

# IPRF ISSUES

Risk & Safety Tips from the ILLINOIS PUBLIC RISK FUND Vol. 2 No. 1 • Quarterly Issue • January 2003

Gerald Grupe, Chairman • Paul Boecker, President • Tom English, Secretary • Arnold Andrews, Treasurer • Richard McGill, Vice President

## Train For Snow & Ice... **Safely & Effectively**

Most areas in Illinois will be faced with large amounts of snow and ice throughout the winter season. Having a public works department that operates at peak efficiency at this time of year is crucial. The village of Alsip is an example of proper training and knows how to safely and effectively get the job done.

Training sessions on snow and ice control give workers the opportunity to become involved in discussions on planning, policies, and problems that are new or have been encountered in the past, and therefore make corrections for the coming season. Training sessions assure understanding operation and the maintenance of equipment so that equipment operates fully, proper use of chemicals, as well as what to do if an accident occurs.

“As an equipment operator for the village of Alsip, snow command training sessions are the opportunity to acquire knowledge necessary to perform to your best ability and to do so in a safe manner. The training sessions are also an opportunity to voice opinions and to add positive input that may benefit you personally or the entire department,” says Vince Cullen of Alsip Public Works.

### Safety Guidelines

- All plow truck drivers are issued a snow & ice control procedure manual. These procedures are to be followed at all times to promote rapid snow and ice removal, effective communication, and safe operation of village equipment.
- Drivers will inspect their assigned routes for any hazards or obstructions that may cause damage to the truck or the driver.



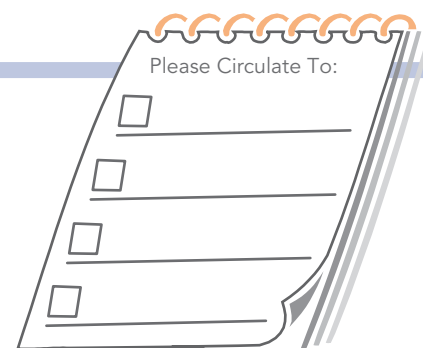
- Drivers will perform a pre-route vehicle inspection to insure the vehicle is in good safe condition before plowing.
- Drivers are to follow posted village speed limits at all times. The curbing pass on the curbs will be at a speed of 15 mph or less.
- The driver will angle the plow in such a way as to discharge snow to the right of the vehicle at all times.
- Drivers must never plow or salt with the bed of the truck raised.
- Driver must never salt roadway at speeds above 20 mph.
- Drivers are to obey post regulatory and traffic control sign at all times.

- Plow trucks are to have the amber rotating beacon or flashing strobe lights on at all times while plowing or salting roadways.
- Drivers must wear seat belts at all times.
- Drivers must call for a radio check to insure communication with the supervisor.

\* \* \* \* \*

Should a driver have any questions about these safety guidelines he/she should contact their supervisor immediately.

**Good Communication and Safety go hand in hand!**



## Inside this issue...

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## An Employers' Guide to...

# Hiring Outside Services & Contractors

This article serves as a guide for employers when hiring outside services, such as construction, janitorial, maintenance, security, and other “independent contractors.” Employers often have an interest in hiring independent contractors instead of regular employees to curtail rising employment costs.

The state and federal governments, however, have an equally compelling interest in challenging an individual's independent contractor status because independent contractors are generally not subject to withholding for payroll taxes, including Social Security, Medicare, and unemployment taxes.

An “independent contractor” has been defined as one who undertakes to produce a certain result, but is not controlled as to the method in which the result is obtained. Generally, the answer to the question whether an individual's status is that of an employee or independent contractor requires a factual determination. Courts and administrative agencies essentially will look at the relationship between the individual and the employer, and ask whether the person should be deemed an employee. There are several factors that Illinois courts consider when determining whether an employer-employee relationship exists. While no one factor is dispositive, the most important factor is the right of the employer to control the manner in which the work is performed. The more control the employer has over the individual worker, the more likely an employment relationship will be found to exist.

Another determining factor is the nature of the work performed by the alleged employee in relation to the general business of the employer. If the worker's services form a regular part of the cost of the product or service, then it is likely that an employment relationship will be found rather than an independent contractor. Other considerations include: the right to discharge, the method of payment, whether taxes are deducted or withheld from the payment, the level of skill required to perform the work, and the furnishing of necessary tools, materials, or equipment.

