

Every 9 minutes,
child protective services substantiates, or finds
evidence for, a claim of child sexual abuse.

RAINN

National Sexual Assault Hotline | 800.656.HOPE | online.rainn.org
Please visit rainn.org/statistics/children-and-teens for full citation.¹



NJ MEL Managers and Supervisors Bi-Annual Training 2025 Edition



J.A. Montgomery
CONSULTING

My Contact Information

- Questions??
- If you would like a PDF version of today's presentation, please send me an email to the address shown below.
- My Contact Information:
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 - Pshives@jamontgomery.com
 - 609-290-5686 (Cell Number)





WELCOME!

Disclaimer

- This seminar will discuss how municipal leaders can protect their communities and themselves from lawsuits. The program is designed to provide a **general understanding** of the legal principles pertaining to governmental operations. **Seek the advice of your attorney to evaluate any case or circumstance.** This seminar is designed to provide a general understanding of the legal principles pertaining to governmental operations.

Our Agenda Today:

- 2025 Employment Practices Liability UPDATE and Training
- Chapter 59 – Claims Against Public Entities and Immunities
- Protection and Safe Treatment of Minors
- Recreational Cannabis and Impact on Local Government Operations
- Harassment in the Workplace
- Five Steps You Can Take to Enhance your Safety Program
 - Transitional Duty
- Resources Available to You

Employment Practices Liability Update for 2025

- Rolled out to NJMEL members on April 15, 2025 (Memorandum from Exec. Director)
- Included updates to Model Personnel Manual, Model Employee Handbook, and Model Volunteer Handbook
- Members with updated program (95% of members) have lower EPL deductibles and co-pay
- MEL Website – “Insurance and Claims”- Public Officials and Employment Practices”

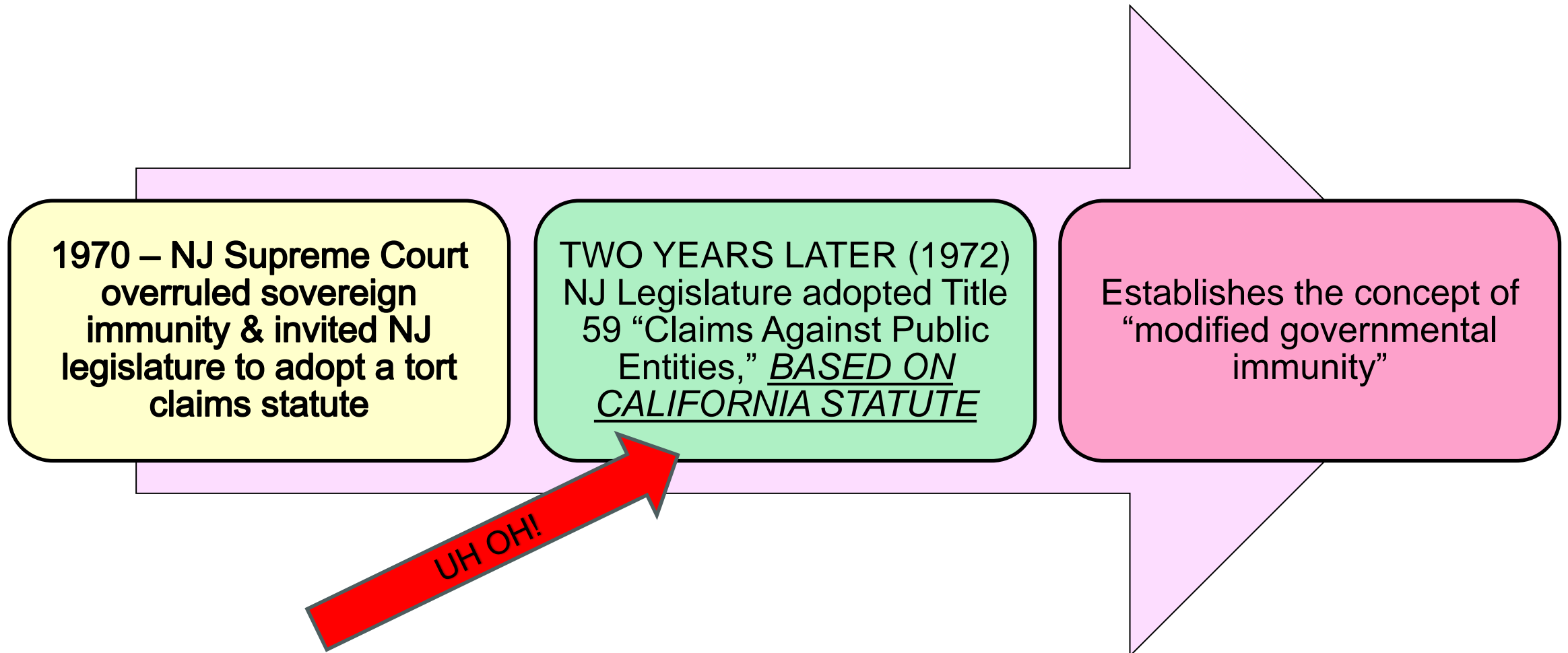
- Required program elements:
 - Employment Attorney/Advisor
 - Personnel Policies and Procedures Manual
 - CEPA Notice
 - Employee Handbook
 - Model Local Unit Civil Rights Resolution
 - Managerial/Supervisory Training
 - Police Chief, Captains, and Lieutenants Training
 - Employee/Volunteer Training (“No Tolerance”)
 - MEL EPL Hotline

Sovereign Immunity

- A legal doctrine that protects the government from being sued without its consent. It applies to federal and state governments, and *sometimes to local governments*, meaning they can't be sued in court unless they explicitly grant permission.
- A principle rooted in **common law**, with the idea that the *government cannot be sued without its express consent.*

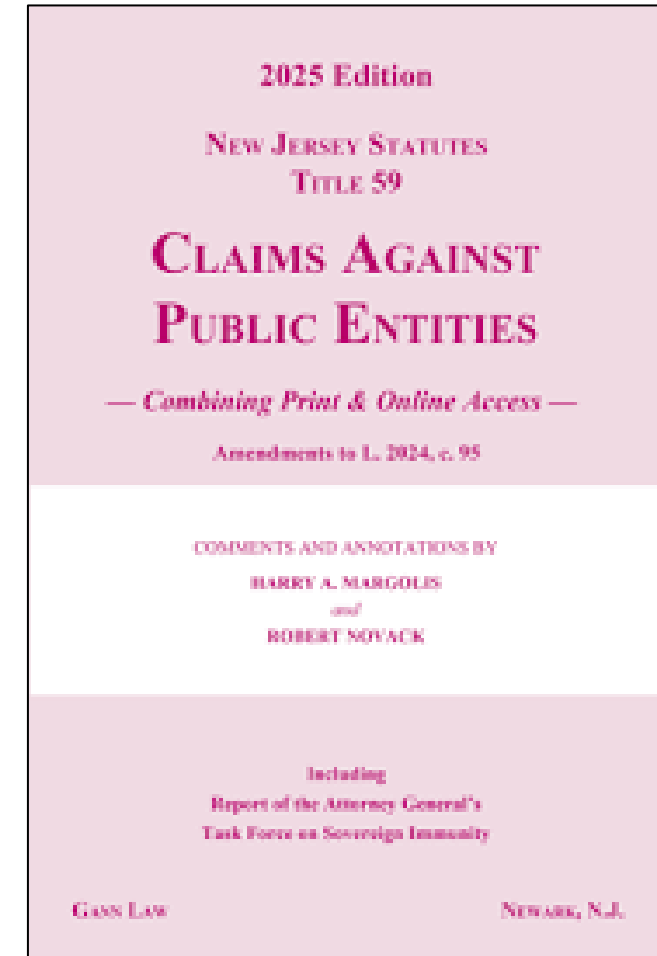


NJ Chapter 59 Timeline



Modified Governmental Immunity N.J.S.A. 59:2-1

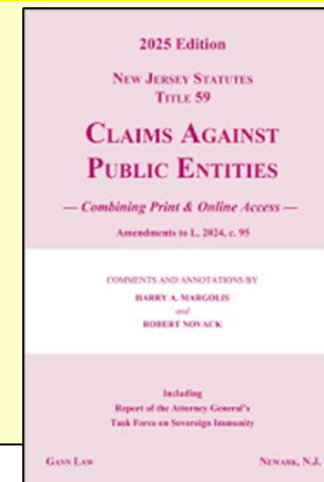
- “Except as otherwise provided by this act, a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.”
- Government can only be sued if there is a statute that permits the suit.
- Many of these cases wind up in court and, ultimately, the court determines whether the public entity is immune in those circumstances. It is important to do all you can to build a defense in advance.



