



Municipal Excess Liability Joint Insurance Fund

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To: Members - Municipal Excess Liability Joint Insurance Fund
(Municipalities and Utility Authorities)

From: David N. Grubb, Executive Director

Date: February 29, 2016

Re: 2017-2018 Employment Practices Liability (EPL) Program

95% of MEL members have adopted the MEL's model employment practices risk control program and are eligible for premium and deductible incentives. These programs must be updated every two years to remain eligible. **PLEASE VISIT THE MEL WEBSITE (www.NJMEL.org) and select the "Coverage" tab and then select "Employment Practices" from the drop down menu to see all the program elements.**

Members with updated loss control programs receive the standard EPL deductible of \$20,000 per claim plus a co-pay of 20% on each claim capped at \$50,000 and may be eligible to buy down deductibles and co-insurance caps. (See note below concerning members with adverse EPL claims experience).

To re-qualify for the incentive, have your General Counsel or Employment Attorney complete and sign the attached one page Checklist confirming that the minimum requirements for updating the plan have been met. It is not necessary to attach any further documentation. Mail the completed form to MEL Fund Office, 9 Campus Drive, Suite 216, Parsippany, NJ 07054.

Members that did not qualify for the 2015-2016 incentive must adopt the EPL loss control plan and submit to the MEL for review. Have your General Counsel or Employment Attorney complete the attached two-page Checklist confirming that the minimum requirements for the plan have been met. The following must be attached to the Checklist: (1) the Personnel Policies and Procedures Manual, (2) the resolution adopting this manual, and (3) the Employee Handbook. Mail the completed form and attachments to the MEL Fund Office, 9 Campus Drive, Suite 216, Parsippany, NJ 07054.

Members submitting the required form by October 1, 2016 will qualify or continue to qualify for the deductible incentives effective January 1, 2017. Members submitting this form after the deadline will become eligible for the deductible incentive upon approval of the application, but not retroactively.

Members without updated loss control programs will have a deductible of \$100,000 per claim plus a co-pay of 20% on each claim with no cap. (See note below concerning members with adverse EPL claims experience).

Members with adverse EPL claims experience: Members with adverse loss experience as determined by the insurance carrier will have a deductible of \$75,000 if they have an updated loss control plan and \$150,000 if they do not – in addition to the co-pay (as outlined above). In a few cases, the insurance carrier will establish higher deductibles for members due to exceptionally poor experience.

Public Official's Training Credit: The MEL is continuing the public officials training throughout the state for elected public officials and authority commissioners. Sessions have already been given at the League Convention and the AEA Convention in Atlantic City. The MEL will reduce each member's 2016 liability premium by \$250 for each municipal elected official and authority commissioner who completes the course by May 1, 2016. The credit is also extended to the member's CEO (i.e. municipal manager/administrator or authority executive director). The maximum credit is capped at 25% of the member's liability claims fund. The MEL webpage has posted a listing of courses scheduled throughout the state. In addition, the course can also be taken on-line through the MEL Safety Institute (instructions attached).

Below is a summary of the required elements for the incentive that must be confirmed via the attached Checklist. The MEL website (www.NJMEL.org) contains all of the referenced elements by clicking the “Coverage” tab and clicking “Employment Practices” from the drop down menu.

- 1. Employment Attorney/Advisor:** An Employment Attorney or an Employment Advisor usually provides advice concerning personnel matters. However, the member may designate its General Counsel if experienced in employment matters.
- 2. Personnel Policies and Procedures Manual:** To facilitate this process, the MEL has developed a Model Personnel Policies and Procedure Manual that members are free to use at their discretion. A Synopsis of changes to the existing Model Manual can be found in the following pages. Members can adopt the model, take sections from the model and place them in their existing personnel manual, or write their own policies that cover the subjects in the model.
- 3. Conscientious Employee Protection Act Notice:** This notice (in both English and Spanish) must be posted on appropriate bulletin board(s) and distributed to all personnel. The notice required by the NJ Department of Labor is included in the Model Personnel Policies and Procedures Manual.
- 4. Employee Handbook:** The handbook must be updated and distributed to all personnel. To facilitate this process, the MEL has developed a Model Employee handbook that members are free to use at their discretion.
- 5. Model Local Unit Civil Rights Resolution (municipalities only):** Adopt the model resolution.
- 6. Managerial and Supervisory Training:** Court decisions made personnel training for managerial and supervisory employees "mandatory". A signed acknowledgement that the manager or supervisor has completed training within the last 12 months must be placed in the personnel files. Training is also mandatory for the Municipal Judge, the heads of volunteer emergency service organizations such as Volunteer Fire Departments, EMS units, and the heads of organizations such as Library Boards and Planning Boards, etc., that are involved in personnel matters. The MEL has developed a Model that the local JIFs will conduct over the following months. Your JIF will contact you with the details.