**Keeping these factors in mind, the employer should take the following minimum steps when looking to create an independent contractor relationship:**

- Prepare a written contract that has been negotiated by the parties, and which explicitly states the intent to form an independent contractor relationship.
- The contract should include the requirements of the job or work to be performed by the contractor, a termination date, a clause which states that early termination will occur only upon substantial or significant violation of the contract or upon written notice by either party, and that the contractor retains right to perform the same or similar services for others. The contract also should allocate risk by requiring the contractor to defend, indemnify, and

hold the employer harmless in the event that a loss is caused by the contractor's acts or omissions. In order to assure financial wherewithal to perform the obligations of defense and indemnity, the contract needs to contain a promise by the contractor to obtain insurance and no work should commence without the contractor first producing a certificate of insurance evidencing individual general liability insurance and workers' compensations insurance coverage with acceptable limits and naming the employer as an additional insured.

- Pay the contractor on a per piece or per project basis, and do not deduct or withhold taxes from the payment.
- Allow the contractor to subcontract out services.
- Do not control the way in which the contractor performs the job. For example, do not set hours, supervise, or provide instruction or training. Instead, focus on the end result.
- Do not provide tools, equipment, or materials to the contractor.

### General Liability

Employers are liable for the negligence and the torts of their employees in certain circumstances. For example, an employer is liable for the conduct of its employee if: 1) the conduct occurs within the scope of the individual's employment; and, 2) the conduct

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## 7 WAYS TO

# Take A Load Off Your Back!!

### Standing

Many people confuse standing up straight with standing rigidly. Keeping all those muscles tense while you're standing on a hard surface is one of the worst things you can do for a bad back. Instead, keep your knees slightly flexed and your weight evenly balanced on each foot.

Shift your posture by resting one foot on a step or rail 2 or 3 inches higher than the ground for a few minutes. Then switch to the other foot.

Working at the kitchen counter can be particularly tiring, especially if the surface is too low to work at without bending slightly. If you must bend, bend from the hips, not the waist. The worst way to stand is leaning forward with your hips against the counter; it's liable to force you into a vulnerable, strained stance to maintain your balance.

Make a footrest out of a sturdy box that is about 8 inches high, and alternately rest one foot on it while doing counter work, ironing or a similar activity.

Whether standing still or walking, low heels are better for your back than high heels.

### Sitting

Americans are notorious for the amount of sitting they do commuting to work, on the job and even around the house. And even though we do it so much, we tend to do it very badly. We slump when we should straighten, dangle our feet when we should have them firmly planted, and sink into cushions when our spine is really craving a firm seat and hard back.

Try to use chairs that have seats large enough for adequate support and that are close enough to the ground for your feet to easily rest flat. If the chair is too low, you may slump and bend your back. If it's too high, you may sway forward.

The bet way to sit is with your buttocks

well back in the seat and the small of your back supported. A firm pillow 1-1/2 inches thick can be tucked behind your lower back for extra support.

Keep your knees above your hips if possible to reduce the stress on your spine and the muscles and ligaments that support it.

### Walking & Carrying

Don't hunch as you hurry down the street. The best posture is the one that comes closest to normal standing. Try to keep your shoulders level and your back straight.

Balance the load: Divide heavy loads into two bundles that can be carried at your sides, one in each hand. If a load can't be divided, hold it close to your body with elbows resting against your sides and the weight balance evenly. If carrying a heavy load in one arm can't be helped, place it as close to the elbow joint as possible.

### Reaching Up

The book you need is on the top shelf and the stepstool is across the room. The temptation is to stand on tiptoe and stretch—resist that thought! It's a quick way to wrench your muscles.

If you can't take time to get the stepstool, hold your abdominal muscles tight and reach, don't stretch. The best rule is, keep things you use frequently at an easy-to-reach height.

### Lifting

First, find out how heavy your load is by trying to lift a corner. If you can tell it's too much for you, get a helper or two.

When you do it yourself, part your feet with one alongside the load and one behind. This gives you greater stability, and the rear foot is in position for the upward thrust of the lift.

Squat with your spine straight but not locked. Tuck in your chin and neck so they maintain



the line of your spine.

Grip with your full palm, not just your fingers, around the corners of the load. Pull your elbows in to your body to give them as much strength as possible. That way they bear the strain, not your back.

Center your body weight over your feet and start the lift with a thrust of the rear foot.

### Pushing & Pulling

Always try to push rather than pull a load. One foot should be behind the other and your weight balanced between them. Again, keep your spine straight and use the force of your legs and arms to move the object.