Modified Governmental Immunity N.J.S.A. 59:2-2

HOWEVER.....

“Nothing in the act shall exonerate a public employee from liability if *it is established that his conduct was outside of the scope of his employment or constituted a crime, actual fraud, actual malice, or willful misconduct.*”



Why is Immunity in any form Necessary???

- Because the decisions of local government impact everything that happens in a community, almost any accident would result in a lawsuit against the town unless there is some reasonable limitation on suits.
- Private entities have the ability to limit the scope of their activities. Government does not.



The “Deep Pockets” of Government \$\$\$\$



N.J.S.A. 59:2-3

- A public entity is not liable for **the exercise of discretion**:
 - An injury resulting from the exercise of judgment or discretion in the entity;
 - Example: Creation of a Police Department is a discretionary act.
 - Example: Whether to supervise a recreation facility is a discretionary act.



N.J.S.A. 59:2-3 – “Palpably Unreasonable” Standard

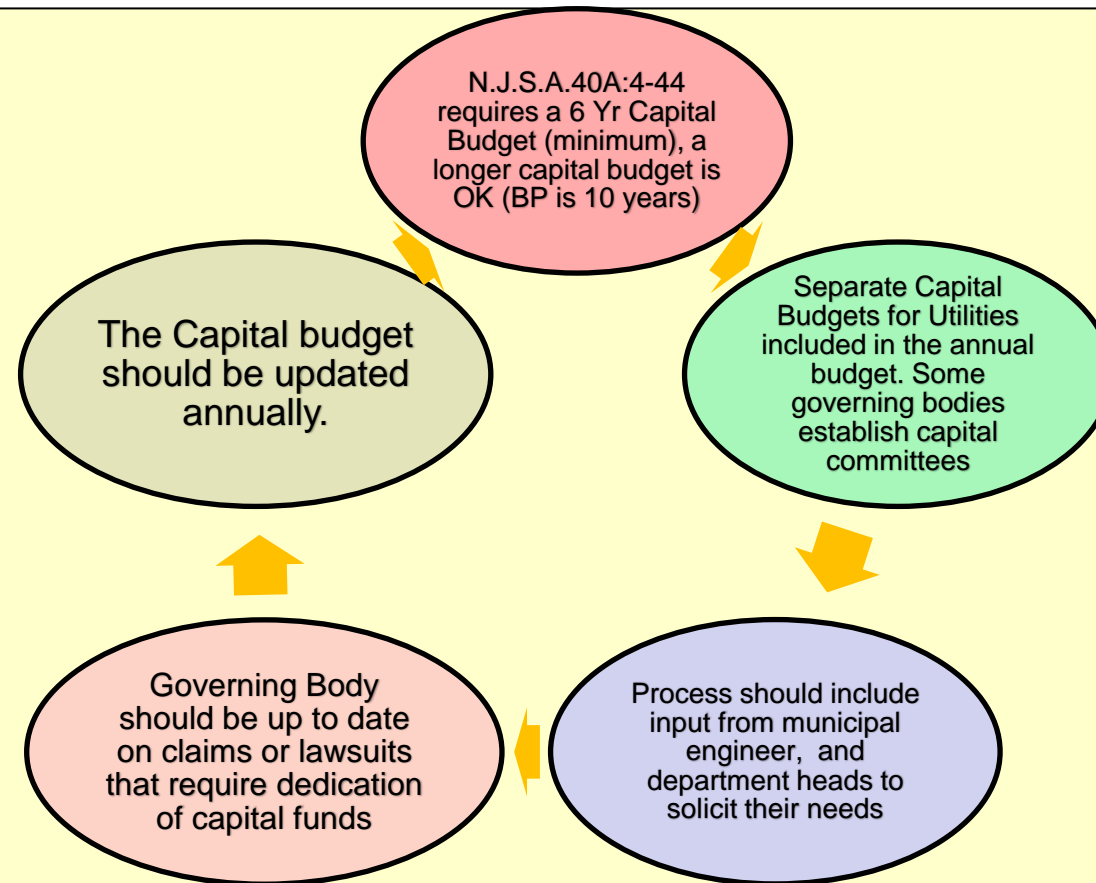
- In determining whether to seek or whether to provide the resources necessary for the purchase of equipment, the construction or maintenance of facilities, the hiring of personnel and, in general, the provision of adequate governmental services; (SCARE RESOURCES defense)
- When, in the face of competing demands, it determines whether and how to exercise or apply existing resources, including those allocated for equipment, facilities and personnel
 - unless a court concludes that the determination of the public was palpably unreasonable.
- Nothing in this section shall exonerate a public entity for negligence arising out of acts or omissions of its employees in carrying out their ministerial functions.

- “public entity acted or failed to act under circumstances which would make it manifest and obvious that no prudent person would approve of its course of action or inaction.”



N.J.S.A. 59:2-3 – “Scarce Resources” Immunity Best Practices

- A public entity cannot address all needs at one time, and it would be impossible to anticipate all the hazards that need to be addressed.



N.J.S.A. 59:2-3 – “Scarce Resources” Immunity – Best Practices

- An inventory of all municipally or county owned facilities that is updated annually is an excellent and invaluable resource when formulating a capital improvement plan. The inventory should include when it was constructed and documentation that the governing body or other appropriate authority has adopted the design and accepted the improvement by resolution.



N.J.S.A. 59:2-3 – “Scarce Resources” Immunity

- Another excellent tool is a system of documenting complaints that are filed by the public and review by the appropriate department head or professional engineer or architect for a recommendation. If the complaint can be resolved through local action, it should be scheduled and documented. IF NOT, it should be included in the capital plan.
- **DOCUMENT, DOCUMENT, DOCUMENT**

N.J.S.A. 59:2-3 – “Scarce Resources” Immunity

- Example of Scarce Resources Allocation:
- NJDEP requires adoption of a Stormwater Management Plan. The Plan should be reviewed and updated to include outfalls and easements.
- The fulfillment of this requirement is a good example of planning ahead for allocation of scarce resources.



Sidewalks

- Some courts in NJ have issued opinions that municipalities cannot pass on liability for sidewalks to homeowners.
 - **Lodato v. Evesham Township (2006)**
 - “Municipal ordinances do not create a tort duty, as a matter of law.”
 - The NJ Supreme Court consistently immunized abutting residential property owners from liability. **Municipalities cannot transfer their legal liability onto property owners adjacent to sidewalks.**
 - The blanket immunity from liability for dangerous conditions of public sidewalks enjoyed by residential landowners is not available to municipalities
 - Creation of a Shade Tree Commission DOES provide blanket immunity (Petrocelli v. Sayerville Shade Tree Commission, 1997).

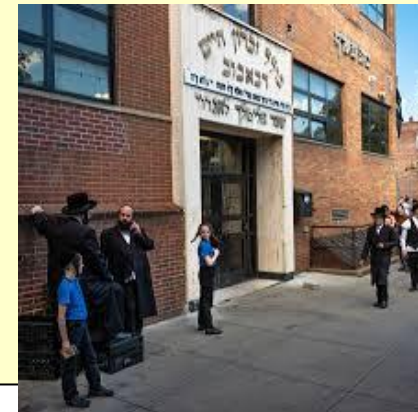
Legislative Immunity N.J.S.A. 59:2-3b

- “A public entity is not liable for legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature.”
- EXAMPLE: A council creates a zone for a high intensity use and this change causes traffic and pedestrian accidents to increase.
 - Zoning is a legislative function. Therefore, the town is protected from a lawsuit filed by an injured pedestrian contending that the council’s legislative action made the area more dangerous.
 - Legislative immunity is critical for government to function. Otherwise, almost every action would be challenged in court.

Legislative Immunity N.J.S.A. 59:2-3b

- HOWEVER, very careful consideration should be given to Zoning changes and the timing of those changes so as to avoid the appearance of impropriety which may result in the payment of substantial damages by the municipality and exposes the governing body to potential personal liability.
 - EXAMPLE: a governing body acts quickly to change the zoning or the requirements in a particular zone after an application is filed that is objectionable to the town, such as a particular religious structure.

Similar
consideration
needed for sudden
purchase of
property for "Open
Space."



