MCIT BULLETIN

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MCIT MISSION:

Providing Minnesota counties and associated members cost-effective coverage with comprehensive and quality risk management services.

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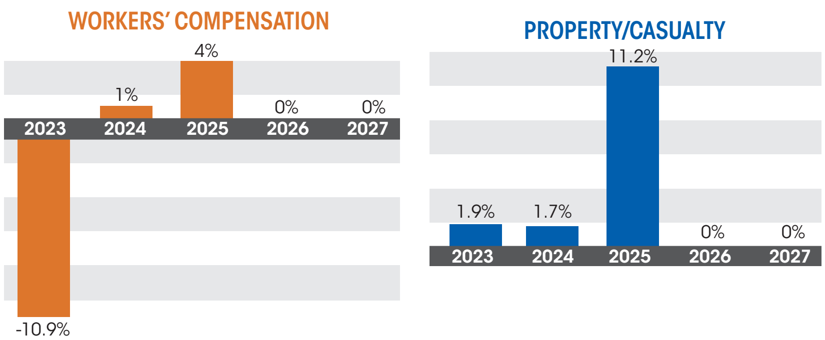
MCIT AGGREGATE RATE CHANGES (2023-2027)



Aggregate Rate Levels Remain Flat for 2027

As work continues on establishing the cost of coverage for 2027, MCIT's actuary delivered the annual rate analysis to the MCIT Board of Directors July 10. The setting of contribution rates is one of the most important decisions the MCIT Board makes that influences the bottom line of a member's annual budget.

Scott Anderson of MCIT's long-term partner, Actuarial Advisors, presented his report with the backdrop of claim stabilization and expected stabilization of reinsurance rates for 2027 in both the property/casualty and workers' compensation divisions. In the end, the MCIT Board of Directors approved Anderson's recommendation to again hold the aggregate rates flat for both divisions for 2027.

This is the second year in a row that the analysis indicated keeping aggregate rates at the current level for both property/casualty and workers' compensation coverages. Generally, this means that actual claims developed as projected and that claims are expected to continue to be similar.

Rates for Individual Lines, Classification Codes Change

Aggregate rates reflect the net effect of rate changes (up and down) to the individual lines of coverage included in the property/casualty program (i.e., auto, general liability, property, public employees liability, etc.) and each individual payroll classification in the workers' compensation program.

For the seven property/casualty lines of coverage, two lines have rate reductions, three rates are increasing and two rates remain unchanged for 2027 compared to 2026.

For workers' compensation, members categorize payroll by position into approximately 30 different classifications that align with each employee's job duties and the corresponding risk exposures. Each code has its own rate that can fluctuate from year to year, depending on the amount of payroll assigned to it and the volume of claims arising from it. Over half of these classifications saw either no change or a reduction in rate for 2027 which is much in line compared to 2026.

Anderson noted that by holding aggregate rate levels flat, MCIT is collecting the same amount of contribution as in 2026 but changes to individual lines of coverage and classification codes better reflect from where claims come.

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HOW CONTRIBUTION IS CALCULATED

The recorded webinar "How MCIT Determines a Member's Contribution" covers:

- The factors that the MCIT Board of Directors reviews when setting rates
- How those factors can affect rate calculations
- Reasons different lines of coverage have varying rates
- How standard rates are applied to a member's specific risk factors

Watch on demand at *MCIT.org/resources*.

COMING EVENTS

Aug. 14
MCIT BUILDING, ST. PAUL
9 A.M.: Board of Directors meeting
1 P.M.: Claims Committee meeting

Aug. 19
ST. CLOUD AREA
9:30 A.M.: Essentials of Data Practices for Responsible Authorities Seminar

Sept. 10
MCIT BUILDING, ST. PAUL
TBD: Board of Directors work session

Sept. 11
MCIT BUILDING, ST. PAUL
TBD: Board of Directors work session continued
TBD: Board of Directors meeting
1 P.M.: Claims Committee meeting

Aggregate Rate Levels Remain Flat for 2027 ... continued from page 1

Member's 2027 Contribution May Differ from 2026

The rate adjustments for each line of coverage combined with an individual member's specific exposures will likely result in a different 2027 contribution, either higher or lower, from what the entity paid for 2026 coverage.

