

## Risk Management Strategies for Lifeguard Operations

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## Introduction

The purpose of this document is to provide our New Jersey Counties Excess Joint Insurance Fund members with risk management strategies for Lifeguard Operations. The length and scope of this document are limited, and there may be several other topics of discussion that are not covered, but the idea is to promote serious thought about what we can do to mitigate the risks associated with this operation. The goal is to engage in the continuous improvement process by enhancing lifesaving operations by identifying and implementing best business practices, to protect our personnel from physical and mental injury, and to mitigate the risks and challenges of litigation.

Over the years, the Loss Time Accident Rate has dropped in government operations, and this is due to the long-term commitment of the New Jersey Municipal Excess Liability Fund and the Municipal Joint Insurance Funds have placed on safety.

It is well understood that many of our personnel engage in high-risk operations that may result in serious bodily injury and or death to self or others. Mitigating these risks through proper supervision and training is the key to reducing that risk. The safety engineering axiom that best describes the challenge states:

*"Any dangerous act will cause an accident if repeated often enough, and any dangerous condition will cause an accident if it remains uncorrected long enough."*

Recognizing this challenge is why we need to commit ourselves to the process of identifying the risks, researching best practices, implementing change, supervising our personnel, and providing effective training programs that will create understanding and commitment to the lifeguard profession.

Every municipal lifeguard operation is unique!

Location, tidal water, resources, equipment, environment, and personnel are just a few of the factors that make each operation unique. One size does not fit all, and to justify operations, every organization should go through a process to develop a plan of action that addresses its concerns. Many organizations use either the S.A.R.A. process or a GAP Analysis to determine their strengths, weaknesses, and opportunities to improve performance.

S.A.R.A. process: **Scan** for threats and vulnerabilities, **Analyze** why they exist, research best business practices, develop action plans and then **Respond** by implementing a plan of action

that addresses the identified risks. **Assessment** is the final step and probably one of the most important ones too. Constantly monitoring and assessing the operations' effectiveness, fine-tuning your responses, eliminating action plans that are not effective, re-designing response plans, and improving our training efforts.

G.A.P. Analysis: A gap analysis is a process used by organizations to compare their current performance with their desired, expected performance. This analysis is used to determine whether an organization is meeting expectations and using its resources effectively.<sup>1</sup>

### **Risk Mitigation**

There are several risks that can damage an organization, and some of those risks include:

- Ignoring it,
- Going through the motions to check off the boxes,
- Failing to understand the data that was collected,
- Failing to go through a decision-making process,
- Depending on subjective judgments,
- Relying too much on experience and tradition

Failing to engage and follow through on the process has led to injuries, deaths, ruined careers, and monetary loss.<sup>2</sup>

### **Legal Obligation – Tort Claims**

The State of New Jersey is the most litigious State in the Union. Over the years, "Immunity" has changed from government entities being completely immune to our current state of affairs under New Jersey State Statute Title 59 – Claims Against Public Entities (Subtitle – New Jersey Tort Claims Act).

Resources: <https://law.justia.com/codes/new-jersey/2019/title-59/>

Grubb, David N., (2020). "*The Power of Collaboration.*" Municipal Excess Liability Joint Insurance Fund & P.E.R.M.A. Risk Management Services, Parsippany, NJ.

Leaders and managers need to familiarize themselves with this statute. The importance of understanding the difference between "May" and "Shall" may determine if you can use the immunity defense during litigation. If the law, your rules, and policies say "May," you have

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<sup>1</sup> <https://www.investopedia.com/terms/g/gap-analysis.asp>

<sup>2</sup> <https://hubbardresearch.com/risk-management-modeling/>

discretion, and you may be protected. If the law, your rules, and policies say you "Shall or Will, you have a ministerial duty to ensure that you act. If you fail to act, liability may be attached. Remember that immunity is not automatic. The case must be presented to a judge to determine whether immunity applies. This is why record-keeping, background investigations, training, certifications, counseling, and operational reports play an essential role in defending an employee and the County's actions.