If you must pull, assume a similar position and face the load. Trying to drag something behind you can strain your shoulders and neck as well as your back.

### Bending Down

Whether retrieving a lost paper clip or wiping up a spill, curb your impulse to lock your knees and bend from the waist. Instead, bend at the hips or knees. If you squat, keep your back fairly straight but not rigid.

# Cell-Phone Use In Company Vehicles Should Be Reviewed

**Because of increased accident risk, employers allowing cell-phone use should educate drivers.**

Using a cellular telephone while driving puts the driver and others on the road at risk.

A 1997 study by The New England Journal of Medicine found a driver's use of a cellular phone increases the risk of an accident by four times.

Talking on a cellular phone takes attention off driving. Are crashers likely to increase in relation to the growing number of such devices in fleet vehicles? The answer is "yes," according to "An Investigation of the Safety Implications of Wireless Communications in Vehicles," a National Highway Traffic Safety Administration report.

When cellular phones are provided to or used by workers, employers should educate them about the potential risks associated with and the safe use of those devices.

Employers should take changing state laws into account when creating safety policies regarding cellular-phone use.

Some states already have laws requiring the use of hands-free accessories.

If cellular phones are allowed while driving, the following safe-use guidelines should be considered in your company's policy:

- ✓ Assess the traffic and dial sensibly. If possible, place calls when you are not moving or before pulling into traffic.
- ✓ Get to know your wireless phone's features, such as speed dial and redial. Memorized the phone keypad so you can use the speed-dial function without taking your attention off the road.
- ✓ When available, use a hand-free device. Whether you choose an installed mounted device or a speaker phone accessory, take advantage of these devices to allow you to keep your hands on the steering wheel and your eyes on the road.
- ✓ Position your wireless phone within easy reach so you can grab it without removing your eyes from the road.
- ✓ Suspend conversations during hazardous driving conditions (for instance, rain, sleet, snow or heavy traffic). As a driver, your first responsibility is to pay attention to the road.
- ✓ Do not take notes or look up phone numbers while driving. Don't get caught in a dangerous situation because you are reading or writing and not paying attention to the road or nearby vehicles.
- ✓ Do not engage in stressful or emotional conversations that may be distracting. Make people you are talking with aware that you are driving and, if necessary, suspend conversations that have the potential to divert your attention from the road.
- ✓ Use your wireless phone to call for help. It is one of the greatest tools you can own to protect yourself and your family in dangerous situations. Dial 9-1-1 or another local emergency number in case of fire, traffic accident, road hazard or medical emergency.
- ✓ Use your wireless phone to help others in emergencies. If you see an auto accident, crime in progress or other serious emergency in which lives are in danger, call 9-1-1 or another local emergency number, as you would want others to do for you.
- ✓ Call roadside assistance or a special wireless non-emergency assistance number when you encounter a broken-down vehicle posing no serious hazard, a broken traffic signal, a minor traffic accident in which no one appears injured or a vehicle you know to be stolen.

These safe-use guidelines should be clearly communicated to all employees. Each employee who drives a motor vehicle for company business should be asked to abide by these guidelines and acknowledge his or her understanding by signing a copy of the guidelines.

NATLSCO Loss Control Services / Additional topics at [www.natlSCO.com](http://www.natlSCO.com)



## Beware of Carbon-Monoxide Poisoning

Winter is here, and so is the heating season. The combination of a closed-up building and interior sources of combustion, such as furnaces or propane-powered fork trucks, creates a potential for serious illness or death from carbon-monoxide (CO) poisoning.

Carbon monoxide is a tasteless, odorless gas. It is produced as a by-product of combustion, among other sources. Its health effects range from flu-like symptoms (low concentrations) to unconsciousness and death (high concentrations).

The federal Occupational Safety and Health Administration's (OSHA) permissible exposure limit (PEL) is 50 parts per million (ppm) as an eight-hour, time weighted average.

Some states have different PELs and additional requirements.

The Minnesota OSHA PEL, for example, is 35 ppm and Minnesota Rule 5205.0116 requires quarterly employee CO exposure monitoring when internal combustion-engine-powered industrial trucks are present.

If sources of CO cannot be replaced with equipment that does not produce CO, the best way to control the gas is through adequate periodic maintenance and exposure monitoring.

Routine equipment maintenance can help minimize emissions and periodic exposure monitoring provides an evaluation of exposure.

Such procedures may also be a regulatory requirement, depending on your location.

