

the Municipal RISK MANAGER

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Donated Buildings May Come with a Cost

Each year, Maine municipalities acquire properties that are either donated or purchased with a minimal transaction cost. Common examples include schools, theatres, factories, historical buildings, or residences that have been abandoned or are no longer in use.

When municipalities agree to take ownership of such properties, they usually have plans to renovate and use them for the good of the community. This goal, along with the seemingly win-win cost of the property, may cause you to overlook the potential hazards as it may not be apparent that anything significant could be wrong with the property. There may be potential perils that should be considered before making the purchase or accepting the property as a donation. Some common scenarios that can result in costly and unplanned repairs or remediation are as follows:

1. A municipality obtains a hall that has only one accessible exit, not meeting the Americans with Disabilities Act (ADA) requirements.
2. A municipality obtains an abandoned school that has asbestos, lead paint and a failing heating system.
3. A municipality is donated a facility that was adjacent to a former plant, or sits on ground that contains underground storage tanks and consequently has pollutants that must be remediated.

Why may these potential hazards exist? Before 1970, neither the Environmental Protection Agency (EPA) nor the Occupational Safety and Health Administration (OSHA) existed. Also, the ADA wasn't enacted until 1990. Therefore, these property may not have been constructed to meet the environmental, health, safety and accessibility requirements that are required today for a public occupancy.

Additionally, underground storage tanks laws were not developed before the EPA came into existence. Subsequently, facilities such as gas stations had to have their tanks removed, at great cost, due to leaking. Some facilities of this type closed without adequate removal of the tanks and remediation of the surrounding grounds.

Similar problems can exist with properties that may have stored bulk chemicals, regardless of whether the chemicals were stored above or below ground. Structures could also contain high levels of lead or asbestos (or both) resulting in significantly high abatement and remodel costs.



Health and safety hazards aren't the only issues to consider. Should you inherit a building with historical status, the materials similar to those used in the original construction may be required to maintain historical status, making renovations costly to accomplish. Further, older buildings may have general structure defects, or may not be built to the structural standards required for repurposing the building to your municipality's desired use.

Essentially, if the desired transaction appears too good to be true, it just might have some of these issues. As a result, your municipality might bear the burden of removing the hazards, or at least spending more money than initially intended. Additional costs may be incurred if renovation or construction unearths and disturbs hazards and contaminants.

There are many other scenarios that could lead to a costly outcome. So consider the following guidelines in your evaluation of "donated and dollar properties:"

1. Hire an environmental consultant to conduct an Environmental Assessment. For buildings, hire a consultant to conduct a thorough building inspection and structural assessment.
2. Ensure that the consultant performs a historical review of the property use and use of adjacent properties for at least the past 80 years.
3. Have the consultant determine if there are any Superfund sites that could impact the property of concern. If so, the consultant should obtain status on any cleanup measures of such sites.

Story continued on next page

OSHA 300 Logs – What are they and what am I required to do?

This is a reminder that your OSHA 300A Summary of Work-Related Injuries and Illnesses for calendar year 2020 is required to be posted in a conspicuous location or placed where employees frequent from February 1-April 30, 2021. The Loss Control Department of Maine Municipal Association get questions each year from our members about OSHA 300 logs and the posting of the 300A form. So, here is some information from Research and Statistics Division, State of Maine Department of Labor, Bureau of Labor Standards.

What is the difference between a recordable and a reportable injury?

All reportable events are recordable, but very few recordable events are reportable. **Reportable** cases are limited to deaths (which must be reported to the Maine Department of Labor within 8 hours) and serious injuries (which must be reported to the Maine Department of Labor within 24 hours), which are defined by the type of injury sustained. While deaths are pretty self-explanatory, an injury is only classified as a serious injury that results in an amputation or loss of any body part (including an eye) or a fracture or break (including teeth) or that necessitates immediate hospitalization or formal admission to the inpatient service of a hospital or clinic for care or treatment.

In contrast, **Recordable** events are defined based on the result of the injury. Did the employee lose time due to the injury? Were they transferred or put on restricted work? Did the employee suffer hearing loss? A reCORDable injury only becomes a rePORTable injury if it crosses one of the above thresholds to be considered a serious injury.

What are the differences between an OSHA 300 and a 300A form?

To answer this, we need to start by talking about the 301 form. The 301 is a detailed incident report that gets filled out with all the demographic and injury data of an employee's injury event. Most small establishments will be able to go through a year without ever needing to fill out a 301 form because they won't have any recordable events and medium sized establishments might need to fill out up to a handful of 301's throughout any given year. But for larger establishments, this will be a much more common occurrence. Keeping track of all those 301 forms can become a headache. That's where the 300 form comes in. The 300 form works like an index of all of the 301 forms generated in a calendar year. If you only know small details about an injury event like who got hurt, the occupation of an injured employee, or details of the injury event, you can look at the 300 form

to quickly find out what case corresponds to that description. That's because the 300 provides basic (and personally identifiable) information about every recordable case so that your safety personnel, OSHA inspectors, or other privileged individuals (union representatives, lawyers, etc.) can use to scan through your collection of 301 forms, and gives them a high level insights of the safety records for a particular establishment.