For example, the cost of property coverage is based largely on the total value of a member's covered property. If a member sees little change in those values from 2026 to 2027 (say, just the 3.9 percent increase for inflation), the cost for property coverage in 2027 could be in line with or lower than the current year, as the contribution rate for buildings is actually lower in 2027 than in 2026.

However, if a member added significantly to the value of its covered property in 2026, perhaps with the addition of new buildings or renovations, the entity could see an increase in contribution even with a lower rate applied.

On the workers' compensation side, a member's 2027 contribution may be different from 2026 if it increased or decreased its payroll and depending on in which job classifications those adjustments occur.

Also, workers' compensation contribution can be affected, sometimes significantly, by a change in the member's unique experience modification factor. This factor reflects the member's own claim activity, specifically, whether the member's loss experience aligns with what is actuarially expected.

2027 Estimated Contribution/ Membership Renewal Notices Mailed Mid-August

With rate decisions made, MCIT staff is working to calculate and validate each member's estimated contribution for next year. Notices will be issued to members by mid-August pursuant to the MCIT Bylaws.

Direct questions regarding 2027 contributions to MCIT underwriting at **866.547.6516** or *underwriting@mcit.org*.

Managing and Preventing Burnout

Provided by AllOne Health

Burnout is prevalent in the modern workplace, leaving employees exhausted, unmotivated and struggling to cope. The good news is that people can successfully prevent and manage burnout. To begin, it helps to take a closer look at this condition and its causes.

What Is Burnout?

Burnout is more than just feeling tired or stressed. It is a prolonged response to chronic workplace stress and is characterized by:

- Emotional and physical exhaustion
- Feeling detached from work and others
- Feeling ineffective, like nothing one does can make a difference

Recognizing the Signs

Burnout can feel similar to depression and can make even the simplest tasks overwhelming. Left unaddressed, it can have serious consequences on a person's health, well-being, job performance, relationships and more.

- Physical symptoms include chronic fatigue, sleep disturbances, headaches, low immunity
- Emotional symptoms can be anxiety, depression, irritability, lack of motivation
- Behavioral symptoms include withdrawal from responsibilities, isolation, using unhealthy coping mechanisms

Recognizing the Causes

Although workplace challenges are a major factor in causing burnout, lifestyle and personality traits also play a role.

1. Work-related challenges that contribute to burnout include:

- Unrealistic deadlines and overwhelming schedules
- Lack of clear job expectations or proper supervision
- Feeling undervalued or unrecognized for one's contributions
- Difficulty unplugging from work, especially in remote roles

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Open Meeting Law FAQs: What Is a Meeting?

A meeting for purposes of the Minnesota Open Meeting Law (OML) can include situations members may not consider or intend to be meetings.

Two elements must be present for a gathering to be a meeting subject to the OML:

1. At least a quorum of board members is present
2. The board members discuss, decide or receive information related to the board's official business.[1]

The following are questions MCIT has received from members regarding situations that may be considered meetings.

Is It an OML Violation for the Board to Have Lunch Together After a Meeting?

The OML does not apply to purely social gatherings of the board. However, there are potential OML issues anytime a quorum of the board gets together.

If a quorum or more of the board gathers for a meal, the members must use care to ensure that they do not discuss or receive information about official business. If the group discusses official business, even if it is unplanned, the meeting is no longer a social gathering and may violate the OML.

Announcing during a regularly scheduled meeting that the board will be eating together after the meeting will not necessarily protect the board from violating the OML.

Further, board members should be aware that gathering together may give the appearance to the public that the board is meeting without complying with the law even when official business is not discussed.

Does the Board Have to Inform and Allow the Public to Attend Board Work Sessions?

The OML applies to all gatherings that meet the definition of a "meeting," even when the gathering is not intended to be an official board meeting or the board does not intend to take any action.

The OML cannot be circumvented by calling the meeting a "work session," "retreat" or "executive session."

Anytime a quorum or more of the public body is present, and those members receive information or discuss matters that are before the public body or that may come before the public body, the meeting must comply with the OML. The meeting must be:

- Properly noticed and
- Open to the public, unless an exception applies

Does the Practice of Allowing Time for Public Comment Before Calling the Meeting to Order Violate the OML?

The OML generally gives the public the right to attend meetings, but it does not give the public the right to speak at an open meeting.

