

**PART V**  
**FINANCE, BUDGETING, AND DEBT**

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**CHAPTER 19: INSURANCE AND LOSS CONTROL**

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# 1. Insurance and loss control

This chapter will address two related issues, insurance and loss control. Loss control reduces the likelihood that a claim will be made, and insurance pays lawful claims that are made.

Loss control

Workers' compensation

Property coverage

Automobile insurance

Fidelity and faithful-performance bonds

Employee-benefit programs

## I. Loss control

Contact the [Minnesota Counties Insurance Trust](#) at 100 Empire Drive, St. Paul, MN 55103.

Phone: 651.209.6400 or 866.547.6516.

Counties can take a number of practical steps to avoid losses and reduce the cost of any losses that might occur. Loss-control seminars, various risk-management publications, and visits by loss-control representatives all help avoid or minimize potential losses. Counties may also contact MCIT for additional resources.

Losses can be controlled by following a number of practices. For example, improving personnel practices reduces claims for wrongful termination, sexual harassment, discrimination, and other employment-related matters. In addition, there are many preventative measures counties can take, classified under the broad title of ergonomics, to reduce or avoid repetitive-work injuries. Emergency-vehicle-driver training, preventive maintenance, and internal controls to reduce the likelihood of embezzlement are just other examples of areas that can be addressed. Even though many claims will be covered by insurance, loss-control measures reduce the cost of the insurance.

There are other reasons to control losses. Frequent accidents and injuries reduce employee morale. Poor personnel policies affect employee performance. And frequent claims against a county may reflect poorly on its management and even impact board members at election time.

## II. Workers' compensation

Minn. Stat. ch. 176; Minn. Stat. § 176.181.

With certain exceptions, all counties must pay workers' compensation benefits to their employees for all injuries from accidents arising out of, and in the course of, their county employment. The law is designed to ensure the quick and efficient delivery of benefits to injured workers. The law doesn't require county to purchase insurance for this purpose, but they should do so, unless the board feels the county is financially able to pay compensation benefits from the treasury. MCIT offers this type of insurance, as do other carriers.

Because of the potential magnitude of a claim, all counties should purchase insurance. If a local government's workers' compensation premium costs are more than a quarter-million dollars, the local government could consider self-insuring. Unlike private employers, political subdivisions don't need the approval of the Department of Labor and Industry to self-insure.

### A. Elected officials

Minn. Stat. § 176.011, subd. 9(6).

Elected officials or officials appointed for a regular term of office, such as members of boards and commissions, are considered to be employees of a county only if the county passes an ordinance or resolution extending coverage to these individuals.

For part-time, minimally-compensated positions such as members of boards and commissions, workers' compensation benefits are based on the individual's actual earnings from all employment. In other words, benefits would be based on the total earnings from the official's regular employment plus the salary, if any, from the county for serving on a board or commission.

### B. Volunteers

Minn. Stat. § 176.011, subd. 9.

The law defines certain volunteers as employees for workers' compensation purposes, including ambulance attendants, first responders, law-enforcement-assistance volunteers, and emergency-management volunteers. These volunteers are entitled to receive workers' compensation benefits if they are injured while performing volunteer services for the county.

Indemnity benefits for volunteers are generally based on the wage of paid employees performing similar services in nearby localities.

Minn. Stat. § 176.011, subd. 9

Other types of volunteers are not deemed to be employees and are therefore not covered by the Workers' Compensation Act. If a volunteer who is not covered is injured while performing services for the county, the volunteer might be able to make a tort claim against the county if the injury was caused at least partly by the county's negligence or the negligence of a county officer, employee or other volunteer, and if the volunteer wasn't more at fault for his or her injury. In order to protect these volunteers, many counties carry accident coverage for volunteers, which would provide no-fault benefits to the volunteer.

### C. Contractors

Minn. Stat. § 176.182.

*Wagen v. City of Fountain*, 255 N.W.2d 813 (Minn. 1977).

Minn. Stat. § 176.021, subd. 4.

