



michigan municipal league

# Liability & Property Pool Workers' Compensation Fund

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## RISK CONTROL SOLUTIONS

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A Service of the Michigan Municipal League Liability and Property Pool and  
the Michigan Municipal League Workers' Compensation Fund

### OPERATING PUBLIC TRANSPORTATION SERVICES

Many public agencies offer some form of transportation service to citizens using municipally owned or operated vehicles. Transportation services can range from a simple trip in a municipal car to more formal programs such as tourist trolley tours or a senior citizen transportation system. Transporting the public places a responsibility on the agency to do it safely and correctly. A poorly managed transportation service can result in injuries, deaths, property damage, or claims of discrimination. The purpose of this document is to review this area of municipal operations and to make suggestions that can help to reduce the likelihood of such an incident.

#### THE FIRST STEP

The first step towards reducing the risk of offering transportation service is to adopt a written policy that details the circumstances under which members of the public may ride in public equipment. All municipal departments should contribute to the development of the policy to assure that it meets the needs of the public they serve. Once completed, the municipality's elected officials should recognize and support the policy.

This policy should:

- State that the public should never ride in public works, recreation, or any type of construction equipment or other vehicles not designed for public transportation, except in emergencies.
- State that the public may only ride in automobiles, vans, trolleys, or buses specifically designed for transport of the public, except in emergencies.
- Establish that, while employees may occasionally -- under unusual circumstances -- decide that it is necessary to transport a citizen in their non-designated agency-owned vehicles, it is preferable to avoid this practice.
- Identify each transportation program, define the purpose of the program, and establish who is eligible to use it. For example, many recreation departments have senior citizen programs that transport citizens to local destinations. Eligibility rules typically require that participants be senior citizens who reside within the organization's corporate limits. The rules also require that participants pre-register for this service with the community. During pre-registration, the community advises them of the program's rules. Other programs include transportation of the disabled, special field events, or local tourist programs.

All employees should receive training on the policy and any other rules that apply to the operation of motor vehicles. Training should make clear that the municipality expects employees to follow the policy consistently. Management should approve any non-emergency exception to the rules.

#### HIRE AND RETAIN THE BEST DRIVERS

Employees who drive municipal vehicles conveying members of the public have a significant responsibility. Many transportation programs have experienced serious injuries as well as deaths.

Municipalities need to hire employees with appropriate qualifications in order to reduce the risk that transporting members of the public creates. One way of assuring this is to offer a wage that attracts and retains drivers who have the proper training and experience to handle the job. Usually, paying minimum wage to drivers leads to high turnover or to the hiring of employees with limited skills.

An essential step in hiring competent drivers is conducting a thorough investigation of candidates' driving records during the hiring process. To obtain these records, agencies should contact the Secretary of State. Municipalities should establish minimum driving record criteria and use them as one basis for the hiring decision. At least once a year, municipalities should review the driving records of current employees to determine if they are still eligible to drive. The Secretary of State's office will automatically provide municipalities with an employee motor vehicle record for their employees annually. Municipalities may choose to have the report run for all employees, selected employees, or only for those whose records show activity. To request this service, contact your Secretary of State's office.

Municipalities should also advise all candidates for employment as drivers that, if they get the job and fail to meet the minimum criteria at anytime during their employment, they would not be able to drive vehicles. Each municipality should establish whether its policy would be to provide other employment opportunities in the community for such employees or to discharge them.

Depending on the type of passengers who receive transportation services and whether the driver will handle money, the municipality may wish to conduct a criminal background investigation. For example, a driver who transports small children should not have a criminal history that might jeopardize child safety. It is important to establish minimum hiring criteria for individuals with criminal histories. In establishing criteria, consider the severity of the offense and the length of time since the conviction. Review the following documents that deal with employment issues to avoid claims of discrimination:

- *Hiring Decisions: Reducing your Exposure to Litigation*
- *Reducing Your Exposure to Claims of Discrimination in Employment*
- *State and Federal Employment Laws*

Select employees who have experience driving equipment similar to yours. This will make your training much easier. Verify candidates' experience by calling past employers. It is also highly desirable to hire employees who are familiar with your community and the routes that they will have to drive.

Require all final candidates to submit to a drug test. In addition, make any job offer conditional on the candidate passing a medical examination. The medical exam should include a vision and hearing test. Make certain that the physician knows that the employee will be driving a vehicle. Providing a written job description is helpful for this purpose. Assisting passengers in and out of vehicles may be part of some drivers' job responsibilities. The employee should be medically able to perform this function. Make sure the physician knows that assisting people in and out of the vehicle is a job requirement.