Other Immunities in Title 59

- Immunity For:
- Failure to inspect, or negligent inspection of property (NJSA 59:2-6)
 - ***HOWEVER, no immunity for negligence for failure to recognize a dangerous condition***
- Failure to provide supervision of public recreational facilities (NJSA 59:3-11)
 - ***HOWEVER, no immunity from failure to protect the public from a dangerous condition***



Other Immunities in Title 59 (Design Immunity)

- Immunity for:
 - An injury caused by the plan or design of public property, either in its original construction or any improvement thereto, where such plan or design has been approved in advance of the construction or improvement by the governing body. (NJSA 59:4-6)

Governing Body awards contract to a licensed professional engineer or architect for design of improvement

Design is completed, reviewed by governing body, and a Resolution (or ordinance) is adopted at a public meeting to approve and adopt the design

Project is constructed according the design & a Certification is signed by the licensed engineer or architect, and the governing bodies adopts a resolution to issue final payment to the contractor.

Other Immunities in Title 59

Proper signage is important in these cases



- Immunity For:
- Injuries caused by a condition of any unimproved public property, including but not limited to any natural condition of any lake, stream, bay, river, or beach. (NJSA 59:4-8)
- Injuries by a condition of the unimproved and unoccupied portions of the tidelands, and submerged lands, and the beds of navigable rivers, streams, lakes, bays, estuaries, inlets and straits owned by the State. (NJSA 59:4-9)

Other Immunities in Title 59

- Immunity For:
 - In any civil action for damages resulting from or caused directly or indirectly by the failure of computer hardware or software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times. (1999 Amendment) (NJSA 59:2-1.2)



Other Immunities in Title 59

- Immunity For:
- Civil action for damages for property damage or personal injury resulting from a motor vehicle accident arising out of or in the course of roadway solicitations for the purpose of soliciting contributions conducted by charitable organizations, as defined pursuant to section 3 of P.L. 1994, c.16. (1997 amendment) (NJSA 59:2-1.1)



Law Enforcement Immunity (Kind of...)



- A public employee is not liable if he acts in good faith in the execution or enforcement of any law. Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment. (NJSA 59:3-3)
- Officers **MUST** intervene if a fellow officer is violating someone's civil rights or using excessive force.
- **NO REQUIREMENT TO MAINTAIN A POLICE DEPT.**

N.J.S.A. 59:2-1.3

- **No immunity provided for:**
 - Action at law for damages as a result of sexual assault or other crime of a sexual nature
 - The new statute emphasizes sexual abuse of minors and mirrors the new **2019 statute**



The Sexual Abuse of Minors

- 1 in 9 girls and 1 in 20 boys under the age of 18 experience sexual abuse or assault.
- 93% of child sexual abuse victims of sexual assault know their abusers (34% are family members, 59% are acquaintances)
- Every 9 minutes child protective services substantiates, or finds evidence for, a claim of child sexual abuse.

OF ALL VICTIMS UNDER 18,
2 OUT OF 3 ARE AGES 12-17



■ **34%** under age 12 ■ **66%** age 12-17

RAINN

National Sexual Assault Hotline | 800.656.HOPE | online.rainn.org
Please visit rainn.org/statistics/children-and-teens for full citation.²

The Sexual Abuse of Minors

- The long-term effects of child sexual abuse:
 - 4 times more likely to develop symptoms of drug abuse
 - 4 times more likely to experience PTSD as adults
 - 3 times more likely to experience a major depressive episode as adults



Protecting Children from Abuse

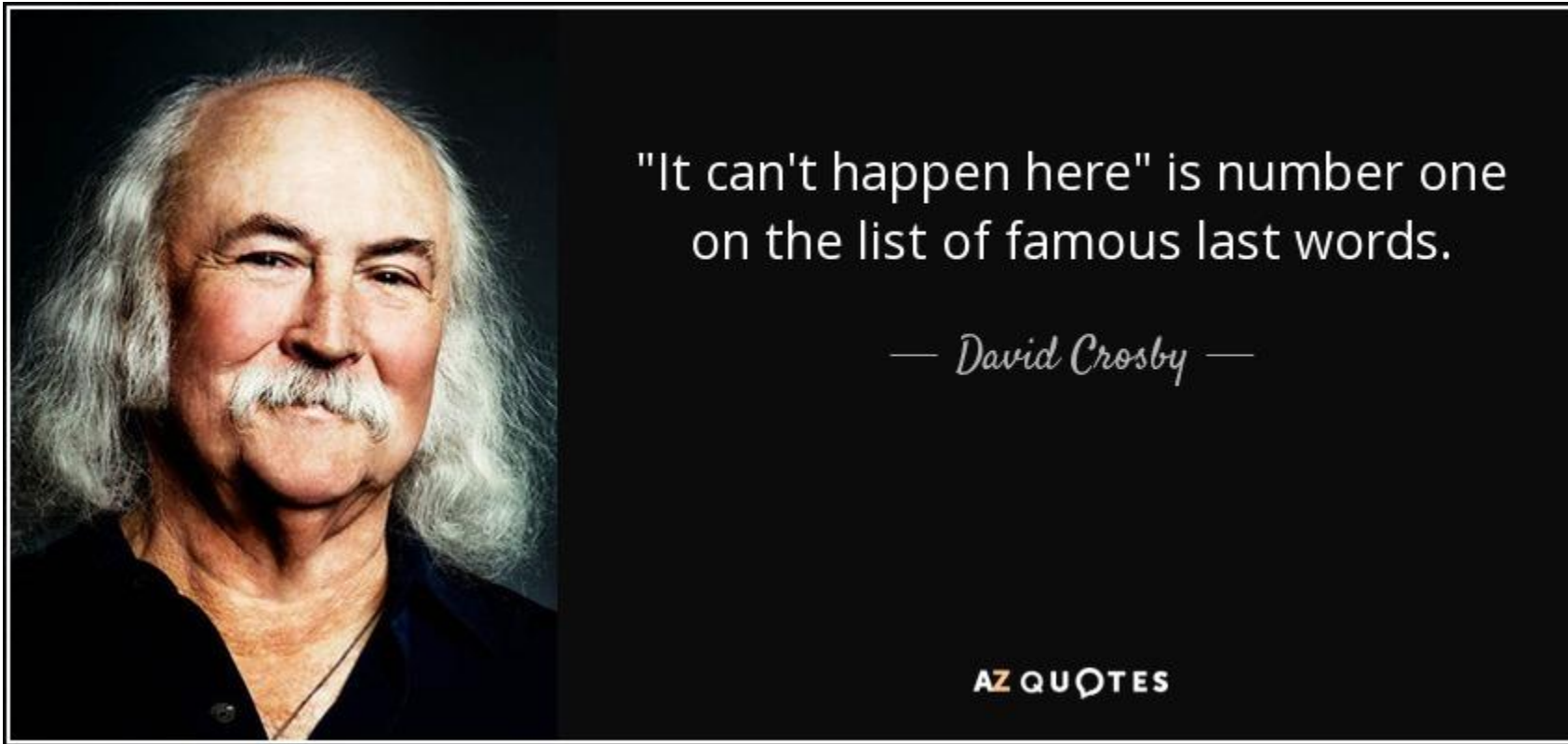


- Children should feel safe when they participate in activities, especially when adults are around.
- Nationwide events; however, have shown the need to implement greater safeguards to protect children. Local government programs are no exception .

Protecting Children from Abuse

- “Trusted member of the community....”
 - “Volunteered his/her time to help children...”
 - “Hiding in plain sight.....”
 - “Groomed their victims....”

Protecting Children from Abuse



Protecting Children from Abuse



BOY SCOUTS
OF AMERICA®



USA GYMNASTICS.



If it can happen in these
places & organizations, it
can happen anywhere!

Boy Scouts of America

- Over 80,000 sexual abuse claims were filed by the November 2020 deadline set by Bankruptcy Court.
- Abuse claims go back to 1944 up through 2016.
- Largest child abuse case involving a single national organization.
- Total compensation to be paid to the victims is more than \$2.6 billion.
- Abusers often held influential positions in local churches, schools, or businesses.
- Victims suffered from PTSD, depression, and other long term psychological impacts
- BSA filed for Chapter 11 Protection.



