

MUNICIPAL EXCESS LIABILITY JOINT INSURANCE FUND

9 Campus Drive, Suite 216
Parsippany, NJ 07054
Telephone (201) 881-7632

BULLETIN MEL 18-14

Date: January 1, 2018

To: Fund Commissioners of Member Joint Insurance Funds

From: Underwriting Manager, Conner Strong & Buckelew

Re: Employment Practices Liability (EPL) Risk Management Program

The bulletin does not apply to the members of the NJPHA JIF and the members of the First Responders Joint Insurance Fund. This bulletin follows the memorandum distributed to member entities by the MEL Executive Director.

To date, 90% of MEL members have adopted an employment practices risk control program and are eligible for deductible incentives. These programs must be updated every two years to remain eligible. PLEASE VISIT THE MEL WEBPAGE (NJMEL.ORG) FOR A COPY OF THE MODEL.

PROGRAM INCENTIVES

Members with updated loss control programs receive the standard EPL deductible of \$20,000 per claim plus a 20% co-pay capped at \$50,000 and may be eligible to buy down deductibles and co-insurance caps. (See note below concerning members with poor EPL claims experience).

To qualify for the incentive, you must have had (or must have) your General Counsel or Employment Attorney complete the one page form checking the minimum requirements for updating the plan. It is not necessary to attach any further documentation. Mail the completed form to MEL Fund Office, 9 Campus Drive, Suite 216, Parsippany, NJ 07054.

Members that did not qualify for the incentive must adopt the EPL loss control plan and submit to the MEL for review. Have your General Counsel or Employment Attorney complete the two-page form checking the minimum requirements for the plan. The following must be attached to this form: (1) the Personnel Policies and Procedures Manual, (2) the Resolution adopting this manual, and (3) the Employee Handbook. Mail the completed form and attachments to the MEL Fund Office, 9 Campus Drive, Suite 216, Parsippany, NJ 07054.

Members without updated loss control programs will have at a deductible of \$100,000 per claim plus a 20% co-pay with no cap. (See note below concerning members with poor EPL claims experience).

PROGRAM INCENTIVES (cont'd)

Members with poor EPL claims experience: Members with adverse loss experience will have a deductible of \$75,000 if they have an updated loss control plan and \$150,000 if they do not. They will also have a 20% co-pay with no cap. In a few cases, the MEL Board of Fund Commissioners will establish higher deductibles for members on probation because of exceptionally poor experience.

Public Official's Training Credit: The MEL is continuing the public officials training throughout the state for elected public officials and authority commissioners. Sessions have already been given at the League Convention and the AEA Convention in Atlantic City. The MEL will reduce each member's current year workers' compensation claims fund \$250 for each municipal elected official and authority commissioner who completes the course by May 1st of the current year. The credit is also extended to the member's CEO (i.e. municipal manager/administrator or authority executive director). The maximum credit is capped at 25% of the member's workers' compensation claims fund.

REQUIRED ELEMENTS FOR INCENTIVES

1. **Employment Attorney/Advisor:** An Employment Attorney or an Employment Advisor usually provides advice concerning personnel matters. However, the local unit may designate its General Counsel if experienced in employment matters.
2. **Personnel Policies and Procedures Manual:** To facilitate this process, the MEL has developed a Model Personnel Policies and Procedure Manual that members are free to use at their discretion. Members can adopt the model, take sections from the model and place them in their existing personnel manual, or write their own policies that cover the subjects in the model.
3. **Conscientious Employee Protection Act Notice:** This notice (in both English and Spanish) must be posted on the bulletin board and distributed to all personnel. The notice required by the NJ Department of Labor is included in the Model Personnel Policies and Procedures Manual. (copy can also be found on the MEL webpage – njmel.org)
4. **Employee Handbook:** The handbook must be updated and distributed to all personnel. To facilitate this process, the MEL has developed a Model Employee handbook that members are free to use at their discretion. (which can be found on the MEL webpage – njmel.org)
5. **Model Local Unit Civil Rights Resolution (municipalities only):** Adopt the model resolution. (which can be found on the MEL webpage – njmel.org)

REQUIRED ELEMENTS FOR INCENTIVES (cont'd)