But shouldn't employees (not privileged to Personally Identifiable Information) also be able to review such safety information for their organization? OSHA thinks so, and that's where the 300A forms comes into play. The 300A is a one page summary document of all the recordable events of the prior year. There is no information on the 300A about individual events, just the grand totals which are calculated on the 300 form, presented in a much more streamlined and simplified manner compared to the full 300 form. That's what makes the 300A form perfect for being posted in a common area for all employees to see.

Below are helpful instructions on how to complete the Form 300-A:

To complete the annual OSHA 300A Summary, enter:

Total the columns on the OSHA 300 Log (if you had no recordable cases, enter zeros for each column total); and

Enter the calendar year covered, the company's name, establishment name, establishment address, annual average number of employees covered by the OSHA 300 Log, and the total hours worked by all employees covered by the OSHA 300 Log.

If you are using an equivalent form other than the OSHA 300-A summary form, as permitted under §1904.6(b)(4), the summary you use must also include the employee access and employer penalty statements found on the OSHA 300-A Summary form.

Only positive tests for Covid-19 must be entered on the OSHA 300.

The employee testing positive for Covid-19 can request their name be redacted on the OSHA 300 form. The employer can strike through the name or black it out using a marker. If the entry has not been entered yet, and the employee has

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4. Have the consultant evaluate the site for various hazards such as:
 - a. Asbestos
 - b. Lead paint
 - c. Radon, especially in lower portions of the building and foundational areas.
 - d. Spills of paints, solvents, fuels, or other chemicals that may have occurred inside or outside the building, penetrating through walls, flooring, ceilings or foundations.
 - e. Water damage through leaks or plumbing that may give rise to structural damage or mold.
 - f. Any other environmental, health, or safety concerns the consultant may have.
5. Discuss the property with your insurance provider to verify that coverage is available prior to taking possession of the property.

If concerns are identified, get full information on the costs of needed repairs or remediation, and consider the risks before finally deciding whether to close the transaction.

OSHA's Form 300 (Rev. 01/2004)
Log of Work-Related Injuries and Illnesses

Attention: This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

Year 20
 U.S. Department of Labor
 Occupational Safety and Health Administration

Establishment name _____
 City _____ State _____

Identify the person
 (A) Case no. (B) Employee's name (C) Job title (D) Date of injury or onset of illness (E) Where the event occurred (F) Describe injury or illness, parts of body affected, and object/substance that directly injured or made person ill

Classify the case
 CHECK ONLY ONE box for each case based on the most serious outcome for that case:
 Death (G) Days away from work (H) Job transfer or restriction (I) Other record, also cases (J) S-1

Enter the number of days the injured or ill worker was:
 Remained at Work (K) (L)
 Away from work (M) (N)
 On job transfer or restriction (O) (P)

Check the "injury" column or choose one type of illness:
 (1) Injury (2) Skin (3) Hearing (4) Respiratory (5) Other

Public reporting burden for this collection of information is estimated to average 14 minutes per response, including time to review the instructions, search existing data sources, gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about this estimate or any other aspect of this data collection, contact the OMB Department of Labor, OSHA, Office of Statistical Analysis, Room N-3348, 200 Constitution Avenue, NW, Washington, DC 20310. Do not send the completed forms to this office.

Page totals >>> _____

Please be sure to transfer these totals to the Summary page (Form 300A) before you post it.

requested their name to be redacted, the incident can be entered on the OSHA 300 AS "PRIVATE."

Names are not recorded on the OSHA 300A form.

Are reporting requirements for workers compensation the same as OSHA / Maine Department of Labor?

In the world of OSHA and the Maine Department of Labor, reportable and recordable are different than the requirements for filing a First Report of Injury (FROI) with Maine Municipal Association (or your Workers' Compensation carrier). If an employee has, or alleges, that they have sustained a work related injury the Workers' Compensation Statute requires that a FROI be filed on all injuries that result in medical treatment and/or lost time from work. If there is a day missed from work a FROI is required to be filed within 7 days of notice of the lost time. If there is medical treatment only you should file a FROI as soon as possible. For members of the MMA Workers Compensation Fund FROIs can be filed on the Risk Management Services page of the MMA website at <https://www.memun.org>.

Does the OSHA 300 have to be posted or just the 300A?

Only the 300A should to be posted, as only the 300A is guaranteed to be void of personally identifiable information.

When does the 300A have to be posted?