BOY SCOUTS
OF AMERICA®

Penn State University

- Child sexual abuse committed over a 15-year period by Jerry Sandusky, former Defensive Coordinator of PSU football team. Story broke in 2011
- Sandusky convicted on 45 counts of sexual abuse of minors in 2012. Sentenced to minimum 30 years/maximum of 60 years
- *The Second Mile* was a nonprofit organization for underprivileged youth, providing help for at-risk children and support for their parents in Pennsylvania.
- It was founded in 1977 by Jerry Sandusky, a then-Penn State assistant college football coach. The charity said its youth programs served as many as 100,000 children annually.
- Over \$100 million paid as victim compensation by PSU.
- Officials Fired: President, VP, AD and Head Coach Paterno



Roman Catholic Church

- Over 11,000 allegations of sexual abuse involving 4,400 priests in the US.
- Victims were 81% male, 19% female.
- 22% younger than age 11
- Number of reported cases began to increase in the 1960's, with another sharp increase beginning in the 1980's.
- Came into national attention in 1985 when a priest in Louisiana pleaded guilty to 11 counts of molestation of boys.
- Research suggests that many of the abusing priests were victims of childhood sexual abuse.
- Settlements surpassed \$3 billion
- Boston Globe articles exposed the practices; later made into a movie, Spotlight



USA Women's Gymnastics

- Larry Nassar was the team doctor of the US women's national gymnastics team for 18 years, & he had access to hundreds of young female gymnasts, whom he sexually abused.
- He would first gain the trust and friendship of his patients, then sexually abuse them during physical therapy, duping the women that his "technique" was a normal way to relief pressure and pain.
- Some of the gymnasts stated that they complained about Nassar as far back as 1990's. It wasn't until 2016 that Nassar was formally charged.
- It is alleged that He repeatedly sexually assaulted at least 265 young women under the guise of his medical treatment.
- He pled guilty and was sentenced to over 100 years in federal prison.



New Legislation in New Jersey

- The new statute in NJ passed in 2019 allows childhood victims of sexual molestation to file suit until they turn 55, or until seven years from the time that they became aware of their injury, whichever comes later.
- Previously, the time limit was two years past the victim's 18th birthday to file.
- **The new law increased the Statue of Limitations by at least 35 years.**
- There was a “retroactive” provision in the new law as well, allowing refiling of old claims that were barred by the old statute of limitations. Initially a two-year window.

Protecting Children from Abuse

Under the 2019 legislation, you can be held personally responsible (AKA “liable”) if you fail to act.
How?



Protecting Minors

- **Possible Exposures:**
- **If a claim is filed by a victim and it can be established that you did any of the following:**
 - Failure to carry out a full and complete background check
 - Failure to train your employees properly
 - Failure to properly supervise your employees
 - Failure to document hiring practices, training, and education
 - Failure to take appropriate action on possible abuse claims



Protecting Minors – Best Practices

- Background checks of all prospective employees and volunteers which may include fingerprint identification, but other methods are acceptable.
 - NJMEL lists 5 vendors on NJMEL website, turnaround time is 24 to 48 hours usually. A new NJMEL RFP is in the works.
- Reference checks in both personal and professional capacities
- The Megan's Law directory for New Jersey and any other state in which the applicant has lived.
- Maintain records for at least 65 years



Protecting Minors – Best Practices

- Any negative or questionable results must be dealt with before the individual is hired, and no provisional hiring should be permitted.
- After hiring, a periodic re-check of Megan's Law directories should be done to ensure no current employees have been added to the list.
- *If there is an arrest or conviction, employees should be required to notify the appropriate Human Resources representative within 72 hours to make sure the arrest or conviction does not impact the ability of the employee to continue to work with children.*



Protecting Minors – Best Practices

- Written protocols and Procedures for:
 - Notifying parents or guardians of a minor in case of an emergency, whether medical or behavioral, natural disaster, or any other disruption
 - Medical treatment authorization forms (Annually)
 - A policy that forbids the release of children to anyone other than the parent, guardian, or other authorized adult (Annually).
 - Policies forbidding staff and volunteers from meeting with a child alone and in private.
 - Guidelines that restrict images taken of children as part of an activity from being shared on social media without expressed written consent from parents or guardians.
 - Anti-hazing policies that cover cyber bullying.
 - Procedures for the monitoring of bathrooms.

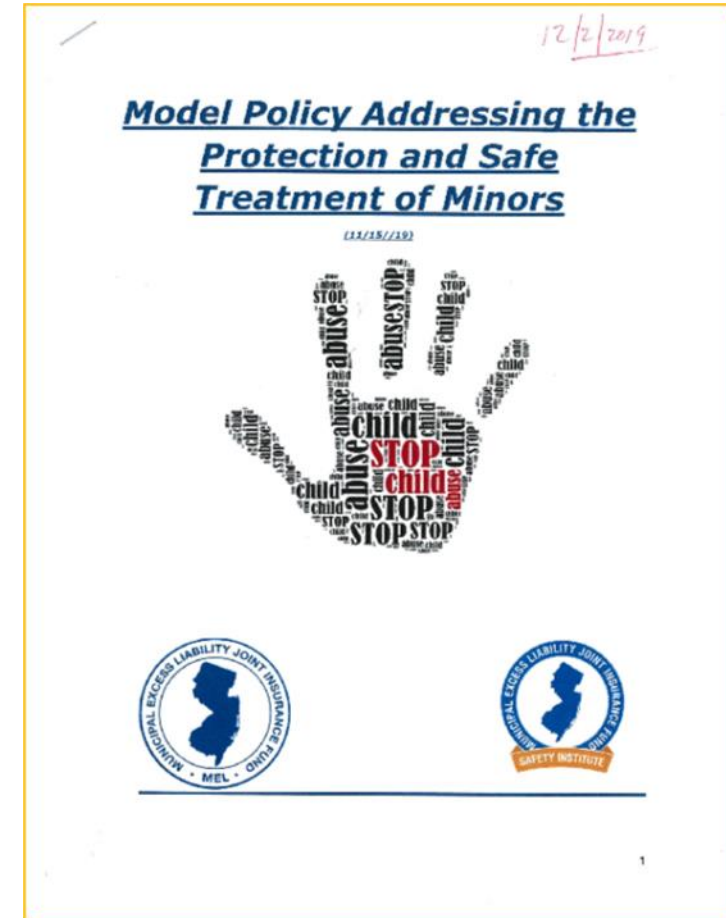
Protecting Minors – Best Practices

- ***Even if your municipality does not directly operate recreational leagues***, if the activity occurs on fields or facilities owned by the municipality, it is more likely than not that the municipality may be brought into any litigation or claim. For that reason, the recommended “best practice” is for municipalities to draft and enter into written agreements annually with the organizations who are operating the leagues that set forth the following at a minimum:
 - Insurance requirements,
 - A certification by the organization that they have read the Model Policy and will adhere to conduct requirements, including mandatory background checks for all coaches and volunteers involved in the program. Completing the Rutgers Safety Course (or acceptable equivalent course) by all coaches, viewing the MEL Protecting Minors video, and adherence to a “Code of Conduct” for all coaches and parents.
 - The permitted dates and hours of use for the facilities and a requirement that the organization will keep the fields clean and safe for use.



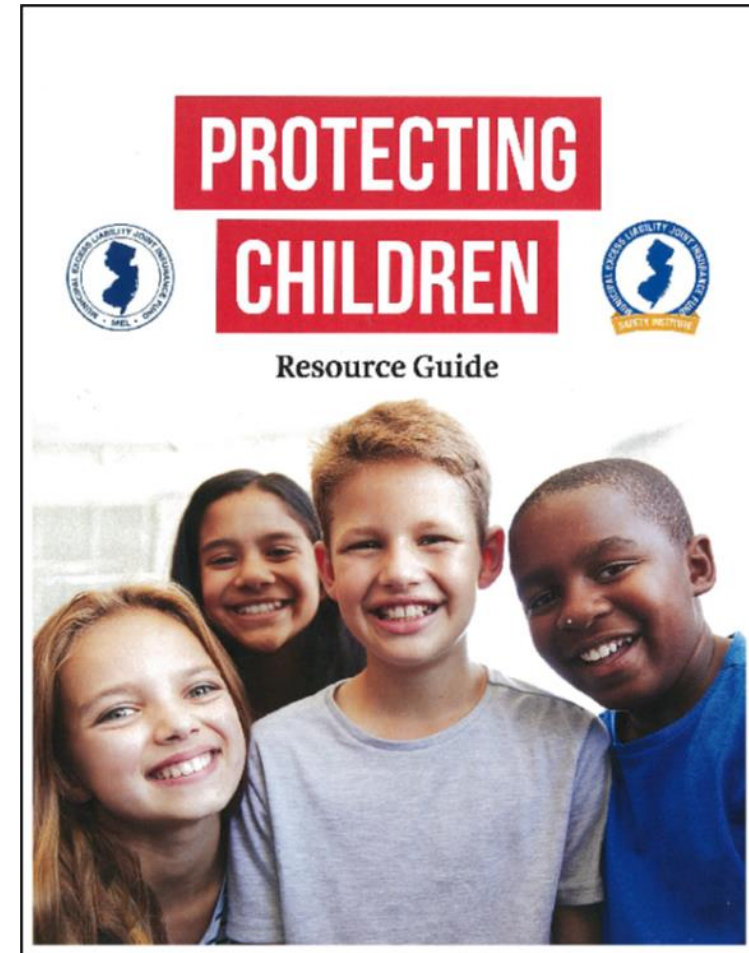
Protecting Minors – Best Practices & Resources

- *Model Policy for the Protection and Safe Treatment of Minors – Updated in 2024*
- Training Video (20 minutes) for volunteers and employees
 - <https://njmel.org/mel-safety-institute/model-policies/protecting-children/>



Protecting Minors – Best Practices & Resources

- *Protecting Children Resource Guide*
- Includes a listing of references for municipal and county officials and managers.