6. **Managerial and Supervisory Training:** Court decisions made personnel training for managerial and supervisory "mandatory". A signed acknowledgement that the manager or supervisor has completed training within the last 12 months must be placed in the personnel files. Training is also mandatory for the Municipal Judge, the heads of volunteer emergency service organizations such as Volunteer Fire Departments, EMS units, and the heads of organizations such as Library Boards and Planning Boards, etc., that are involved in personnel matters. The MEL has developed a Model that the local JIFs will conduct over the next 6 months. Your JIF will contact you with the details.
7. **Police Chief, Captains and Lieutenants Training:** Because Police Departments are involved in a high percentage of employment related litigation, Police Chiefs and at least one other command officer must complete employment-practices training that takes into consideration the Attorney General's guidelines for police operations. A schedule of these seminars will be distributed by your JIF.
8. **Training for All Other Personnel:** Court decisions also require employers to offer anti-harassment and related personnel training to all employees. This can be accomplished by requiring your employees to complete the 14-minute on-line Employee Orientation found on www.njmel.org. Attached are the instructions to access this program. The MEL also makes this program available on a DVD with the attached Lesson Plan. Please contact the MEL Fund office for copies.
9. **MEL EPL Helpline:** The MEL includes a helpline to its members at no additional cost. Members are required to enroll (if you have not already done so) by calling 415-617-1611 or emailing bhansen@enquiron.com.

The MEL is committed to assisting members to update their personnel practices to the current standards. The MEL Office as well as the office of your local JIF is available to assist you in any way possible.

If you have any questions, please contact your Risk Management Consultant, JIF Executive Director or the Underwriting Manager.

The above description is a general discussion of the coverage and limits provided by the FUND. However, the actual terms and conditions are defined in the policy document and all issues shall be decided based on the policy document.

cc: Risk Management Consultants
Fund Professionals
Fund Executive Directors

Checklist for Members with Currently Approved Risk Control Plans

MEL EMPLOYMENT PRACTICES RISK CONTROL UPDATE CHECKLIST

Name of Municipality or Authority: _____

- Retain Employment Attorney/Advisor: (name) _____
- Update and distribute to managerial/supervisory employees the Personnel Policies and Procedures Manual: (Not necessary to attach)
- Distribute a notice concerning the Conscientious Employee Protection Act to all personnel:
- Update and distribute the Employee Handbook: (Not necessary to attach)
- Adopt the model civil rights resolution (municipalities only).
- Train managerial and supervisory personnel:
- Have Police Chief, Deputy Chief, Public Safety Director, Captains & Lieutenants complete the special EPL training course:
- Offer Anti-Harassment training to all other personnel:
- Sign up with NJ MEL Helpline for Employment Practices.

I, _____, the (check __General Counsel or __Employment Attorney) of (member name) _____ hereby certify that the member has verified to me that the above actions have been completed and that I have read the updated Personnel Policies and Procedures Manual and the updated Employee Handbook.

Signature: _____

Date: _____ Telephone: _____

To qualify for the Employment Practices Liability policy deductible, this checklist should be returned to the MEL Fund Office (9 Campus Drive, Suite 16, Parsippany, NJ 07054 or fax 201-881-7633 as soon as possible. Members submitting this form after January will become eligible for the deductible incentive upon approval of the application, but not retroactively.

Checklist for Members without Currently Approved Risk Control Plans

INITIAL EMPLOYMENT PRACTICES LOSS RISK CONTROL INCENTIVE APPLICATION

Name of Municipality or Authority: _____

- Retain Employment Attorney/Advisor: (name) _____
- Adopt and distribute to managerial/supervisory employees the Personnel Policies and Procedures Manual: (Attach Resolution and Manual)

Required Minimum Provisions:

- Anti-Discrimination Policy
 - Americans with Disabilities Act Policy
 - Contagious or Life Threatening Illnesses Policy
 - Safety Policy
 - Drugs and Alcohol Policy
 - Workplace Violence Policy
 - General Anti-Harassment Policy
 - Anti-Sexual Harassment Policy
 - Whistle Blower Policy
 - Employee Complaint Policy
 - Access to Personnel Files Policy
 - Conflict of Interest Policy
 - Political Activity Policy
 - Employee Evaluation Policy
 - Employee Discipline Policy
 - Workforce Reduction Policy
 - Driver's License Policy
 - Communication Media Policy
 - Bulletin Board Policy
 - Leave of Absence Policy
 - Family and Medical Leave Act Policy
 - Military Leave Policy
 - Domestic Abuse Leave Policy
 - Employment Procedure
 - Open Public Meeting Act Procedure Concerning Personnel Matters
 - Processing and Orientation of New Employees Procedure
 - Initial Employment Period Procedure
 - Employee Handbook Procedure
 - Performance Evaluation Procedure
 - Disciplinary Action Procedure
 - Personnel File Procedure
 - Employee Complaint Investigation Procedure
 - Requests for Employment Verification and Reference Procedure
 - Continuing Education Procedure
- Distribute a notice concerning the Conscientious Employee Protection Act to all personnel:
 - Adopt and distribute the Employee Handbook: (Attach handbook)

Checklist for Members without Currently Approved Risk Control Plans (cont'd)

- Adopt the model civil rights resolution (municipalities only).
- Train managerial and supervisory personnel:
- Have Police Chief, Deputy Chief, Public Safety Director, Captains & Lieutenants complete the special EPL training course:
- Offer Anti-Harassment training to all other personnel:
- Sign up with NJ MEL Helpline for Employment Practices.

I, _____, the (check ___General Counsel or ___Employment Attorney) of (member name) _____ hereby certify that the member has verified to me that the above actions have been completed and that I have read the Personnel Policies and Procedures Manual and the Employee Handbook.

Signature: _____

Date: _____ Telephone: _____

To qualify for the Employment Practices Liability policy deductible, this checklist should be returned to the MEL Fund Office (9 Campus Drive, Suite 16, Parsippany, NJ 07054 or fax 201-881-7633 as soon as possible. Members submitting this form after January 1 will become eligible for the deductible incentive upon approval of the application, but not retroactively.



Step 1: Go to the MEL's website <http://njmel.org/>

Step 2: On the MEL homepage, click on the MSI logo at the top to access the MSI page.

Step 3: On the MSI page, click "MSI Login" to access the login page.

Step 4: Login to access the Welcome Page. If you have taken MSI classes in the past, enter your username and password. If you do not know your username/password, check with your Training Administrator or call the MSI Helpline listed below. If you are new, click "I am a new user." Complete the fields and you will receive a confirmation email with your username and password.

Step 5: On the Welcome Page, click on "MSI On-line Training Courses" on the lower right to access the course selection page.

Step 6: On the course selection page, click "Employment Practices Liability" on the left. Then click "enroll" on the right.

Step 7: The program will now thank you for enrolling. Hit "Click here" to go to your authorized course list.

Step 8: On your authorized course list, click "Employment Practices Liability" to access the course.

Step 9: When the course appears, click the start symbol in the middle of the screen to begin the course.

You must complete the entire program and the affidavit at the end of the program to receive credit. If you need additional assistance please call the MSI help line at **(866) 661-5120** during business hours.

Employee Safety and Anti Harassment Seminar Leader's Guide

Who should conduct the seminar? The leader should be the Municipal Manager/Administrator, the Authority Executive Director, the Human Resources Manager, the local unit's General Counsel or Employment Attorney/Advisor.

Are all employees required to attend? The court requires employers to "make training available" to all employees. However, the employer has the option of making the training mandatory. Attendance must be documented in each employee's personnel file.

How long is the seminar? The formal presentation is about 20 minutes, mostly consisting of the video. However, the question and answer period at the end could easily add another half hour or more to the seminar.

Is this seminar also available on line? Yes. See NJMEL.ORG. for directions on how to take this course directly from the MEL's web based learning management system.

Section One: Introduction

Each of you has a right to safe workplace free discrimination, violence, harassment and conflicts of interest. The (local unit name) has a "no tolerance policy" towards workplace wrongdoing and expects all employees to conduct themselves consistent with this policy. Today, we will discuss what this means.

The program begins with a twelve-minute video that explains your rights and obligations under the "no tolerance" policy. The video states clearly what types of conduct are unacceptable when interacting with fellow employees. As many of the unacceptable behaviors are also against the law, compliance is essential both for your own protection and to ensure that others not subjected to conduct that might create a hostile work environment.