7. **Police Chief, Captains and Lieutenants Training:** Because Police Departments are involved in a high percentage of employment related litigation, Police Chiefs and at least one other command officer must complete employment-practices training that takes into consideration the Attorney General's guidelines for police operations. A schedule of these seminars will be distributed by your JIF.
8. **Training for All Other Personnel:** Court decisions also require employers to offer anti-harassment and related personnel training to all employees. This can be accomplished by requiring your employees to complete the 14-minute on-line Employee Orientation found on the MEL website. The MEL also makes this program available on a DVD with the attached Lesson Plan. Please contact the MEL Fund office for copies.
9. **MEL EPL Helpline:** The MEL includes a helpline to its members at no additional cost. Members are required to enroll (if you have not already done so) by calling 415-617-1611 or emailing bhansen@enquiron.com.

For assistance, please contact the MEL office or the office of your local JIF.

**Synopsis of Changes to
Municipal Excess Liability Joint Insurance Fund
MODEL PERSONNEL POLICIES AND PROCEDURES MANUAL**

The Personnel Policy Committee (“Committee”) convened to consider changes to the Model Personnel Policies and Procedures (“Manual”) for the 2017 Policy Year. In order to be eligible for deductible and co-pay incentives, members must adopt the recommended changes by **October 1, 2016**.

This memorandum is intended to provide an overview of the changes to the Manual and accompanying documents. Members should amend their personnel manual accordingly.

Adopted Changes:

- A. Change One:** Modification to Anti-Discrimination Policy/ American’s with Disabilities Act Policy (Section 1 of Manual) and Employment Application to comply with the New Jersey Pregnant Worker’s Fairness Act. The foregoing referenced policies and application were amended to comply with the New Jersey Pregnant Worker’s Fairness Act, which amended the Law Against Discrimination to prevent discrimination based upon pregnancy, childbirth or pregnancy medial related condition. It also requires employers to provide reasonable accommodation.
- B. Change Two:** Modification to the Social Media Policy portion of the **Communication Media Policy (Section 2 of the Manual)** to reflect changes in technology and practices of government. Note: In this section, we have a note provided by a member of the Committee. To accommodate his comments, we have also included alternative wording.
- C. Change Three:** Addition of Employee Dating Policy to Section 2 of the Manual. This policy is adopted as an optional policy to require supervisor/ subordinate dating to notify human resources.
- D. Change Four:** Addition of I9 language to Employment Procedure in Section 5
- E. Change Five:** Modification to Open Public Meetings Act Procedures concerning Personnel Matters.
- F. Change Six:** Model Employment Application to be Compliant with Ban the Box Legislation. In March of 2015, New Jersey’s Ban the Box Legislation become effective, which prohibits employers from asking on an employment application about a candidate’s criminal background. Therefore, we have eliminated the question from the standard job application.
- G. Change Seven:** CEPA Notice. Removed outdated CEPA notice and replaced with most current version.

Checklist for Members with Currently Approved Risk Control Plans

2017 - 2018 MEL EMPLOYMENT PRACTICES RISK CONTROL UPDATE CHECKLIST

Name of Municipality or Authority: _____

- ☐ Retain Employment Attorney/Advisor: (name)_____
- ☐ Update and distribute to managerial/supervisory employees the Personnel Policies and Procedures Manual: (Not necessary to attach)
- ☐ Distribute a notice concerning the Conscientious Employee Protection Act to all personnel:
- ☐ Update and distribute the Employee Handbook: (Not necessary to attach)
- ☐ Adopt the model civil rights resolution (municipalities only).
- ☐ Train managerial and supervisory personnel:
- ☐ Have Police Chief, Deputy Chief, Public Safety Director, Captains & Lieutenants complete the special EPL training course:
- ☐ Offer Anti-Harassment training to all other personnel:
- ☐ Sign up with NJ MEL Helpline for Employment Practices.

I, _____, the (check __General Counsel or __Employment Attorney) of (member name)_____ hereby certify that the member has verified to me that the above actions have been completed and that I have read the updated Personnel Policies and Procedures Manual and the updated Employee Handbook.