Protecting Minors – Training Resources

- **Elected officials and appointed commissioners-**
Webinar/In-Classroom
- **Managers and Supervisors** – Webinar/In-Classroom
- **Police Command Officers** – part of the annual training required for all officers
- ***All other employees and volunteers – video training program on MEL website***
- All training records must be retained for at least 65 years

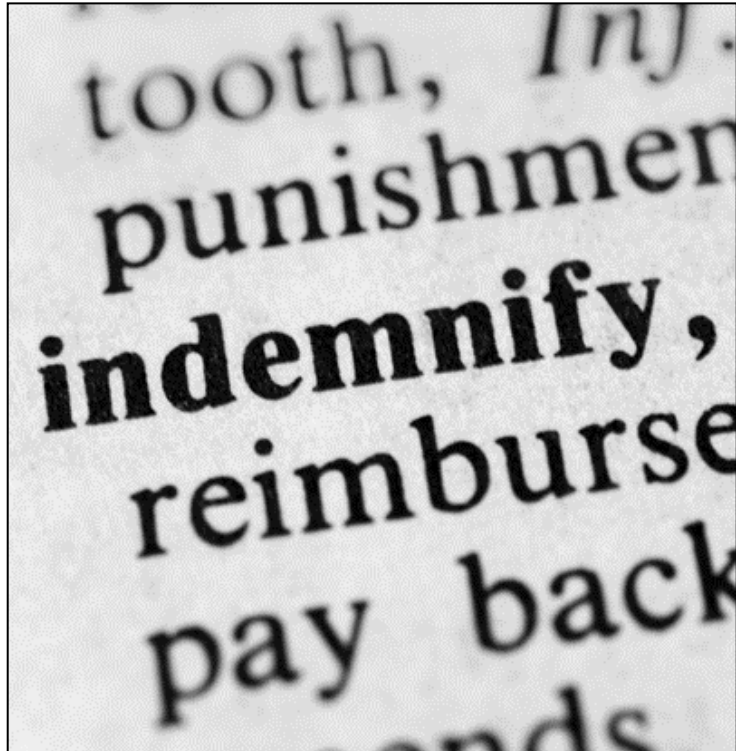


Protecting Minors – Training Resources

- Volunteer coaches must also complete the Rutgers SAFETY Clinic Course that provides partial civil immunity under “The Little League Law.”
- If more than seven years ago, also watch the video.
- Records of these trainings should also be maintained for at least 65 years.



Protecting Minors – Indemnification



- Your governmental entity has probably made arrangements for your defense and indemnification. (Check to see if your entity has an Indemnification Policy for employees.)
- ***“Reservation of Rights”*** provisions
- You should talk with your municipal, board or authority attorney to understand exactly how these defense and indemnification procedures work.

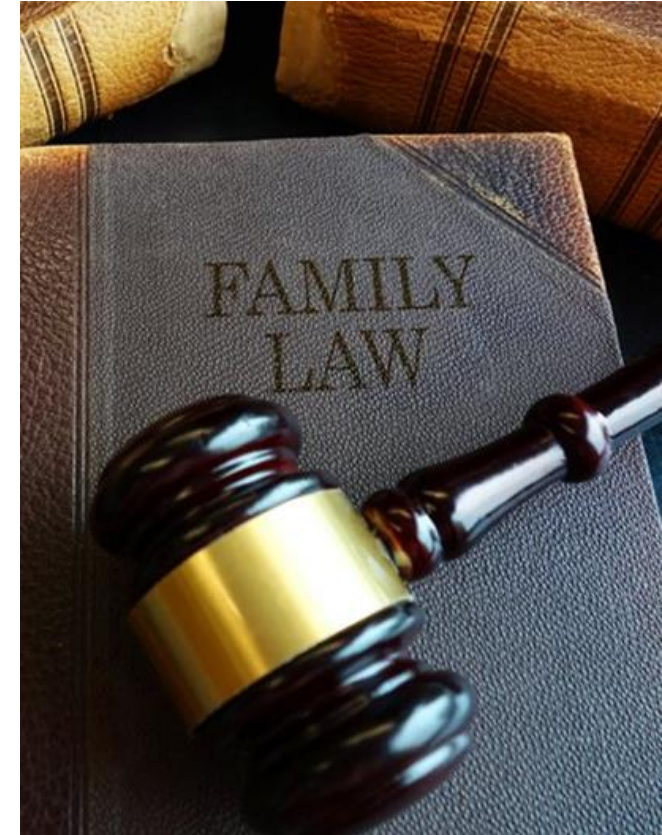
Reporting Suspected Abuse

- As a governmental official, employee or volunteer, you are legally required to report suspected child abuse. This requirement includes all governmental officials, employees AND volunteers.
- Unlike other states, New Jersey law specifically provides that: “Any person having reasonable cause to believe that a child is being subjected to abuse shall report this immediately.”



Reporting Suspected Abuse

- Any person who, in good faith, reports suspected abuse or testifies in a child abuse hearing is immune to any criminal or civil liability that may result.
- You can choose anonymous reporting.



Recreational Cannabis

- NJ Voters overwhelmingly approved a ballot question on the sale and use of recreational cannabis in November of 2020
- NJ Legislature followed up with passage of the NJ Cannabis Regulatory Enforcement Assistance, and Marketplace Modernization Act (CREAMM)
- Act included creation of the NJ Cannabis Regulatory Commission
- As of 12/31/2024, a total of 905 licenses for sale of recreational cannabis products have been issued. Additional licenses approved at each monthly meeting. (over 1,000 licenses are “Conditionally Approved.”)



Recreational Cannabis



Total Sales of Cannabis Products 2022
through 2024 = \$2.4 billion
State Tax Revenue = \$123 million

■ Challenges for NJ Local Government:

- To permit or not permit recreational cannabis facilities in their municipality (zoning) & the local tax (Deadline for OPT OUT was 8/21/2021)
- Regulating and enforcing employee use of cannabis products either for medicinal or recreational purposes
- CDL Drivers-no leeway
- NON-CDL Drivers and employees in “safety sensitive” positions
- Law Enforcement Officers (next slide)
- All other employees
- NOTE: Written policies that have been distributed to all employees (with an acknowledgement) are ESSENTIAL to your program.

Challenges to Local Government

- Law enforcement officers
 - Conflict between Federal law and State of NJ Law
 - Still a controlled substance
 - Licenses to carry
 - Probable Cause Issues?
 - Jersey City Case(s)
- As of yet, no reliable way to measure when someone ingested cannabis products

- The odor of cannabis-based products is no longer probable cause in NJ.
- If police observe **additional factors** that indicate criminal activity, they may still have probable cause to search. This could include things like visible drug paraphernalia or other suspicious behaviors.



Recreational Cannabis

- **Stay tuned for:**
 - Guidance from the courts (likely US Federal Court) and possibly the NJ Legislature on the issue of use of cannabis products by off duty police officers, and conflict with federal law.
 - Development of a reliable and accurate measuring device to determine a timeframe for when employees used cannabis products.



Harassment in the Workplace

- We spend an average of 2,100 hours each year at work.
- It is essential to keep in mind that **“work” is not a “social setting,”** and to remind ourselves:
 - Comments or jokes or cartoons involving someone’s ethnicity, race, religion, age, appearance, creed, marital status, sexual orientation, disability or military service are **NOT APPROPRIATE** in a work environment.
 - Just as “beauty is in the eye of the beholder,” so is harassment. In other words, the VICTIM or TARGET is the one who feels the impact. Ultimately it may be left to a judge or jury to determine if harassment occurred, and, if so, it may cost the perpetrator his/her job, pension, and may involve payment of damages to the victim.
 - **BEWARE** of “informal” or “casual” settings at work such as police locker rooms, public works locker rooms, lunchrooms, etc...

The Two Most Important Questions to Ask Yourself

- ***Do You Know? AND Should it Matter?***



RACIST JOKES



Harassment in the Workplace

EVERYONE has a part to play in stopping harassment in the workplace!

However, Supervisors and Department Heads have a much greater role and responsibility in addressing potential harassment in the workplace immediately and curtailing practices by employees that give rise to harassment claims.