By law, any contractor doing business with the county must provide evidence of compliance with the statutes that require employers to have workers' compensation insurance. This could be achieved by showing the contractor has insurance, showing that he or she does not have employees and thus is not an employer, or by showing that he or she is self-insured. Although the workers' compensation laws do not create any liability on the county's part for providing workers' compensation benefits for the employees of contractors who do not have coverage, there are ways the county might be required to pay workers' compensation benefits to these uncovered employees. A court could determine the contractor was really a subcontractor and the county was a general contractor, and therefore, is liable for providing workers' compensation benefits to the subcontractor's employees. Or an independent contractor, who is a sole proprietor with no employees, might be found to meet the criteria of an "employee," who is entitled to benefits. When dealing with independent contractors who are sole proprietors, the county must be extremely careful to make sure the person meets the criteria of an independent contractor or purchases workers' compensation coverage. An employee cannot waive the right to be covered by the Workers' Compensation Act.

## III. Property coverage

Insurance is a contract. Property insurance generally covers the loss of or damage to buildings, contents, mobile equipment, and motor vehicles named in the contract due to the risks and hazards specified in the contract, which may include fire, weather, and damage due to a variety of causes. Indemnification may be for the actual cost of the property or its loss or replacement value. Although there is standard insurance industry policy language, coverage for counties can and should be broader. The importance of reviewing the contract, the types of perils insured against, the list of covered property, and the form of indemnity can not be stressed enough.

Property insurance should provide broad coverage, be simple and easy for the county to administer, and minimize the potential for errors that result in inadvertent gaps in coverage. To best protect the county, coverage should be on a blanket-limit, replacement-cost base with no co-insurance clause.

Flood and other water-damage insurance should be purchased. A national flood-insurance program provides coverage for buildings in flood-hazard areas, but the insurance has many limitations. Additional wrap-around insurance for these structures should also be purchased.

Counties should also consider “boiler and machinery” or “machinery breakdown” coverage. As the name suggests, this type of coverage can protect the county from losses caused by machinery breakdowns. Standard property-insurance policies typically would not cover that type of loss.

It is best to discuss the coverage available for your county with an insurance agent.

## **IV. Liability coverage**

There are a variety of types of liability the county may be subject to, including general liability, errors-and-omissions liability, police liability, ambulance liability, firefighter liability, employment liability, and so forth. Counties should make sure all areas of liability are covered.

### **D. What is liability coverage?**

Liability coverage is coverage for claims someone else makes against the county, an officer or employee, or another covered party. It does not apply to losses the county itself suffers. That type of loss to property is covered under property coverage.

The county is not liable for all claims of damage. For the county to be liable for someone else’s damage, three conditions must generally be met:

- The county must have been negligent. That is, the county must have done something it should not have done or failed to do something it should have done.
- The damages must have been caused by the county’s negligence.
- The conduct causing the damages must not be in one of the areas in which the county is immune from liability.

Immunity from liability is discussed in Handbook, ch. 18.

A lawsuit that demands a county do something (like issue a building permit) rather than pay damages is typically not covered by conventional liability insurance. The cost of defending a lawsuit for damages is normally included in a policy.

## **E. Who should be covered?**

Covered parties in a liability policy should include the county and its officers, employees, and all volunteers. Relief associations should also be covered. Joint-powers entities and certain boards, commissions, and agencies must be named specifically in order to be covered. All of the following should be named insured under the policy:

- County board members.
- Members of boards or commissions.
- County volunteers, whether individuals or organizations.
- Other elected or appointed officials.
- County employees, whether full-time, part-time, or temporary.
- Relief associations and their officers, employees, and members.
- Former county officers, employees, and volunteers.

## **F. Types of coverage to include**

The following are some types of liability that may be excluded under many conventional insurance policies, but which represent important liability exposures for counties. Counties should make sure their liability coverage includes these risks.

- Libel, slander, defamation, and invasion of privacy arising out of comments made at a public meeting or in the performance of an employee's duties, especially arising out of the operation of a public-access TV channel, or a broadcast of board meetings.
- Claims that a police officer used unreasonable force.
- Liability for employment actions such as hiring, firing, disciplining, or promoting, including back wages awarded as damages for wrongful termination.
- Liability for claims of sexual or racial harassment.
- Claims for punitive damages to the extent permitted by law.
- Violations of civil rights, including payment of attorney's fees.
- Claims for indemnification of volunteer firefighters for automobile liability incurred while responding to a fire.

