

## THE ADA APPLIES TO YOU, DO NOT IGNORE IT

As public entities, you are subject to the Americans With Disabilities Act (“ADA”). The ADA is a complex area of federal law that requires public entities to make reasonable accommodations for individuals with disabilities. If a public entity fails to make reasonable accommodations, it can lead to extensive and costly litigation, including paying their attorneys’ fees. Put simply, the ADA can be a costly trap for the unwary.

The ADA is broad in scope and even the courts struggle with what is a disability and which accommodation requests are reasonable. This is because the ADA requires a fact-intensive analysis of each situation. As a public entity, it is vital to be aware that the ADA requires you to accommodate disabled individuals and ensure they are provided meaningful access to your programs and services.

Every disability is different and not all accommodation requests are created equal. Reasonable accommodations may include moving meetings to handicap accessible rooms, modifying employee work stations and schedules, providing a sign language interpreter or another auxiliary aid for the deaf, modifying an ordinance to allow service animals to accompany a disabled individual where animals are generally prohibited, and everything in between. There are numerous types of disabilities and accommodation requests that courts may consider reasonable.

Also, federal law prohibits you from asking invasive questions about the extent of an individual’s disability. The nature of questions you may ask depends on the situation, but initially, you should consider an individual’s claim of disability to be valid. If something appears suspicious, consult a lawyer with any questions you may have on how to proceed.

If you receive a request for accommodation, do not immediately disregard or reject it. First, try to fulfill the request. If you cannot fulfill the exact request, try to work with the disabled individual to see if an alternative accommodation or modification will allow them access to your service or program. However, if the requested accommodation or modification will result in a substantial expense or fundamentally alter the nature of the program or service you provide, and there is no other way to accommodate, you should contact a lawyer before you deny the request.

Public entities are common defendants in ADA lawsuits across the country. Awareness of the ADA, taking ADA requests seriously, and attorney consultation will best serve your public entity and your constituents. *Provided by Brian D. Schmidt, Attorney at Law and partner at Smith Porsborg Schweigert Armstrong, Moldenhauer & Smith.*

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## PROTECT YOUR AGENCY, MINIMIZE YOUR RISK

NDIRF members are now eligible for a special discount on Lexipol's North Dakota-specific policy and training solutions. **Lexipol**, the most trusted name in policy management and integrated policy training, is offering NDIRF members the opportunity to receive:

- **Policy Manual Offer:** 5% discount on annual subscription to Lexipol's North Dakota Law Enforcement and/or Custody policies and training
- **Implementation Offer:** 20% discount on Lexipol's optional implementation services

Members who subscribe to Lexipol also receive a 5% discount on NDIRF annual law enforcement and custody professional liability contributions.

Co-founded by risk management expert Gordon Graham, Lexipol serves over 3,500 agencies nationwide – including over 40 law enforcement agencies in North Dakota. Lexipol's policy solution provides:

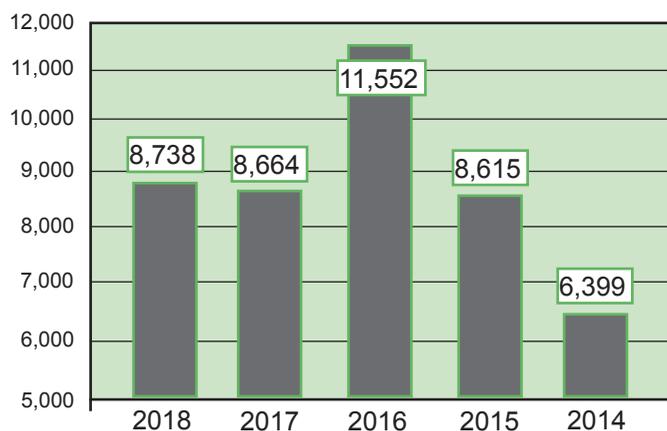


- North Dakota-specific **law enforcement and custody policies**
- **Regular policy updates** in response to changing laws, regulations, and evolving best practices
- Scenario-based **training** that reinforces agency-approved policies
- Editing capabilities to **customize your manual** to reflect your unique policies, mission and philosophy
- **Policy acknowledgement** tracking and archiving
- **Mobile app** – where you can access your policies direct on your smartphone 24/7

Whether your agency is large or small or somewhere in between, you carry the same exposure to lawsuits, payouts and public scrutiny. Now is the time to turn to the experts for the peace of mind in having up-to-date policies and training.

For more information, to request sample policies or to schedule a demo of Lexipol's policy solution, please contact Mike Madden, Lexipol North Dakota representative, at (469)731-0794 or [mmadden@lexipol.com](mailto:mmadden@lexipol.com). ■

### LOSSES INCURRED (In Thousands)



This graph represents losses incurred by the NDIRF over the past 5 years, including payments for losses and payments made to adjusters and attorneys assisting in the claims settlement process. It also includes reserves for outstanding claims and incurred but, not reported reserves.