One important note that employers and employees need to be familiar with is that under NJ Rev Stat § 59:3-14. Public employee immunity-exception:

*a. Nothing in this act shall exonerate a public employee from liability if it is established that his conduct was outside the scope of his employment or constituted a crime, actual fraud, actual malice, or willful misconduct.*

*b. Nothing in this act shall exonerate a public employee from the full measure of recovery applicable to a person in the private sector if it is established that his conduct was outside the scope of his employment or constituted a crime, actual fraud, actual malice, or willful misconduct.*

*L.1972, c. 45, s. 59:3-14.*

### **Legal Obligation - Public Employees Occupational Safety and Health (P.E.O.S.H.)**

The New Jersey Department of Health – P.E.O.S.H. requires public employers to maintain a safe and healthy workplace for public employees. P.E.O.S.H. recommends that employers take an active role by communicating with workers (training, coaching, and counseling) to help improve workplace safety and health. Employers should communicate with workers regularly and encourage them to identify hazards, suggest solutions, and report incidents, injuries, and illnesses promptly.<sup>3</sup> This open process of communication may bump into the tradition of organizations that have a strict chain of command, but leaders need to re-think the process, as open communication may improve operational effectiveness and procedures. Employees should be well aware that this open communication process may be curtailed during a critical incident where immediate action is needed to save a person from serious bodily injury or death.

Employers are also required to ensure that workers exposed to hazards are informed of their exposure and are trained to recognize those hazards, take protective measures, and follow

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<sup>3</sup> <https://www.nj.gov/health/workplacehealthandsafety/peosh/public-employers/>

emergency procedures.<sup>4</sup>

An effective safety and health program takes the commitment and energy of many individuals, and that includes both employers and employees. Implementation starts at the top; showing concern and commitment are key to making this work.<sup>5</sup>

The New Jersey Department of Health requires all employers to conduct a Right To Know Survey. Every County must have an Employer Responsible R.T.K. Official (E.R.R.O.). Identify who this person is and ensure that your facility is surveyed. Chemical exposures can cause short and long-term health issues. Please access this [link](#) to the New Jersey Department of Health – Workplace Health and Safety for additional information on this topic.

### **Ethical Obligation**

We have an ethical obligation. In most cases where public safety is the agency's mission, the employee is required to take an oath of office when appointed (N.J. Rev. Stat § 41:1-3). *(For additional guidance on the need to require an Oath of Office, please contact your Municipal Attorney).*

Supervisors need to re-check this oath as it usually contains a clause stating that "I will faithfully, impartially and justly perform all the duties of the office of \_\_\_\_\_ according to the best of my ability." This oath was brought to the jury's attention in a recent criminal trial. The officer (public safety official) was described as being incompetent because they failed to conduct a safety check on their Taser as required by Department policy and procedures. The allegation was then made that the officer violated their oath of office. Having policy and procedures in place is good but showing that you and your agency are following these practices is better.

This was a criminal trial, but the same question has been raised in civil actions. During depositions or a trial, the plaintiff's attorney will read a policy or procedure and then ask the witness, supervisor, or defendant if they fulfilled their oath of office by performing to the best of their abilities. When done in front of a jury, this can be an intimidating question as the jury listens intently, wondering if you did your job!

Once they are finished questioning the defendants and their supervisors, they will bring in an "expert" to testify about the organization's personnel and operations. Rest assured, the report

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<sup>4</sup> Ibid.

<sup>5</sup> <https://www.nj.gov/health/workplacehealthandsafety/peosh/public-employers/>

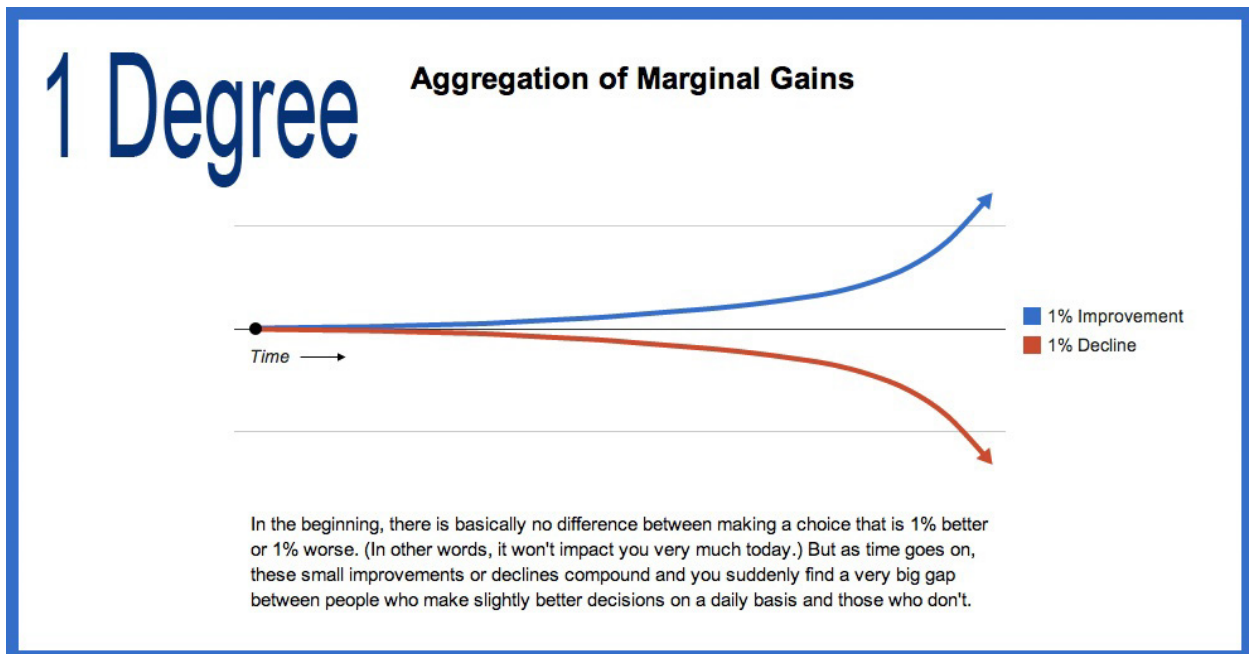
will most likely be full of negatives, with allegations that best business practices were not implemented and the supervisors were incompetent.

