Agency Risk Management Program Evaluation Guidelines

July 11, 2017

Issued by:

Department of Financial Services
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INTRODUCTION

The Department of Financial Services, Division of Risk Management (the Division), administers the self-insurance program for the state of Florida, offering lines of coverage to all state Agencies and universities for workers' compensation, general liability, civil rights and employment liability, automobile liability, and property. The Division consists of the Bureau of Risk Financing and Loss Prevention, the Bureau of State Employee Workers' Compensation Claims, and the Bureau of State Liability and Property Claims.

Pursuant to section 284.50(1), F.S.:

> The head of each department of state government, except the Legislature, shall designate a safety coordinator. Such safety coordinator must be an employee of the department and must hold a position which has responsibilities comparable to those of an employee in the Senior Management System. The Department of Financial Services shall provide appropriate training to the safety coordinators to permit them to effectively perform their duties within their respective departments. Each safety coordinator shall, at the direction of his or her department head:
>
> (a) Develop and implement the loss prevention program, a comprehensive departmental safety program which shall include a statement of safety policy and responsibility.
> (b) Provide for regular and periodic facility and equipment inspections.
> (c) Investigate job-related employee accidents of his or her department.
> (d) Establish a program to promote increased safety awareness among employees.

The Division is required to conduct Agency Risk Management Program evaluations pursuant to section 284.50(4), F.S.:

> The Division of Risk Management shall evaluate each agency's risk management programs, including, but not limited to, return-to-work, safety, and loss prevention programs, at least once every 5 years. Reports, including, but not limited to, any recommended corrective action, resulting from such evaluations shall be provided to the head of the agency being evaluated, the Chief Financial Officer, and the director of the Division of Risk Management. The agency head must provide to the Division of Risk Management a response to all report recommendations within 45 days and a plan to implement any corrective action to be taken as part of the response. If the agency disagrees with any final report recommendations, including, but not limited to, any recommended corrective action, or if the agency fails to implement any recommended corrective action within a reasonable time, the division shall submit the evaluation report to the legislative appropriations committees.

STATEMENT OF POLICY

It is the policy of the Division to maintain guidelines to serve as a framework for the implementation of Agency Risk Management Programs and to provide appropriate training and assistance to Agency Safety Coordinators and other risk managers to permit them to effectively perform their duties within their respective departments.

OBJECTIVE AND SCOPE

The Division's objective in establishing the Agency Risk Management Program Evaluation Guidelines (the Guidelines) is to provide a model of best practices for effective implementation of the key components that comprise Agency Risk Management Programs. The Guidelines represent a basic framework for program development and are designed to promote positive loss prevention outcomes by assisting Safety Coordinators and other risk managers in performing the duties assigned to them. Additionally, in their role as an assessment tool in the Division's review of Agency programs, the Guidelines are intended to allow the Division to identify and share successful risk management practices across agencies. While it is the Division's intent to apply the Guidelines in a consistent manner, they may be applied on a case-by-case basis depending upon a variety of factors, including, but not limited to: Agency size, number of Employees, and unique loss exposures.

The scope of the Guidelines mirrors the Division's lines of self-insurance coverage under the State Risk Management Trust Fund pursuant to section 284.30, F.S., and the Division's evaluation of Agency programs will be limited to these areas. The following program elements are addressed in the Guidelines: administration; safety; workers' compensation; employment discrimination and Federal Civil Rights; and general and automobile liability. Risk management guidelines for property will be assessed separately through loss control Inspections conducted by the Division-contracted broker of record. Examples of risk exposures not covered by the State Risk Management Trust Fund—and therefore not included in the Guidelines or the Agency program evaluation process—include cyber risks and environmental risks.

DEFINITIONS

The terms provided below are common to the administration of risk management, safety, workers' compensation, return-to-work, and Loss Prevention Programs and processes. While these terms may not be referenced directly in the Guidelines, they may be discussed in the program evaluation report. Each Agency should make the final determination regarding which definitions to include in its own policies and procedures.

Accident Investigation: Process of identifying and documenting contributing hazardous activities or conditions following an accident to determine Corrective Actions that need to be taken to prevent and eliminate a recurrence of accidents from similar causes.

