



Risk Management Solutions

A QUARTERLY NEWSLETTER OF THE ALABAMA MUNICIPAL INSURANCE CORPORATION
AND THE MUNICIPAL WORKERS COMPENSATION FUND, INC.

SUMMER 2003

Heat-Related Illness: Signs and Symptoms

Summer time is a busy season for most municipal departments that work outdoors. Since the summer heat can be very dangerous, it is important to know the stages and symptoms of heat related illnesses, and how to treat it.

Normally, the body has ways of keeping itself cool, by letting heat escape through the skin, and by evaporating sweat (perspiration). If the body does not cool properly or does not cool enough, the victim may suffer a heat-related illness. Anyone can be susceptible although the very young and the elderly are at greater risk. Heat-related illnesses can become serious or even deadly if unattended.

Precautionary Measures

- **Dress for the heat.** Wear lightweight, light-colored clothing. Light colors will reflect some of the sun's energy. It is also a good idea to wear hats or to use an umbrella. When possible, work in the shade.
- **Drink plenty of water or sports drinks.** Carry it with you and drink continuously, even if you don't feel thirsty. Avoid caffeine, which can dehydrate the body.
- **Slow down.** Avoid strenuous activity. If you must do strenuous activity, do it during the coolest part of the day, which is usually in the morning between 4:00 a.m. and 7:00 a.m.
- **Take regular breaks.** When engaged in physical activity on warm days, plan and take regular breaks. Take time out to find a cool place.
- **Monitor the weather.** If you work outdoors, monitor local weather forecasts and discuss them each morning before beginning work.
- **Monitor each other.** Know how to recognize heat related illness, and know what to do in the event you or a coworker suffers a heat related illness.

Stages and Treatment

Heat Cramps Heat-related illness usually comes in stages. The signal of the first stage is heat cramps in muscles. These cramps can be very painful. If you are caring for a person who has heat cramps, have him or her stop activity and rest. If the person is fully awake and alert, have him or her drink small amounts of cool water or a commercial sports drink. Gently stretch the cramped muscle and hold the stretch for about 20 seconds, then gently massage the muscle. Repeat these steps if necessary. If the victim has no other signals of heat-related illness, the person may resume activity after the cramps stop.

Heat Exhaustion

The signals of the next, more serious stage of heat-related illness (often called heat exhaustion) include:

- Cool, moist, pale skin (skin may be red immediately following physical activity).
- Headache.
- Dizziness and weakness or exhaustion.
- Nausea.
- Skin may or may not feel hot.

Treating Heat Exhaustion

Get the person to a cooler place and have him or her rest in a comfortable position. If the person is fully awake and alert, give a half glass of cool water every 15 minutes. Do not let him or her drink too quickly. Do not give caffeine to them, as it can make conditions worse. Remove or loosen tight clothing and apply cool, wet cloths such as towels or wet sheets. If the person refuses to drink liquids, seek professional emergency medical treatment.

Heat Stroke

The signals of the late stage of a heat-related illness (often called **heat stroke**) include:

- Vomiting.
- Decreased alertness level or complete loss of consciousness.
- High body temperature (sometimes as high as 105°F).
- Skin may still be moist or the victim may stop sweating and the skin may be red, hot and dry.
- Rapid, weak pulse.
- Rapid, shallow breathing.

Treating Heat Stroke

This late stage of a heat-related illness is life threatening! Seek professional emergency medical treatment immediately! Until professional help arrives, shade the victim or move the person to a cooler place. Quickly cool the person's body. Wrap wet sheets around the person's body and fan it. If you have ice packs or cold packs, wrap them in a cloth and place them on each of the victim's wrists and ankles, in the armpits and on the neck to cool the large blood vessels. Do not use rubbing alcohol because it closes the skin's pores and prevents heat loss. Watch for signals of breathing problems and make sure the airway is clear. Keep the person lying down until professional help arrives.



The Montgomery Water Works and Sanitary Sewer Board has water coolers mounted on most of its work vehicles. Sport drink mixes are also provided for the crews once the temperature climbs above 90 degrees.