At the end of the video, there will be time to ask questions.

Section Two: Play video, "Employee Orientation"

Section Three: Question and Answers:

Before opening for questions, distribute copies of the CEPA notice and discuss the procedure to report wrongdoing. This is also an opportunity to distribute the revised employee handbook or discuss any particular personnel matter that you deem appropriate.

At the beginning of the Q&A period, tell the employees questions that pertain to a particular individual are not appropriate for the general session and should be asked after the meeting. Further, if anyone feels uncomfortable asking a question during the meeting, you will be available to talk to them afterwards. Also state that if the question involves a legal issue, it will be forwarded to the General Council or the Employment Attorney/Advisor. Make detailed notes of these questions in the attached Question Log and tell the employees that the attorney/advisor will quickly get back to them.

Conscientious Employee Protection Act "Whistleblower Act"

Employer retaliatory action; protected employee actions; employee responsibilities

1. New Jersey law prohibits an employer from taking any retaliatory action against an employee because the employee does any of the following:
 - a. Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the employer or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation issued under the law, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care;
 - b. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation issued under the law by the employer or another employer, with whom there is a business relationship, or, in the case of an employee who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into quality of patient care; or
 - c. Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes:
 - (1) is in violation of a law, or a rule or regulation issued under the law or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;
 - (2) is fraudulent or criminal; or
 - (3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.
N.J.S.A. 34:19-3.
2. The protection against retaliation, when a disclosure is made to a public body, does not apply unless the employee has brought the activity, policy or practice to the attention of a supervisor of the employee by written notice and given the employer a reasonable opportunity to correct the activity, policy or practice. However, disclosure is not required where the employee reasonably believes that the activity, policy or practice is known to one or more supervisors of the employer or where the employee fears physical harm as a result of the disclosure, provided that the situation is emergency in nature.

CONTACT INFORMATION

The following contact person has been designated to answer your questions or provide information regarding your rights and responsibilities under this act (N.J.S.A. 34:19-4):

Primary Contact: _____

Address: _____

Telephone Number: _____

This notice must be conspicuously displayed.

Once each year, employers must distribute notice of this law to their employees.
If you need this document in a language other than English
or Spanish, please call (609) 292-7832.



Questions Log

| Employee Name | Details of Question(s) Raised |
|---------------|-------------------------------|
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

PUBLIC OFFICIALS LIABILITY AND EMPLOYMENT PRACTICES LIABILITY STRUCTURE

Member Entity (with an approved LC/RMP Program)

Public Officials and Employment Liability

| Combined Limit (Annual Aggregate) | Insurer | Entity Retention | Entity Co-Insurance Contribution |
|--------------------------------------|--------------------------------|-------------------|----------------------------------------------------|
| \$2,000,000 | QBE Specialty Insurance | \$20,000 * | 20% of 1 st \$250,000 of Loss |

* except that a \$75,000 deductible per occurrence applies for member local units with unfavorable loss experience.

QBE North America Insurance offers members that qualify based on certain criteria the option to purchase a lower deductible and coinsurance contribution.

Member Entity (without an approved LC/RMP Program)

Public Officials Liability

| Combined Limit (Annual Aggregate) | Insurer | Entity Retention | Entity Co-Insurance Contribution |
|--------------------------------------|--------------------------------|------------------|----------------------------------------------------|
| \$2,000,000 | QBE Specialty Insurance | \$20,000* | 20% of 1 st \$250,000 of Loss |

* except that a \$75,000 deductible per occurrence applies for member local units with unfavorable loss experience.

Employment Liability

| Combined Limit (Annual Aggregate) | Insurer | Entity Retention | Entity Co-Insurance Contribution |
|--------------------------------------|--------------------------------|-------------------|------------------------------------------------------|
| \$2,000,000 | QBE Specialty Insurance | \$100,000* | 20% of 1 st \$2,000,000 of Loss |

* except that a \$150,000 deductible per occurrence applies for member local units with unfavorable loss experience.

All members with adverse loss experience may be subject to higher deductible and coinsurance as provided by QBE North America.

Additional Notes

The member entity retention is “each loss” retention.

The limits are per member entity.

Optional limits of up to \$8,000,000 excess \$2,000,000 are available. See MEL Bulletin 17-18 for details.