



# THE MUTUAL EFFORT

Summer 2009

Wisconsin County Mutual Insurance Corporation

Volume 14.2



1st place winner  
Mark Bobholz

## 2009 County Mutual Highway Safety ROADeo

Focus Provides Ongoing Education

By Michelle Gormican Thompson, Thompson Communications

In light of these tight economic times, it is the infrastructure of Wisconsin that will move our state toward a stronger economy. Now more than ever, our roads are at

the foundation of a better tomorrow. Helping to keep this infrastructure healthy on a daily basis are the county highway departments and their dedicated employees.


Without them, state roads would suffer and greatly impact quality of life for Wisconsinites. After all, it is these employees who clear snow to get families out the door in the middle of winter, fill dangerous potholes to provide a safe ride for all motorists and maintain safe roadways year-round.

The job of county employees is not an easy one. The recent death of a Dane County highway employee on the job tragically demonstrates the dangerous working conditions for highway workers. Poor visibility during storms, lifting heavy objects and often working mere feet from speeding traffic makes for a situation ripe for accidents.



To provide ongoing safety training for county highway employees, Wisconsin County Mutual Insurance Corporation (County Mutual), the insurance carrier for counties in the state, sponsored the 2009 Highway Safety ROADeo in Wisconsin Dells on June 9, 2009.

The free event was held in conjunction with the Wisconsin County Highway Association Summer Conference and brought together county highway employees from 17 counties. Attendees took part in

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*For your convenience, additional copies of this newsletter are available at*

[www.wisconsincountymutual.org](http://www.wisconsincountymutual.org)



four separate rotations, which included:

- A written general safety exam;
- A vehicle inspection where participants had to identify five things wrong with the truck that would qualify as a safety hazard;
- A presentation by speaker Bob Emmerich on working safely on elevated platforms; and
- A driver skills course that employees had to maneuver in a county truck. Situations on the course included safely backing up and maneuvering in tight spaces.

There were a total of 500 points available to participants between the written exam, vehicle inspection and driver skills course.



This year's keynote speaker was Bob LoMastro, who gave a dynamic presentation on "Defining Safety." Following his speech, an awards ceremony was held and this year's top finishers were:

- First place: Mark Bobholz, Dodge County**
- Second place: Todd Olson, Polk County**
- Third place: Gary Puestow, Washington County**
- Fourth place: Brian Klos, Ozaukee County**



Left to Right: Brian Klos (4th Place Ozaukee County), Gary Puestow (3rd place Washington County), Todd Olson (2nd place Polk County), Mark Bobholz (1st place Dodge County).



#### Volunteers:

*Back Row:* Mike Keichinger (Juneau County), Bob Dahlman (Juneau County), Tony Rhoades (Sauk County), Todd Hogan (D.O.T.).

*Front Row:* Gary Kelly (Sauk County), Dennis Rehr (Sauk County), Steve Paulus (Ozaukee County), Jim Cross (Columbia County), and Vance Forrest (Aegis).

Barb Hoile (Juneau County), Judy Rank (Shawano County), and Michelle Thompson (Thompson Communications) were diligently working inside and not present in photo.

The 2009 County Mutual Highway Safety ROADeo was planned by Aegis Corporation, the general administrator of the County Mutual. Volunteers from the Wisconsin County Highway Association also served as volunteers and helped to coordinate events throughout the day.

The Highway Safety ROADeo is just one of many safety and training seminars provided by the County Mutual. Aegis Corporation's staff of safety specialists typically makes over 500 on-site loss control and risk management training visits a year to member counties, with topics ranging from sexual harassment to chainsaw safety.

"Our county highway employees are providing one of the most visible services to our taxpayers. Their work can be dangerous at times and we believe it is critical that they continue to receive the latest in safety training," said John Dirkse, Aegis Corporation Executive Vice President. "The County Mutual is steadfast in our belief that we must keep safety a top priority for all of our employees. The Highway Safety ROADeo provided an arena for our highway employees to focus on safety and is yet another way the County Mutual proves itself to be different from others in the industry with its strong safety philosophy."



