



PEP ON POINT

Building Stronger Communities Together



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2024 NEWSLETTER SECOND QUARTER

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BIKE LANE BEST PRACTICES

BY PEP RISK SERVICES TEAM

Bike lanes are designed to provide a safe and separate space for cyclists on the roadways, which is essential for reducing the risk of accidents and injuries. When designing bike lanes, public entities need to consider several factors, including width, placement, and visibility, to ensure they are effective and safe for cyclists.

One of the primary benefits of bike lanes is that they can help reduce accidents and injuries on the roadways. By providing a separate space for cyclists, bike lanes help to reduce the risk of collisions with motor vehicles and pedestrians. In addition, bike lanes can also help to reduce the number of accidents caused by cyclists riding on sidewalks or in other unsafe areas.

Another important factor in bike lane design is visibility. Bike lanes should be clearly marked and visible to both cyclists and motorists, which can help reduce the risk of accidents caused by confusion or lack of awareness. In addition, bike lanes should be designed to be easily identifiable and distinguishable from other areas of the roadway, which can help prevent accidents caused by drivers inadvertently entering the bike lane.

Bike lane design can also play an important role in protecting public entities from liability claims. If a cyclist is injured or killed while using a bike lane, the public entity may be held liable if the lane was not designed or maintained properly. This can include issues such as poor visibility, inadequate width, or improper placement. By ensuring bike lanes are designed and maintained to a high standard, public entities can help protect themselves from liability claims and ensure cyclists have a safe and enjoyable experience on the roadways.

The Urban Bikeway Design Guide is a valuable resource for public entities looking to improve their bike lane design. Published by the National Association of City Transportation Officials (NACTO), the guide provides detailed guidance and best practices for the design of urban bikeways, including protected bike lanes, cycle tracks, and bike boulevards. The guide includes detailed design standards and recommendations for a range of different types of bikeways, as well as guidance on intersection design, signage, and pavement markings. (<https://nacto.org/publication/urban-bikeway-design-guide/bike-lanes/>)

By following the guidance in the Urban Bikeway Design Guide, public entities can ensure their bike lane design is safe and effective. This resource provides a wealth of information and guidance on best practices for bike lane design and can help public entities reduce the risk of accidents and injuries and protect themselves from liability claims.



NEWLY ELECTED COUNCIL SEMINAR TRAINING RECAP



The following PEP members received training at recent Ohio Municipal League (OML) sponsored seminars for newly elected council members, taking advantage of this program designed specifically to gain insight to their role as a municipal official, to advance the quality of their public experience, and to connect with other new local leaders. PEP is proud to have the trust and confidence of the Ohio Municipal League (OML) as an endorsing partner representing the collective interests of Ohio cities and villages since 1952.

The following PEP members were in attendance at the OML Newly Elected Council Seminar Training:

- Village of Ada
- Village of Archbold
- City of Athens
- Village of Bellaire
- City of Bellevue
- Village of Bloomdale
- Village of Bolivar
- City of Brooklyn
- City of Bucyrus
- Village of Carroll
- City of Cleveland Heights
- City of Columbiana
- City of Fairborn
- City of Galion
- Village of Georgetown
- Village of Gnadenhutten
- Village of Highland Hills
- Village of Kelleys Island



GARRY HUNTER,
LEGAL COUNCIL, OML (LEFT)

KENT SCARRETT, EXECUTIVE
DIRECTOR, OML & PEP BOARD
OF DIRECTOR MEMBER (RIGHT)



GARRY HUNTER,
LEGAL COUNCIL, OML

- Village of Minerva Park
- Village of Mingo Junction
- City of Mount Vernon
- City of Nelsonville
- City of New Carlisle
- Village of North Baltimore
- Village of North Lewisburg
- Village of Oakwood
- City of Oberlin
- Village of Powhatan Point
- City of Riverside
- Village of Sebring
- Village of Seven Mile
- Village of Shadyside
- Village of South Amherst
- City of St. Clairsville
- City of Sylvania
- City of Trotwood
- Village of Urbancrest
- Village of Waverly
- Village of West Lafayette
- City of Whitehall
- Village of Windham
- Village of Woodlawn
- Village of Woodsfield



FEATURE ARTICLE

SUMMER CAMPS

BY MARCO GUARDI, VICE PRESIDENT, RISK SERVICES

Summertime is camp time. With school out, it is the perfect time to hone one's skills at camp. Often camps are held at park sites and may be run by a public entity's personnel or contracted vendor. Like any other curricula, these camps present risks and exposures at a variety of levels. These risks can be appropriately managed depending on who operates the camps and the risk control measures taken. There are two basic types of operation: camps operated and sponsored by the public entity or camps where the public entity is only providing the facility.