What Is Harassment and How Can We Stop It?

By Ken Smith, Deputy Director/Chief Counsel
Alabama League of Municipalities

When people think of workplace harassment, they almost invariably think first of sexual harassment. While sexual harassment remains a significant issue for employers, they must also be aware of the potential liabilities and problems created by any form of workplace harassment.

Workplace harassment can take many forms, from direct, physical threats against an employee to actions that create a hostile work environment but that are not directed toward any specific person. Sexual harassment claims generally fall into one of two categories: hostile work environment harassment or quid pro quo (something for something) harassment. Typically, quid pro quo harassment cases involve a supervisor or other manager who either rewards an employee for granting sexual favors or who punishes an employee for refusing to comply. The key factors in a successful quid pro quo claim are the authority of the harasser, the establishment of a link between the benefit given or withheld and the request for favors.

Quid pro quo harassment is easy to recognize when it occurs. Hostile work environment claims, though – and most non-sexual harassment claims and some sexual harassment claims fall into this category – are sometimes more difficult to identify. As explained in *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 65 (1986), in order to create an actionable hostile environment claim, the activity complained of must be “sufficiently severe or perverse” to alter the conditions of employment and create an abusive working environment. Whether conduct creates a hostile environment depends on all the circumstances, especially their frequency and severity, including “whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.” *Harris v. Forklift Systems, Inc.*, 114 S.Ct. 367, 371 (1993).

The test encompasses both subjective and objective elements. That is, the offensive conduct must be severe or pervasive enough to create an objectively hostile or abusive work environment – one that a reasonable person would find hostile or abusive – and the victim must have, in fact, perceived the environment to be abusive. Its effect on the employee’s psychological well-being is pertinent to whether the plaintiff subjectively found the environment abusive, but a serious effect on the employee’s psychological well-being is not essential to the claim. Thus, whether a particular action constitutes harassment depends in large part on the perception of the employee or employees who are offended by the behavior. Some important factors to know about harassment include:

- Anyone can be a victim of harassment – men are protected as well.
- A single statement or action may constitute harassment. It does not have to be repeated to be defined as harassment.
- Even behavior that isn’t intended to offend someone may be harassment.
- Harassment can occur between people of the opposite sex or between people of the same sex.
- Differences between cultures, language and attitudes, or misinterpretation of social signals may mean that what is seen as offensive behavior or language by one person may not seem like it to another.

Types of Harassment

As noted, sexual harassment is the most familiar type of harassment simply due to the coverage it has received from the media. Most of the high profile harassment cases have involved some form of sexual harassment. However, other forms of harassment that municipalities must be aware of include:

- racial harassment (regarding skin color, language or national origin);
- homophobic harassment (anti-gay, anti-bisexual, anti-lesbian and anti-transgender), which would include calling someone names;
- religious harassment (attacks on someone’s religious beliefs or religious affiliation);
- insults regarding someone’s height or weight; and
- forms of bullying (attempting to force someone to do something they don’t want to do through threats, intimidation and/or insults).

Any of these type actions, or any other type of behavior that makes other employees uncomfortable or unable to perform their jobs due to discomfort or

intimidation, can constitute hostile workplace harassment. **And why is knowing this so important?** Well, other than the need for employees to feel secure in the workplace, harassment can lead to significant liability on the part of the municipality if it does not take steps to deal with the problems before they arise.

In *Faragher v. City of Boca Raton*, 66 LW 4643 (1998) and *Burlington Industries, Inc. v. Ellerth*, 66 LW 4634 (1998), the United States Supreme Court ruled that employers will be held vicariously liable for the unlawful sexual harassment of employees by supervisors. Employers, though, may raise as an affirmative defense that (1) the employer exercised reasonable care to prevent and promptly correct any sexually harassing behavior, and (2) the employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to otherwise avoid harm.