The 300A form must be posted every year by February 1st, summarizing all injuries from January 1 through December 31st of the previous year. The log must be visible from February 1st until April 30th. If you have multiple locations – Public Works in one location, Fire Department in another and the Town Office in a third location, then department-specific 300A forms must be displayed, at each location, in a common area where notices to employees are usually posted.

What about electronic submission of 300A? Is that now a requirement for public entities in Maine?

On the OSHA website there is a link titled, "OSHA ITA". It is a link for Maine's public sector to the OSHA Injury Tracking Application (ITA). This is the application for employers who are required to file 300A information electronically with reporting requirements.

While OSHA only requires information from the 300A form to be electronically submitted, the Survey of Occupational Injuries and Illness (SOII) survey is a separate data project and requires information from the 300 and 301 forms as well.

Electronic submission is not required of any establishments with less than 20 employees, and only required of establishments with between 20 and 249 employees if their NAICS code appears on the list. All establishments with 250 or more employees are required to electronically submit their 300A forms. OSHA requires all 300A information to be submitted by March 2nd.

A great resource to help you to determine if you need to electronically submit data or not is the Maine Department of Labor, Safety Works. Their contact number is 207-623-7900 or 1-877-723-3345.

To view this article with six helpful links, please go to the Advisory page on the MMA website at <https://memun.org/Insurance-Services/Risk-Management-Services/RMS-Advisories> .We appreciate the assistance of Mr. Victor Tardiff III, Director, Research and Statistics Division, State of Maine Department of Labor, Bureau of Labor Standards in putting this information together.



EMPLOYMENT LAW HOTLINE CHUBB

EPL Assist™

What is the Employment Law Hotline and how does it help you?

MMA Property & Casualty Pool members have unlimited access to expert legal advice and counsel on employment law issues at no cost through EPL Assist™ a cutting edge risk management program providing:

- No cost, online and live access to the legal experts at Littler Mendelson, the largest employment and labor firm in the U.S.
- Employment law updates, newsletters, related publications and a compendium of online employment law resources through a secure website
- Employment policies and practices
- Human Resources forms library
- Sample employee handbooks
- State and national employment law summaries and reference materials
- State surveys on various employment law essentials including:
 - minimum wage and overtime requirements
 - protected classifications
 - new hire reporting requirements



Risk Management Services recognizes the unique burdens faced by Municipalities and Governmental Entities in today's employment arena, and we are pleased to have partnered with the nation's foremost employment and labor law firm, Littler Mendelson (Littler). This partnership grants you the ability to interface directly with Littler lawyers dedicated to assisting you in navigating the turbulent waters of employee management.

For further information regarding this program, please contact RMS Member Services at:

1-800-590-5583 or Email rmsunderwriting@memun.org

Serving Maine Communities Is What We Do and All We Do

InforME (Information Resource of Maine)

The Internet gateway to interact with government electronically

Through InforME, all municipalities have access to a free subscriber account that allows municipal staff to interact with state government. With a subscriber account, municipal staff can search vehicle information including driver, registration and title records, corporate information including corporate records search, and, in some cases, no cost Public Criminal Records. With our experienced staff, you can take comfort in knowing that the NIC Maine staff is a phone call or email away if you have questions about any of these services. MMA Risk Management services encourages you to use this service when obtaining annual MVR checks and/or background checks for new hires.

To learn more about NIC Maine, InforME, and the services available to your municipality, please visit www.maine.gov/informe or contact municipalservices@informe.org.

FREQUENTLY ASKED QUESTIONS

How can I use the Online University to manage our trainings and policies?

Offered FREE to members of Workers' Compensation Fund and Property & Casualty Pool, the Online University allows members the ability to educate employees on critical safety, health and liability topics while documenting training records and certifications.

We are pleased to introduce you to these powerful new and improved developments in the Online University.

- The ability to organize training by Departments and assign courses with due dates via an email format.
- Ability to setup multi-level administrators or supervisory groups with individualized access.
- Courses can be taken by an individual or in a group setting.
- Custom Member content courses can be developed and visible to only you.
- Ability to track live on-site trainings.
- Upload 90 uniquely named Operating Procedures (Policies) with an automatic acknowledgement statement.
- Up to 6 city-wide personnel policies can be uploaded.
- Policies and SOPs can be assigned just like the training modules and will be linked to the training reports.
- Policies and SOPs are only visible to member employees.
- Track professional certifications and licenses
- Track Continuing Education Units (CEUs).
- Users can be assigned to multiple departments within one member

For more information on the Online University or the available services offered by MMA Risk Management Services please visit: <https://www.memun.org/Insurance-Services/Risk-Management-Services> or call Member Services at 1(800)590-5583.



The Municipal Risk Manager

The Municipal Risk Manager is published seasonally to inform you of developments in municipal risk management which may be of interest to you in your daily business activities. The information in these articles is general in nature and should not be considered advice for any specific risk management or legal question; you should consult with legal counsel or other qualified professional of your own choice.

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