Camps operated and sponsored by the public entity

In this scenario, the public entity's staff members provide oversight of camp activities, and the camp is sponsored in full or in part by the public entity. Camp participation fees may be collected via online registration or mailed in through recreation flyers. Risks associated with these camps can be minimized by the following:

- Pre-event documented inspections of the area, facilities and equipment to confirm in good condition
- Reservation of camp/activity on file
- Procedures in place to address emergencies, and staff knowledgeable in procedures
- Parental notification of emergencies and authorization to provide first-aid forms
- Authorized site lease agreement if camp is held offsite and confirm site host has updated insurance
- Camp registration forms reviewed by legal counsel prior to use
- Background check for all personnel assigned to supervise minors
- Camp counselors and assistants have received and can show proof of mandatory training





As an additional measure, cash transactions for camps registration fees should be minimized, especially when cash is collected at the campsite itself. Payments for these purposes should be made prior to the event date, if possible.

Camps where the public entity is only providing the facility

In these cases, camps are run by independent vendors, or for more sports-focused, by local athletic coaches. It is essential to clearly determine who is responsible for the camp. At these camps, vendors and coaches are considered separate legal entities apart from the public entity and should be directly liable for the events and actions arising from camp activities. Fees for camp participation are directly received by these coaches and are not co-mingled with public entity funds.

In order to manage the risks associated with these camps, the following items are recommended:

- Completed and signed facilities lease agreement with responsibilities defined
- Personal workers compensation coverage
- Certificate of general liability insurance which names the public entity as additionally insured with \$1M single event and \$2M aggregate coverage limits, with endorsements for molestation and abuse
- Pre-event documented inspections of the area, facilities and equipment to confirm in good condition
- Parental notification of emergencies and authorization to provide first-aid forms
- Camp registration forms include release of liability clause and are reviewed by legal counsel prior to use

If public entity staff members are working at these types of camps, their employment status also needs to be discussed. Are they working as public entity employees or under the direction of the vendor/coach? Those working with youth should have background checks and mandatory training.

Use of the public entity's name and/or logos is another issue. Does the vendor or coach have permission to use the public entity's "brand" to recruit for the camp? This permission may be granted, but it is an issue to resolve in the beginning.

POOL SAFETY

BY PEP RISK SERVICES TEAM



The safety of guests and employees using swimming pool facilities should be a critical concern to those managing a facility where aquatic activities occur. The staff should be aware of protecting the general public and facility users, but also the safeguarding of lifeguards or other employees should be thoroughly considered. A pool safety checklist should be used to document each inspection (find checklist in the Resource eLibrary). The following are suggested:

Assess, repair, and inventory hazards of your pool

Are depth markers easy to read? Are walkways, ladders and decks equipped with non-slip surfacing? Is the pool free of deterioration? Are swimming lanes clearly marked? The swimming areas should have a clearly defined shallow area and defined diving areas. These areas must have rescue equipment to include backboards, ring buoys, reaching devices or designated rescue equipment. It is important that all areas are inspected on a routine basis and that necessary repairs are made and documented. There must be an inventory of what hazards are associated with the particular water environment to eliminate the hazards. Water environments are extremely dynamic, and their characteristics can change quickly. The typical changes can include bottom conditions, water quality, biohazard wastes and others.

Provide sanitation, safety, and signage

Swimming pool sanitation and safety concerns include items such as chemical storage, covered drains, non-skid decks, ladders, diving boards, clear water and chemical testing. Water should be monitored constantly for debris and foreign objects. The local or state jurisdiction that enforces the frequency of water testing and pool monitoring should be followed. Pool rules should be posted in easily visible areas. Review pool signs and posted rules. Be sure any signs or regulations that have been posted are in good condition, are legible and meet notice requirements. For example, a sign that states, "DANGER, CHLORINE" should be posted outside the chlorine room. All swimming pools should be in compliance with the Virginia Graeme Baker Act. Ropes and/or buoys should be used to distinguish between any drastic changes in elevation.