This standard also applies to other types of harassing behavior as well. For instance, in *Tillery v. ATSI, Inc.*, 242 F.Supp.2d 1051 (N.D.Ala.,2003), the federal district court noted:

We have yet to address a hostile work environment claim based on religion. However, Title VII has been construed under our case law to support claims of a hostile work environment with respect to other categories (*i.e.*, sex, race, national origin). We see no reason to treat [the plaintiff’s religiously-]hostile work environment claim any differently ...

And, in its on-line publication, *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors* (available on-line at www.eeoc.gov/docs/harassment.html#I), the Equal Employment Opportunity Commission notes:

The rule in *Ellerth* and (*Burlington Industries, Inc. v. Faragher* regarding vicarious liability applies to harassment by supervisors based on race, color, sex (whether or not of a sexual nature), religion, national origin, protected activity, age or disability. Thus, employers should establish anti-harassment policies and complaint procedures covering all forms of unlawful harassment.

To protect itself against claims, an employer must position itself appropriately before any improper behavior takes place. Winning a harassment lawsuit will depend largely on the steps a municipality takes to prevent harassment from ever taking place, as well as the way the municipality deals with any objectionable behavior by employees when it occurs.

Protecting Yourself

A municipality must make it clear to all employees that harassment is unacceptable behavior that will not be tolerated. The first, most logical step local governments can take to insulate themselves from sexual harassment claims is the adoption of a written anti-harassment policy that contains effective complaint procedures. Although the Court in *Faragher* and *Burlington Industries* stated that an employer did not have to have a policy in place as a matter of law, not having a policy in place to address sexual harassment concerns makes proving due diligence by the employer more difficult.

Once the policy is adopted, copies should be posted in a conspicuous location and given to every employee. The employer should take time to carefully explain the policy and the grievance procedures and address employee questions. As part of this process, employees should sign a form acknowledging receipt of the policy and that it has been explained to them. The form should be *dated* as well.

The local government should also conduct an employees’ meeting to instruct them on the contents of the policy. In this case, employees should sign an attendance form to show that they were present at the meeting. This form would be *in addition* to the acknowledgement form mentioned above. Both forms should be retained by the employer as proof of its efforts to deal with harassment.

Of course, the anti-harassment policy will only be effective if it is enforced. The local government should provide employees with an effective complaint

continued next page

procedure and swiftly and efficiently deal with any complaints that are filed. Employees must know that allegations will be treated seriously and dealt with promptly and fairly.

In taking remedial action, an employer is 'obliged to investigate (the employee's) charges and to present a reasonable basis for its subsequent actions.' *Swentek v. USAir, Inc.*, 830 F. 2d 552, 558 (4th Cir. 1987). Remedial action does not necessarily require that the employer believe all of the plaintiff's allegations, nor does it require that the alleged harasser be fired. See, e.g., *Hirschfeld v. New Mexico Corrections Dept.*, 916 F. 2d 572 (10th Cir. 1990) and cases cited therein.

In addition to its enforcement efforts, the local government should train its supervisors well on the policy and monitor their performance. Periodic sessions to review the policy might also promote compliance.

Finally, supervisory candidates should be screened carefully before being promoted. Their personnel records should be carefully reviewed for previous problems and resolutions.

Examples of Harassment

The following examples are taken from court decisions around the country ruling that the specific behaviors listed constitute improper harassment. This list is, of course, not exhaustive; other types of actions may also violate legal proscriptions against harassment.

The courts have found the following types of conduct to be unwelcome verbal harassment:

- Using language of a sexual nature.
- Making sexual comments and references about a person's body.
- Making sexual comments and innuendoes.
- Using foul language, yelling and innuendos, along with vulgar and sexually explicit comments.
- Making comments about whether an adult likes to be spanked.
- Making comments about a woman's decreased sexual desirability while she was pregnant.
- Subjecting a female police dispatcher to harangues, demeaning sexual inquiries and vulgarities.

The courts have found the following types of conduct to be unwelcome non-verbal harassment:

- Supervisor looking a person up and down in a way that was uncomfortable.
- A male looking at and talking about his groin area.
- Subjecting an employee to extremely vulgar and sexually explicit graffiti throughout the workplace on a continuous basis.