## Why Are Counties Giving Away Management Rights?

By Andrew T. Phillips, Patrick C. Henneger Centofanti Phillips, S.C.



Over the past 18 months, our firm has reviewed several county personnel policies for compliance with state and federal laws. What we have found is that most personnel policies don't just comply with the law, the policies go beyond the requirements of law to provide rights to employees that should otherwise be retained by management. This begs the question, why are counties giving management rights away?


It is understandable why an employer would want to provide employees with benefits over and above what the law requires of them. Many times, market conditions demand that you pay a little more to attract the best talent. Otherwise, we would all work for minimum wage. However, it may be a mistake to absolutely take away the discretion of the employer to react to different facts and circumstances in an employment relationship. Employers should retain the flexibility to react to the myriad of issues that come up in an employment relationship without having to follow a rigid written procedure in every circumstance. Not only is this process inefficient to employers, but it creates the impression among employees that the employer will follow every written procedure regardless of whether the employer reserves the right to change the procedure or not follow the procedure altogether.

Rather than create consistency and trust between the employer and employee, exhaustive written procedures can create conflict when the expectation given to the employee is not followed through.

***“the most common management rights given away to employees involve grievance rights for non-represented employees, compensatory time to salaried employees and complicated reclassification procedures.”***

Of the recent policies we have reviewed, the most common management rights given away to employees involve grievance rights for non-represented employees, compensatory time to salaried employees and complicated reclassification procedures. In each instance, the employer gives employees certain rights that were unnecessary, confusing and could potentially legally bind the employer regardless of whether the employer reserved the right to change the policy.

Many of the county personnel handbooks we reviewed included progressive disciplinary procedures for non-represented employees and some included a “just cause” standard for dismissal.<sup>1</sup> Even if elsewhere in the handbook the employer expressly states that the employee is terminable at-will or that the progressive disciplinary system is permissive rather than mandatory, the fact that they are written in the handbook gives an employee something to hang his or her hat on when challenging a particular adverse employment action. Even if the creation of a “just cause” standard does not modify the “at-will” nature of the relationship (i.e., it does not create a guaranteed contract of employment), an employee may well claim that a county’s departure from the “just cause” standard in a particular circumstance is evidence of “discriminatory intent” or renders the real reason for the action to be considered “pretextual.” For this reason, we consistently recommend that counties remove any reference to “just cause” for nonrepresented employees from their policies. In addition, we recommend that counties remove any rigid rules regarding application of the progressive disciplinary scheme.

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<sup>1</sup> For represented employees, counties expressly contract for a progressive disciplinary system and dismissal only for just cause in a collective bargaining agreement. The provisions of a county personnel handbook do not override the terms of a collective bargaining agreement. Therefore, this article is focused on management concessions that were not bargained for under a collective bargaining agreement.



The county personnel manuals we have reviewed also consistently provide compensatory time off for salaried employees exempt from overtime compensation. Under the Fair Labor Standards Act, employers are required to pay employees one and one-half times their regular hourly rate for all hours worked in excess of 40 hours in a week. Employers can also choose to give employees compensatory time (earned at a rate of one and one-half hours for each hour of overtime worked). However, certain salaried employees are exempt from the overtime compensation requirements and are not entitled to compensatory time.<sup>2</sup>

In the case of an exempt salaried employee, the county pays a regular salary in exchange for the employee committing to working the number of hours it takes to get the job done, even if it exceeds 40 hours. The county presumably has factored in the work load and the time demands of the job into the salary. Therefore, there is no need to provide additional “compensatory time” in addition to other paid time off given to the employee. In addition, the policies for paying “compensatory time” are usually permissive, which can create confusion for the employee when he/she is not awarded compensatory time for hours worked over forty in one week but are awarded compensatory time for another week.

