

At Issue

A RISK MANAGEMENT NEWSLETTER FOR
ELEMENTARY AND SECONDARY SCHOOLS



Premises Losses

You're Back to School, Now Let's Get Back to Safety.

By: **Robert Bambino**, CPCU, ARM, Executive Vice President, Wright Specialty Insurance

The 2015-16 school year is underway. Depending on where you are located, school has been open for three weeks, or in excess of one month. Overall, school administrators and buildings and grounds staff have worked diligently to ensure that facilities are ready for students, staff and visitors. Many schools spent the summer doing repairs, completing construction projects, and generally getting buildings and other facilities into shape for the 2015-16 school year.

Now that routine operations and activities are in progress, and facilities and equipment are getting used, it's a good time to assess some specific areas that historically contribute to accidents and losses. This process is a good assignment for safety or building facility committees.

PREMISES LOSSES — slips, trips, falls and injuries caused by activities that involve equipment — lead the list of accidents submitted by policyholders for coverage through the general liability policy. We thought it prudent to provide information that will help eliminate or reduce these losses.

I. PLAYGROUNDS AND ATHLETIC FACILITIES

- Playgrounds account for over 200,000 emergency room visits each year by children. The US Consumer Products Safety Commission (CPSC) reports that falls from playground equipment are the most common type of accident. The first item to check in the playground is the condition of the surface below and around the equipment. Plan on 12 inches of wood chips, mulch, sand, or pea gravel, or mats that are made of safety-tested rubber or rubber-like materials. Then look over the condition of the equipment — be aware of protruding hardware, damaged support elements or splintered wood structures, or entrapment hazards that could trap children such as openings in guardrails or between ladder rungs, measuring less than 3.5 inches or more than 9 inches. Make sure that proper playground signs are in place and visible.
- Soccer goals weigh close to 100 pounds and can tip over, causing injuries to players around the goal. To prevent them from tipping over, make sure the goals are secured to the ground with anchors. Most manufacturers will supply anchoring hardware.
- Sports and recreation facilities need to be reviewed as well. A leading cause of injury during sporting events is unsafe facilities, fields, equipment, or gymnasiums.

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CHECK:

INDOOR FACILITIES	OUTDOOR FACILITIES
<ul style="list-style-type: none"> • Inadequate safety zones around playing courts • Improper storage of equipment • Overcrowding • Unsupervised areas • Improper maintenance of facilities and equipment • Lack of safety glass • Wet floors in locker rooms, shower areas and around pools • Missing warning or instruction signs • Defects in floor surfaces 	<ul style="list-style-type: none"> • Overlapping athletic fields • Defects on playing surfaces • Improper placement of dugouts or benches • Inadequate or missing warning tracts • Improper fall zones beneath and around playground equipment, or improper ground cover • Inadequate fencing • Missing warning or instruction signs • Damaged challenge course equipment • Traffic patterns that overlap play areas

BLEACHERS

While the frequency of bleacher inspections in your district will depend on how often your bleachers are used, and the mandates of any applicable laws or guidelines, the US Consumer Products Safety Commission (CPSC) recommends at least quarterly inspections to identify any structural damage or degradation that could compromise safety. Correct deficiencies immediately or seal-off the bleachers and retain documentation. Documentation should include the date and signature of the person performing the inspection. The CPSC further recommends that at least every two years, a licensed professional engineer, registered architect or company that is qualified to provide bleacher products and services should conduct an inspection. Obtain a report from the engineer indicating that the bleachers are safe for use.

CHECK:

The CPSC produces a publication, Guidelines for Retrofitting Bleachers, that can be found at their website: <http://www.cpsc.gov/PageFiles/122347/330.pdf>



II. SLIPS TRIPS AND FALLS

Falls are the leading cause of unintentional injuries, accounting for approximately 8,000,000 emergency room department visits each year. Falls are also the third leading cause of unintentional injury fatalities. At Wright Specialty, slips, trips and falls are the leading cause of injury for general liability claims.

Slips and falls are caused by physical hazards. For example, falls on sidewalks or walkways typically result from defective or hazardous conditions, such as cracks, uneven surfaces, or missing slabs. Potholes, cracks and sinkholes are often the cause of slips and falls in parking lots. Loose handrails and defective steps increase the likelihood of falls on stairs. Weather conditions involving snow, ice or water accumulation create other hazards, such as wet or slippery surfaces.

CHECK:

In addition to a maintenance and inspection program that addresses premises hazards, consider the following suggestions:

- If a condition cannot be repaired immediately, cordon it off with orange tape, cones or other devices.
- Lock down stairs, hallways or other areas that are unsafe.
- Document inspections, repairs, equipment, invoices or contracts for repair work and any other material that demonstrates your school's efforts to protect students, staff and others.
- Lighting can either help prevent slips, trips and falls, or be the cause of such accidents if it is inadequate.
- Changes in programs or operations may necessitate a change in maintenance programs, inspections or lighting.
- Parking lots can deteriorate from summer heat. Make sure that any defects such as cracking or potholes are repaired.
- Staff should know how to report a dangerous condition such as water or debris on a surface to buildings and grounds personnel.
- Community use of facilities increases in the fall. Require potential users to complete an application before a permit is issued.