Inspect emergency equipment

Make sure emergency rescue equipment such as reach poles and approved buoys are in place, in good condition and are readily available. Bloodborne pathogens kits (BBP) and an AED should be available near the pool area with proper staff training provided. Also, make sure first aid kits are adequately stocked, and a self-contained breathing apparatus or gas mask is available for the chlorine room entry. Inspect, replace or repair all emergency supplies and equipment as needed before, during and after the season.

Provide training and protection

Be sure lifeguards have the appropriate certification, and the documentation to support it is on file. There should always be a written emergency response plan documenting the duties and responsibilities of all persons involved. The chain of command must be defined with those involved knowing what to do and where to go. The plan should be practiced and rehearsed periodically by lifeguards and aquatic instructors. The local fire, police and EMS departments may want to be involved in practice drills or in helping a location develop specific emergency procedures for their facility. This can be a valuable aid in making sure emergency response is effective and timely. Phones and/or radios should be available near the pool areas. Contact numbers should also be available in the event of an emergency.

Drills and training sessions should be conducted before pools open to the public, so all employees are trained and prepared to respond. Training logs should be kept on file that indicate the type of training, the date of the training and the name of the participants who took the training. Lifeguards should be protected from environmental hazards by providing them with proper personal protective equipment.



Any participant or parent of a minor participant in an organized swimming activity or program should sign a consent form. The form should include the level of the participant's swimming ability (beginner, intermediate or expert), indication of any medical concerns that may interfere with the participant's swimming ability, the location of the swimming activity, and the number of participants. A swim test to determine each individual's level of swimming competency is suggested. "The Buddy System" (pairing up of children of similar swim capability to watch over each other in the pool) and the "Wristband System" (an alarm triggering bracelet that alerts a supervisor when the wrist band comes into contact with the water) are both types of systems that are suggested after determining the swimmers' individual strengths.

Review all employees' job descriptions and duties

Create a safe workplace by clearly defining each employee's job and the associated duties. For example, lifeguards should not be distracted with other duties that would keep them from proper observance of persons in the pool area, or that would prevent immediate assistance to persons in distress. Be certain that your lifeguards' job descriptions do not include duties that would interfere with the performance of their proper duties. It is important that a qualified, experienced person be designated to oversee and administer the aquatics program. The supervisor must be able to enforce established safety regulations, identify and manage environmental and other hazards related to aquatic activities, provide necessary instruction and provide certified lifeguards to be readily available.

Additional information can be found in the Resource eLibrary, or consult your Risk Control Specialist with any questions you may have or to request an onsite visit.



'MEMBER-FOCUSED' PEP BENEFITS

APPLY FOR THE PEP+ GRANT

As part of PEP's loss control and risk management initiative, PEP members are able to apply for a grant of up to \$1,000. The 2024 PEP+ Grant deadline is **December 31**, so be sure to get your application in today. Grants are awarded to help offset qualifying expenses covering safety items that help prevent or reduce liability claims or property losses. Funds are available for purchases or expenses incurred during the application period. Access the PEP+ Grant Program application by visiting www.PEPOHIO.org.



TAKE ADVANTAGE OF PEP'S HR AND CYBER PORTALS

Upgraded for PEP members are the HR and Cyber portals. The updated platform, Zywave, still includes all of the great **HR and Cyber resources** such as: information on state and federal employment laws, interviewing, background check guidelines, applications, **the handbook builder**, cyber security training, cyber tips, IT audit kits, checklists, and more. You can access the platforms through the eLibrary at <https://apepelibrary.com>.

LEGAL ACCESS

FREE CONSULTATIONS

When you need a lawyer's opinion for a community-related issue, put your PEP membership to work. Every PEP member is eligible for up to **90 minutes of free legal consultation per year**, covering issues associated with human resources, zoning, land use, open records/open meetings and more. Authorized PEP member representatives seeking legal consultation services should call PEP Legal Access at **(877) 250-5545** to request up to 90 minutes of free advice, guidance or information.

WHAT MEMBERS ARE SAYING ABOUT PEP'S RISK SERVICE TEAM



"Susana was delightful, very up-to-date and I appreciated her recommendations."

~ Roundhead - McDonald Park District,
Hardin County

"Nice meeting as Nick left several possible resources for the city to utilize."