Failure on the part of Supervisors and Department Heads to take on this role places them in jeopardy of potential exposure to liability, prosecution, and possible loss of their job.



The Statistics

- According to the US EEOC, claims for harassment in the workplace have increased by 14% beginning in 2018 following the “ME TOO” movement in the US.
- Between 2018 and 2021, the EEOC received over 98,000 charges alleging harassment in the workplace.



New Challenges

- Claims are increasing due to:
 - Racism
 - *Black/African American, Biracial, Hispanic, and Asian* employees are especially targeted
- Claims involving those who identify as LGBTQ+ individuals are rising as well, and;
- Harassment against individuals who "look differently" (i.e., hair styles, tattoos, style of dress, religious garb) are on the rise as well.
- Political Divisiveness



The Statistics from HR Acuity Study (2023)

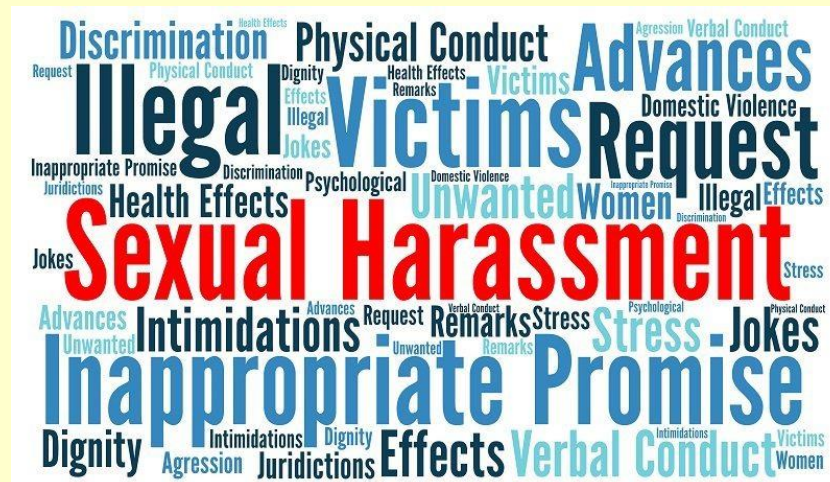
- Over **52%** of employees have experienced or witnessed inappropriate, unethical or illegal behaviors at work.
 - The most prevalent behaviors:
 - **Bullying 51%**
 - Sexual harassment 40%
 - **Racism 30%**
- **83%** of **transgender employees** have experienced or witnessed an issue at work
- Only **58%** of employees reported the poor behaviors they experienced or witnessed, meaning that **42% of inappropriate workplace behaviors were not reported.**



> Source: **HR Acuity**

The Statistics from HR Acuity Study (2023)

- 55% of victims experience retaliation after speaking up or making a claim.
- Over a third of those surveyed left their job because of unresolved harassment.



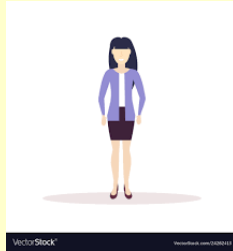
The Statistics from HR Acuity Study (2023)



- Women, Trans and gender-diverse people have significantly less economic security and influence than men.
- Women three-times greater chance than men of being victimized by harassment in the workplace

Bias Statistics

- Pay Disparities (Source): Institute for Women's Policy Research (2024)



Men	\$ 1.00
Women (in general)	\$ 0.84
Asian Women	\$ 0.93
White Women	\$ 0.83
Black Women	\$ 0.70
Hispanic Women	\$ 0.65

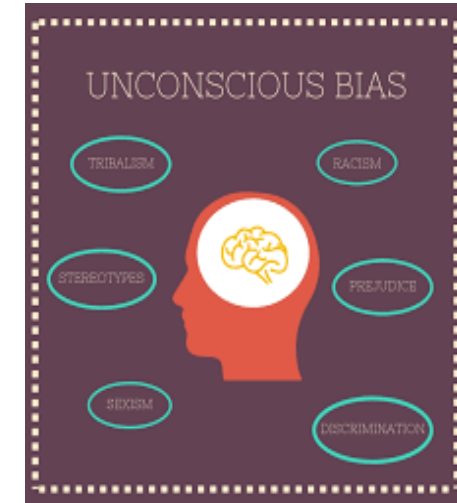


Job Classifications	Per Week		Annual:		Difference:
	Women	Men	Women	Men	
Teachers - Elem/MS	\$ 1,220.00	\$ 1,370.00	\$ 63,440.00	\$ 71,240.00	-12%
Registered Nurses	\$ 1,409.00	\$ 1,657.00	\$ 73,268.00	\$ 86,164.00	-18%
Managers	\$ 1,536.00	\$ 1,887.00	\$ 79,872.00	\$ 98,124.00	-23%
Accountants/Auditors	\$ 1,504.00	\$ 1,644.00	\$ 78,208.00	\$ 85,488.00	-9%



The Root Cause of Harassment - Bias

- All of us have biases
- “Implicit” biases (i.e., unconscious or subconscious gut reactions.)
- That bias is how our minds streamline thinking so we can quickly make sense of the world..



Having a bias doesn't make you a bad person, however, and not every bias is negative or hurtful.

The Root Cause of Harassment - Bias

- And if we allow our biases to shape our behavior in a work setting, the consequences can be severe.
- If you are a supervisor or department head and you are unable to recognize and control the biases you have, you may treat employees under your supervision differently based on those biases.

Jealousy?????



**This is called *disparate treatment*,
and it is a violation of the law.**

Passing Down Our Biases

- *“In one study, researchers found that very young children exhibited more explicit negative bias if their mothers held implicit biases—regardless of their explicit messaging. There can be a mismatch between what parents say and their unconscious reactions toward minority groups—and children seem to pick up on this.”*



- *Much of the time this occurs unconsciously. Parents, in their own behavior - especially facial expressions and posture and body language - convey a lot that kids see. Other times, it can be more obvious, when parents actually talk about their biases out loud.*

Types of Harassment in the Workplace

Quid Pro Quo

Quid Pro Quo =
This for That
If you do *this* for me
I'll do *that* for you

Hostile Work
Environment



Quid Pro Quo Harassment



Quid Pro Quo Harassment

- Power/authority
- Bullying tactics often come into play.
- Employees are reluctant to report these incidents for fear of losing his/her job and for fear of retribution.
- Employee “dating” relationships are a particular concern in this area



70% of relationships do not survive the first year

Hostile Work Environment



Hostile Work Environment

- Causes someone to feel **emotionally distressed at work**.
- Comments, jokes, or cartoons with sexual, ethnic, or racial nature
- Sharing inappropriate content with sexual innuendo
- Unwelcome sexual advances or physical contact such as groping.
- Inappropriate touching
- Sexual assault or violence (which is also a crime)

HWE complaints may have nothing to do with sex



Federal Anti-Discrimination Statute

- Title VII of the Civil Rights Act of 1964:
 - Federal laws prohibit discrimination based on a person's national origin, race, color, religion, disability, sex, and familial status.
 - Laws prohibiting national origin discrimination make it illegal to discriminate because of a person's birthplace, ancestry, culture or language.
 - This means people cannot be denied equal opportunity because they or their family are from another country, because they have a name or accent associated with a national origin group, because they participate in certain customs associated with a national origin group, or because they are married to or associate with people of a certain national origin.
 - The Civil Rights Division of the Department of Justice enforces federal laws that prohibit discrimination in education, employment, housing, lending, public accommodations, voting, and law enforcement/police misconduct.

Anti-Discrimination Statutes in NJ

- *New Jersey Law Against Discrimination (first in USA)*
- *Creating of Respectful and Open World for Natural Hair Act (CROWN)*
- *Conscientious Employee Protection Act (CEPA/Whistleblower Law)*

New Jersey Law Against Discrimination

- Prohibits discrimination and harassment based on actual or perceived race, religion, national origin, gender, sexual orientation, gender identity or expression, disability, and other protected characteristics.
- Applies to hiring, promotion, demotion, and termination of employment, as well as to workplace conduct.
- Applies to all paid employees, & volunteers, including Volunteer Firefighters and EMTs



Creating of Respectful & Open World for Natural Hair Act (CROWN ACT)

- The 2019 act prohibits discrimination and harassment based on a person's hair texture or hairstyle if that style or texture is commonly associated with a particular race or national origin.