Finally, another common policy that is included in personnel manuals is complicated reclassification procedures. While it may be helpful to classify positions as full-time or part-time, benefited or unbenefited, it is not always useful to create different “levels” within a particular department or job category. Establishing appeal rights so that a Department Head’s discretionary decision is being reviewed by a committee or the county board merely encourages employees to circumvent their immediate supervisor. This should not be promoted.

Reclassification is another area that is well-known in union circles, but has no place in the ranks of the nonrepresented employees.

In sum, while it is helpful and informative for employees to have a comprehensive policy manual, it does not have to be exhaustive. The employer can and should leave plenty of room to exercise its independent judgment while still giving employees guidance on the employer’s expectations regarding work performance and procedures. Striking that balance is not always easy, but employers should resist the temptation to write a procedure for every situation the employee or the employer may encounter. Exhaustive written procedures may make the employer feel satisfied that it is providing consistent direction to the employee, but the procedures may end up being inefficient, create confusion and discontent when not followed and open up the employer to potential liability for breach of contract. A better approach is to give management the freedom to approach employment issues in different ways based upon the particular facts and circumstances, rather than a one-size-fits-all procedure that gives away management rights.

<sup>2</sup> Section 13(a)(1) of the Fair Labor Standards Act, as amended, provides an exemption from the Act’s minimum wage and overtime requirements for any employee employed in a bona fide executive, administrative or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of an outside sales employee, as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act. Section 13(a)(17) of the Act provides an exemption from the minimum wage and overtime requirements for computer systems analysts, computer programmers, software engineers and other similarly skilled computer employees.

## **BACK BY POPULAR DEMAND!**

### **PERSONNEL POLICIES & PROCEDURES PROGRAM**

This program is designed to conduct a legal review of your policies and procedures, upon request.

This service is being offered by the Wisconsin County Mutual Insurance Corporation. There is no charge to participate in this program. The improvements in the personnel policies and procedures are designed to reduce defense costs.

Please contact your Risk Management Consultant to schedule your policy review.

Risk Management Consultants: Debra DeWitt, Vance Forrest, Jeff Rettig, and Jodi Traas



# County Mutual Provides Online Training at No Cost

Wisconsin County Mutual's dedication to increasing Risk Management Services continues, with a current offering of 25 online training courses at no charge. The addition of online training courses is convenient for employees who can learn at their own pace. These courses provide training documentation required by the Department of Commerce without disruption of the workflow since travel and attendance at seminars would not be required. It is a great training tool to document county training efforts on a wide variety of topics.

*The County Mutual has always strived to provide incomparable training opportunities to their clients. Realizing the increased need for cost effective training, we feel our online training to be a well-timed solution.*  
- Debra Ann DeWitt, Aegis Corporation.

Each course is designed to be completed within 20–25 minutes. Each session concludes with a 10-question quiz in which the employee must receive a passing grade of 80%.

Employees who do not successfully complete the test have the opportunity to retake the course after 24 hours. At the conclusion of the exam they are provided with immediate test results and a tutorial on incorrect answers.



### Available Courses:

- Excavation Awareness
- Defensive Driving
- Ergonomics and Work Station Design
- Personal Protective Equipment
- Work Zone Safety
- Hazard Communication
- Protect Your Back!
- Safe Use of Fire Extinguishers
- Avoiding Slips, Trips & Falls
- Bloodborne Pathogens
- Confined Spaces
- Avoiding Sexual Harassment in the Workplace
- Diversity & Ethics in the Workplace
- Accident Investigation
- Violence in the Workplace
- Playground Safety & Maintenance
- Ladder Safety
- Lockout/Tagout
- Hearing Conservation
- Hybrid Vehicle Safety
- Emergency Action Plan
- Forklift Safety
- Respirator Safety & Fit Testing
- Responding to the Media - Short Version
- Responding to the Media for Law Enforcement

### Coming in Fall, 2009:

- Lawn Mower Safety
- Chainsaw Safety
- Woodworking Safety
- Bus & Fleet Safety



## Racine County Receives \$78,493 Dividend for Keeping Safety a Priority on Its Law Enforcement Center Renovation and Construction Project

### *Check Presented at Racine County Board Meeting*

Keeping a close eye on safety during the renovation and construction project on its Law Enforcement Center has paid off for Racine County.