If the board allows public comment, it can set rules for the commenters. This can include allowing comment only at the beginning or end of the meeting, limiting the amount of time per speaker or the total time for public comment. As a best practice, the rules should be in writing, available to the public, and enforced consistently.

If a public comment period is offered, it optimally should be included in the meeting. Assuming a quorum of the board is present during the comment period and the members of the public are speaking about issues related to the board's official business, the OML would apply to this comment period.

If the public comment period takes place outside of the regularly scheduled or properly noticed meeting, it could be a violation of the OML. Accordingly, as a best practice, the public comment period should be included in the official meeting and all OML requirements should be met.

Is the Board Required to Broadcast the Public Comment Portion of Its Meetings?

The OML does not require a public body to broadcast or record its meetings that are open to the public. The decision to

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3 Ways to Build Cyber-resilience

MCIT's enhanced cyber coverage (see July 2026 Bulletin) is not a defense. Rather, it helps members manage the financial consequences after an attack or data breach. The real defense is an entity building cyber-resilience to protect the organization from risk in an evolving threat landscape.

Members should take steps to reduce the likelihood and impact of a successful attack. This means implementing layered controls, educating employees and having sound policies.

1. Protect

Many security programs and tools are available, which are often required by other coverage providers. Although MCIT does not currently have any technical requirements, it is in the best interest of individual members and the pool as a whole for members to implement these basic security measures.

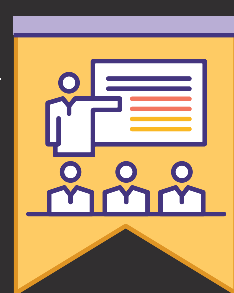
- **Endpoint detection and response (ERD)** acts like a 24/7 security guard that aims to detect, contain and respond to perceived threats. Protecting machines and servers from suspicious behavior is a basic level of defense.
- **Multifactor authentication (MFA)** requires users to verify their identity using two or more forms of authentication before they gain access to an account or system. This is accomplished by sending a code to a separate device than a computer, such as a mobile phone or security fob. This is critical to combat unauthorized persons accessing data. For MFA to be most effective, employees should be prompted for a code at least once a workday (every eight hours) when logging into systems. Spacing MFA verification over longer periods essentially makes the system as vulnerable as if MFA were not enabled.
- **Email security** to prevent phishing scams, malicious links and spoofed or imposter emails from reaching employees' inboxes. Programs that filter out known attacks and identify suspicious attempts are critical.
- **Backup and recovery systems** help mitigate the impact and ability for threat actors to hold critical data hostage. If the stolen data can swiftly and easily be recreated or restored, the monetary value of the data to the threat actors is significantly reduced.

Remember, too, that email is for the temporary sending and receiving of messages. Any information contained in those messages that needs to be maintained should be moved to a secure, permanent storage location, such as the local network server. This is especially important for sensitive or protected information that an employee needs to keep.

Email is not a secure storage location. For more details about email and data security, see these resources at *MCIT.org/resources*:

- "Manage Data, Email, Records to Manage Cyber Risk"
- "Are Your Electronic Communications Secure? Encryption Is a Simple Solution"
- "Manage Data to Manage Cyber Risk"

2. Train



Making cybersecurity part of regular employee training is vital. Because email phishing remains one of the most common ways attackers gain access to an organization and its sensitive data, training employees can significantly reduce risk.

Perhaps the single most important security tool is the human firewall, meaning employees actively help protect an organization. These folks are able to recognize and avoid threats and notify or report suspicious activity when they see it.

But employees must be taught and reminded about how to identify threats. No one instinctively knows how to do this. Members need to give their employees the tools and training to be an effective human firewall.

MCIT offers a number of resources to assist members in training their employees. Check them out at *MCIT.org/resources* (choose the "cybersecurity and data security" Topic filter).

3. Plan

A member's incident response plan is key to navigating an actual cyberincident effectively. Members should assess their vulnerabilities, develop a response plan, and test and update it regularly.

Developing and regularly testing an incident response plan helps ensure that employees know their roles and to act quickly and correctly if and when an incident occurs.

The main goal is to understand the key aspects and needs of the entity's business continuity. Making these decisions before an incident is critical. Having established plans before they are needed makes responding to an event much easier.

Members should work within their organizations to determine which departments and systems need to be brought back online first and which departments can be offline the longest. Other decisions, such as how payroll and citizen communications, should be handled during an outage should be factored as well.