The application should include indemnification and hold harmless language, as well as an insurance procurement agreement.

WEATHER ISSUES

Although winter weather is still months away (we hope) it is a good time to check snow clearing equipment. Inspect – and repair or replace as needed – belts, hoses, chains, shear bolts/pins and other fasteners, control levers and other parts of the equipment. Check on your supply of ice and snow melt materials, shovels, and winter clothing that is supplied to staff. Manufacturers provide maintenance schedules for fluid replacement, spark plugs and filter changes.



LIGHTING

As we move further into the year, we lose about two minutes of daylight each day. Daylight saving time ends on Sunday, November 1st; sunrise and sunset will be one hour earlier. Adequate lighting makes it safer to walk at night. It also helps reduce crime (assaults, vandalism, thefts) and increases the efficiency of nighttime security patrols.

III. SCIENCE AND TECHNOLOGY ROOMS

Our loss experience includes a large claim where a high school student was severely burned during a botched science experiment. Use of chemicals — even in a supervised, controlled environment — can lead to serious losses.

CHECK:

ITEMS TO INSPECT IN SCIENCE AND TECHNOLOGY ROOMS INCLUDE, BUT ARE NOT LIMITED TO:

- Secure chemical cabinets
- Adequate chemical inventories
- Adequate ventilation
- Chemical disposal
- Use and training of personal protective equipment

- Machine guarding
- Secure tool cabinets
- Signage
- Eyewash stations
- Fire extinguishers
- Housekeeping

Transgender Employees and the Current Case Law

By: Rona L. Platt, Esq.

As more people publicly identify as transgender, lesbian, gay, bisexual, or otherwise than heterosexual, employers can potentially face issues they never expected. For example, does an employer have to allow a transgender individual to use the mono-sex restroom associated with the individual's chosen gender? Or may the employer require the transgender individual to use the mono-sex restroom associated with the individual's biological gender? Do the prohibitions against discrimination on the basis of sex or gender extend to transgender or gender identity? As discussed below, employers

must remain informed of the applicable statutes and regulations to ensure that they are not violating the rights of any protected class, which includes transgender individuals.

CASE LAW

In 1989, the Supreme Court decided *Price Waterhouse v. Hopkins*, and held that the protections of Title VII extended to workers who are discriminated against because of sex stereotyping¹. Ms. Hopkins was denied a promotion and told that in order to secure one, she needed to “walk more femininely, talk more



femininely, [and] dress more femininely [.]” As the Court made clear, discrimination predicated upon assumptions or expectations about how a person should dress, behave, etc. because of his or her sex, violate Title VII.

The Court’s pronouncement in *Price Waterhouse* has served as the basis for numerous suits brought by transgender individuals and the number of those suits is increasing. While the Supreme Court has yet to hear a case involving a transgender individual, lower level courts have been busy. For example, Title VII has been held to protect a man transitioning to female who was suspended upon adopting a more feminine look and advising his employer that he was going to transition², a male to female transsexual who dressed as a male while on duty as a police officer but dressed as a woman when off duty³, and an individual in the midst of transition from male to female who was allegedly fired because her employer feared lawsuits by others if she was permitted to use the women’s restroom⁴. In each case, courts found that the plaintiff was discriminated against because of assumptions or expectations about how a person of a given sex should dress, behave or act.

The protection is not limited to Title VII. Among the other statutes found to be violated by discrimination against persons not conforming to gender stereotypes have been the Equal Credit Opportunity Act, where a male dressed in traditionally female attire was denied a loan application and sued⁵. In essence, anytime a statute forbids discrimination on the basis of sex, a court is likely to hold that discrimination against transgender individuals runs afoul of that statute.

EEOC ENFORCEMENT

In addition, the Equal Employment Opportunity Commission (EEOC), which has primary jurisdiction over employment practices complaints arising under, among other statutes, Title VII, investigates charges filed by individuals who believe that they have been discriminated against because they are transgender, or transitioning from one sex, or do not conform to gender stereotypes. In the last three fiscal years, the EEOC investigated more than 300 complaints involving gender identity and/or transgender issues.⁶ In fact, the number of complaints involving gender identity and/or transgender issues filed with the EEOC has increased year over year. In Fiscal Year 2013, 147 charges were filed; in Fiscal Year 2014, 202 were filed; and in the first two quarters of Fiscal Year 2015, 112 charges were filed. In fact, the Strategic Enforcement Plan for Fiscal Years 2013-2016, adopted by the EEOC in December 2012, makes enforcement of Title VII’s provisions to protect lesbian, gay, bisexual and transgender individuals a top priority.⁷

GET HELP

You should revisit your policies to ensure that they do not run afoul of the law. For example, the Department of Labor’s Occupational Safety and Health Administration (OSHA) mandates that employers provide access to restrooms that correspond to their gender identity⁸. Therefore, if you have mono-sex bathrooms, an employee transitioning from male to female and identifying as female must be permitted to use the women’s room.