NATLSCO Loss Control Services

## Average & Maximum Weekly Disability Benefits



The maximum TTD benefit can be no more than 133-1/3% of the statewide average weekly wage on the date of the injury or last exposure.

	STATE AVERAGE WEEKLY WAGE	MAXIMUM TTD BENEFIT
January 15, 2002 to July 14, 2002	\$742.24	\$989.65
July 15, 2002 to January 14, 2003	\$748.59	\$998.12
January 15, 2003 to July 14, 2003	\$753.31	\$1,004.41

## Quotables...

Marriage is like a card game. You start with a pair, he shows a diamond, she shows a flush, and then you end up with a full house.

Burglar: "Hey, what are you laughing at?"

Homeowner: "That you would come at night without a light to look for money when I can't even find any in broad daylight."

Faith helps us face the music, even when we don't like the tune.

You must have patience on a diet – especially if it's your spouse who's on it.

Cherish your freedom...everyday.

results in an injury to another person or damage to another's property. The rationale is that accidents, which occur directly or indirectly from employment, ought to be paid for by the employer in question as a cost of doing business.

General speaking, an employer is not liable for the acts or omissions committed by an independent contractor. Thus, the avoidance of public liability for torts is just one of the benefits of hiring independent contractors. There is an exception to this general rule, however. One who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for physical harm to others for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care. For example, if the employer negligently retains, supervises, or directs the independent contractor, then the employer can be held liable for the personal injury or property damage caused by the independent contractor's acts or omissions. Public entities need to protect themselves against these situations. One such way is to ensure that any outside services or contractors that are hired produce certificates of insurance evidencing coverage for commercial general liability with an acceptable carrier and policy limits naming the public entity as an additional insured.

### Workers' Compensation Liability

Employers have a vested interest in hiring independent contractors when it comes to workers' compensation liability because the Illinois Workers' Compensation Act does not apply to independent contractors. Simply stated, independent contractors are not covered employees under the Workers' Compensation Act because the law requires the existence of an employer-employee relationship. Therefore, if an independent contractor is involved in a work-related injury, he or she must look to other insurance coverages and benefit plans. In the event that none exist, injured independent contractors often turn to the worker's compensation system where they try to establish their status as an employee of the party who hired them.

With this in mind, it can be difficult to prove an independent contractor relationship in a workers' compensation setting in the absence of the safeguards highlighted above – especially the written contract. This is because the workers' compensation laws are social legislation and, as such, the theory is that the employer should bear the cost of work injuries. As in the general liability setting, the most important factor is the amount of control the employer exercises over the individual. The more control the employer retains, the more likely the Illinois Industrial Commission will find that there is, in fact, an employment relationship, warranting an award of workers' compensation benefits.

The Workers' Compensation Act includes a special exception for public employers. Section 1(b)(1) of the Act states in relevant part: "one employed by a contractor who has contracted with the State or a county, city, town, township, incorporated village, school district, body politic or municipal corporation which made the contract." Private employers in Illinois do not enjoy the same protection from workers' compensation liability for uninsured subcontractors. Despite this protection, however, it is always important to ensure that a contractor has workers' compensation insurance.

### Employee Benefit Liability

A claim by an individual for employee benefits stems from a breach of fiduciary duty. If an employer improperly classifies an employee as an independent contractor, then the employer can be subject to substantial costs, penalties, and tax consequences. Section 530 of the Revenue Act of 1978 provides a "safe haven" provision, which in certain circumstances, does not permit the IRS to challenge the status of workers as independent contractors. In order for an employer to avail itself of the "safe haven" provision, the employer must meet three following requirements: (1) First, the employer must have a reasonable basis for not treating the worker as an employee; (2) Secondly, the employer must have treated the worker, and all other similarly situated workers, as independent contractors for federal payroll tax purposes; and, (3) Finally, the employer must have filed all federal tax returns consistent with the treatment of the worker as an independent contractor.

If an employer is unable to meet all three requirements of the "safe haven" provision, then the IRS will look to twenty factors to determine worker status for benefit liability. The legal test, like in general liability and workers' compensation liability, is whether the person receiving the services has the right to direct and control the means and the details of the work. An employer can afford itself limited protection by placing a provision in the plan document which states if a court re-classifies an independent contractor as an employee, the employee is only entitled to benefits prospectively as opposed to retroactively.

### Conclusion

Public employers must utilize contractors and independent service providers in order to accomplish the mission of providing essential public services. Adherence to the safeguards highlighted above will help assure that the taxpaying public does not inadvertently become an "insurer" in the process.

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