The experts will use public documents from the United States Lifesaving Association, South Jersey Lifeguard Chief's Association, American Red Cross Lifeguard Manual, the New Jersey Department of Environmental Protection Lifeguard Manual / State-Operated Ocean Beach Manual, and any other documents that would assist them with the case. These are a few of the resources that can be referenced and used to identify best business practices.

### **Zero Harm – Presence of Safety**

We need to begin the journey to a Zero-Harm Workplace. Zero harm focuses on the presence of safety, while zero incidents focuses on its absence.

Many organizations just look at their trailing indicators, but they fail to look at safety processes. The Zero-Harm approach focuses on procedures and training to ensure workers stay safe and not cut corners for some small gain. Eventually, all of these "corner cuts" lead to a decline in decision-making and performance, which may lead to a catastrophic injury or loss. The (1) Degree / Aggregation of Marginal Gains chart below shows how declines in performance can create a very big gap between people who make slightly better decisions on a daily basis and those who don't. Leaders and supervisors need to direct their attention to this phenomenon and assist their employees with maintaining safe practices by making good decisions.



Source: Wildwood Beach Patrol, New Jersey

## **Continuous Improvement**

Elected officials, managers, and department leaders need to engage in the process of continuous improvement. Leaders who fail to engage in the CI process and depend solely on the tradition of past practices will eventually fail. The organization will pay the price in terms of morale, reputation, and in many cases, financially.

## **High Risk – High-Frequency Topics: (Based on research and Best Business Practices)**

### ***Agency Certification:***

New Jersey is the most litigious State in the Union. Fee shifting, where the plaintiff's attorney can file for and receive compensation for their services, is not directly related to the plaintiff's success in the case. If the plaintiff wins \$1.00, the plaintiff's attorney will receive compensation for their fees from the municipal entity. The Law Against Discrimination, the Conscientious Employee Protection Act (C.E.P.A.), failure to train, negligent hiring and retention, and failure to supervise are some of the allegations that may be made against a government entity, a supervisor, or an employee. To mitigate these risks, training and best practices need to be implemented to protect our employees from unwarranted harassment.

To promote effectiveness and identify best practices, lifeguard agencies need to comply with the New Jersey Department of Health - Public Recreational Bathing Code. There are national and local organizations that certify lifeguard agencies. The chief or person in charge of the operation needs to do the research to ensure that the certifying body meets the needs of the organization and the State Code.

Conduct a needs assessment; this may be a real challenge as you want to ensure that you are not just using an organization to check boxes off in case litigation occurs. When searching for a certifying agency, review the organization's mission statement to determine if your agency's goals align with its mission. The organization should emphasize the need for training and implementing best business practices.

The United States Lifeguard Association (U.S.L.A.) is one example of an organization that Certifies agencies.

*The United States Lifesaving Association is America's nonprofit, professional association of beach lifeguards and open water rescuers. The U.S.L.A. works to reduce the incidence of death and injury in the aquatic environment through public education, national*

*lifeguard standards, training programs, promotion of high levels of lifeguard readiness, and other means.*<sup>6</sup>

The U.S.L.A. concluded that a single rigid training program covering widely varying conditions in open water areas throughout the United States would be prohibitively lengthy.<sup>7</sup> U.S.L.A. therefore designed a program with core instruction in basic lifesaving techniques, but one which requires local employers to adjust the training within established parameters, to address local conditions. For this reason, a lifeguard trained under the U.S.L.A. system must be re-trained if the lifeguard moves to another area.<sup>8</sup>

Please note the U.S.L.A. does not "certify" lifeguards or lifeguard instructors. Instead, U.S.L.A. certifies lifeguard employers, including their training programs and standards, which follow U.S.L.A. guidelines. The U.S.L.A. certification system is therefore, in effect, an accreditation system for local lifeguard training programs.<sup>9</sup> Certification guidelines can be accessed at [www.usla.org/certification](http://www.usla.org/certification).