2016 was a record year for incurred losses. 2018, 2017, and 2015 are in line and are what we expect as the new norm for loss activity. ■

## WHAT TO CONSIDER BEFORE UTILIZING DRONES

The use of unmanned aerial systems or drones in public safety continues to grow at a rapid rate. Several factors are driving drone use, including safety of emergency responders, decreased cost and increased availability, as well as the issuance of long-awaited FAA guidelines governing law enforcement use of drones.

Drone use is also a controversial issue, bringing with it privacy and safety concerns. Law Enforcement agencies must not only ensure their officers are properly trained, but also that they are complying with federal and state guidelines. Having a comprehensive policy and procedure in place to guide drone use is key to ensuring their legal, safe use. Here are a few key areas to consider:

- **Permitted Uses**

There are many benefits to owning and operating a drone in your agency. Documentation of these benefits is vital to your policies and procedures. Why do you have the drone? What is the benefit to your agency to utilize this tool? How will this make your agency better?

- **Prohibited Uses**

For all the benefits drones provide, they are also subject to scrutiny from privacy advocates and state legislatures, creating a growing list of prohibited uses that your agency's policy must address. Know what you are prohibited to do with your drone. Note: There are some prohibited operations that can be permitted through waivers. If you have obtained some of these waivers, have them in your policies and procedures.

- **Importance of Preserving Privacy Rights**

Addressing privacy concerns surrounding drones involves balance of policy and engagement. Your policy should include a strong statement about the importance of preserving privacy rights. Once your policy incorporates a strong privacy protection, you will be in a better place to engage advocacy groups concerned about the use of law enforcement drones.

- **Retention of Data**

With the data your drone can collect, know what you can obtain, what you can keep, how long you can keep it, and who you can share it with and have it in your policy.

- **Responsibilities of the Drone Coordinator**

A best practice is to build the role of drone coordinator into your policy. For many agencies, this will not be a standalone position, but by designating a person or a team to coordinate your agency's drone use helps bring consistency to operations and provides a point of contact for questions or issues.

- **Liability and Physical Damage Coverage**

It is also important to consider the liability ramifications of drone use and what liability coverage you have or would need to add in order to protect your entity. Currently, the NDIRF Liability Memorandum of Coverage and the NDIRF Public Assets Memorandum of Coverage both contain exclusions for aircraft which, in the opinion of the NDIRF staff, would apply to drones. In order for the NDIRF to provide coverage for drones use, the NDIRF will endorse the Liability Memorandum of Coverage and/or the Public Assets Memorandums of Coverage to eliminate the applicable exclusions for the drone or drones specifically listed on the endorsements. The issuance of the endorsements is subject to underwriting approval and an additional contribution will be required. If a member of the NDIRF would like liability and/or physical damage coverage, for the ownership and use of a drone, or if you have any questions concerning these coverages, please contact your local agent or the NDIRF Underwriting team by phone at 800-421-1988 or by email at [underwriting@ndirf.com](mailto:underwriting@ndirf.com).

*Content for this article was provided, in part, by Lexipol, a comprehensive policy management solution. Visit [www.lexipol.com](http://www.lexipol.com) for more information. ■*



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### FROM THE CEO

On behalf of the NDIRF Board of Directors and Staff, I would like to sincerely thank you for your participation in the NDIRF. With membership in the NDIRF comes the eligibility to receive a conferment of benefits, if declared by the NDIRF Board of Directors. While we understand this to be a valued feature of membership in the NDIRF, due to the volume of loss activity over the past few years, the NDIRF surplus growth has not kept pace with the levels required to declare a conferment of benefits to NDIRF members. So, unfortunately, the NDIRF Board of Directors did not declare a conferment of benefits for 2018.

I would like to point out, however, that **the NDIRF maintains very strong financial health**. The conferment of benefits is not reflective of the NDIRF's financial health, overall, but reflective of the NDIRF's annual surplus level in relation to the surplus level requirement to declare a conferment of benefits set by the NDIRF Board of Directors. The NDIRF maintains over \$20 million in surplus which significantly exceeds the level required to meet a 90% confidence level in the opinion of the NDIRF's actuarial consultant.

Our sole focus as NDIRF staff is the service of our members. If there is anything NDIRF staff can assist you with regarding your coverage, service, or other NDIRF-related matters, please do not hesitate to contact our office at 800-421-1988. Again, thank you for your membership in the NDIRF. ■

### Upcoming Events:

May 22, 2019

NDIRF Annual Meeting  
Ramkota Inn, Bismarck

NDIRF Board of Directors Meeting  
NDIRF offices, Bismarck

*Think Spring!*