Lastly, members need to practice their plans after they have been established. Based on the tests, members should modify the plan as issues are found and operations change. Just as the threat actors and threat landscape evolve, a member's defenses and responses must as well.

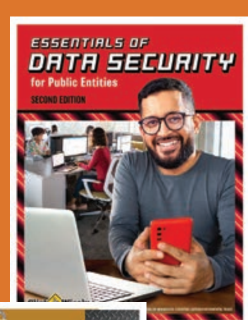
Risk Management Consultant Assists Members

MCIT's risk management consultant who focuses on data- and cybersecurity can assist members with their questions around these three fundamentals of cyber-resilience, and other concerns. Contact Richard Miehe at **866.547.6516** or *rmiehe@mcit.org*.

CHECK OUT CYBERSECURITY RESOURCES AT *MCIT.ORG*

See *MCIT.org/resources* (select "cybersecurity and data security" Topic filter) for articles and tools to assist in building cyber-resilience, such as:

- "Essentials of Data Security for Public Entities" guide
- Articles addressing specific cybersecurity risk management issues (e.g., developing a response plan, hosting others' data, AI use policy, contracting for IT services)
- Employee awareness items, including digital images for use in emails, intranet, handouts; and Quick Take on Data Security short training scripts and handouts
- Cybersecurity Self-assessment



How to Apply for Additional Cyber Coverage Limits

MCIT's new reinsurance partner for cyber coverage, Great American, allows county members to purchase an additional $1 million in coverage limits.

The process for county members to purchase the additional coverage limit is fairly simple:

1. Request the application from MCIT underwriting at *underwriting@mcit.org* or **866.547.6516**.
2. Complete the application and return it to MCIT.
3. MCIT submits the application to Great American.
4. Great American evaluates the information submitted by the member and determines if it will extend the additional coverage limit. If so, then Great American calculates the premium cost for each member based on its specific exposures.

The additional coverage limit criteria, evaluation and pricing are determined by Great American.

MCIT has no role in this process other than to be the conduit between the member and Great American for the application.

More information about the cyber coverage enhancements that took effect June 1 is provided in the announcement at *MCIT.org/news* and the recorded webinar "Cyber Coverage Enhancements" at *MCIT.org/resources*.

Tips for Responding to First Amendment Audits

"First Amendment audit" generally refers to a situation where a member of the public films public employees or elected officials in public places to "test" the right to film and the government's response.

Some auditors refer to themselves as citizen journalists or social media activists. The auditor may portray the audit as education or to promote transparency and accountability. The videos are often posted to social media and used to make money. The auditor may try to provoke a confrontation to make the video more interesting and generate more views.

It may be uncomfortable for those being filmed without their permission, but the public generally has a right to record public employees and officials carrying out their official duties in public places.

However, the right to film is not without limitation and may be restricted in some spaces. For example, filming can generally be prohibited in bathrooms, employee offices and areas where the public is not permitted.

Best Practices for Best Outcome

Public employees and officials should use care during encounters with First Amendment auditors because it can result in legal liability or have other negative consequences, such as reputational damage for individuals or the entity. Individuals can take a number of steps to be prepared for and respond to audits.

Before an Audit

Conduct a walkthrough of the building or work area and consider which locations are accessible to the public and what the public can view from an accessible area. This includes areas the public can view through windows, either within the interior of the building or on the exterior of the building.

Make sure that not public data is not visible from public areas. Determine whether any changes should be made, including installing curtains or privacy film on windows, locating computers or desks so information on screens or desktops cannot be viewed from a public area, and posting signs marking nonpublic areas (e.g., "employees only").

Educate employees and elected officials about First Amendment audits so they know what to expect and how to react when an audit occurs. Also train employees about entity policies related to public access, filming and other First Amendment rights, and harassment or workplace violence prevention.

Consult legal counsel with any questions about the public's First Amendment rights and the entity's responsibilities. Members may also want legal counsel to review any policies that restrict filming or other First Amendment rights.

During an Audit

Keep calm, remain professional, and carry on with business as usual. Auditors may ask many questions, so answer the questions to the extent they would be answered for other members of the public. Treat the auditor like anyone else.