This supports the position of J. A. Montgomery Consulting that a "Risk Assessment" should be conducted to identify the unique challenges of every jurisdiction.

One important note to make is that the U.S.L.A. guidelines are consistent with best practices, but agencies are encouraged to surpass these standards and exceed the current norms by identifying new techniques and equipment that will enhance their operations.<sup>10</sup>

Certification Requirements for the U.S.L.A. can be found at this [link](#).

The New Jersey Department of Health provides a list of current agencies that are [certified](#) to provide training to oceanfront and tidal waters lifeguards.

<a href="#">United States Lifesaving Association (USLA)</a>	-----	3-year certification
<a href="#">South Jersey Lifeguard Chiefs Association</a>	-----	Annual certification
<a href="#">North Shore Lifeguards Association</a>	-----	Annual certification
<a href="#">Ocean Lifesaving Association (Provisional)</a>	-----	Annual certification
<a href="#">NJ Certification United States Lifesaving Association</a>	-----	Annual certification

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<sup>6</sup> <https://www.usla.org/page/MISSION>

<sup>7</sup> [https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/USLA\\_Guideline\\_001\\_Certifica.pdf](https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/USLA_Guideline_001_Certifica.pdf)

<sup>8</sup> [https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/USLA\\_Guideline\\_001\\_Certifica.pdf](https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/USLA_Guideline_001_Certifica.pdf)

<sup>9</sup> [https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/USLA\\_Guideline\\_001\\_Certifica.pdf](https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/USLA_Guideline_001_Certifica.pdf)

<sup>10</sup> [https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/USLA\\_Guideline\\_001\\_Certifica.pdf](https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/USLA_Guideline_001_Certifica.pdf)



## **Job Safety Analysis**

Under 29 CFR 1910.132, employers are required to assess the workplace to determine if hazards that require the use of personal protective equipment are present or are likely to be present. If hazards or the likelihood of hazards are found, employers must select and have affected employees use properly fitted P.P.E. suitable for protection and existing hazards.

P.E.O.S.H. reports that failing to conduct a "Job Safety Analysis" is a commonly cited area of concern, which may lead to employer sanctions and or fines. Proof of these analyses needs to be ready for inspection. The analysis needs to identify the hazards and the procedures taken to determine and ensure that personal protective equipment is provided, used, and maintained in a sanitary and reliable condition whenever it is necessary to prevent injury. This includes protection of any part of the body from hazards through absorption, inhalation, or physical contact.<sup>11</sup>

## **Training**

Comprehensive safety training programs that are effective reduce risk and increase safety. We want our employees to be safe and successful by creating a culture of safety that overcomes complacency. We need to stop managing people and start coaching and counseling our personnel. Repetition is good, but just going through the motions and checking off boxes leads to complacency, and our personnel lose their proficiency edge. Complacency is a state of decreased external awareness and reduced sensitivity to hazards. The solution to complacency is to reengage the employee by asking questions.<sup>12</sup>

***There are at least four good times to be asking questions. First, when the group is starting the day or a task together (Roll Call, Training Events, Departmental Meeting). Second, when an individual is starting a task or switching to a different task. Third, when there is some type of pressure element such as time, visibility, or interpersonal conflict. Fourth, when people are engaged in repetitive work. (Lipinski, Sharon. How to Overcome Safety Complacency in the Workplace, E.H.S. Today, 1/10/2022).***

When litigation occurs, state-mandated training requirements, certification requirements, and supplemental training will all be scrutinized by a plaintiff's attorney. Complete records need to be maintained, acknowledgment forms, and if required, copies of testing material and answer

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<sup>11</sup> [https://www.govregs.com/regulations/title29\\_chapterXVII\\_part1910\\_subpartI\\_section1910.132](https://www.govregs.com/regulations/title29_chapterXVII_part1910_subpartI_section1910.132)

<sup>12</sup> <https://www.ehstoday.com/training-and-engagement/article/21213341/how-to-overcome-safety-complacency-in-the-workplace>

sheets. Procedures need to be outlined as to how the "wrong answers" were addressed. Verifying that a one-on-one review was completed, explaining the "why" the answer was wrong, having the employee acknowledge through an explanation that they understand the question and the correct answer (procedures).

