



County Connection

News from the Washington Counties Risk Pool

May / June 2013

CONFERENCE NEWS



WASHINGTON COUNTIES RISK POOL

2013 Summer Conference / Annual Meeting and 25th Anniversary Celebration
Enzian Inn, Leavenworth, WA
Wednesday, July 24– Friday, July 26



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



Summer Conference Highlights

Wednesday, July 24th

4:00 pm - 7:00 pm Welcoming Reception at the Enzian Inn

Thursday, July 25th

8:30 am - 11:15 am Roundtable: Claims Administration / Risk Management *
11:30 am - 1:30 pm 25th Anniversary Recognition Luncheon
1:45 pm - 5:00 pm WCRP Board (of Directors) Worksession / Annual Meeting
6:00 pm - 9:00 pm 25th Anniversary Social and Dinner *at the Icicle Ridge Winery*

Friday, July 26th

8:30 am - Noon (est.) Continuation of Annual (Board of Directors) Meeting

* For those attending the **Roundtable Session** at the Summer Conference on Thursday morning, most of the time will be devoted to a true roundtable format. The microphone will be passed around the room and all those in attendance will be invited to share a success, or a problem with the group. With all the experience and wisdom in the room, you will leave with some fresh ideas! Come prepared to share or bring a question for the group.



PRESIDENT'S MESSAGE



Just a reminder from your President:

During the upcoming Vacation Season, many of your friends, neighbors, family, and co-workers may know you are going on vacation. What they do NOT need to know is where you are going.....versus simply staying home. Once you post a destination or location on different networks, Facebook, internal out-of-office lists, etc., then those less scrupulous may target your house or possessions for crime. It may simply be an inadvertent comment from a friend,

co-worker, or family member. But other not-so-friendly ears may also hear.

Your vacation is your business. Don't advertise that your possessions are ready to be taken.

I look forward to seeing many of you at the Pool's 25th Anniversary Celebration next month. Enjoy this great Summer!

Mark R. Wilsdon

Mark R. Wilsdon, MBA, CPCU, ARM-P
Clark County Risk Manager



Executive Committee

Py 2013 President

Mark Wilsdon, Clark County

Py 2013 Vice-President

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Py 2013 Secretary/Treasurer

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David Goldsmith, Specialty Services

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



Published by
**WASHINGTON COUNTIES
RISK POOL**

Created by Counties for Counties



POOL NEWS



Website Update

The Pool has a new web-based training program that will soon be available on the website.

Discrimination, Harassment and Retaliation

presented by Mike Bolasina will be offered in three segments. From the website (www.wcrp.info), select the Training tab. To access the new training sessions, you will then select Webinars and Website Training Sessions from the Training tab menu.

Coming later this year, look for a new "search" feature that will be available on the website. The search feature will be available for the expanding Sample Policy Library as well as the Board of Directors Manual. Keep those policies coming - if you have a policy that would be a useful addition to the Pool's Sample Policy Library, send it to Jill Lowe at jill@wcrp.wa.gov and she will have the document added.



CLAIMS NEWS



JURY REJECTS DOG BITE CLAIM OF “GRAYS HARBOR’S MOST WANTED”

Harold Rath brought suit against Grays Harbor County for injuries he received from the County’s law enforcement canine, Gizmo, which were inflicted during the course of Mr. Rath’s arrest. Mr. Rath claimed that the County was strictly liable for his injuries under the State’s strict liability dog bite statute, which makes dog owners automatically liable for bites to people who are on public property or lawfully on private property. The trial court denied cross-motions for summary judgment after finding a fact issue regarding whether Mr. Rath was lawfully on private property at the time of his arrest. Plaintiff claimed he did not hear orders to surrender on an outstanding felony warrant. Law enforcement officers testified that Mr. Rath’s physical movements indicated he heard the orders and was prepared to resist arrest. The jury returned a verdict for Grays Harbor County finding that Mr. Rath was not lawfully on the property and thus the strict liability statute did not apply to him. Since Mr. Rath’s arrest, the Washington legislature has amended the strict liability dog bite statute to exclude its application to police canines used to make a lawful arrest.



