

PARTICIPATOR

April 2013

NDIRF ANNOUNCES \$2.1 MILLION CONFERMENT OF BENEFITS

The conferment of benefits earned by NDIRF members in 2012, to be paid out on April 1, 2013, is over \$2.1 million. This brings the total of conferment payments across the nineteen year span of the program to over \$58 million. A remarkable achievement for the Fund and its membership! ■

DISTRACTED DRIVING LEADING TO BIG HEADACHES FOR EMPLOYERS

The use of cell phones has quickly become the country's number one driving distraction. Sure, there are still people out there eating, applying makeup, or reading maps while driving, but almost everyone on the road has operated a cell phone or other mobile device in some way while driving. Driving while using a cell phone is not only dangerous but also deadly, as reports of accidents related to distracted driving continue to soar. It can also be expensive: Attorneys are winning big judgments against employers whose employees have been involved in distracted-driving accidents while on the clock.

Numbers on Distracted Driving

According to the National Safety Council report "Employer Liability and the Case for Comprehensive Cell Phone Policies":

- Motor vehicle crashes are the number one cause of work-related deaths and account for 24 percent of all fatal occupational injuries.
- On-the-job crashes are costly, with employers incurring more than \$24,500 per property damage crash and \$150,000 per injury crash.
- At least 24 percent of crashes in 2012 involved drivers using cell phones.
- The risk of a crash is four times as likely when a person is using a cell phone – handheld or hands-free.
- Studies have shown that hands-free devices offer no safety benefit because they don't eliminate the cognitive distraction of conversation.

While the potential for injury or loss of life is the most important issue associated with distracted driving, you shouldn't discount the financial burden of being held liable for employees involved in such crashes.

Federal, State Prohibitions on Distracted Driving

In 2011, U.S. Department of Transportation (DOT) Secretary Ray LaHood pushed through federal rules that specifically prohibit interstate truck and bus drivers from using handheld cell phones while operating their vehicles. In 2012, the Federal Motor Carrier Safety Administration and the Pipeline and Hazardous Materials Safety Administration issued a joint rule prohibiting commercial drivers from using a handheld mobile phone while operating a commercial truck or bus. Recently, LaHood called for a federal law banning the use of cell phones while driving for all drivers of all motor vehicles, calling the use of cell phones while driving a "national epidemic".

continued on Page 2

continued from Page 1

Currently, 10 states, Washington, D.C., Guam and the Virgin Islands prohibit all drivers from using handheld cell phones while driving. No state bans all cell phone use – handheld and hands-free – for all drivers, but many prohibit all cell phone use by certain drivers, such as bus drivers and those under the age of 18.

Distracted Driving Policies a Must

All employers – not just those whose employees drive as part of their jobs – should not only have clear cell phone usage policies in place but also take steps to train and educate employees on the policies and on the known dangers of cell phone use while driving. The best policies should extend beyond the requirements of state and local laws, and you should be diligent in enforcing them. Here are some points to consider:

- A distracted-driving policy should clearly state that it's against company rules to text, e-mail, or use a handheld phone or communication device while operating a company vehicle, driving a personal vehicle for business use, or using a company-issued communication device while driving.
- Consider prohibiting the use of hands-free devices except in emergency situations.
- When essential calls must be made, instruct employees to pull off the road to a safe place.
- Require employees to acknowledge, in writing, that they have read and will comply with the policy.

Bottom Line

With the physical and fiscal dangers of distracted driving running so high, you need to address it in your employee handbook, train employees on the policy and safety issues, and enforce the policy consistently. Generally, refraining from using a cell phone, laptop, tablet, or other mobile device while operating a motor vehicle must become part of everyday workplace culture. *Reprinted courtesy of the North Dakota Employment Law Letter. For subscription information, call 800-274-6774 or click to www.HRhero.com.* ■

RISK SERVICES

THE DEADLINE IS HERE! - AQUATICS AND THE ADA

The original Americans with Disabilities Act (ADA) was passed in 1990. However, the feds didn't specifically address how the Act pertained to public pools and spas until 2010 in their ADA 2010 Revised Requirements: Accessible Pools-Accessible Means of Entry and Exit. In a nutshell, the 2010 language said that if you had less than 300 lineal feet of perimeter, you needed at least one entry method that was accommodating to the disabled. Facilities having in excess of 300 feet needed two methods.

The Department of Justice (DOJ) is the agency charged with the enforcement of the law. DOJ gave facilities a two-year grace or transition period to comply with the new deadline being March 15, 2012. Many entities purchased and were utilizing portable lifts to satisfy the ADA requirements of entry into the water. Then the DOJ, just two months before the deadline, said ALL lifts must be anchored permanently to the deck. Pushback ensued from the private industry; namely the lodging and hotel business. Hence, the DOJ granted two extensions to the deadline with the last extension deadline being January 31, 2013. Many questions are being asked about the regulations and there are some key points according to the DOJ website.

Key Point #1

There is no need to provide access to existing pools if doing so is not "readily achievable." Providing access is not readily achievable if it would involve significant difficulty or expense. "Significant difficulty or expense" - this wording requires some further clarification. The goal of the ADA requirements is to provide access to disabled individuals without imposing unduly burdensome or expensive requirements on the provider. This will be determined on a case-by-case basis and is a flexible stipulation. The analysis to be used for determining "readily achievable," will be based upon several factors that include:

- The nature and cost of the needed action.
- All the financial, staff and other resources available to the entity.

continued on Page 3

RISK SERVICES

continued from Page 2

- Impact on the operation of the site.
- Legitimate safety requirements necessary for safe operation.