Create a training checklist for each employee based on assignments and level of expertise. The checklist should include all of the mandatory training programs that must be completed before the lifeguard is deployed. This information should be maintained in the employee's personnel file.

Resources:

Ocean and Tidal Waters Lifeguard Certification

Live Virtual Training: Dealing with Difficult People

### **Harassment in the Workplace**

In recent years, there has been a dramatic increase in lawsuits alleging workplace discrimination and harassment. Employees are no longer willing to accept employment-related bad behavior and look to the courts for relief.<sup>13</sup>

Statutory Law: N.J.S.A. 10:5-1 et seq., this act shall be known as "Law Against Discrimination." It shall be an unlawful employment practice, or as the case may be, unlawful discrimination for an employer because of the race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partner status, affectional or sexual orientation, genetic information, pregnancy, or breastfeeding, sex, gender identity or expression, disability, or atypical hereditary cellular or blood trait of any individual, or because of the refusal to submit to a genetic test or make available the results of a genetic test to an employer, to refuse to hire or employ or to bar or to discharge or require to retire, unless by lawful considerations other than age, from employment such individual or to discriminate against an individual in compensation or in terms, conditions or privileges of employment...

<https://www.nj.gov/oag/dcr/downloads/NJ-Law-Against-Discrimination.pdf>

The act also allows for "fee-shifting," where the defendant must pay the plaintiff's legal bills if there is an award. As a result, legal costs now represent approximately 70% of the total cost of employment practice actions. There is no proportionality between the jury award and the

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<sup>13</sup> Grubb, David N. (2020) "The Power of Collaboration Risk Management for Local Officials." Municipal Excess Liability Joint Insurance Fund and PERMA Risk Management Services, Parsippany, NJ. (p. 42)

attorney fees.<sup>14</sup>

Case Law: In *Mancini v. Township of Teaneck (A-18-03) (2004)*, the Court found that even low-level sexual harassment is actionable if a reasonable woman could believe that the working environment is hostile, and the employer lacked an effective anti-harassment program. Further, the Court ruled that if there was harassment during the period allowed under the statute of limitations, then the prior activity can also be included.

Case Law: *Lehmann v. ToysR'Us, Inc. 132 N.J. 587 (1993)*. The Court determined that an employer's liability for damages when an employee raises a hostile work environment discrimination claim against a supervisor:

1. An employer will be strictly liable for equitable damages and relief
2. An employer may be vicariously liable under agency principles for compensatory damages that exceed equitable relief; and
3. an employer will not be liable for punitive damages unless the harassment was authorized, participated in, or ratified by the employer

Supervisors can and will be held accountable for harassment in the workplace. The line between liability and non-liability is not always clear. The Court has established specific guidelines for what an employer must put in place to have any real defense in employment litigation.<sup>15</sup>

Supervisors need to monitor the workplace and take action to curtail any form of harassment. This means that locker room banter and joking around cannot be tolerated in the workplace.

For supervisors, preparation is key. Conduct a web search on Lifeguard harassment cases in the State of New Jersey, and several hits (examples) will emerge. These are cases that should be studied by supervisory personnel. They include low-level and egregious examples of harassment cases that have been or are in the process of being litigated. Cases include allegations of improper touching, sexually explicit comments, the use of social media to post pictures, texting, and creating a hostile work environment. Several cases were settled, and others are pending awaiting mediation and or trial. Supervisory personnel need to uphold the law (LAD and CEPA) and maintain an environment that is free from all types of harassment and retaliation.

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<sup>14</sup> Ibid. p. 43.

<sup>15</sup> Grubb, David N. (2020) "The Power of Collaboration Risk Management for Local Officials." Municipal Excess Liability Joint Insurance Fund and PERMA Risk Management Services, Parsippany, NJ. (p.50).

## Lightning Safety

According to the National Weather Service, there were two lightning fatalities in New Jersey in 2021. One event was a lifeguarding incident and the second incident occurred on a golf course. U.S. Lightning Fatalities between 2010-and 2021 included the deaths of (63) females and (222) males.<sup>16</sup> Lightning is a major cause of storm-related deaths in the United States.<sup>17</sup> Lightning strikes should be a recognized hazard, and municipalities with Lifeguard operations need to develop response policies and install monitoring equipment designed to mitigate these risks.