On March 10, 2009, the county was presented with a \$78,493 dividend check from the Wisconsin County Mutual Insurance

Corporation (County Mutual) for having a reduced number of lost-time accidents during the Gilbane Building Company-managed renovation and construction project on the Racine County Law Enforcement Center. Racine County Executive Bill McReynolds was in attendance at the Racine County board meeting and accepted the dividend check on behalf of the county.

“In these tight fiscal times, this dividend payment to Racine County clearly demonstrates the partnership between the County Mutual and counties to provide effective insurance solutions,” said McReynolds. “Taxpayer dollars were saved and lives were protected during the work on the Racine County Law Enforcement Center. This is something of which we should all be proud.”

For this project, Racine County participated in the County Mutual’s Owner Direct Insurance Program (ODIP). The ODIP is a cost-saving insurance product that allows counties to take control of their general liability and worker’s compensation insurance needs on building projects such as jails or law enforcement centers. Estimates have shown that the cost of general liability for these types of projects is typically three-to-four percent of the total contract value.




In addition to program administration, regular safety visits and training on-site were conducted for the Racine County Law Enforcement Center project by Aegis Corporation, which is the general administrator for the County Mutual and administered the on-site safety program for the ODIP program.

“Racine County had a team in place for this project that made safety a top priority,” said Vance Forrest, Vice President of Risk Management for Aegis Corporation. “There was a commitment to safety from all parties involved in construction—from the contractors to the workers raising the walls. This dedication to keeping the job site safe is why Racine County has seen such savings using the ODIP.”

The total premium paid by Racine County was \$297,700 with \$78,493 coming back to the county in the form of a dividend payment.

“The ODIP is a highly effective and unique tool that can save counties, whether or not they are members of the County Mutual, a substantial amount of money on building costs,” said WCA Executive Director Mark D. O’Connell. “At a time when counties are faced with daunting budget challenges, the County Mutual’s ODIP is a simple and workable alternative for saving taxpayer monies.”

As mentioned, the construction manager for the new center was Gilbane Building Company. Those involved in the Racine County Law Enforcement Center from the

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## Risk Management

company included Operations Manager Keith Isken and Superintendent Dan Clausen. Safety challenges included the busy urban location and the continuous operations of the existing facility around the construction area.

“Our safety plans take into account the well-being of construction workers and everyone near the area including inmates, lawyers, judges, staff, pedestrians and vehicles passing by,” said Isken. “The ODIP partnership fits well with our philosophy and commitment to deliver projects with zero incidents or injuries. We are proud to have been a part of the Racine County team.”

The Wisconsin Counties Association (WCA), along with county officials from around the state, created the Wisconsin County Mutual Insurance Corporation in 1987 to provide quality liability insurance substantially at cost to its members. The company has a strong focus on risk management and currently insures 53 of the state’s 72 counties. To learn more, visit [www.wisconsincountymutual.org](http://www.wisconsincountymutual.org).

For more information on how your county can utilize the ODIP for construction projects, contact Vance Forrest at Aegis Corporation, 800.236.6885 or [vance@aegis-wi.com](mailto:vance@aegis-wi.com).



*Ongoing ODIP projects include Green Lake County Law Enforcement Center and Sauk County Health Care Center.*



### We Want to Hear from You

This newsletter is provided as a service to you.  
Our goal is to provide informative and interesting articles.  
Your input and suggestions will assist  
our publication of this newsletter.