~ City of Willard, Huron County

The PEP Risk Services Team conducts field inspections, responds to special requests regarding exposures and risk management issues, and assists in developing safety programs, etc. integrated into a holistic approach to prevent injuries and protect member assets. Members can contact PEP Risk Services at **(866) 907-3776**.

CYBER SECURITY GUIDANCE

INCIDENT RESPONSE PLANNING, CYBER SECURITY AWARENESS TRAINING AND SECURE REMOTE ACCESS

BY RISK SERVICES TEAM

In today's digital age, public entities are constantly facing cyber threats that can result in devastating consequences if not handled properly. Incidents like cyber-attacks and data breaches can cause significant damage to a public entity's reputation, finances, and customer trust. To combat these threats, public entities need to have a robust cyber security strategy that includes incident response planning, cyber security awareness training, and secure remote access.

Incident Response Planning is the process of preparing to respond to security incidents such as cyber-attacks, data breaches, and system failures. Having a well-defined plan in place can help entities minimize the impact of a security incident by enabling them to respond quickly and efficiently. Benefits of incident response planning include:

1. Reduced Downtime
2. Faster Recovery
3. Improved Resilience

Cyber Security Awareness Training educates employees on best practices for protecting sensitive information and systems from cyber threats. Benefits of cyber security awareness training include:

1. Reduced Risk of Insider Threats
2. Increased Vigilance
3. Improved Compliance

Secure Remote Access is essential for many entities, but it also introduces security risks. Secure remote access solutions can help entities minimize these risks while still allowing employees to work from anywhere. Benefits of secure remote access include:

1. Increased Productivity
2. Improved Security
3. Reduced Costs

Incident Response Planning, Cyber Security Awareness Training and Secure Remote Access are all essential components of a robust cyber security strategy. As cyber threats continue to evolve, it is important for entities to stay up-to-date with best practices and continue to adapt their cyber security strategies to protect against new threats.



To learn more about Incident Response Planning, Cyber Security Awareness Training and Secure Remote Access and more, contact Eric Adonteng at (240) 808-9278 or email eric.adonteng@sedgwick.com

RISK SERVICES RESOURCES



I'VE JUST BEEN SUED! NOW WHAT DO I DO?

BY NATACHA MCCLAIN, DESIGNATED LITIGATION MANAGER

In your role as a public official or public entity employee, you may be served with a lawsuit on behalf of the public entity. You may be named as a defendant as well. In some instances, you may have anticipated a situation or claim that would result in a lawsuit. Some lawsuits, however, come as a complete surprise. In these circumstances, this article will identify steps to take in the event of an unexpected lawsuit where there was no pre-suit claim.

Contact your claims representative and legal director

One of the critical first steps is to notify your claims representative and legal director as soon as possible/practicable. There are several reasons for this. First, the service of a Complaint starts the clock on when the served defendant must respond to the Complaint. Second, the earlier the notice, the more time the public entity will have to ensure proper steps are taken and to develop a strategy for defending the claims. Moreover, as a member of a pool, your Legal Defense and Claim Payment Agreement requires notice of any potential or actual claims and/or lawsuits. It is important not to undertake any part of the defense on your own (whether by retaining counsel or engaging in settlement discussions, etc.) because that responsibility and right rests with the pool.

Once you have provided notice to your claims representative, the pool will determine whether coverage is available for the claims set forth in the Complaint. Coverage is evaluated for each separate defendant whether it is the public entity or current or former employees or public officials of the public entity. The pool will provide a coverage determination to you and identify whether defense counsel will be assigned.

In addition to defending a lawsuit, you will address with defense counsel whether to conduct an internal investigation and evaluate risk control measures. Corrective action and preventative action procedures can help public entities not only detect and investigate problems, but also implement solutions to prevent recurrence, mitigate risks, and promote continuous improvement.

Finally, keep in mind lawsuits are public records and can create media attention. Your law director or legal counsel will want to discuss and agree on how to handle the media. From a risk management perspective, having a media policy and procedure in place before any lawsuits arise is recommended. If there is a media policy in place, it is important to make individuals aware of the procedures contained in the policy.

Preserve evidence

Courts have held that the duty to preserve evidence triggers when litigation is reasonably anticipated. This date could be different than an official service date, which starts the clock for a defendant's deadline to respond. Therefore, for unforeseen lawsuits, even if not yet formally served, the notice of the lawsuit triggers the duty to preserve evidence.