Do not argue with the auditor, overreact or escalate the situation. Keep the encounter uneventful and uninteresting. A video of a public employee responding calmly and professionally is not likely to generate many views on social media.

Let the auditor film, so long as the auditor is not attempting to access a restricted area, or disrupting the workplace or the use of the property. Merely filming in an unrestricted area open to the public is not breaking the law or disrupting the workplace.

Do not request or attempt to confiscate the auditor's recording equipment.

Do not record or take pictures of the auditor with a personal device. It could lead to a data practices request for the information on the personal device.

After an Audit

Debrief: Discuss what went well and what could have been done differently.

Monitor for any negative consequences: Was the video posted to social media? Has there been any publicity as a result of the audit?

NO-COST TRAINING FOR EMPLOYEES

MCIT offers the on-site training session "Understanding and Responding to First Amendment Audits" for member employees as part of membership. The session is appropriate for all staff, including elected leaders, executive staff, department heads or supervisors and line staff; and takes about an hour.

Members can learn more about MCIT speaker services, topics offered and how to request training at *MCIT.org* on the Speaker Services page under the Services & Programs tab.

Work Wisely

Complacency Breeds a False Sense of Safety

A false sense of security can be formed from repeated successes after behaving unsafely. This can blind employees to potential hazards and become complacent to their actions (they have no concern that their behavior is unsafe). Complacency can also result from poor training or lack of proper understanding.

In short, complacency is a safety villain. But employers can create a culture of safety that combats this behavior.

How Does Complacency Show up?

Complacency can be exhibited in many forms, such as failing to wear required personal protective equipment, ignoring or glossing over pre-start inspections, using a chair in place of a step stool or other seemingly minor choices that may not result in any immediate problems. However, given enough time, these decisions can put the employee or others at risk.

Recognize Complacency

Complacency is a state of mind and can be difficult to identify. The following are signs that an employee may be starting down the road to complacency:

- Poor housekeeping, which may include hoses or cords left out on the ground. Leaving items on stairs, in front of exits, in walkways, or in front of fire extinguishers or emergency shutoff switches.
- Inconsistent use of personal protective equipment, which can range from wearing items improperly, infrequently or not at all. It could include failing to keep PPE clean or storing it haphazardly.
- Skipping or rushing checklist items without adequately checking on the items.
- Increase of close-calls or failing to report safety hazards.
- Skipping steps during work tasks.

Preventing Complacency

Everyone is responsible for workplace safety, for themselves, co-workers and visitors. The following steps can help supervisors and employees from becoming complacent to safety.

- Learn to recognize and be aware of the symptoms of complacency.
- Focus on the task at hand and stay in the moment, particularly for repetitive or familiar tasks.
- Be on the lookout for bad habits and try to reverse them early.
- Sometimes people act in an unsafe manner because they do not know how to do something safely. Create an environment where they are taught how to complete a task safely, are encouraged to ask how to do their jobs safely and are expected to execute their work safely every time.
- Report near misses to a supervisor or manager so it can be investigated and addressed.
- Remember that it is the responsibility of all employees to follow all safety rules every time. Failure to do so may result in disciplinary measures.

BUILD A POSITIVE CULTURE OF SAFETY

The MCIT-created Work Wisely program encourages safety behaviors that apply to all types of work and highlights specific hazards and their solutions. It empowers each employee to become a safety advocate, boosts a safety mindset for all employees and improves safety behaviors.

The ready-to-use Get Wise to Safety Villains campaign is provided to members at no cost and helps grow positive safety behaviors.

Download campaign items at *MCIT.org/resources* (use keyword filter "Safety Villains"). Materials include:

- Posters
- Digital images
- Table tents
- Short video
- Quick Takes on Safety refresher scripts and handouts
- Multiuse label

The MCIT loss control consultants are happy to work with members to establish and foster a culture of safety. Connect with them at **866.547.6516.**

Managing Risks of Volunteers

Many public entities rely on the generosity of volunteers to help provide services to constituents. Although the volunteer may be working side-by-side with staff—on the premises or independently with the entity's knowledge—the relationship is different from the typical one of employer and employee.

This difference can lead to questions regarding MCIT members' risk exposures and coverage related to volunteers.

4 Important Elements for Volunteer Management

When entities use volunteers, they should keep in mind four key points to help reduce risks.