For suggestions, please write or call:  
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# Coming Events

## WISCONSIN COUNTY MUTUAL INSURANCE CORPORATION

### 17th Annual Corporation Counsel/Defense Counsel Forum

September 18, 2009 • Holiday Inn, Stevens Point

\*\*\* New Location \*\*\*

#### AGENDA

- 8:30–9:00 a.m. ....REGISTRATION (*Coffee & Rolls*)
- 9:00–9:30 a.m. ....THE FUTURE OF DISCRETIONARY IMMUNITY IN THE WISCONSIN SUPREME COURT *Charles H. Bohl, Esq., Whyte Hirschboeck Dudek S.C.*
- 9:30–10:00 a.m. ....FACEBOOK, TWITTER, AND THE COUNTY EMPLOYEE *Rebecca G. Bradley, Esq., Whyte Hirschboeck Dudek S.C.*
- 10:00–10:30 a.m. ....JAIL MANAGEMENT TO KEEP YOU OUT OF COURT *Nathan A. Fishbach, Esq., Whyte Hirschboeck Dudek S.C.*
- 10:30–10:45 a.m. ....BREAK
- 10:45–11:15 a.m. ....COUNTY GOVERNMENT AND THE HEALTH CARE CRISIS *Barbara J. Zabawa, Esq., Whyte Hirschboeck Dudek S.C.*
- 11:15–11:45 a.m. ....HOT TOPICS IN EMPLOYMENT LAW THAT AFFECT EVERY COUNTY EMPLOYER *Andrew A. Jones, Esq., Whyte Hirschboeck Dudek S.C.*
- 11:45 a.m.–12:00 p.m. ....POSTCARD FROM THE MARICOPA COUNTY JAIL (AND THE CONSTITUTIONAL IMPLICATIONS OF TAKING FOOD OFF THE MENU) *Timothy H. Posnanski, Esq., Whyte Hirschboeck Dudek S.C.*
- 12:00–1:00 p.m. ....LUNCHEON *Courtesy of today’s co-sponsors Whyte Hirschboeck Dudek S.C. and Crivello Carlson S.C.*
- 1:00–1:35 p.m. ....COLOR BLIND: THE FAIR HOUSING ACT AND LAND USE DECISIONS *Michele M. Ford, Esq., Crivello Carlson S.C.*
- 1:35–2:10 p.m. ....RAMPS, LIFTS, AND HANDRAILS: APPLYING TITLE II OF THE AMERICAN WITH DISABILITIES ACT IN MUNICIPAL DECISIONS *Agatha K. Raynor, Esq. Crivello Carlson S.C.*
- 2:10–2:25 p.m. ....BREAK
- 2:25–2:45 p.m. ....FROM MANHOLE ACCESS TO INVERSE CONDEMNATION - CLAIMS ALLEGING “TAKINGS” AND OTHER INTERFERENCE WITH LAND OWNERSHIP *John J. Juettner, Esq., Crivello Carlson S.C.*
- 2:45–3:05 p.m. ....RIPPLES AND RIPTIDES – NEW LEGAL CONCERNS IN THE WAKE OF THE 2009 BUDGET BILL *William W. Ehrke, Esq., Crivello Carlson S.C.*
- 3:05–3:40 p.m. ....IF DEATH RESULTS – DEFENDING JAIL SUICIDES, ACCIDENTAL SHOOTINGS, HUBER RELEASE DEATHS AND THE USE OF DEADLY FORCE *Michele M. Ford, Esq., Crivello Carlson S.C.*
- 3:40–4:00 p.m. ....GENERAL DISCUSSION ON TOPICS, QUESTIONS AND ANSWERS

**Register Today!! Contact Barb Hanger, Aegis Corporation, 1.800.236.6885 or [bhanger@aegis-wi.com](mailto:bhanger@aegis-wi.com)**

*A special thank you from Wisconsin County Mutual Insurance Corporation to this year’s Forum co-sponsors:*

**WHYTE HIRSCHBOECK DUDEK S.C. and CRIVELLO CARLSON S.C.**