



# Risk Management Solutions

A QUARTERLY NEWSLETTER OF THE ALABAMA MUNICIPAL INSURANCE CORPORATION  
AND THE MUNICIPAL WORKERS COMPENSATION FUND, INC.

Summer 2010

## ADA – All Municipalities Must Comply

Richard Buttenshaw, ARM-P, CIC, Loss Control Representative, AMIC/MWCF

The Americans with Disabilities Act (ADA) gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age and religion. The ADA guarantees equal opportunity for individuals with disabilities in employment, transportation, telecommunications, in goods and services provided by businesses and – most importantly for our purposes – *state and local government services*.

Small towns offer a variety of essential programs and services that are fundamental to the public and to everyday American life. Although the range of services offered by small municipalities varies, it is essential that people with disabilities have the opportunity to participate in the programs and services offer by the town.

There seems to be a widely held misconception that “older” buildings or facilities are “grandfathered in” and do not need to comply with ADA regulations. That is not true, although there are some concessions made for registered historic buildings. When programs, services or activities are located in facilities that existed **prior** to January 26, 1992, municipalities must still make sure they are also available to persons with disabilities, unless to do so would fundamentally alter a program, service or activity or result in undue financial or administrative burden. There are different ways to accomplish this. For existing facilities, the concept of *program accessibility* is used. Think of it this way, the issue is access to the *services* offered, not specifically the *buildings*. The accessibility can be achieved by relocating the program or activity, for example, to an accessible facility rather than modifying the building currently used. Of course, the alternative is to make the modifications to the current building or facility itself to provide that accessibility.

New construction and alterations since January 1992 must comply with the provisions of the ADA Standards for Accessible Design. This requirement includes facilities that are open to the public and those that are for use by employees. What is considered an “alteration” or “addition”? In general, the alteration provisions are the same as the new construction requirements except that deviations are permitted when it is not technically feasible to comply. Additions are considered an alteration but the addition must follow the new construction requirements. When existing structural and other conditions make it impossible to meet all the alteration requirements of the ADA Standards, then they should be followed to the greatest extent possible.

Municipalities must also make reasonable modifications to policies, practices and procedures to avoid discrimination against individuals with disabilities. For example, if a town provides a temporary mobile rest room facility for a special event every year, the overall facility must comply with ADA Standards. This may be easily achieved by simply adding at least one handicap accessible portable toilet to the location. Being temporary does not avoid ADA requirements for accessibility. Towns should also provide notice to the public about its ADA obligations and about accessible facilities and services in the municipality. For municipalities with 50 or more employees, there may be additional obligations necessary to comply with ADA. For example, designating an individual to coordinate ADA compliance, develop a transition plan and develop a grievance procedure.

There are many complex issues surrounding ADA compliance. For detailed information on this topic, an extensive list of resources can be found at [www.ada.gov/publicat.htm#Anchor-ADA-3800](http://www.ada.gov/publicat.htm#Anchor-ADA-3800), including the “ADA Guide for Small Towns” on which this article is based. ■



This mobile rest room does not meet ADA requirements.



The entrance to this municipal facility does meet ADA requirements.

# HOT TOPIC!

## Does a volunteer fire chief have to be a certified firefighter?

If that person receives compensation for that service, the answer is **YES** – that person is required to be a certified firefighter with the Alabama Fire College and Personnel Standards Commission. This statement is true regardless of whether the department is a full-time paid or a paid/volunteer.

The Personnel Standards Commission Administrative Code under section 36-32-7 Minimum Standards for Firefighters clearly states that NO city or fire fighting agency which provides fire protection to the public shall permanently employ any trainee as fire-protection personnel who has not met the requirements of that section.

There are penalties for not following this rule defined in the same code under section 36-32-8 which clearly states: any person who shall permanently employ any trainee who, to the knowledge of the employer, fails to meet the minimum provided in Section 36-32-7 or the standards, rules and regulations issued by the commission under that chapter, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not exceeding \$1,000.00.

## More Loss Control Resources

Visit the Loss Control link at [www.amicentral.org](http://www.amicentral.org) for additional resources.

Public Employees Safety Council of Alabama (PESCA) provides a forum for safety, health and risk management practitioners to meet and share information through meetings and website resources. For a link to the PESCA website, please visit the AMIC website ([www.amicentral.org](http://www.amicentral.org)) under More Loss Control Resources.