- Claims arising out of a county officer or employee's malfeasance, including defense costs of the person accused of malfeasance.
- The defense of charges of open-meeting-law violations against county officials. (These are not claims for damages, but for civil penalties. However, the costs of defense can easily be much greater than any penalty assessed.)
- Claims based on lead or asbestos contamination.
- The fiduciary liability of county officials.
- Claims arising from the failure to supply utilities.
- Legal costs for litigation relating to land-use regulation or development, even if that litigation doesn't involve a claim for damages.
- Underground-tank-liability coverage.

Excluding certain types of claims from coverage should be a conscious decision, and should not be made by purchasing the least expensive policy. Every claim made against a county that is not covered by insurance is a potential loss to the taxpayers. Retaining these risks may save premium money, but a better and more predictable way to reduce costs by retaining risk is to use deductibles by which the county retains the financial responsibility for all claims or certain claims up to a certain dollar amount each year. The county can budget for this type of loss.

## G. Joint-powers entities

Private insurance policies typically have a similar exclusion for joint ventures. Unless the joint-powers entity has arranged for coverage in its own name, neither the county and its officers and employees, nor the joint entity and its officers and employees, will have coverage for a liability claim or suit arising out of the activities of the joint-powers entity. Counties should make sure any joint-powers entity with which it is involved has liability coverage. The joint-powers entity could purchase liability coverage (and property and workers' compensation coverage, if appropriate), or one of the contracting governing bodies could insure the joint-powers entity under the governing body's own insurance.

Counties should review all joint-powers contracts in which they are involved, including mutual-aid agreements and service contracts. If the contract creates a separate board with power to do any of the following, the joint-powers entity probably is not covered under the county's liability policy:

[Minn. Stat. § 471.59.](#)

For more information on Joint Powers Agreements, see Handbook, ch. 17.

- Receive and expend funds.
- Enter into contracts.
- Hire employees.
- Purchase or acquire real or personal property.
- Sue or be sued.

Not every joint-powers contract creates a joint-powers entity. If a joint-powers agreement merely provides for cooperation in some venture, then a new entity is not created and the joint-powers activities are probably covered by the insurance of the governing bodies. An example would be when a county agrees, in return for money, to provide police protection in a city. The insurance of the county providing the service would likely cover its activities in another city.

## H. Independent administrative boards

Independent administrative boards created under statute require specialty coverage for certain exposures. Also, these boards, and the activities under their control, may not be covered by the county's liability policy unless they've been specifically named as covered parties. Counties that have the following independent administrative boards should make sure their activities are covered:

- Port authority, housing and redevelopment authority, economic development authority, municipal redevelopment authority or a similar authority.
- Airport board or commission.
- Hospital, nursing home, and medical clinic board or commission.

## I. Amounts of coverage

[Minn. Stat. § 466.04, subd. 1.](#)

The liability limits of a county, and an officer or employee of a county, for a tort arising out of an alleged act or omission occurring in the performance of duty may not exceed \$400,000 per individual claim and \$1,200,000 for all claims arising from a single occurrence. On July 1, 2009, the limits will be raised to \$500,000 per individual claim and \$1,500,000 for all claims arising from a single occurrence.

See Handbook, ch. 18

This limit does not apply to all types of claims against the county or its officers or employees. The following are some of the types of claims that have no or higher limits on the monetary amount the claimant can recover:

- Contractual liability.
- Eminent domain/condemnation.

- Constitutional claims.
- Federal-civil-rights claims.

[Minn. Stat. § 466.06.](#)

The statutory tort-liability limit restricts the amount of money that a claimant who has been injured by the county's negligence will receive, only if the actual injuries exceed the statutory liability limits. Some counties may wish to provide more protection to claimants so that their injuries will be more fully compensated if they are over the statutory liability limits. Counties can waive the statutory liability limits; in which case, the damages compensated could be up to the amount of coverage carried.