The CROWN Act



Conscientious Employee Protection Act (CEPA)

- Protects employees who come forward to report illegal and fraudulent activities and employer commitments.
- CEPA is frequently referred to as New Jersey's whistleblower statute and prohibits employers from retaliating against employees who report such activity in good faith.
- Volunteers are NOT employees under CEPA



Harassment Claims are EXPENSIVE

- Claims alleging Harassment in the workplace are potentially extremely expensive.
- **"Fee-shifting"** consequences for public employers.
- Legal costs now represent 70% of the total cost of employment practice litigation.



When does \$1 = \$600,000?

Lehmann v. Toys R Us (1993); NJ Supreme Court

- Theresa Lehmann was a supervisor in the Purchasing Department at Toys R US, and she was subjected to numerous touching incidents, unwanted sexual advances, and inappropriate comments by her superior.
- She complained to her superiors but was told to “work it out.”
- She complained to senior management, but there was no change.
- She was offered a transfer but rejected it.
- She ultimately resigned and filed a suit.



Lehmann v. Toys R Us (1993); NJ Supreme Court

- The Court ruled that an employer is responsible for sexual harassment committed by its supervisory employees unless the employer established an **EFFECTIVE** anti-harassment program.
- The Court made it clear the decision is not limited to sexual harassment but applies to all harassment in the workplace based on employee belonging to a “protected class.”



Lehmann v. Toys R Us (1993); NJ Supreme Court

Fortunately, Judge Garibaldi, in her decision, provided excellent guidance on the components of an effective anti-harassment Program:

- **Written policies and procedures**
- **Unequivocal commitment from senior management**
- **Both formal and informal complaint procedures.**
- **An effective system to monitor compliance**
- **Mandatory management training**

NJ MEL Model Policy Against Harassment

- Zero Tolerance Policy
- Applies to ALL Employees and Volunteers
- Designed to ensure all employees a work environment free of any type of discrimination based upon a protected status, including freedom from sexual harassment.
- Make sure ALL employees receive notice of the policy



All complaints should be thoroughly investigated. (BP is use of an outside 3rd party).

Employee Accidents

- Over 60% of the cost of casualty insurance is workers' compensation. ***The immunities in Title 59 do not apply to accidents where employees are injured.***
- “Nothing in this act shall be construed to affect, alter, or repeal any provision of the workers' compensation laws of this State.”



Employee Accidents and Employee Safety

- Local Government has one of the highest employee accident rates of any occupation.

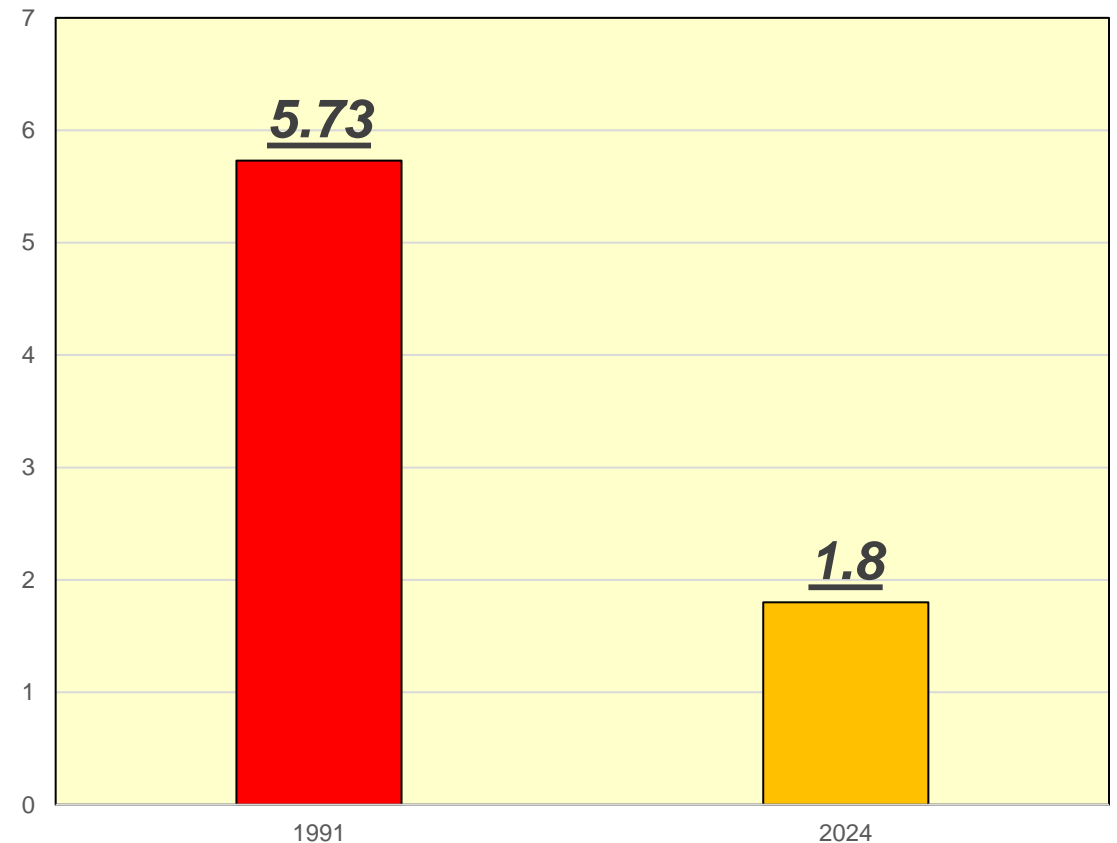
■ <i>Public Works</i>	46%
■ <i>Police</i>	34%
■ <i>Fire</i>	9%
■ <i>EMS</i>	4%
■ <i>Administration</i>	4%
■ <i>All Other Depts</i>	3%

DPW + Police =
80% of all accidents

Employee Accidents and Employee Safety

- Over Time, Management **Can** Substantially Reduce Accident Rates

NJMEL Lost Time Accident Frequency



5 Things You Can Do to Help Create & Nurture a Culture of Safety

■ ONE

□ Monitor Safety Performance

- Managers communicate their priorities by what they monitor
- The risk management and safety program should be a monthly agenda on the governing body's workshop agenda



5 Things You Can Do to Help Create a Culture of Safety

- TWO
 - *Empower employee involvement in the safety program.*
 - *STRONG MANAGEMENT SUPPORT OF THE SAFETY COMMITTEE*



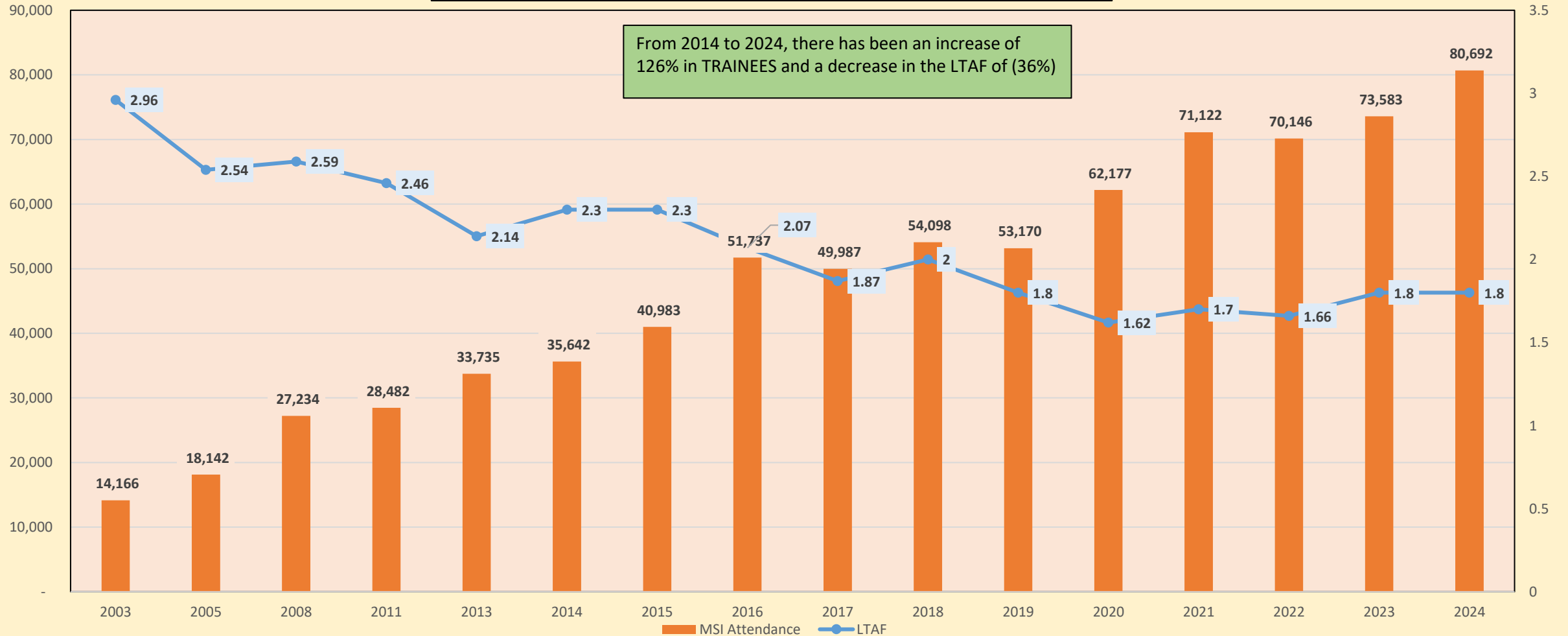
5 Things You Can Do to Help Create a Culture of Safety

- THREE
 - *Require all personnel to complete a safety orientation and refresher training course*
 - Assign training to employees based on their areas of responsibility



Safety Training WORKS!!!