For a complete listing of the loss control resources available to AMIC and MWCF members, we encourage you to visit [www.alalm.org](http://www.alalm.org). Inside the Programs tab, you will find links to the MWCF, Loss Control and AMIC loss control resource pages. Resources include references on various topics; current and past issues of *Risk Management Solutions*; information on the SkidCar and FATS programs; and the AMIC/MWCF Video Library listings. Additionally, the AMIC link includes a Reference Search function for all loss control resources including loss control references, power point presentations and newsletters.

## Loss Control Seminars Set for August 11, 12, 17 & 18

Each seminar will run from 9:00 a.m. until 3:00 p.m. and feature the following topics:

- **Heat Stress Hazards and Other Seasonal Hazards**  
Myra Forrest, Safety Consultant
- **Personal Protective Equipment for Municipalities**  
Will Strength, Loss Control Representative
- **Special Events Planning**  
Richard Buttenshaw, Loss Control Representative
- **Seat Belts – Have they made a difference?**  
Todd McCarley, Loss Control Representative

### Dates and Locations:

**August 11:** Athens Recreation Center, 270 Hwy 31 North, Athens.

**August 12:** Calera Community Center, 8560 Hwy 31, Calera.

**August 17:** Brewton Community Center, 1010B Douglas Avenue, Brewton.

**August 18:** Valley Community Center, 130 Sports Plex Drive, Valley. **NOTE: Eastern time zone!**

**For more information, contact  
Donna Wagner at 334-262-2566.**

## Defining Moment

### Personal Protective Equipment

Personal protective equipment, or PPE, is any specialized clothing or equipment that is worn by an employee for protection from workplace injuries or illnesses resulting from a hazard of their job. PPE should be considered the last line of defense when other methods of control such as engineering, administrative and work practice controls do not completely eliminate workplace hazards.



# Navigating Comp Time

Lori Lein, Deputy General Counsel • Alabama League of Municipalities

The Fair Labor Standards Act (FLSA) is a federal law which was originally enacted by Congress in 1938 and has been amended several times since. It was established to guarantee employees certain minimum wages as well as payment for any hours worked over the maximum number of hours set for their work period (overtime). Pursuant to the FLSA, overtime payments are set at time and one-half of the employee's regular pay.

Many employees and employers prefer paid time off (compensatory or "comp" time) rather than actual payment for overtime. Under the FLSA, employees may receive comp time in lieu of overtime pay for hours worked in excess of the maximum set for their work period. *See* 29 U.S.C. § 207(o). Employers need to have a written program in place if they want to offer comp time off in lieu of overtime.

Some common questions arise regarding the accrual and use of comp time in lieu of overtime. This article attempts to answer some of those questions.

## Who is eligible for comp time?

Not all public employees are covered by the FLSA. Employees who are "nonexempt" from the FLSA overtime standards are eligible for comp time. Basically, if they are eligible for overtime pursuant to the FLSA, then they are eligible for comp time. Employees who are not considered to be employees under the FLSA include: elected officials, personal staff members, policy making appointees, immediate legal advisers not covered by personnel rules, independent contractors, prisoners and trainees.

While the FLSA specifies which employees are entitled to overtime or comp time in lieu of overtime, it is important to point out that employers are free to provide overtime and or comp time to any employee regardless of whether they are nonexempt under the FLSA.

## Can a municipality require employees to take comp time rather than be paid for overtime?

If a municipality currently utilizes only overtime and would like to start providing for comp time in lieu of overtime it is permitted to do so as long as it is agreed to by employees who were hired after April 15, 1986. *See* 29 U.S.C. § 207(o)(2). However, no agreement is necessary for employees hired prior to April 15, 1986, if the employer had a regular practice of granting comp time in effect on that date.

An agreement or understanding with employees may be established by notifying the employees of the municipality's comp time practice. *See* 29 C.F.R. § 553.23. The agreement must be reached **before** the performance of work by employees. *See* 29 C.F.R. § 553.23(a). An agreement will be presumed to exist if the employee does not object after receiving notice. If an employee does object, an employer cannot require that the employee utilize comp time rather than be paid for overtime.

## At what rate does comp time accrue?

Generally, comp time is accrued at a rate of not less than one and one-half hours for each hour the employee is authorized to work in excess of the maximum set for their work period. *See* 29 C.F.R. § 553.20. For example, if an employee who is covered by FLSA for a maximum 40 hour work week works 60 hours during a particular work week, her or she would receive 30 hours of comp time off rather than 20 hours of overtime pay. Another way of stating the answer is: 60 hours actually worked – 40 hour work week = 20 hours of overtime x 1.5 = 30 hours of comp time.