Agency: An entity within state of Florida government currently covered under the State Risk Management Trust Fund. Under this definition, "Agency" includes agencies, boards, commissions, departments, and universities.

Alternate Duty: Temporary duties established away from an Employee's regular work area/responsibilities and within the "functional limitations and restrictions" stated on the DWC-25. Alternate duty is evaluated with each subsequent physician visit when functional restrictions are updated.

Alternate Safety Coordinator: Employee delegated responsibility for the implementation of the Agency Loss Prevention Program in the absence of and/or in support of the appointed Safety Coordinator.

Americans with Disabilities Act (ADA): Civil rights law prohibiting discrimination against persons with disabilities in public accommodation, schools, transportation, communications, employment, and government activities.

Authorized Treating Healthcare Provider: Healthcare provider authorized by the Medical Case Management Provider or adjuster to provide medically necessary treatment to an Employee who sustains a job-related Injury.

Corrective Action: Remedial actions developed to correct a Hazard with the goal of preventing accident reoccurrence by reducing or eliminating the unsafe condition.

DWC-1 (also known as "First Report of Injury or Illness"): Division of Workers' Compensation form used to report a work-related Injury or death.

DWC-25 (also known as "DFS-F5-DWC-25" or "Florida Workers' Compensation Uniform Medical Treatment/Status Reporting Form"): Department of Financial Services form used by the Authorized Treating Healthcare Provider to report an injured worker's medical treatment and status, including functional limitations and restrictions, to the employer.

Division: Division of Risk Management within the Department of Financial Services.

Employment Dispute Resolution: Process utilized to resolve complaints and disputes in the workplace.

Employee: Employee who is covered under the Division's self-insurance program.

Equal Employment Opportunity Commission (EEOC): Commission responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an Employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, genetic information, or because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Family and Medical Leave Act (FMLA): Federal act entitling eligible Employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the Employee had not taken leave.

Federal Civil Rights (FCR): Those rights provided by the federal constitution or federal laws. For example, Employees may allege they were terminated or not promoted because they were discriminated against based on their sex or race; or an inmate may allege excessive use of force, deliberate indifference to the inmate's serious medical need, or cruel and unusual punishment.

First Report of Injury or Illness (also known as "DWC-1"): See "DWC-1."

Fleet Vehicle Manager: Individual responsible for selecting and maintaining an Agency's fleet of vehicles and monitoring the various aspects of fleet and driver operations.

Florida Commission on Human Relations (FCHR): Commission established by the Florida Legislature in 1969 to enforce the Florida Civil Rights Act and address discrimination issues through education, outreach, and partnerships.

Florida Workers' Compensation Uniform Medical Treatment/Status Reporting Form: See "DWC-25."

General Counsel: Chief legal advisor responsible for providing legal advice and determinations regarding federal and state law and their appropriate interpretation and application to various program areas within the advisor's Agency.

Hazard: Condition, situation, or activity that has the potential for harm.

Human Resources (HR) Liaison: Agency contact person for human resource issues.

Injury: Personal Injury or death by accident arising out of and in the course of employment and any diseases or infections naturally or unavoidably resulting from such Injury.

Inspection: Evaluation method in which a facility, equipment, and/or job task is examined by a person or group to detect and document Hazards or violations of safety standards.

Interagency Advisory Council on Loss Prevention: Council comprised of Safety Coordinators from each Agency, along with representatives designated by the Division of State Fire Marshal and Division of Risk Management, that meets quarterly to discuss statewide loss prevention and safety issues and share resources.

Job Safety Analysis: Process of integrating accepted safety and health principles and practices into specific job tasks by analyzing each basic step of the job and recommending the safest way to perform the job tasks. Job Safety Analysis also refers to the worksheet used to document this process.

Legal Representative: Office or individual counsel providing legal representation to an Agency in litigation before state, federal, and administrative venues.

Loss Prevention Program: Comprehensive Agency safety program that includes a Statement of Safety Policy and Responsibility.

Medical Case Management Provider: Vendor contracted by the Division to provide medical case administration for the workers' compensation program and assist covered Employees in gaining access to needed medical services following a workplace accident.

Modified Duty: Temporary duties established within the Employee's regular position and within the functional limitations and Work Restrictions reflected on the DWC-25.