1. Policy

An organization should have policies and procedures related to volunteers. They should include who authorizes volunteers, for what volunteers are needed and how the entity will utilize the volunteers.

Although volunteer needs vary, departments engaging volunteers should have the opportunity to provide input in policy development. Once policies and procedures are set, all employees and officials need to follow them.

2. Registration

This is a key element when securing volunteers for any situation, as it confirms that the entity and volunteer have been in contact. Registration can vary from a sign-in sheet to applications and interviews. Registration also is a prompt for MCIT's coverage if there is a claim involving a volunteer.

The type of registration varies by the type of volunteer. Obviously in an emergency situation, gathering volunteers needs to be completed on short notice. Registration may be as simple as reporting to a county location to sign in with one's name. Additional information such as address, phone number and emergency contact should be kept separate as private data.

A medical-services or law enforcement volunteer should go through a more detailed registration, such as completing an application, an interview and a background check. Their duties could involve exposures that bring more risk to an organization.

The important key is that the entity knows who its volunteers are.

3. Direction

Volunteers are expected to be acting on behalf of, subject to the direction of and under the control of the entity. Volunteer duties need to be assigned by the entity. Entities must plan what types of volunteers are necessary for various jobs. The volunteer needs to be placed in a position that is a good fit for him or her.

Direction of volunteers helps keep an entity in control of volunteers' activities. At the time of registration, an entity representative must evaluate the volunteer. For example, the volunteer needs to be in the proper condition to perform certain tasks or may need to wear proper clothing or footwear.

Once volunteers complete duties for an entity, there may be opportunities to debrief and discuss their experiences. Valuable information can be gathered for future volunteer engagements.

4. Training

The type of volunteer work may dictate the type of training a volunteer may need. Most emergency management activities, such as sandbagging and general storm clean up, require volunteers who are in reasonably good shape to handle the heavier work. In these situations, the training may be as basic as good lifting practices.

A sheriff's posse member on the other hand, needs more specialized training, such as riding a horse, and search and rescue skills. This differs from a dive team that needs specific water training. A reminder is that all law enforcement training for specialized volunteer groups must be at the direction of the sheriff or chief law enforcement officer.

Members may want to invite volunteers to orientation and training, such as safety meetings, defensive driving courses, and first aid/CPR sessions.

Volunteer Coverage

Liability

MCIT includes volunteers in the definition of "covered party" for liability coverage. Therefore, MCIT responds to liability claims on behalf of the member and its authorized volunteers.

This coverage applies only to claims occurring from acts within the scope of the volunteer's duties on behalf of the member.

Auto

A fundamental rule of auto liability coverage is that insurance follows the vehicle. MCIT responds to claims caused by volunteers driving member-scheduled vehicles with the express permission of the member for work purposes. Both liability coverage and physical damage coverage apply to a scheduled vehicle if involved in an incident when a volunteer is driving.

The volunteer's personal auto insurance must respond to claims that occur while he or she is driving his or her own vehicle even when it is to perform work for the member. For claims that exceed the volunteer's own liability limits, the member's hired and nonowned auto liability coverage provides protection consistent with limits as provided in Minnesota Statutes, Chapter 466.

MCIT provides no physical damage coverage for a volunteer's vehicle or deductible.

Workers' Compensation

Under the Minnesota Workers' Compensation Act, Minnesota Statutes, Chapter 176, a volunteer is an individual who receives no remuneration or compensation in exchange for services rendered. This compensation does not need to be monetary and must be specifically for services rendered as a benefit.

For example, providing a meal to volunteers cleaning up a park may not make them employees, but giving them a gift card at the end of the cleanup may make them employees eligible for workers' compensation benefits.

The Workers' Compensation Act extends coverage to certain volunteers for public entities. These volunteers include certain law enforcement, public safety, first responders and health volunteers. See "Workers' Compensation Coverage for Volunteers" at *MCIT.org* for more details.

Personal injuries that occur while volunteering may be eligible for coverage under the member's medical payments coverage or liability coverage, depending on the situation and the cause of the injury.

Property

Personal property belonging to a volunteer may be eligible for MCIT property coverage, depending on the property in question. Contents coverage is available for property used for the benefit of the member up to a maximum of $5,000 per loss occurrence when the property is not scheduled.