If state law requires the operator of the vehicle to have a Commercial Driver's License or Chauffeur's License, make sure that it is valid throughout his or her employment.

## **TRAIN THE EMPLOYEE**

The day the employee starts working for you should be the day you begin your training. In addition to covering general organizational policies and procedures, you should also train your employees on the following:

### ***First Aid and/or CPR***

The driver should know what to do if someone starts choking, bleeding, or having other medical problems. Usually, the fire department or the local Red Cross office offers first aid classes. Make having or obtaining a valid first aid card within a specified period of time a requirement of the job. Any vehicle transporting the public should have a first aid kit and a two-way radio.

### ***Defensive Driving***

The National Safety Council defines defensive driving as "...driving to save lives, money and time in spite of the conditions around you and the actions of others. This includes heavy traffic, highway traffic, adverse weather conditions, or an unruly passenger." Municipalities can obtain materials for providing defensive driving training by contacting the National Safety Council at 248/557-7010.

### ***Bloodborne Pathogens***

Some programs transport individuals with medical problems that require drivers to have physical contact with these passengers. In any program, the possibility exists that an injury will occur that will require physical contact between the driver and a passenger. Should contact be necessary, the driver may come in contact with the passenger's bodily fluids. MIOSHA requires employers to provide training and equipment to protect employees from exposure to bloodborne infectious diseases. Drivers must know how to take universal precautions when handling every passenger. For more information regarding this important requirement, see the PERC\$ entitled *Occupational Health Concerns* available by contacting the League's Loss Control Services.

### ***What to Do in an Emergency***

Emergencies of any kind can occur while a driver is on the road. These can include a motor vehicle accident or a medical emergency involving a passenger. Drivers should receive training on what to do in each situation that prepares them to take action immediately. If a motor vehicle accident occurs, the driver should pull over to a safe location. The driver should then contact 911 immediately, if possible, and advise if there are any injuries. The driver should not make a judgment call as to the seriousness of the injured passenger's condition. That is the medical response team's job. The best the driver can do is to provide first aid and comfort until emergency medical personnel (911) arrive. If the driver cannot pull out of traffic, he or she should ask for help in directing traffic or in helping the injured. The community should instruct the driver to provide all factual and necessary information to law enforcement officials at the scene of an accident. However, the driver should not admit fault or imply that the community is responsible for any damage.

The driver should never drop off a passenger who has experienced an injury or medical emergency at home or some other location unless the medical team indicates that it is all right to do so. The driver or the dispatcher should contact a family member so someone is available to stay with the passenger.

### ***How to report an accident***

Training should emphasize the importance of drivers notifying the dispatcher or supervisor regardless of the accident's seriousness after they have taken proper emergency action. Municipal policy should require the driver to call the police department and to complete an accident report that he or she submits to the supervisor for investigation later.

### ***Conducting a pre-trip vehicle inspection***

Consistently conducting thorough pre-trip inspections and documenting them on a checklist is essential. A pre-trip inspection includes testing all lights, safety equipment, and other operating equipment. Drivers should never take out a vehicle with malfunctioning equipment. Instead, they should report all problems to the appropriate individual and request another vehicle.

## **MAINTAIN YOUR VEHICLES**

Motor vehicles require maintenance and repair to operate safely on the road. The community should maintain transportation vehicles at the same high level of quality as its other equipment. The best way to achieve this is to have a Fleet Management Program. For more information on how to implement such a program call the League's Loss Control Services and request a copy of the guide, Fleet Management Program for Public Agencies.

## **EQUIPMENT CONSIDERATIONS**

The vehicles a municipality uses to transport the public should be designed specifically for that purpose. Seat belts or other restraining devices should be in place and in proper working order. Vehicles for transporting wheelchair bound passengers should have devices that limit the movement of the wheelchair and prevent injuries. The municipality should never fabricate these devices but should purchase them from a manufacturer specializing in their design. Lifting equipment should receive regular inspections that follow manufacturers' recommendations.

The municipality should install mirrors to eliminate blind spots for the driver, including those at the front and rear of the vehicle. Having a clear view of the area around the vehicle is especially important when passengers are loading and unloading. All transportation vehicles should have backup alarms. Emergency warning lights should be in proper working order.

## **SUPERVISE YOUR DRIVERS**

Once you hire and train your drivers, never assume that they will always remember and follow the rules. Periodically check on them to see how well they are doing. It is not a bad idea to review each driver's performance annually — in writing, if possible. You may wish to use an anonymous rider who provides you with information on quality control issues. If you find a driver who has frequent problems, accidents, or violates rules frequently, you may have to provide additional training or apply progressive discipline. Offering a Safe Driver Award or other incentive program often helps to maintain high levels of performance and interest in safety.