1. Model U.S.L.A. Lightning Safety Guideline  
[USLA Guideline 006 Lightning.pdf \(ymaws.com\)](#)
2. Develop an Emergency Action Plan  
[https://www.usla.org/resource/resmgr/docs/lightning\\_model\\_eap.doc](https://www.usla.org/resource/resmgr/docs/lightning_model_eap.doc)
3. U.S.L.A. position statement on Lightning Safety  
[https://cdn.ymaws.com/www.usla.org/resource/resmgr/Guidelines/USLA\\_Guideline\\_006\\_Lightning.pdf](https://cdn.ymaws.com/www.usla.org/resource/resmgr/Guidelines/USLA_Guideline_006_Lightning.pdf)
4. O.S.H.A. Fact Sheet – Lightning Safety When Working Outdoors  
<https://www.osha.gov/sites/default/files/publications/OSHA3863.pdf>
5. Equipment research
  - a. Effectiveness and reliability (backup systems)
  - b. Portable versus ones that are integrated into a computer system
  - c. Power connections, battery backups
  - d. Length of beach and long-range detection systems
  - e. Pop up storms versus tracked radar storms
6. Training Personnel
  - a. Emergency action plan
  - b. Test personnel/tabletop exercises
7. Warnings and Communications
  - a. Notification systems and procedures for lifeguards
  - b. Notification systems and procedures for bathers
8. Legal responsibility/notification to bathers and safety of lifeguards
  - a. Number of notifications to bathers
  - b. Abandon beach/lifeguard safety
9. First Aid and E.M.S. Dispatch for Lightning Injuries<sup>18</sup>

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<sup>16</sup> <https://www.weather.gov/safety/lightning-fatalities>

<sup>17</sup> <https://www.weather.gov/safety/lightning-odd>

<sup>18</sup> <https://www.usla.org/general/custom.asp?page=Lightning>

## **4 X4 Utility Vehicles and ATVs**

In recent years ATVs have been purchased and deployed by Lifeguard Departments throughout New Jersey. They are practical tools for transporting a person(s) for general patrol and emergency operations equipment.

Before deploying this equipment, management needs to go through a process to ensure that they are being deployed safely and legally.

1. Conduct a Job Hazard Assessment(s)- [Job Hazard-PPE Forms & Assessments](#).
2. Needs assessment - types of ATVs being purchased, size, signals, horsepower, and safety equipment need to be taken into consideration. Training by manufacturer
3. Management's commitment to ensuring that the vehicles are being operated in a safe manner
4. The owner's manual that came with the equipment must be reviewed and used as a training tool. Always comply with the manufacturer's recommendations – document the training.
5. Maintenance, comply with the owner's manual and develop a procedure that requires personnel to report any vehicle deficiencies.
6. Documentation of training records, policy on deployment and operation, consequences of rule violations
7. Must be in compliance with all Title 39 regulations of the State of New Jersey – Consult with your local law enforcement agency and your County Attorney

## **Lifeguard Emergency Vehicle Operations**

Lifeguard emergency vehicles (LEV) are four-wheel drive motor vehicles that are legally permitted to drive on streets, highways, and beaches. Training should be provided to every employee who operates one of these vehicles. Organizations need to take into consideration the following factors:

1. Registration and proof of insurance are required.
2. Lifeguard Emergency Vehicle Instructor
  - a. Job description and instructor qualifications
  - b. Age of operator, 21 years of age, check with R.M.C. and NJCE Risk Control Consultant.
  - c. Maintains a valid driver's license, driving Record
  - d. Completion of an emergency vehicle operations course

3. Lifeguard Emergency Vehicle Operator
  - a. Minimum age – 18 years of age
  - b. Lifeguard qualifications, experience, and valid driver's license
  - c. Open water lifeguard certification
  - d. Training - successful completion of a course of no less than 24 hours in lifeguard emergency vehicle operations
  - e. Driving Record – demonstrated proof of a safe driving record based on a check of the driver's license history
  - f. Refresher training
  - g. Training and proficiency with the vehicle's emergency equipment
4. Lifeguard Emergency Vehicle Equipment (minimum)
  - a. Emergency warning lights in accordance with state requirements
  - b. Siren and public address system
  - c. Decals or other markings to indicate the name of the agency and other appropriate information, such as "Lifeguard," Emergencies call 911
  - d. Backup alarm
  - e. Appropriate rescue equipment based on vehicle type and capabilities
  - f. Two-way radio system<sup>19</sup>

### **Competition**

Lifeguard competitions are very popular. If an injury were to occur, would the sponsor or organization be able to explain the purpose of sponsoring these types of activities?