For example, coverage could extend to loss or damage to a volunteer's laptop computer if the member has approved its use as necessary to the volunteer's duties with a work-related purpose. Any resulting claim would be valued on a cost replacement basis, subject to the member's property deductible. Higher-value volunteer items can be added to the member's property schedule.

Coverage may also be available under MCIT's electronic data processing coverage if the volunteer's electronic personal property is used at locations other than a member's scheduled buildings. Members should discuss coverage options with their risk management consultant.

Loss Prevention and Risk Management Recommendations

Understanding how coverage applies when a claim occurs is only part of operating a successful volunteer program. It is also important to take steps to mitigate losses or prevent them from occurring. Consider the following risk management advice:

- Evaluate volunteer needs, how they will be utilized and who is in charge of them
- Evaluate the risks surrounding the use of volunteers, ensuring that both the community and volunteers are safe
- Maintain a file for each volunteer that includes essential information, including name, address, telephone numbers, emergency contacts, etc.
- Develop driver qualifications and requirements and apply them consistently
- Advise volunteers that they are responsible for physical damage and liability losses resulting from the use of their personal vehicles
- Check all vehicles for safety
- Consider a waiver for each volunteer activity outlining the risks and requesting that volunteers acknowledge those risks and agree to be responsible for their own injuries and damages that occur while volunteering
- Offer personal protective equipment to volunteers as is provided to employees, if appropriate
- Maintain clear descriptions for volunteer positions, including responsibilities and expectations
- Limit a volunteer's exposure to money and tangible property
- Promptly report any incident or claim involving a volunteer to MCIT

If members have questions concerning volunteers, they are encouraged to contact their MCIT risk management consultant toll-free at **866.547.6516**.

See the online post of this resource for frequently asked questions and additional volunteer management recommendations.

How to Make Legally Defensible Budget Decisions

Public entities throughout the state of Minnesota may soon be facing operational and budget uncertainties due to economic pressures, federal funding changes and shifting mandates. Budget cuts, reductions in income, and the limited ability and desire to increase taxes are expected to place a great deal of pressure on counties while the demand for certain services increase.

As a result, local governments may be faced with difficult decisions regarding what services to provide to constituents. When the decision is made to eliminate or reduce services in response to financial difficulties, public entities may encounter resistance from employees and citizens who are not happy with the changes.

The decision making process used by the local government to address changes in services and the documentation of the process significantly affects the ability to defend claims that arise from the board's decisions.

The state and federal governments have mandated that public entities perform certain duties and provide certain services. In addition, both the state and federal courts have imposed levels of performance upon local governments. There are also a number of cuts/reductions that the entity has the discretion to apply.

Follow Process When Making Budgetary Decisions

Regardless of whether services are mandated or discretionary, when making a decision to alter them, public entities should follow specific processes.

The first step in being able to defend a budget decision is to identify mandated services and the minimum level of performance that is required to comply with the mandate. In some instances, local governments may have discretion as to providing a service. When the entity engages in the provision of a discretionary service, it must ensure that mandatory minimum levels of that service are maintained.

Examples:

- There is no mandate that a county sponsor volunteer programs; however, if the county chooses to offer these services, it must do so in a safe manner, which might include background checks and safety training.
- The county may lay off employees. But union contracts and state or federal statutes may require that certain steps be followed and notices be given.

Protections for Decision Making

Statutes and courts have provided local governments with significant protections for their discretionary decision making. The Separation of Powers doctrine in the U.S. and Minnesota constitutions requires that courts give great deference to the legislative functions of the other branches of government. In Minnesota, statutes provide public entities with immunity for these legislative functions.[1]

Under the doctrine of statutory (a.k.a. discretionary) immunity, municipalities subject to Chapter 466 "are immune from liability for claims 'based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.'"[2] Statutory immunity only protects planning-level conduct, not operational decisions.[3]

Planning-level decisions are those involving questions of public policy. That is the evaluation of factors, such as the financial, political, economic and social effects, of a given plan or policy and requires that the public entity engage in a balancing of these factors in deciding which cuts and changes to make.[5] This is the essence of the legislative function of government.

When litigation involving one of these cuts or changes ensues, the entity can assert statutory immunity early in the litigation, but this requires that the local government prove that statutory immunity exists. "Discretionary immunity protects the government only when it can produce evidence its conduct was of a policymaking nature involving social, political or economic considerations."[6]

When the public entity has the evidence to prove the balancing of policy considerations, it can be immune from liability for the consequences of its conduct. Although this does not prevent the entity from being named in a lawsuit, it does provide a defense. Statutory immunity applies to policy decisions made at the highest level.