Signature: _____

Date: _____ Telephone: _____

To qualify for the Employment Practices Liability policy deductible, this checklist should be returned to the MEL Fund Office (9 Campus Drive, Suite 216, Parsippany, NJ 07054 as soon as possible. Members submitting this form by October 1, 2016 will qualify or continue to qualify for the deductible effective on January 1, 2017. Members submitting this form after the deadline will become eligible for the deductible incentive upon approval of the application, but not retroactively.

Checklist for Members without Currently Approved Risk Control Plans

INITIAL EMPLOYMENT PRACTICES LOSS RISK CONTROL INCENTIVE APPLICATION

Name of Municipality or Authority: _____

- ☐ Retain Employment Attorney/Advisor: (name)_____
- ☐ Adopt and distribute to managerial/supervisory employees the Personnel Policies and Procedures Manual: (Attach Resolution and Manual)

Required Minimum Provisions:

- ☐ Anti-Discrimination Policy
- ☐ Americans with Disabilities Act Policy
- ☐ Contagious or Life Threatening Illnesses Policy
- ☐ Safety Policy
- ☐ Drugs and Alcohol Policy
- ☐ Workplace Violence Policy
- ☐ General Anti-Harassment Policy
- ☐ Anti-Sexual Harassment Policy
- ☐ Whistle Blower Policy
- ☐ Employee Complaint Policy
- ☐ Access to Personnel Files Policy
- ☐ Conflict of Interest Policy
- ☐ Political Activity Policy
- ☐ Employee Evaluation Policy
- ☐ Employee Discipline Policy
- ☐ Workforce Reduction Policy
- ☐ Driver's License Policy
- ☐ Communication Media Policy
- ☐ Bulletin Board Policy
- ☐ Leave of Absence Policy
- ☐ Family and Medical Leave Act Policy
- ☐ Military Leave Policy
- ☐ Domestic Abuse Leave Policy
- ☐ Employment Procedure
- ☐ Open Public Meeting Act Procedure Concerning Personnel Matters
- ☐ Processing and Orientation of New Employees Procedure
- ☐ Initial Employment Period Procedure
- ☐ Employee Handbook Procedure
- ☐ Performance Evaluation Procedure
- ☐ Disciplinary Action Procedure
- ☐ Personnel File Procedure
- ☐ Employee Complaint Investigation Procedure
- ☐ Requests for Employment Verification and Reference Procedure

- ☐ Continuing Education Procedure
- ☐ Distribute a notice concerning the Conscientious Employee Protection Act to all personnel:
- ☐ Adopt and distribute the Employee Handbook: (Attach handbook)
- ☐ Adopt the model civil rights resolution (municipalities only).
- ☐ Train managerial and supervisory personnel:
- ☐ Have Police Chief, Deputy Chief, Public Safety Director, Captains & Lieutenants complete the special EPL training course:
- ☐ Offer Anti-Harassment training to all other personnel:
- ☐ Sign up with NJ MEL Helpline for Employment Practices.

I, _____, the (check __General Counsel or __Employment Attorney) of (member name)_____hereby certify that the member has verified to me that the above actions have been completed and that I have read the Personnel Policies and Procedures Manual and the Employee Handbook.

Signature: _____

Date: _____ Telephone: _____

To qualify for the Employment Practices Liability policy deductible, this checklist should be returned to the MEL Fund Office (9 Campus Drive, Suite 216, Parsippany, NJ 07054 as soon as possible. Members submitting this form by October 1, 2016 will qualify or continue to qualify for the deductible effective on January 1, 2017. Members submitting this form after the deadline will become eligible for the deductible incentive upon approval of the application, but not retroactively.

Conscientious Employee Protection Act "Whistleblower Act"

Employer retaliatory action; protected employee actions; employee responsibilities

1. New Jersey law prohibits an employer from taking any retaliatory action against an employee because the employee does any of the following:
 - a. Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the employer or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation issued under the law, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care;
 - b. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation issued under the law by the employer or another employer, with whom there is a business relationship, or, in the case of an employee who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into quality of patient care; or
 - c. Provides information involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity.
 - d. Provides information regarding any perceived criminal or fraudulent activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity.
 - e. Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes:
 - (1) is in violation of a law, or a rule or regulation issued under the law or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;
 - (2) is fraudulent or criminal; or
 - (3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment. N.J.S.A. 34:19-3.
2. The protection against retaliation, when a disclosure is made to a public body, does not apply unless the employee has brought the activity, policy or practice to the attention of a supervisor of the employee by written notice and given the employer a reasonable opportunity to correct the activity, policy or practice. However, disclosure is not required where the employee reasonably believes that the activity, policy or practice is known to one or more supervisors of the employer or where the employee fears physical harm as a result of the disclosure, provided that the situation is emergency in nature.