Lost Time Accident Frequency v. MSI Attendance 2003-2024




NJMEL Leadership Academy

- *And that includes the “Chain of Command” in any organization where leadership is critical*

**A CHAIN IS ONLY
AS STRONG AS THE
WEAKEST LINK.**



 www.verify-safety.com

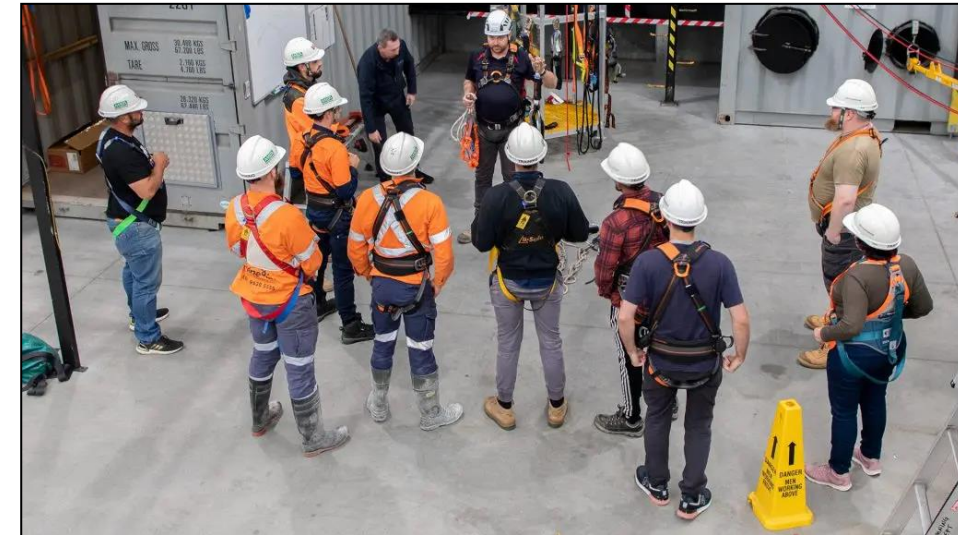
NJMEL Leadership Academy

- Two separate “tracks”, one for Law Enforcement and another for Non-Law Enforcement Supervisors
- Provides valuable supervisory training focused on municipal employees
- Includes Required courses in:
 - Ethics
 - Practical Leadership Skills – 21 Irrefutable Laws of Leadership
 - Implicit Bias
 - Protecting Children from Abuse
 - Harassment in the Workplace
 - Two-Day Supervisors Leadership Skills Workshop
 - Law Enforcement Violence and Risk Considerations for LE Officers when Interacting with Mental Health Consumers (LE Only)

Two Open Enrollment
Periods: 12/1 to 12/22 AND
6/1 to 6/22

5 Things You Can Do to Help Create a Culture of Safety

- FOUR
 - *Require supervisors and crew leaders to discuss safety with employees at the start of each shift. (“Toolbox Talks.”)*
 - Statistics show that workplaces where safety is discussed daily average less than half the frequency of accidents.



5 Things You Can Do to Help Create a Culture of Safety

■ FIVE

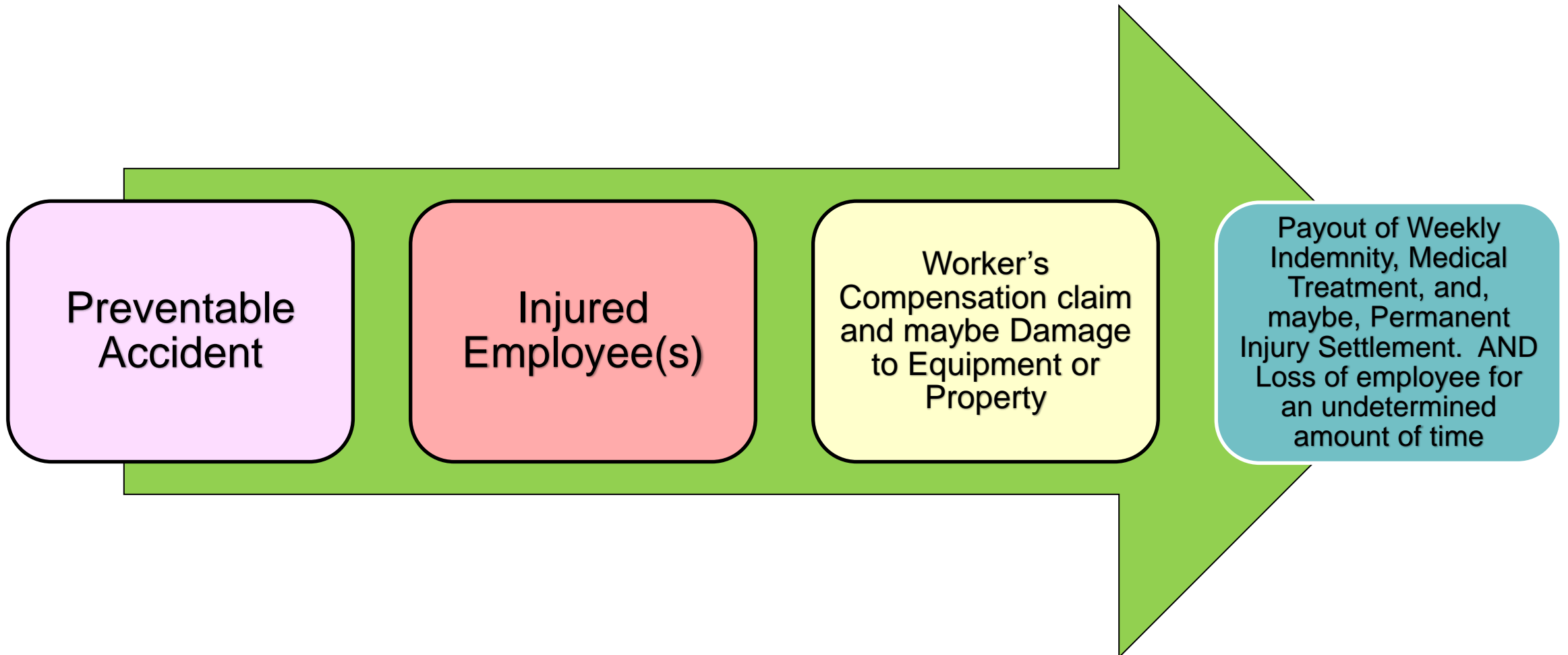
□ Actively participate in accident investigations AND Monitor PEOSH compliance

- Get involved, drill down to the root causes of accidents
- Reach out to your Risk Control Consultant on any issues arising out of an inspection from PEOSH



PEOSH

The Impact of Employee Accidents



Transitional Duty Programs

- Workers Compensation Costs = 50% of Liability Insurance Costs.
- **Employers/Employees have a common interest in facilitating the safe return to work of injured employees as soon as possible**
 - Statistics show the longer an injured employee remains out of work, the LESS chance they have of returning to their job again.
- NJMEL Developed a model transitional duty program, posted on the NJMEL website
- Requires input from all department heads
- Has proven to be an excellent option for employees to “transition” back to their jobs. Improves employee morale.



Some NJMEL Resources Available to You

- MEL Safety Institute (MSI)
 - MSI Live (In Person, or Virtual/Instructor Led)
 - Over 90 training courses
 - MSI NOW – Over 200 “On Demand” training videos
 - Safety Bulletins, Checklists, Templates, Video Briefings
 - Leadership Academy
 - Your Safety and Law Enforcement Consultants
 - MEL Employment Practices Helpline



Class Certificates & Group Sign-in Sheets

Certificates will be available
in a few weeks



Please submit Group Sign-In
Sheet within 24 hours



Group Sign-in Sheets



My Contact Information

- Questions??
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