Defense counsel will work with the public entity to identify the categories of potentially relevant evidence based on the allegations contained in the Complaint. Although not all Complaints contain sufficient facts to contemplate all potentially relevant evidence, the allegations should provide key details surrounding the bases for the claims made against the public entity.

Remember, evidence may not come only in the form of a document, but could also be photographs, video and tangible objects such as a motor vehicle.

Failing to preserve evidence could result in sanctions by the Court or an adverse jury instruction in the event the matter proceeds to trial and result in weakened or no liability defenses.

Separate attorney communications from general records to avoid inadvertent disclosures

Public entities have a unique responsibility to the public to be open and candid. Nevertheless, like any individual or organization, public entities have the right to seek legal advice that allows for full and frank discussions and avoids public scrutiny. Attorney-client privileged communications are exempt from disclosures in response to public record requests and protected from disclosure in litigation.

A communication between defense counsel and the designated representative of the public entity made in confidence for the purpose of seeking, obtaining, or providing legal advice for the public entity is an attorney-client privileged communication.

Keep in mind that if a communication is shared with anyone other than the attorney and the client, even if inadvertently shared, then the attorney-client privilege may be considered waived and no longer subject to exemption under the Ohio Public Records Act.

Understand the impact on resources

While the fiscal impact of a lawsuit is often considered, a public entity defendant must also consider the impact on human resources. Communicating with defense counsel, preserving evidence, gathering information in response to written discovery requests and appearing for depositions, mediation and trial all require considerable time and energy from the designated public entity representative. Other public entity employees and public officials, whether individually named as defendants or not, may also be required to appear for a deposition or trial. In addition to the potential fiscal impact, you will want to discuss with your defense counsel the scope of responsibilities and the amount of your time that will be required to properly defend the public entity. You will also want to explore whether settlement negotiations may be the appropriate strategy for resolving the lawsuit and weigh the benefits of minimizing employees' time versus any potential financial and reputational impact of a settlement.

Be prepared

Contacting your claims representative and legal director as soon as possible, preserving evidence and identifying what financial and non-financial resources will be impacted are all essential steps to properly defending a lawsuit. Immediately reporting a lawsuit to your claims representative is your best opportunity to avoid waiving defenses. Having policies in place such as a media policy or claims handling policy that designates an employee to be the point of contact for claims and litigation can help minimize exposures and resources when defending a lawsuit.



PEP offers up to 90 minutes of free advice, guidance or information.
Call (877) 250-5545.



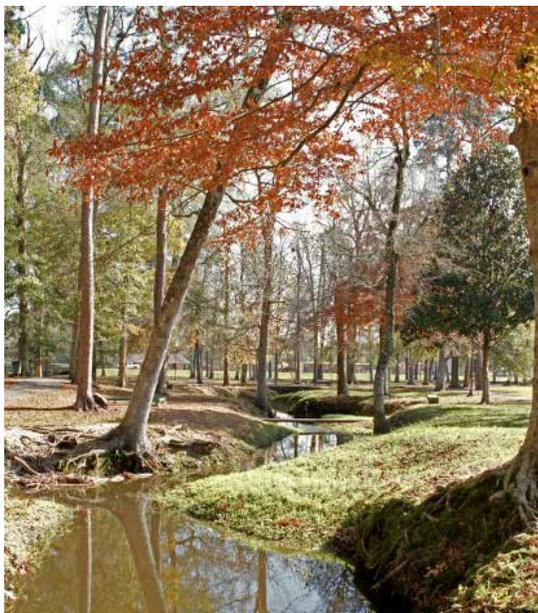
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If our mailing records need to be updated, please contact the PEP Administrator at pep@pepohio.org.

GRANT RECIPIENT SPOTLIGHT

Village of Leesville

Located in southwestern Carroll County



We are proud to have the **Village of Leesville** as a PEP member. They are the recipient of a **\$1,000** grant that will help in repairing the village's storm sewers.

Leesville was platted August 1, 1812, as Leesburg in what was then One Leg Township, Tuscarawas County, by Thomas Price and Peter Saunders.

Eckley and Perry state of Leesville: "It was one of the stations on the Underground Railroad, and in those days its little public hall at times was visited by such bright and shining abolition lights as William Lloyd Garrison, Frederick Douglass, Wendell Phillips, Parker Pillsbury."

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Every effort has been made to ensure the accuracy of the information in this newsletter. Professional counsel should be sought before any action is taken or decision is made based on this material.

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