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The Confusion Over Workplace Safety

Sadly, some municipalities don't pay enough attention to safety programs because they believe they're not under the jurisdiction of the Occupational Safety and Health Administration (OSHA). But any municipality that thinks there is an easy route when it comes to protecting their employees is opening themselves up to serious consequences.

All employers – private, public, or municipal – are required to provide a safe workplace for their employees in order to prevent or reduce the risk of accidents, whether it be confined space, walking/working surfaces, personal protective equipment, trainings, etc. The reasons a borough needs to have a safety program in place are obvious:

1. The affects a life-altering or life-ending injury can have on

an employee and their family.

2. Without a safe workplace, a municipality is going to pay significantly higher premiums for workers' compensation insurance.
3. If an employee gets seriously injured and they are not properly trained to do the job they were performing, they may try to prove the municipality was grossly negligent and sue.

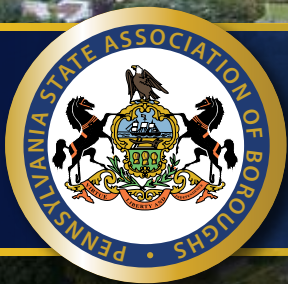
There are municipalities that haven't implemented best practices, such as having a robust accident investigation procedure and training. Without it, they cannot to determine what the root cause was or exactly what happened. Thus, they wouldn't be able to make the necessary changes to prevent future accidents and injuries.

More importantly, if they don't know what the real cause was, they don't know if the employee got hurt on the job or off the job, or if the injury was as bad as the borough was led to believe. This could lead to the municipality having someone out longer than necessary and significant dollars being spent by the municipality's insurance company, which will lead to higher premiums.

Safety Practices

There are also "safety practices" that are not related to employee injuries, such as abuse and sexual harassment, that could stem from inadequate screening of employees who work with children or the elderly.

continues on page 30...



PENNSYLVANIA

Borough News

boroughs.org | December 2020

LEADING *our Communities*

PAGE
28

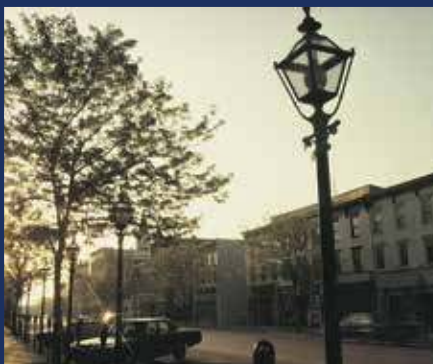
The Confusion Over
Workplace Safety

PAGE
32

Effective Leadership in
Borough Communities

PAGE
40

COVID-19 Curbs
Community Policing at a
Time of Diminished Trust



Boroughs are identified on page 17.



Volume 13, Issue 12

2019 FOLIO:
EDDIE
AND OZZIE
HONORABLE MENTION
AWARDS

For example, a summer youth program led by college students who have been hired without the proper background checks. The municipality, in this case, could be opening itself up to a significant lawsuit. Pennsylvania has requirements for both employees and volunteers, whether the free labor is for single or multiple days. In all of these cases, full clearance should be in place.

Motor Vehicle Safety

It's imperative to have a formal program for vehicle safety training and driver Motor Vehicle Report (MVR) review, which provides background on a driver's habits, both good and bad, and whether they have any driving citations and fines. Insurance underwriters are taking a much stricter look at auto risks and no longer insuring certain ones. This is one reason municipalities should have a fleet safety program.

It's also important to consider vehicles owned by the municipality that are operated by members of volunteer fire departments or emergency services (such as emergency medical technicians).

Borough management may give the insurance agent a list of drivers but fail to include drivers from the volunteer fire department. This could lead to a number of scenarios that could cause a municipality a lot of financial

trouble. What if a volunteer takes out the hook-and-ladder truck, causes an accident, and doesn't even have a valid driver's license? It is what the courts call the doctrine of negligent entrustment, which allows somebody to operate a vehicle who should not be, which opens up the municipality for punitive damages not covered by insurance.

Cyber Risk

Another key area where municipalities often come into harm's way is in the area of cybercrime. It's been stated that 90 percent of all cyber breaches are caused by employee activity. This means training workers properly to avoid cyber attacks is imperative.

Safety Manual

A safety manual gives employees direction on the procedures they should follow related to the risks they face in the job(s) they perform on a regular basis, including fire, police, public works, and others such as crossing guards.

Another area to address is "confined space," which is a space, that is not designed for normal occupancy and has limited egress. A lot of municipalities are missing safety programs, training, and equipment for entering manholes, for example, which are considered confined spaces, as well as other regularly encountered spaces.

Safety Saves Money

So why doesn't every municipality have a formal safety program in place? One possibility is there isn't involvement from OSHA and some insurance agents may not have the depth of expertise to understand all the necessary programs that a municipality needs to be following.

On the workers' compensation side, agents see a lot of municipalities that have an experience modification factor well over 1.0 (meaning the municipality is paying more than average rates) and one of the driving forces is the lack of safety training.

A very poor return-to-work program can also put a municipality behind the eight ball. With union workers and/or having a small staff, borough management may believe they can't have an employee on transitional duty, thinking they can't afford to pay somebody not to do the job.

However, some boroughs have negotiated into their collective bargaining agreement (CBA) a return-to-work stipulation. Because of a CBA's mandated safety training and return-to-work provisions, municipalities have achieved a low frequency and low severity of injuries.

As part of this attention to safety, employers also have a "job." They need to make sure employees

are trained to operate all their equipment and have the necessary personal protective equipment (PPE), such as gloves, dust mask, hearing protection, and eye protection.

Other areas to consider are preventing slips, trips, and falls, as well as proper training beyond public works and emergency services.

Sometimes, though, it's not the employee who is in harm's way but the public, especially in work areas.

For example, a municipality was replacing storm drains, and put up signs and cones denoting the area as a construction zone. When it was dark and foggy, a motorist did not see the cones, and the car went into the storm drain. The problem: the hole wasn't covered with a heavy plate and there were no blinking lights to alert people when it became dark (or foggy). This resulted in serious litigation issues.

If reasonable and prudent procedures and policies to protect employees and the public are not put into place, then a borough has opened itself up to liability, which directly leads to higher insurance premiums.

Editor's note: To learn more about the fundamentals of a workers' compensation safety program, mark your calendar for a PSAB webinar on this topic on Feb. 24. The author of this article, David Leng, will be the presenter.



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About Keystone: Keystone has been the endorsed insurance provider to PSAB members since 2002. As the recommended insurance provider, PSAB members have access to an exclusive insurance program including loss control and risk management consultation and opportunities to share in a safety dividend.

Keystone formed in 1983 when four independent insurance agencies teamed up to pool their experience and expertise. Today, Keystone has grown to almost 300 independent agency partners. In Pennsylvania, Keystone has 57 partner agencies with more than 80 locations in or around borough communities in PA.

Keystone provides its agents with a community of like-minded agencies, industry expertise, and access to specialized products for their clients. Keystone is ranked number three on Insurance Journal's 2019 list of Top 20 Agency Partnerships.

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