Careful consideration should be given to policies addressing discrimination on the basis of all protected classes, including sex, to ensure that it complies. Consult with your counsel to ensure those policies comply with all applicable federal, state and local laws, and protect all to whom the courts have said the protection is extended, including transgender individuals.

RESOURCES

EEOC:

http://www.eeoc.gov/eeoc/publications/brochure-gender_stereotyping.cfm

http://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm

<http://www.eeoc.gov/eeoc/publications/upload/Gender-Stereotyping-LGBT-brochure-OLC.pdf>

<https://www.osha.gov/Publications/OSHA3795.pdf>

¹ *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (holding that sex stereotyping is a form of gender discrimination).

² *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. 2004).

³ *Barnes v. City of Cincinnati*, 401 F.3d 729 (5th Cir. 2005)

⁴ *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011).

⁵ *Rosa v. Parks W. Bank & Trust. Co.*, 214 F.3d 213 (1st Cir. 2000)

⁶ http://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm

⁷ <http://www.eeoc.gov/eeoc/plan/sep.cfm>

⁸ <https://www.osha.gov/Publications/OSHA3795.pdf>

Risk Transfer Update: Request Sexual Misconduct Coverage!

Schools include insurance procurement requirements in their contracts with transportation and coach contractors. These requirements usually include a request for Automobile Liability insurance (with limits of \$5,000,000 or more); Commercial General Liability, statutory Workers Compensation and Employers Liability insurance. Excess coverage may be required as well.

The Commercial General Liability coverage protects entities for non-automobile related claims — such as assaults — but some insurers do not provide coverage for sexual misconduct claims, such as, sexual assault or abuse. Your insurance requirements should specifically request coverage for sexual misconduct exposures, either within the commercial general liability policy or through a separate policy, with limits equal to the limits for general liability.

If additional insured status is successfully obtained, the financial consequences of a claim or lawsuit alleging sexual misconduct on a bus or van contracted by your school will be transferred to the insurer for the transportation contractor.



Frozen Pipes Reminder – Take Steps Now to Avoid this Silent Cold Weather Hazard

By: **Andrew Graham**, Senior Vice President Risk Management Services, Wright Specialty Insurance



Classrooms flooded. Ceilings, flooring, walls, electrical systems damaged. Extra educational space non-existent. Construction in the building during classes. These are some of the unexpected issues faced by schools that experience pipe freeze damage.

In the Spring 2015 edition of At Issue, we used this past very cold winter's expensive pipe freeze losses to discuss cold weather preparation for the coming cold. Well, we are at the start of the school year once again and it is time to make sure steps have been taken against pipe freezes. And if you have not started, there is still time to prepare.

Below is a list of the items discussed in the last issue:

- Like any accident, an investigation should be conducted to determine the root cause of a pipe freeze. Determine the causes and develop a strategy to prevent recurrence incorporating both physical system improvements (insulation) and management improvements (identifying all areas where pipe freezes are possible and taking steps to address those areas).
 - Unusual cold for a certain region of the country is never the only root cause and should not be dismissed as a one-time event especially considering climate change effects. Climate change does not just mean warmer temperatures globally but wider variations from considered norms.
- Did a pipe freeze occur in one structure that is a basic “cookie cutter” of other structures? If so the other identical or similar units may also be at risk. This occurs most often with multiple resident housing units built at the same time.
- Downtimes such as school breaks during the winter are particularly worrisome due to:
 - Reduced staffing.
 - Lowered thermostats to conserve energy.
 - No students or fewer staff members around to detect either malfunctioning heating or frozen/burst pipes.
 - Renovations taking place exposing pipes that are not normally exposed.
- New construction or renovations should incorporate cold weather improvements such as:
 - More and better insulation.
 - Depth of water lines buried in the ground. Deeper is generally better.
 - Locating water lines away from exterior walls.

- Providing heat where otherwise there would be none.
- Making water shut-off valves easily accessible and visible.
- Cracks and holes in exterior walls should be identified and sealed.
- Preparation for known frigid weather:
 - Keep thermostats above 55 degrees.
 - Drain all pipes not in use or for fire protection.
 - Inspect all dry pipe sprinkler valve and fire pump rooms to ensure they are kept warm with a UL Listed space heater or building heating unit.
 - Identify all main water valves and keep access to them clear in case those valves need to be closed in a hurry.
 - Open doors from heated areas to the unheated areas to keep pipes in those areas sufficiently warm.
 - Take thermometer readings during especially cold days to help determine those areas most vulnerable.

Many of the educational institutions in our wide book of business suffered substantial pipe freeze losses last year. Many more had near misses that did not result in damage THIS TIME. For those that sustained damage, make sure that those areas are now protected and any similar areas have been inspected to find weaknesses that need additional protection. Those that did not suffer damage could have just been very lucky. Take luck out of the equation by putting the time and effort in now to identify and address vulnerable areas.

Visit this website for additional information:

<http://www.redcross.org/prepare/disaster/winter-storm/preventing-thawing-frozen-pipes>



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