Property Coordinator: Designated Agency liaison responsible for ensuring accurate reporting of insured values of buildings and contents to the Division. Additionally, Property Coordinators are responsible for reporting information concerning property losses and filing claims for losses to the Division.

Return-to-Work Program: Program developed to provide Modified Duty and Alternate Duty work assignments that accommodate the functional restrictions and limitations of an injured Employee—as determined by the Authorized Treating Healthcare Provider— in an effort to promote successful Employee re-integration into the work environment as soon as medically possible following a workplace accident.

Risk Management Program: A system for planning, organizing, leading, and controlling the resources and activities that an organization needs to protect it adequately from the adverse effects of accidental losses.

Safety Awareness Program: Program developed to promote interest, increase awareness, and gain acceptance of safe work practices by securing maximum Employee participation through the effective use of media, awareness activities, and individual/group recognition.

Safety Committee: Group of Agency Employees comprised of the Safety Coordinator, Workers' Compensation Coordinator, and other personnel as appropriate for the structure of the Agency that meets on a regular basis to review Employee accident and claim information, discuss safety-related issues, and consider Corrective Actions.

Safety Coordinator: Employee with responsibilities comparable to those in a Senior Management System position; appointed by the Agency head; and responsible for the development and implementation of the Agency Loss Prevention Program pursuant to section 284.50, F.S.

Senior Management System Employee: State Employee who holds a managerial or policymaking position without civil service protection; heads an organizational unit; and has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in the Employee's area(s) of responsibility, pursuant to section 121.055, F.S.

Statement of Safety Policy and Responsibility: Agency declaration of its obligation and intent to provide Employees with a safe and healthful workplace free of Hazards that is communicated to Employees via official policy.

Training:

- ***New Employee Orientation Training:*** Initial training given to new Employees to provide them with basic introductory information about the Agency and its programs, benefits, policies, and procedures.
- ***Basic Safety Training:*** Generalized training providing Employees with an overview of fundamental safety principles.
- ***Basic Supervisory Training:*** Training given to Employees in supervisory positions to provide them with information, guidance, and instruction concerning managerial responsibilities and supervisory accountability.
- ***Job Safety Training:*** Workplace training designed to address Hazards or safety issues specific to a particular job or job task.
- ***Refresher Training:*** Training provided to Employees to update and/or reinforce previously attained knowledge and skills.

- ***Remedial Training:*** Training provided to Employees as a remedy to improve competency in a certain skill or subject.
- ***Targeted Safety Training:*** Safety training developed to address a specifically identified item, location, area, or issue of concern.

Workers' Compensation Coordinator: Employee responsible for coordinating the reporting and handling of workers' compensation claims for injured workers within his/her Agency.

Work Restrictions: The Authorized Treating Healthcare Provider's description of the work an Employee can and cannot do based on the DWC-25 functional limitations and restrictions.

GUIDELINES

The following guidelines address the Risk Management Program elements of administration, safety, workers' compensation, employment discrimination and Federal Civil Rights, and general and automobile liability.

A. ADMINISTRATION

Administrative guidelines include program resource allocation, planning, scope of responsibility, and assessment of Agency-wide risks.

1. The head of each department of state government, except the Legislature, shall designate a Safety Coordinator who holds a position with responsibilities comparable to those of an Employee in the Senior Management System as required by section 284.50(1), F.S. The head of all other covered entities should also designate a Safety Coordinator who holds a position with responsibilities comparable to those of an Employee in the Senior Management System.

2. The Agency should develop and implement a Risk Management Program that includes documented policies and procedures for its day-to-day operation; assigned responsibilities for each area of the program; and shall include a Statement of Safety Policy and Responsibility pursuant to section 284.50(1)(a), F.S.

3. The Agency Risk Management Program should include established goals and objectives to measure the efficiency and effectiveness of each of its components. The Agency should periodically compare program performance against these established goals and objectives.

4. The Agency head should allocate sufficient resources to implement the Risk Management Program fully and effectively.

5. The Agency Risk Management Program should have a process in place requiring the completion of periodic risk assessments that identify Agency loss exposures.

6. The Agency should implement a process to report Risk Management Program progress, problems, and Corrective Actions to senior-level management on at least a quarterly basis.