John Justice

Thanks to Defense Attorney John Justice with Law, Lyman, Daniel, Kamerrer & Bogdanovich for providing this report. This was an excellent result for law enforcement in Washington.

TRAINING & EVENTS



On Tuesday, June 11, John Chino of Arthur J. Gallagher facilitated a webinar for approximately 50 Risk Pool members. The webinar topic was “Risk Management Basics.” Those of you who attended the Spring Conference at Suncadia saw the presentation in person. Joanne Kerrigan of WSTIP (Washington State Transit Insurance Pool) is responsible for the behind the scenes technology. WCRP would like to thank WSTIP for hosting the webinar and John Chino for providing an excellent presentation. A copy of the power point presentation is available on the WCRP website.



John Chino with Arthur J. Gallagher and Joanne Kerrigan with the Washington State Transit Insurance Pool preparing for the Risk Management Basics Webinar.





HELPLINE NEWS



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

May Question: *We have an employee who has been employed with the company for 19 months. He is currently on medical leave due to cancer treatment that he has been receiving. He was given doctor's orders to not work until his cancer treatment was complete. Last week two of our current employees saw him working for another company at a shopping center. Do we have grounds to terminate this employee's employment?*

Response: As an initial matter, it is not clear if the subject employee is (or should be) on leave under the Family & Medical Leave Act (FMLA). If the employee meets the eligibility requirements (and likely he has a "serious health condition"), then the FMLA requires the employer to provide him with up to 12 weeks of leave and to restore him to his original or an equivalent position upon return from leave. (See the DOL website at <http://www.dol.gov/whd/regs/compliance/1421.htm> to review these requirements.) If the subject employee's medical leave is FMLA-protected, the Department of Labor addresses the issue of a second job while on FMLA leave as follows: "Employers with established policies regarding outside employment while on paid or unpaid leave may uniformly apply those policies to employees on FMLA leave. Otherwise, the employer may not restrict [an employee's] activities. The protections of FMLA will not, however, cover situations where the reason for leave no longer exists, where the employee has not provided required notices or certifications, or where the employee has misrepresented the reason for leave."

Thus, as a general matter, if the employer has a policy that prohibits moonlighting, outside employment, or secondary work during other periods of leave, a policy precluding an employee from engaging in outside employment or working at another facility during a period of FMLA leave would, strictly speaking, be permissible. Otherwise, the employer cannot and should not dictate whether an employee can work at another facility or terminate on this basis. Indeed, it is

possible that the employee's illness does not preclude him from performing whatever his duties are at the other job. In other words, if the employee is on FMLA protected leave, the employer cannot prohibit secondary work if it does not conflict with FMLA restrictions and there is no policy otherwise. If you suspect that the employee has fraudulently taken FMLA leave when he is, instead, working at another job, or no longer needs FMLA, the employer can and should take steps to investigate (i.e., can require a Certification or recertification if there is legitimate evidence that the leave is not being taken properly) and can then take appropriate steps, consistent with employer policy and practice, if it determines that an employee has taken advantage of the Act (up to and including dismissal consistent with employer policy).

If the FMLA does not apply or leave under the FMLA has been exhausted, then the employer can apply its policy (if any) as to outside employment, assuming such policy has been consistently applied in the past. In other words, if your company typically terminates employees who work at another employer during a leave of absence, then it may do so here as well. If you do not already have such a policy (or consistently applied past practice), then we would not recommend termination here without at least further investigation to determine whether the outside work conflicts with the employee's medical restrictions presented to your company and/or that the employee's medical documentation supporting the leave is somehow fraudulent. We also recommend consulting with local counsel to assist the employer in drafting a policy prohibiting secondary employment during leaves of absence or to at least review any such policy that the employer endeavors to draft itself to ensure compliance and enforceability going forward against this employee and all others similarly situated.

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

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