Excess liability coverage can give the county additional protection for those types of claims mentioned above for which there are no statutory limits. This type of insurance is designed to pay up to a specified amount, so it may not cover the entire amount of a possible loss.

[Minn. Stat. ch. 13D](#) (open meeting law).

## V. Automobile insurance

See [Minn. Stat. ch. 65B](#); [Minn. Stat. § 65B.49](#).

County automobiles and other vehicles should be insured. Confusion often occurs as to uninsured/underinsured motorist coverage. By law, a minimum limit of coverage of \$25,000 must be carried to cover injury to or the death of one person in any accident, and \$50,000 to cover injury to or the death of two or more persons in any accident. Most counties should carry this minimum limit rather than providing for higher limits.

The uninsured/underinsured motorist coverage is designed to help ensure that an injured driver will be compensated if she or he is injured in an accident caused by an uninsured or underinsured driver. This coverage steps into the place of the liability insurance that the other driver should have possessed.

In the case of county vehicles though, an injury to the driver while operating a county vehicle would, in most cases, be covered by workers' compensation benefits. The amounts the driver would be able to recover from uninsured/underinsured motorist coverage would be in addition to the medical, indemnity, and other benefits paid under workers' compensation laws and, in many cases, would amount to a double recovery for the driver's injuries.

A county might decide to carry a higher limit of coverage if it believes the workers' compensation benefits would be insufficient to compensate the injured employee, or if it wants to make sure non-employees riding in county vehicles are fully compensated in the event of an accident with an uninsured or underinsured motorist. But in many cases, the passenger of a driver of another vehicle would have uninsured/underinsured coverage, which would protect the passenger when riding in another vehicle.

## **VI. Fidelity and faithful-performance bonds**

Public-employee-bond coverage is required for certain county positions, but it is a good idea to cover all employees of the county in order to minimize the risk of loss.

Not only county employees should be covered; employees of county-related organizations and joint-powers entities should also be covered, which would include employees of economic development authorities, port authorities, housing and redevelopment authorities, etc.

A fidelity bond covers the risk of employee dishonesty—that is, the risk that an employee will steal money.

A faithful-performance bond covers any loss the county or a member of the public suffers because an employee failed to faithfully perform his or her duty. A faithful-performance bond would cover the same dishonesty risks that a fidelity bond would cover. In addition, it could cover a loss to the county that results from the employee's carelessness or incompetence. It could also cover county losses due to the malfeasance, willful neglect of duty, or the bad faith of an employee.

A faithful-performance bond does not protect the employee; it protects the county and the public.

[Minn. Stat. § 574.25.](#)

When a citizen has a claim against a public employee covered by a faithful-performance bond, the claim is to be paid first out of the property of the employee if sufficient property can be found, and, if not, out of the property of the surety.

When a county makes a claim against an employee under a faithful-performance bond to recover a loss the county suffered because of an employee's mistakes or carelessness, the county is saying the employee failed to faithfully perform his duties and that the employee should therefore repay the county for the loss he or she caused.

The statutes require certain officers to be bonded for the faithful performance of their duties. Some of the officers and the amounts for which they are required to be bonded include:

- Minn. Stat. § 384.02 • Auditor: \$5,000 to \$20,000
- Minn. Stat. § 385.03 • Treasurer (in counties over 150,000): \$500,000, or \$250,000 if authorized to be surety
- Minn. Stat. § 386.01 • Recorder: \$5,000
- Minn. Stat. § 387.01 • Sheriff:
  - In counties under 150,000: \$5,000
  - In counties over 150,000: \$25,000
- Minn. Stat. § 389.011 • Surveyor: \$2,000

The above amounts are minimums, and the county could decide that higher bond amounts are appropriate.

## VII. Employee-benefit programs

Insurance is available to fund a wide variety of employee-benefit programs, including health, dental, disability, and life coverage. The coverage that is available to county employees is usually a matter of judgment of the board, although labor agreements may also determine what is to be made available to employees. The county may agree to pay all or a portion of the cost as a part of its employee-compensation package. No county is required by law to provide any employee benefits.

See Handbook, ch. 10.

If a county provides health insurance for its employees, several laws govern its continuance and the level of benefits.

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