The accrual of comp time is limited. The maximum accrual for city employees in a public safety, emergency response or seasonal activity is

480 hours (320 hours of actual overtime worked) and 240 hours (160 hours of actual overtime work) for employees engaged in other types of work. *See* 29 U.S.C. § 207(o)(3)(a). If additional overtime hours are accrued, the employee must be paid overtime compensation at the regular rate earned by the employee at the time the employee receives the payment.

## How should comp time be requested?

Requests to accrue comp time must be made by the employee before work is performed. It should be in writing and made freely and without pressure or suggestion from the employer. This should be made part of the employer's policies and procedures.

As far as requesting the use of already accrued comp time, normally an employee must be permitted to use any accrued comp time within a reasonable period of time after making the request for time off so long as the time off does not unduly disrupt municipal operations. A simple inconvenience cannot serve as a reason for denying a timely request for use of comp time. However, a municipality can have reasonable policies and procedures in place for the use of comp time that take into account the day to day operational and manpower needs of the municipality.

## What happens to comp time upon termination (voluntary or otherwise)?

If an employee has accumulated unused FLSA comp time at the time of termination of employment, the employer must cash out the accrued comp time at the rate of the employee's regular pay rate upon termination or the employee's average pay rate for the last three years of employment, whichever is higher. *See* 29 U.S.C. § 207(o)(4). If an employee has had a break in employment, the employer need only use the rate of pay during the current period of employment.

Even where a comp time agreement has been formulated, the employer may freely substitute cash, in whole or in part, in lieu of comp time. This decision will not affect future granting of comp time pursuant to the agreement.

## Conclusion

The use of comp time in lieu of overtime provides employers with flexibility to allow employees to take time off for overtime hours worked rather than come up with the cash for overtime pay. Municipalities should be careful not to use comp time as a means to avoid the requirement to pay overtime. Employers should never attempt to pressure employees to accept more comp time than they can realistically expect to grant within a reasonable period.

Hopefully, this article provides some basic information to municipalities to help clear up any misunderstandings over how to administer comp time in lieu of overtime payments; particularly with regard to how hours are earned and under what circumstances time off can be given. Please keep in mind that this article is not intended as a complete overview of the Fair Labor Standards Act but is, rather, an attempt to summarize issues that arise when utilizing comp time. For a more comprehensive look at the FLSA and other labor laws affecting municipalities, please contact the League office for a copy of our manual titled "Labor Laws Affecting Municipalities." ■



**ALABAMA LEAGUE OF MUNICIPALITIES**  
**P.O. Box 1270 • 535 ADAMS AVE.**  
**MONTGOMERY, AL 36102**

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## New Safety DVDs

Safety Orientation	2.011
Workplace Bloodborne Pathogens	7.112
Workplace Fire Safety	7.113
Personal Protective Equipment	7.114
First Aid: Prepared to Help	7.115
CPR and AED: The Chain of Survival	7.116
Office Ergonomics: It's Your Move	10.010
Confined Space Entry	14.017
Excavation and Trenching	14.018
Preventing Sexual Harassment for Managers	16.011
Preventing Sexual Harassment for Employees	16.010

**Call, FAX or e-mail your Video/DVD request to Rachel Wagner at:  
 334-262-2566; rachelw@alalm.org; or FAX at 334-263-0200.**

## ATTENTION!

**For step-by-step instructions on filing  
 work comp claims, visit:**

**[www.alalm.org/MWCF/claimreporting.html](http://www.alalm.org/MWCF/claimreporting.html)**

### EMPLOYMENT PRACTICES LAW HOTLINE

# 1-800-864-5324

Through a toll-free Employment Practices Law Hotline, members can be in direct contact with an attorney specializing in employment-related issues. When faced with a potential employment situation, the hotline provides a no-cost, 30 minute consultation.

## 2010 SKIDCAR SCHEDULE

**Date/location subject to change.**

- |                 |                 |                |               |
|-----------------|-----------------|----------------|---------------|
| • Thomasville   | July 6-9        | • Calera       | October 12-22 |
| • Muscle Shoals | July 20-30      | • Orange Beach | November 9-19 |
| • Decatur       | August 17-27    | • Montgomery   | December 7-17 |
| • Troy          | September 14-24 |                |               |



*For more information, contact  
 Donna Wagner at 334-262-2566.*