CONTACT INFORMATION

Your employer has designated the following contact person to receive written notifications, pursuant to paragraph 2 above (N.J.S.A. 34:19-4):

Name: _____

Address: _____

Telephone Number: _____

This notice must be conspicuously displayed.

Once each year, employers with 10 or more employees must distribute notice of this law to their employees.

If you need this document in a language other than English or Spanish, please call (609) 292-7832.



AD-276 (8/11)

La Ley de protección al empleado consciente

"Ley de protección del denunciante"

Acciones de represalia del empleador; protección de las acciones del empleado

1. La ley de New Jersey prohíbe que los empleadores tomen medidas de represalia contra todo empleado que haga lo siguiente:
 - a. Divulgue o amenace con divulgar, ya sea a un supervisor o a una agencia pública toda actividad, directriz o norma del empleador o de cualquier otro empleador con el que exista una relación de negocios y que el empleado tiene motivos fundados para pensar que violan alguna ley, o en el caso de un trabajador licenciado o certificado de la salud y que tiene motivos fundados para pensar que se trata de una manera inadecuada de atención al paciente;
 - b. Facilite información o preste testimonio ante cualquier agencia pública que conduzca una investigación, audiencia o indagación sobre la violación de alguna ley, regla o reglamento que el empleador o algún otro empleador con el que exista una relación de negocios; o en el caso de un trabajador licenciado o certificado de la salud que facilite información o preste testimonio ante cualquier agencia pública que conduzca una investigación, audiencia o indagación sobre la calidad de la atención al paciente; o
 - c. Ofrece información concerniente al engaño o la tergiversación con accionistas, inversionistas, usuarios, pacientes, clientes, empleados, ex empleados, retirados o pensionados del empleador o de cualquier agencia gubernamental.
 - d. Ofrece información con respecto a toda actividad que se pueda percibir como delictiva o fraudulenta, toda directiva o práctica engañosa o de tergiversación que el empleado tenga motivos fundados para pensar que pudieran estafar a accionistas, inversionistas, usuarios, pacientes, clientes, empleados, ex empleados, retirados o pensionados del empleador o de cualquier agencia gubernamental.
 - e. Se opone o se niega a participar en alguna actividad, directriz o práctica que el empleado tiene motivos fundados para pensar que:
 - (1) viola alguna ley, o regla o reglamento que dicta la ley o en el caso de un empleado licenciado o certificado en cuidado de la salud que tiene motivos fundados para pensar que constituya atención inadecuada al paciente;
 - (2) es fraudulenta o delictiva; o
 - (3) es incompatible con algún mandato establecido por las directrices públicas relacionadas con la salud pública, la seguridad o el bienestar o la protección del medio ambiente. Artículo 34:19-3 de las Leyes comentadas de New Jersey de protección del empleado consciente (N.J.S.A., por sus siglas en inglés)
2. No se puede acoger a la protección contra la represalia, cuando se hace una divulgación a un organismo público, a no ser que el empleado le informe al empleador de tal actividad, política o norma a través de un aviso por escrito y le haya dado al empleador una oportunidad razonable para corregir tal actividad, política o norma. Sin embargo, no es necesaria la divulgación en los casos en que el empleado tenga indicios razonables para creer que un supervisor o más de un supervisor del empleador tienen conocimiento de tal actividad, política o norma o en los casos en los que el empleado teme que tal divulgación pueda traer como consecuencia daños físicos a su persona siempre y cuando la naturaleza de la situación sea la de una situación de emergencia.

Información del Contacto

Su empleador ha designado a la siguiente persona para recibir notificaciones de acuerdo al parágrafo 2, de la ley (N.J.S.A. 34:19-4):

Nombre: _____

Dirección: _____

Número de teléfono: _____

Este aviso se debe exponer a la vista de todos.

Anualmente, patronos con 10 o más empleados, deberán distribuir notificación de esta ley a todos sus empleados. Si necesita este documento en algún otro idioma que no sea Inglés o español, sírvase llamar al (609) 292-7832.



AD-276.1 (8/11)



2015-2016 Elected Officials Online Training Instructions

While we recommend that public officials attend a training class, the MEL is also making available an on-line training program for elected officials and authority commissioners to earn their \$250 training credit. Please follow the steps below to access the program. To receive credit, the program must be completed by May 1, 2016.

Step 1: Go to the MEL's website <http://njmel.org/>

Step 2: On the MEL homepage, click on the MSI logo at the top to access the MSI page.