The courts have found the following types of conduct to be unwelcome physical harassment:

- Giving an unwanted massage around the neck, shoulders or back.
- Moving toward a woman until she was backed against a wall.
- Unwanted touching of a woman's head and chest.
- Intimidating a woman by standing uncomfortably close to her, even though she asked him to move away.
- Unwanted hugging and kissing.
- Supervisor grabbing and twisting the arm of a female employee.

Conclusion

The Supreme Court's decisions in *Ellerth* and *Burlington Industries, Inc.* make it clear that employers can no longer handle harassment issues by crossing their fingers and hoping. Employers cannot merely rely on a lack of knowledge about events to defend themselves. These cases – and others – provide a strong incentive for employers to develop, implement and enforce strong policies prohibiting harassment and establishing effective complaint procedures.

The cases also make it clear that employees must follow procedures and alert management about harassment before it becomes severe and pervasive. If employers and employees undertake these steps, unlawful harassment can often be prevented, reducing lawsuits and achieving an even more laudable goal – making the workplace safe and comfortable for employees. ■

Previous issues of *Risk Management Solutions* can be found by visiting www.AMICentral.org or www.alalm.org and clicking on the MWCF link.

Defining Moment

LOSS RATIO Defined: "Proportionate relationship of incurred losses to earned premiums expressed as a percentage." If, for example, a firm pays \$100,000 of premium for worker's compensation insurance in a given year, and its insurer pays and reserves \$50,000 in claims, the firm's loss ratio is 50 percent (\$50,000 incurred losses/\$100,000 earned premiums). Bear in mind that reserves are always included when calculating incurred losses. This seems to inflate the figure but is an essential component of the equation! The loss control staff is often asked why a particular claim is higher, in dollar terms, than what has actually been spent on the claim. The answer: case reserves. Again, reserves are an integral part of incurred losses – once the claim is closed the amount of reserves that were not spent are deducted from the file and the appropriate records. You are not charged for reserves that are not used!

Glossary of Insurance and Risk Management Terms
Eighth Edition

International Risk Management Institute, Inc. Dallas, Texas

SkidCar Schedule

- Decatur – August 19-29, 2003
- Albertville – September 16-26, 2003
- Andalusia – October 14-24, 2003
- Fairhope – November 11-21, 2003
- Montgomery – December 9-19, 2003

**For additional information, contact the
Loss Control Division at
334-262-2566.**



EMPLOYMENT PRACTICES LAW HOTLINE

1-800-864-5324



Through a toll-free Employment Practices Law Hotline, members can be in direct contact with an attorney specializing in employment-related issues. When faced with a potential employment situation, the hotline provides a no-cost, 30 minute consultation.

Popular Safety Videos for Summer

- Outdoor Safety: Critters & Plants (7.029)
- Tractor Safety (5.039)
- Heat Illness (7.062)
- Right-of-Way Mowing Safety (5.032)

To check-out a safety video, simply call, FAX, or e-mail your request to Rachel Wagner at:
334-262-2566; rachelw@alalm.org;
or FAX at **334-263-0200.**

Alabama Association of Chiefs of Police to Meet in August

The next Alabama Association of Chiefs of Police meeting will be held August 20, 21 and 22, 2003 at the Conference Center in Auburn, Alabama. The Wednesday training, which will be held from 1:00 p.m. until 5:00 p.m., will be led by the Attorney General's staff and will cover: a law update; the Community Notification Act; Gaming (Slot Machines); Sentencing Reform; and a legislative update. Thursday's topic is Diversity: Understanding People and Cultures and will be held from 8:00 a.m until 5:00 p.m. Each chief can receive 14 hours of APOST Executive level training if they attend all of the sessions.



For more information, call:
334-262-2566.



**Please share this
publication with
your staff and
coworkers!**

Presorted Std.
U.S. POSTAGE
PAID
Montgomery, AL
PERMIT NO. 340

CHANGE SERVICE REQUESTED

ALABAMA LEAGUE OF MUNICIPALITIES
P.O. Box 1270 • 535 ADAMS AVE.
MONTGOMERY, AL 36102