B. SAFETY

Safety guidelines include Basic Safety Training, Hazard reporting, Inspections, Accident Investigation, Safety Committee, Job Safety Analyses, and communication of safety awareness.

7. The Agency should implement a process for regular communication between the Safety Coordinator and Workers' Compensation Coordinator to review Employee Injury claims and related issues.

8. The Safety Coordinator should have a process in place for the review of the available safety data for use in conducting trend analysis for program planning purposes, including identification of areas in the Agency that experience a high frequency and/or high cost of

claims. These data should include, but not be limited to, claim reports; First Report of Injury forms; and Inspection and Accident Investigation reports.

9. Each Agency should establish and maintain a central Safety Committee. The committee should meet on at least a quarterly basis and be comprised of the Safety Coordinator—who should chair the committee—the Workers' Compensation Coordinator, and other Agency personnel as appropriate for the structure of the Agency. Committee agenda should include review of workers' compensation claims and issues (including trends, causation factors, and return-to-work efforts); Inspection and Accident Investigation reports; Hazard reports and Corrective Action statuses; as well as updates on program efforts. Minutes should be documented for every Safety Committee meeting.

10. Each Agency should ensure that all Employees are provided with an initial Basic Safety Training course upon employment.

11. Each Agency should ensure that Employees are given instruction and training on how to perform their jobs in a proper and safe manner in accordance with Agency policies and procedures, and that supervisors monitor Employees to ensure Employees are performing their jobs properly and safely.

12. Agencies that have high-risk exposures should provide Refresher Training to affected Employees in accordance with safety industry best practices.

13. Each Agency should coordinate Targeted Safety Training for Employees within the Agency and maintain a log of all attendees to every safety event or training.

14. Each Agency should conduct and document Job Safety Analyses on new, complex, and/or high-risk tasks; and utilize these analyses for job-specific training.

15. The Safety Coordinator shall provide for regular and periodic facility and equipment Inspections pursuant to section 284.50(1)(b), F.S. Safety Inspections should be performed on workplace locations and premises with public access.

16. Each Agency should have a process in place for reporting and documenting Hazards that includes implementation of Corrective Actions and notification to the Safety Coordinator.

17. The Safety Coordinator shall investigate job-related Employee accidents of his/her Agency pursuant to section 284.50(1)(c), F.S. Accident Investigations and accompanying Corrective Actions should be documented.

18. The Safety Coordinator shall establish a program to promote increased safety awareness among Employees of the Agency pursuant to section 284.50(1)(d), F.S. The Safety Awareness Program should include regular communication to all Employees of safety and accident prevention information; goals and objectives; and other related events or activities. The program may additionally include recognition of Employees who make exceptional contributions to safety in the workplace.

19. The Safety Coordinator or the coordinator's alternate shall participate in quarterly meetings of the Interagency Advisory Council on Loss Prevention pursuant to section 284.50(2), F.S., to work toward achieving effective Loss Prevention Program outcomes through interagency activities including, but not limited to, data sharing; ongoing research; identification and implementation of best practices; training; and policy development.

C. WORKERS' COMPENSATION

Workers' compensation guidelines emphasize efficient handling of Employee claims; communication with supervisors and the Medical Case Management Provider; coordination of and adherence to the medical case management model; timely reporting of Employee injuries and accidents; and participation in return-to-work processes.

20. Each Agency should have a central Workers' Compensation Coordinator and, as needed based upon the size and structure of the Agency, additional workers' compensation or human resources representatives responsible for processing and tracking Employee Injury claims.

21. The Agency should ensure that information is provided to all supervisors regarding their responsibilities and those of the Authorized Treating Healthcare Provider and contracted Medical Case Management Provider.

22. Each Agency should have a process in place to ensure that all workplace accidents or injuries are reported to the contracted Medical Case Management Provider immediately after the occurrence.

23. Each Agency should collaborate with the contracted Medical Case Management Provider to ensure effective case management claim administration and adherence to established reporting processes.

24. The Department of Financial Services and all agencies employing more than 3,000 full-time Employees shall develop, implement, and promote return-to-work and stay-at-work processes that ensure supervisors return injured Employees to work upon receipt of the Authorized Treating Healthcare Provider's documented functional restrictions and limitations for the Employee as indicated in section 284.50(3), F.S., and section 216.251(2)(b)2., F.S. All other agencies employing 3,000 or fewer full-time Employees should also develop, implement, and promote return-to-work and stay-at-work processes as described above.