Step 3: On the MSI page, click "MSI Login" to access the login page.

Step 4: Login to access the Welcome Page. If you have taken MSI classes in the past, enter your username and password. If you do not know your username/password, check with your Training Administrator or call the MSI Helpline listed below. If you are new, click "I am a new user." Complete the fields and you will receive a confirmation email with your username and password.

Step 5: On the Welcome Page, click on "MSI On-line Training Courses" on the lower right to access the course selection page.

Step 6: On the course selection page, click "Risk Management for Officials in Local Government" on the left. Then click "enroll" on the right.

Step 7: The program will now thank you for enrolling. Hit "Click here" to go to your authorized course list.

Step 8: On your authorized course list, click "Risk Management for Officials in Local Government" to access the course.

Step 9: When the course appears, click the start symbol in the middle of the screen to begin the course.

You must complete the entire program and the affidavit at the end of the program to receive credit. If you need additional assistance please call the MSI help line at **(866) 661-5120** during business hours.



Rights and Duties of an Employee in Local Government Online Training Instructions

This course discusses the right of each employee to a workplace free of harassment and each employee's duty to respect the rights of all other employees.

To access the online course:

Step 1: Go to the MEL's website <http://njmel.org/>

Step 2: On the MEL homepage, click on the MSI logo at the top to access the MSI page.

Step 3: On the MSI page, click "MSI Login" to access the login page.

Step 4: Login to access the Welcome Page. If you have taken MSI classes in the past, enter your username and password. If you do not know your username/password, check with your Training Administrator or call the MSI Helpline listed below. If you are new, click "I am a new user." Complete the fields and you will receive a confirmation email with your username and password.

Step 5: On the Welcome Page, click on "MSI On-line Training Courses" on the lower right to access the course selection page.

Step 6: On the course selection page, click "Rights and Duties of an Employee in Local Government" on the left. Then click "enroll" on the right.

Step 7: The program will now thank you for enrolling. Hit "Click here" to go to your authorized course list.

Step 8: On your authorized course list, click "Rights and Duties of an Employee in Local Government" to access the course.

Step 9: When the course appears, click the start symbol in the middle of the screen to begin the course.

If you need additional assistance please call the MSI help line at **(866) 661-5120** during business hours.

Employee Safety and Anti Harassment Seminar Leader's Guide

Who should conduct the seminar? The leader should be the Municipal Manager/Administrator, the Authority Executive Director, the Human Resources Manager, the local unit's General Counsel or Employment Attorney/Advisor.

Are all employees required to attend? The court requires employers to "make training available" to all employees. However, the employer has the option of making the training mandatory. Attendance must be documented in each employee's personnel file.

How long is the seminar? The formal presentation is about 20 minutes, mostly consisting of the video. However, the question and answer period at the end could easily add another half hour or more to the seminar.

Is this seminar also available on line? Yes. See NJMEL.ORG. for directions on how to take this course directly from the MEL's web based learning management system.

Section One: Introduction

Each of you has a right to safe workplace free discrimination, violence, harassment and conflicts of interest. The (local unit name) has a "no tolerance policy" towards workplace wrongdoing and expects all employees to conduct themselves consistent with this policy. Today, we will discuss what this means.

The program begins with a twelve-minute video that explains your rights and obligations under the "no tolerance" policy. The video states clearly what types of conduct are unacceptable when interacting with fellow employees. As many of the unacceptable behaviors are also against the law, compliance is essential both for your own protection and to ensure that others not subjected to conduct that might create a hostile work environment.

At the end of the video, there will be time to ask questions.

Section Two: Play video, "Employee Orientation"

Section Three: Question and Answers:

Before opening for questions, distribute copies of the CEPA notice and discuss the procedure to report wrongdoing. This is also an opportunity to distribute the revised employee handbook or discuss any particular personnel matter that you deem appropriate.

At the beginning of the Q&A period, tell the employees questions that pertain to a particular individual are not appropriate for the general session and should be asked after the meeting. Further, if anyone feels uncomfortable asking a question during the meeting, you will be available to talk to them afterwards. Also state that if the question involves a legal issue, it will be forwarded to the General Council or the Employment Attorney/Advisor. Make detailed notes of these questions in the attached Question Log and tell the employees that the attorney/advisor will quickly get back to them.

ATTENDANCE LOG

Employee Safety and Anti Harassment Seminar

Town/Authority Name: _____

Date: _____ **Time:** _____

Leader's Name: _____

[illegible]

Questions Log

[illegible]