## **COMPLY WITH STATE AND FEDERAL LAWS**

The law requires drivers of some passenger vans and buses to hold a Commercial Drivers License (CDL) and to be subject to random drug testing. The state requires the Michigan State Police to inspect school buses. State requirements also include specific maintenance measures that operators of these types of vehicles must take. If you operate a passenger van or school bus, you should contact the passenger transport if you have any questions concerning compliance.

## **OTHER LIABILITY ISSUES**

Sometimes employees use their own vehicles to transport citizens. Municipalities should discourage this practice, however. However, if it is unavoidable, the municipality should make sure that the vehicle receives proper maintenance and that the owner has adequate collision and liability insurance. If an accident occurs, the vehicle owner's insurance will be responsible for any resulting injuries or property damage. The MML Pool may protect a volunteer for uninsured damage to their vehicle up to a limited dollar amount.

The Americans with Disabilities Act requires that public entities make services available and accessible to the disabled. For example, if an entity provides transportation for a senior citizen program, it must make the vehicle accessible to a wheelchair user who meets the eligibility requirements of the program. This means that the municipality may have to equip the vehicle with a wheelchair lift or provide an alternative means of transportation. Municipalities should review these requirements with their ADA coordinator.

## **CONCLUSION**

Transporting the public is a valuable public service. While there are significant exposures to loss, municipalities can implement specific policies, procedures and measures to manage a safe and efficient transportation system. Municipalities should take an active approach by reviewing this issue with their transportation supervisor or manager.



### **Important Telephone Numbers**

MML Risk Management Services	734/662-3246 or 800/653-2483
Loss Control Services	800/482-0626

### **Note:**

This document is not intended to be legal advice. It does not identify all the issues surrounding the particular topic. Public agencies are encouraged to review their procedures with an expert or an attorney who is knowledgeable about the topic.



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### OPERATING PUBLIC TRANSPORTATION SERVICES SELF ASSESSMENT

Public Agencies that want to implement a public transportation system or to review an existing program for liability exposures should consider the following issues.

#### Does Your Organization:

1. Have a written Policy Statement?  
Yes  NO



**Does the policy:**

- Address the needs of all departments?
- Have the support of elected officials?
- Restrict the public from riding in construction equipment?
- Identify the purpose of a particular transportation program?
- Communicate policy issues to employees and the public?

2. Hire and retain the best drivers?  
Yes  NO



**Do you :**

- Offer a competitive wage rate?
- Check motor vehicle records?
- Check criminal records when appropriate and legal?
- Hire employees with experience?
- Require a drug test?
- Require a physical examination?
- Require that drivers maintain state and federal licensing requirements?

3. Provide training for your employees?  
Yes  NO



**Do you train in:**

- First Aid/CPR?
- Defensive Driving?
- Bloodborne Pathogens?
- Emergency procedures?
- Accident Reporting?
- Pre-Trip Inspections?

4. Maintain your vehicles at a high level of efficiency?

Yes  NO  →



5. Supervise its drivers?

Yes  NO  →



6. Comply with State and Federal laws?

Yes  NO  →



7. Take steps to manage other liability issues?

Yes  NO  →

- Do you have a fleet management program?
- Have you reviewed the Michigan Municipal Liability and Property Pool and Workers' Compensation Fund's *Fleet Management Program* guide?

**Do you**

- Check that drivers follow policies and procedures?
- Evaluate drivers' performance?
- Retrain or discipline drivers that violate policies and procedures?

- Do your drivers have CDL's?
- Are your buses properly inspected?
- Are your vehicles properly equipped?

**Do you**

- Avoid allowing employees to use their own vehicles?
- Comply with the requirements of the ADA regarding public services?

**Conclusions**



If you were able to honestly answer "yes" to all seven questions and your organization is following most or all of the suggested practices, then your organization has reduced its exposure to future workers' compensation and liability claims resulting from the operation of transportation services. You should congratulate yourself.



If you could not answer "yes" to any of the seven questions, your organization may have an exposure to claims from employees and the public resulting from your organization's practices. Missing components of one or more of the seven recommended practices might also indicate a deficiency in your current program. You should take one or more of the following actions:

- Correct any deficiency that may exist;
- Contact a specialist in the operation of transportation services for the public;
- Contact MML Risk Management Services at (800) 653-2483; or
- Contact the League's Loss Control Services at (800) 482-0626.

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