Operational decisions made by individual employees or even department heads may not receive the same level of consideration from the courts. Therefore, it is critical that the governing board makes a record of the balancing process it goes through to implement cuts and changes. Decisions involving the determination of public policy and application of the political process to specific cuts or changes invoke the protection of statutory immunity.

Micromanagement of the specific cuts made in each department by the governing board is not necessary. Allowing department heads and other operational professionals the opportunity to recommend and implement specific changes is prudent. However, it is imperative that the governing board adopts program changes by resolution, which is supported by at least a summary of the process and rationale utilized by the board to make its decision.

Example: It is better from a risk management position, for the governing board to determine that it will no longer apply herbicides than to adopt a budget requiring the county engineer to reduce the department budget by 30 percent.

Best Practices

No doubt the economic environment, as well as state and federal budget issues, have an impact on local government. Change may involve a significant alteration in the way public entities do business. Some of these decisions may be controversial, and some may generate litigation. To better defend itself if litigation arises as a result of tough budget decisions, the entity should:

- Identify all mandated programs and services that the local government must provide.
- Identify mandatory levels of service for discretionary programs that the public entity will retain.
- Follow all special procedures and provide all notices necessary to accomplish the changes adopted by the governing board.
- Make the decisions concerning program and service changes at the governing board level.
- Establish a detailed record of the factors examined by the governing board in determining the changes and cuts that are adopted.

MCIT coverage would typically respond to third-party claims arising from the public entity's decision making process unless determined by the courts to be willful or in violation of Minnesota statutes, or other actions specifically excluded by the MCIT Coverage Document.

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[1] Minn. Stat. § 466.03

[2] *Conlin v. City of St. Paul*, 605 N.W.2d 396, 400 (Minn. 2000)(quoting Minn. Stat. § 466.03)

[3] *Conlin*, at 400 (quoting *Holmquist v. State*, 425 N.W.2d 230, 232 (Minn. 1988))

[4] *Conlin*, at 400 (quoting *Holmquist*, at 232)

[5] *Conlin*, at 400

[6] *Conlin*, at 402 (quoting *Steinke v. City of Andover*, 525 N.W.2d 173, 175 (Minn. 1994)

Managing and Preventing Burnout ... continued from page 2

2. Lifestyle challenges that contribute to burnout include:

- Lack of work-life balance, which increases stress and exhaustion
- Poor sleep habits, which make it more difficult to cope with daily challenges
- Unhealthy diet and inadequate exercise affect energy levels, mental health and stress resilience
- Minimal social support can intensify feelings of isolation and stress
- Overcommitment can leave a person feeling drained and overwhelmed

3. Personality traits that can contribute to burnout include:

- Perfectionism and feeling like nothing is ever good enough
- People-pleasing tendencies and trying to meet everyone else's needs at the expense of one's own
- High-achieving or Type A personality, which interferes with getting appropriate rest
- An inability to delegate
- Fear of failure or constant worry makes it difficult to unwind

When to Reach Out for Help

For those who every day feels like a bad day and they no longer find joy in work or personal activities, it may be time to take action. Burnout has a way of escalating and interfering with a person's health, relationships and ability to function in everyday life.

The Employee Assistance Program can help individuals take proactive steps and regain their balance and well-being. Services are no cost, confidential and available to staff and their family members. Employees can connect with the EAP at **800.550.6248** or *MCIT.AllOneHealth.com*.

Open Meeting Law FAQs: What Is a Meeting? ... continued from page 3

broadcast or record an open meeting is a policy decision to be made by the public entity's governing board.

Also, nothing in the OML requires that the public body broadcast its entire meeting. However, if parts of the meeting are not broadcast without explanation or set procedures, it may give the appearance to the public that something is being hidden. MCIT recommends that members consult with legal counsel if deciding to broadcast only certain parts of public meetings.

Seek Advice

Members are encouraged to contact legal counsel with questions about when the OML may apply.

[1] See *Moberg v. Ind. Sch. Dist. No. 281*, 336 N.W.2d 510, 518 (Minn. 1983).

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