Key Point #2

The Department of Justice will not pursue enforcement of the fixed lift requirements against those who had already purchased compliant lifts before March 15, 2012 so long as they are kept in position for use at the pool and operational during the times the pool is open to guests/patrons.

Key Point #3

If you currently do not have accessibility and it is not readily achievable, you likely will not be required to close your pool.

Key Point #4

Newly constructed or altered swimming pools, wading pools or spas must comply fully with the ADA requirements.

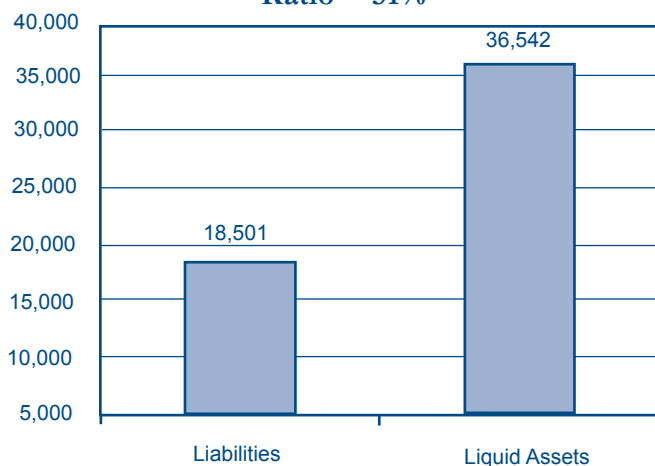
Due diligence, some homework, and thorough documentation will be required on your part for most of the key points. How are you going to prove that it was too expensive and/or burdensome without doing some comparison shopping? You will need to document all of your findings and keep them on file. Be sure to address each of the bullet points listed. If not fully in compliance, you will need to have a plan on providing accessibility in the future when it does become readily achievable.

More information on this subject can be found at the Department of Justice website at: http://www.ada.gov/qa_existingpools_titleIII.htm

If you have questions on this article, please contact Doug.Griffin@NDIRF.com or 701-751-9112. ■

FINANCIAL INSIGHTS

Liabilities to Liquid Assets Ratio (000 omitted) As of December 31, 2012 Ratio = 51%



This ratio is a measure of a company's ability to pay its financial obligations. The ratio is calculated by dividing liabilities (primarily loss reserves) by liquid assets (cash and marketable investments). A ratio less than 105% is desirable. As this graph indicates, NDIRF, with a 51% ratio, is in a very strong position to meet its obligations, with liquid assets nearly twice as large as liabilities. ■

FROM THE CEO

The NDIRF Annual Meeting will be held on May 8, 2013 beginning at 10:30 A.M. at the Ramkota Hotel, Bismarck. By the time you see this column, NDIRF members will have received their information packets, including proxy statements, for the Annual Meeting.

While Fund members can, and do, make their wishes known for election of directors and other business by providing the proxies, I encourage you to attend at least one NDIRF Annual Meeting in person. We would like to meet you and I believe you would find the information presented to be of value – to put into perspective exactly what your participation in the Fund means.

Please take a moment to review the meeting materials and I hope you will consider joining us. There'll be coffee, door prizes and you are invited to a nice Ramkota luncheon (including popover!) afterward. If you can attend, just let us know (RSVP included in the meeting information packet – or, simply contact us) and we'll reserve a seat at the table – hope to see you there. ■



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at Four Regional HR Seminars for Local Government

Calling all Human Resource officials and other local government employees who handle HR duties! The Human Resource Collaborative for

Local Government will be hosting four one-day HR seminars in various locations around the state – May 8th, 9th, 15th and 16th.

The focus of these sessions will be Wage & Hour Requirements and Sexual Harassment. ND Labor Commissioner Tony Weiler will be presenting the Wage & Hour Seminar in the morning and the afternoon session will be co-hosted by Representative Kathy Hogan and Chuck Horter.

Representative Hogan worked in county government for a number of years as Social Service Director for Cass County and brings a wealth of knowledge and experience in dealing with harassment issues. Chuck Horter is a retired HR professional with over 30 years of experience in the field. In addition to the training sessions, the networking lunch will be an open discussion on emerging HR issues and training needs for HR staff.

Policy makers, human resource staff, business managers, auditors, supervisors or anyone who has responsibility for managing people are invited to participate. These regional sessions welcome all types of local government: city government, county government, parks and recreation, schools, public health and townships.

The cost of the session is \$30.00 and lunch is included with your registration. Locations and agenda are outlined below. If you handle HR issues in your entity, the Human Resource Collaborative strongly encourages all interested to register for one of these one-day events!

Online registration is available at www.ndaco.org/hrtraining.

Locations: May 8 Valley City – American Inn
 May 9 Grand Forks – Prairie Harvest Room, GF County Courthouse
 May 15 Dickinson – Dickinson City Commission Room, City Hall
 May 16 Minot – North Central Research Center (south on highway 83) ■

Mark Your CALENDAR

April 2013

29: NDLC Regional Meetings,
Mandan

30: Velva

May 2013

1: NDLC Regional Meetings,
Lakota

2: Mapleton

8: NDIRF Annual Meeting
Ramkota Inn, Bismarck

8: NDIRF Board of Directors Meeting
NDIRF offices, Bismarck