D. EMPLOYMENT DISCRIMINATION & FEDERAL CIVIL RIGHTS

Employment discrimination guidelines focus on managing Agency exposure to Employee civil liability actions through the development of documented employment policies, procedures, training, and practices.

25. Each Agency should have written Employee personnel policies that address the following: FMLA; ADA; cultural diversity; standards of ethical conduct; prohibition of harassment, discrimination, workplace violence, threatening or intimidating behavior, or any inappropriate action or process that would pose a risk to the health or safety of other

Employees, clients, customers, or volunteers. These policies should include procedures for a neutral, independent process for Employees to report such actions and should prohibit retaliation. Each Agency should maintain a record of Employee receipt of these policies and any other related policies in the official Employee personnel file.

26. Each Agency should conduct training on its policies related to FMLA; ADA; cultural diversity; standards of ethical conduct; and prohibition of harassment, discrimination, workplace violence, threatening or intimidating behavior, or any inappropriate action or process that would pose a risk to the health or safety of other Employees, clients, customers, or volunteers. Training should be presented upon employment and upon becoming a supervisor. The Agency should maintain a record of training participation.

27. Each Agency having a higher-than-average exposure to the risk of civil rights violation claims because it has custody of persons as part of its operational duties—such as agencies responsible for foster children, disabled persons, prison inmates, and youthful offenders—should provide and document training to its staff regarding the risk of violating the civil rights of those persons in its custody and how to best prevent claims alleging the violation of civil rights.

28. Agencies should provide dispute resolution options to Employees involved in conflicts that could potentially result in civil action.

29. Each Agency should have a process in place for the HR liaison and the Agency Legal Representative assigned to HR to review all significant employment discrimination actions, FCR claims, disciplinary actions, and related issues to ensure compliance with current law.

30. Each Agency should have a process in place to report to the Division immediately all written notices of intent to sue for FCR and employment actions claims and lawsuits where an answer or response is due. If involved in an employment discrimination case before the FCHR or EEOC, the Agency shall provide the Division with the charge and its official response pursuant to section 284.385, F.S. The Agency should notify the Division if it wishes to have the Division participate in a pre-suit settlement.

31. Each Agency should have a process in place to investigate the circumstances surrounding any FCHR or EEOC inquiries pertaining to equal employment opportunity complaints filed with those commissions.

E. GENERAL & AUTOMOBILE LIABILITY

General and automobile liability guidelines cover identification of exposures, timely reporting of claims, driver safety and training, and incident tracking.

32. Each Agency should have a process in place for reporting general liability claims; automobile damage and injuries; and fee-related cases to its Legal Representative and the Division.

33. Each Agency should have a process in place to immediately report to the Safety Coordinator and the Division adverse incidents involving serious bodily Injury to clients, patients,

individuals in state residential custody, and any individual over which the state has legal custody, control, or responsibility.

34. The Agency should have a process established for analyzing general liability claims to identify and address trends in areas with high claims frequency and cost.

35. Each Agency should assess any contractual liability that may be assumed when entering into contracts with vendors. Each Agency should ensure that contracts do not provide for an agreement for the state to indemnify or hold harmless another party due to the negligence of that party or other parties involved in the operations contemplated in the contract. The Agency should maintain a copy of the certificate of insurance and/or any contract on file.

36. Each Agency should implement a policy or program prohibiting Employees from engaging in any distracted behavior of a reckless or careless nature while operating a motor vehicle, including, but not limited to, cellular phone texting.

37. Each Agency should conduct automobile safety training periodically beginning upon initial employment for any Employee who routinely operates a motor vehicle for state business. Agency-specific trends should be addressed during the training and the Agency should maintain a record of Employee training participation.

38. Each Agency should have a process in place to monitor Employee driver's licenses if the Employee is authorized to drive a motor vehicle for state business on a routine or regular basis as indicated in the Employee's position description.

39. The Agency should have a process established for analyzing automobile liability claims to identify and address trends in areas with high claims frequency and cost.