mercury with the stiff cardboard paper. You could also use an eyedropper or syringe aspirator to suction up the balls of mercury. Carefully place the mercury into a wide-mouth container or zip lock bag. Pick up any remaining beads of mercury with sticky tape. Use a flashlight to look around for any remaining mercury beads. The light will reflect off the

beads and make them easier to see. Then place the mercury into a plastic bag or airtight container. The paper and eyedropper should also be bagged in a zip-lock container. Use disposable gloves when you do this.

DON'T dispose of it into the regular trash. On a carpet or rug, the mercury-contaminated section should be cut out and placed in a plastic bag with any cleanup items.

DON'T try to soak it up with a towel or rag or use a broom; doing so only spreads the mercury, breaking it up into smaller beads and making it more difficult to find and remove.

DON'T use household cleaning products to clean the spill, particularly products that contain ammonia or chlorine. These chemicals will react violently with mercury, releasing a toxic gas.

DON'T pour mercury down the drain.

DON'T vacuum carpeted floors contaminated with liquid mercury. The vacuum will put mercury vapor into the air, increase exposure, and the vacuum will be contaminated and have to be thrown away.

FOR SPILLS THAT ARE MORE THAN THE AMOUNT IN A THERMOMETER:

- Isolate the area
- Turn down the temperature if possible
- Open windows
- Don't let anyone walk through the mercury
- Don't vacuum
- Contact your local health department or the state Department of Ecology.

The best way to minimize your risk is to make sure that small spills are cleaned up promptly and properly. If a larger amount is spilled seek professional guidance. If you try to ignore the problem then the cleanup could be expensive (because the mercury will have spread) and your legal liability could increase.

For more information see EPA's mercury Web site: <http://www.epa.gov/mercury/>, or call Scott La Bar at (360) 750-7504.

Unemployment Unfolded

REASONABLE ASSURANCE LETTERS HELP CONTROL UNEMPLOYMENT COMPENSATION CLAIMS DURING THE SUMMER BREAK

May is the time of year that school districts provide letters to their employees concerning their employment status for the next school year. This needs to be done by statute (RCW 28A.405) for nonrenewal of contracts with certificated staff, and to help control unemployment claims for non-contracted certificated and all nine-month classified staff.

The law in Washington State denies unemployment compensation benefits to individuals employed with school districts during scheduled breaks (including summer) if they will return to basically the same job after the scheduled break:

“Benefits shall not be paid based on any and all services for any and all educational institutions for any week of unemployment which commences during the period between two successive academic years...if...there is a reasonable assurance that such individual will perform such services in the second of such academic years.” RCW 50.44.050 (2) (The same exclusion applies to other scheduled breaks.)

The Employment Security Department determines an educational employee's eligibility for unemployment benefits between academic years or terms based on reasonable assurance that the employee will have continued employment during the following academic year or term.

The existence of a contract or showing of reasonable assurance can establish continued employment. RCW 50.44.053 defines “reasonable

assurance” as “a written, verbal, or implied agreement that the employee will perform services in the same capacity during the ensuing academic year or term as in the first academic year or term.”

In the absence of a written contract, one way that school districts document this reasonable assurance of continued employment is by using what is referred to as a reasonable assurance letter. This letter should state that the employee has reasonable assurance of continued employment in the next academic year. Some districts also use this letter to document the continued interest of substitutes to work in the district the next school year.

Such a letter should not be sent to employees who do not have reasonable assurance of returning in the same capacity. “Same capacity” means positions that fall under the same terms and conditions of employment test, which include wages, duration of contract, hours of work, and the general nature of the work. It does not include details such as the specific work location, duties, or assignment. The position need not be identical to the previous position to meet this test.

Individuals employed in substitute positions and who receive reasonable assurance are disqualified from receiving unemployment benefits based on school wages during a scheduled break. The law does not distinguish between regular or



substitute positions. If an individual was employed in an on-call substitute position before the break and has reasonable assurance to return to the active on-call substitute list after the break, they are not eligible for unemployment benefits based on their school wages. (Some individuals who have non-school wages may qualify for benefits.) However, if that individual had a long term substitute position that ends with the school year, and then is put on the on-call list for the next year, this would not fall under the same terms and conditions and could possibly qualify for unemployment compensation.

Without a reasonable assurance letter, the employee who is not working for the school district over the summer could make the case to the Employment Security Department that s/he has no assurance of continued employment, and therefore may be able to receive unemployment benefits.

For questions about reasonable assurance letters, please contact Shaun Mettler at (360) 750-7504.

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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

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**.

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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