- The basic objectives of a Lifeguard Competition should be clearly promoted in the competition paperwork. The below-listed objectives are an example and were taken from the U.S.L.A. Lifeguard Competition Webpage.
  1. To sustain and uplift employee morale;
  2. To stimulate personal interest in rescue skill training; and
  3. To acquaint the general public with water safety procedures and skills used daily by professional lifeguards to advance public safety at the beach<sup>20</sup>
- The sponsor needs to be prepared to explain the "why" behind the activities being promoted during the competition and how they meet the competition's stated

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<sup>19</sup> [https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/usla\\_guideline\\_004\\_vehicle\\_o.pdf](https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/usla_guideline_004_vehicle_o.pdf)

<sup>20</sup> <https://www.usla.org/page/NATIONALRULES>

objectives. Why is swimming part of the competition, why is running part of the competition, why is rowing a boat part of the competition, why is a paddleboard or a kayak part of the competition, and how do the activities relate to rescue and water safety procedures.

- Promote a safe competitive environment
- Safety procedures and emergency alert procedures need to be in place and relayed to the officials and competitors.
- Competitors who participate in Lifeboat rowing activities or operate Personal Watercraft (PWC) should wear protective helmets and U.S.C.G. approved personal flotation devices. This rule should be clearly stated in the competition's rules and enforced by team supervisors, sponsors, and competition officials.
- During the competition, the competitors should be using or wearing the equipment they use during lifeguard operations.

The Safety Director's Office recommends that prior to any competition that the organization check with and verify to determine if the equipment being used during the event is designed for competition. If the equipment is approved for competition, the organization should obtain the manufacturer's approval in writing before participating in any competition.

Reference Material that may assist sponsors of Lifeguard Competitions:

U.S.L.A. Lifesaving Sports Rules – Effective 2021

<https://cdn.ymaws.com/www.usla.org/resource/resmgr/competition/uslalifesavingsportrules.pdf>

U.S.L.A. National Junior Lifeguard Competition Guidelines (Revised 8/2/15)

<https://cdn.ymaws.com/www.usla.org/resource/resmgr/Docs/uslaJuniorGuardcomprules0802.pdf>

USLA U19 Competition Rules (Revised 7/20/17)

[https://cdn.ymaws.com/www.usla.org/resource/resmgr/competition/U19\\_Rules- KI\\_edit\\_7-20-2017.pdf](https://cdn.ymaws.com/www.usla.org/resource/resmgr/competition/U19_Rules- KI_edit_7-20-2017.pdf)

### **Lifeguard Surf Boats, Dories, Lifeboats**

For years, Lifeguard Surf Boats have been used for lifesaving activities and competitions. There is a strong tradition behind their use, but each County needs to evaluate its effectiveness. Technology and lifesaving equipment have steadily improved, and new equipment and techniques must be considered.

Conduct an assessment and go through the S.A.R.A. process to determine if the costs and use of these rowboats meet the agency's needs.

Some of the factors that need to be taken into account:

- How often are the boats used for a rescue?
- How many lifeguards are required in order to operate and save a person in distress safely?
- How many employees have been injured using these boats?
- What is the cost of purchasing and maintaining the boats versus other lifesaving equipment?
- What can be done to minimize injuries; policies that outline how and when they can be deployed; use of safety equipment (helmets), number of persons in the boat, training, experience, and other factors that would assist in making a sound policy decision?
- Would rescue boards be more effective?
- Would PWCs be more effective?

Keep in mind that if and when an incident occurs, and a lifeboat is used or involved in an injury or loss of life, questions will be asked! You need to be prepared to answer those questions. Most likely, they will start with, "why do you use these lifeboats?" The most common answer is, "we have always used them," this is a traditional response, and it is just the opening for a salvo of follow-up questions that will be designed to make you look incompetent. Before depositions and or Court, attorneys will prepare a line of questioning designed to get answers that are favorable to their client; remember this is an adversarial system. An attorney's goal is to win. Attorneys will usually ask questions that they already know the answer to, and they will consult with an expert in the field to prepare those questions. Experts (current and former lifeguards) will be used to challenge your thoughts on the traditional use of this equipment. They will always bring up continuous improvement, research, and alternative solutions that they believe would work better. Be prepared!

**Special Note:** The equipment being used for competitions must be designed for that purpose. Check the manufacturer's user manual as in many cases, the surfboat is a work boat designed for beach patrol use to patrol and guard crowds of bathers from the ocean side of the crowd as opposed to the beachside, rescue bathers and boaters, and respond to other emergencies in coastal waters. One manufacturer of these surfboats has stated that the company does not make, design, manufacture, or promote race boats, only rescue boats. In addition to this, the manufacturer stated that their surfboat is to be rowed by two trained lifeguards, and it is



desirable to bring the vessel to shore stern first to enable better control.<sup>21</sup>

### **Personal Rescue Watercraft Agency Certification**

According to the United States Lifeguard Association:

*Personal rescue watercraft (PRWC) are employed by professional aquatic rescuers in a wide variety of environments. Their cost, size, speed, power, maneuverability, and relative ease of handling all contribute to their value in rescue operations. Like all motorboats, personal rescue watercraft can pose hazards to the operator, crewperson, passenger(s), and others. Operators and crew persons must be properly trained and issued the equipment they will need to perform their task adequately. This is especially true if the operator is assigned to patrol and rescue in challenging aquatic conditions.*<sup>22</sup>

The United States Lifesaving Association convened experts in this field from organizations with extensive experience in the use of personal rescue watercraft. Their professional knowledge of the subject ranged from large surf to relatively calm conditions, warm water to relatively cold, and a wide variety of aquatic areas of the United States. These guidelines represent USLA recommended minimum standards for training and equipping operators to use personal rescue watercraft (PRWC).<sup>23</sup>

Agencies are encouraged to exceed these standards, particularly in areas where environmental challenges and rescue frequency exceed the norm.<sup>24</sup>

The U.S.L.A.'s standards are available on their website:

[https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/usla\\_guideline\\_007\\_certifica.pdf](https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/usla_guideline_007_certifica.pdf)

Agencies are encouraged to develop agency standards by conducting a needs assessment (S.A.R.A.). Policies at a minimum should include the type of authorized equipment being used, age of the operator, licensing, training, safety equipment for the operators (helmets), deployment (surf conditions and operator risk), number of persons deployed on the equipment, rescue equipment on the PWC, inspections, maintenance, and documentation.

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<sup>21</sup> Department of Labor and Workforce Development, State of New Jersey. (April 2022) Inspection Number: F 59-02-047 (Van Duyne Bros. Company) p. 1.

<sup>22</sup> [https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/usla\\_guideline\\_007\\_certifica.pdf](https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/usla_guideline_007_certifica.pdf)

<sup>23</sup> [https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/usla\\_guideline\\_007\\_certifica.pdf](https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/usla_guideline_007_certifica.pdf)

<sup>24</sup> [https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/usla\\_guideline\\_007\\_certifica.pdf](https://cdn.ymaws.com/www.usla.org/resource/resmgr/guidelines/usla_guideline_007_certifica.pdf)

## **Uniform Flag Standards for Beach Operations**

In New Jersey, there appears to be a lack of beach flag standards. Tourists may visit several different beaches, and each jurisdiction posts and uses different flags for varying conditions. Some may not even have a flag system. This is an area of concern as consistency is essential when dealing with the public. The Safety Director's Office recommends that the Lifeguard Associations (Committee) get together and develop a universal system that creates consistency on our beaches and beach entryways.

Guidelines and procedures need to be developed on how flags can be used to designate bathing areas, bathing conditions, and weather conditions.

Flexibility on posting of flags needs to be discussed, as conditions may vary on each beach. Procedures for documenting why a specific flag was posted. The sources used and the information that the decision-maker had at the time of the decision. Procedures as to how feedback from lifeguards will be addressed who are deployed on beaches that have special conditions. These special conditions may include rip currents, traveling rips, spilling breakers, plunging breakers, backwash, and wind direction.

Signage at key points of entry and on lifeguard stands are strongly recommended. One organization posted QR codes on its lifeguard stands that linked the user to its website for additional safety information. Other agencies posted information about beach conditions and flagging on their website. Some of these links have safety videos that explain the rules of the beach and safety procedures. This is an excellent way of educating the public and shows your concern for the safety of the bathers.

In 2018, DeRosa Aquatics studied this challenge and made several recommendations.

- The report emphasizes the need to conduct an assessment of each particular beach area and post warnings relative to the specific risks found at that beach.
- The report emphasized the use of graphical symbols over length of word-based signs.
- Sign placement was addressed, and adequacy of the warnings, as courts, often look for a signal word/alert describing the severity of the hazard and a brief explanation of the nature of the hazard. If signs do not meet these design standards, they may be deemed "inadequate warnings."
- The importance of standardizing flag warning systems at ocean beaches

- Creation of a water safety page on a members' website, wherein municipalities can post specific water safety information as well as rules and regulations relative to their specific beaches, and much more<sup>25</sup>

This is an excellent document that is designed to assist Municipalities and Lifeguard operations with the challenges of developing and posting signage at their respective beaches.

Resources for this topic can be located on the Atlantic County Municipal Joint Insurance Fund, the International Standards for Beach Safety and Information Flags, and the Honolulu Emergency Services Departments' web pages.

<http://arc.usla.org/publicinfo/library/flagwarningstandardsilsfinal20FEB04.pdf>

<https://www.honolulu.gov/esdosls/followthebeachsigns.html>

The Safety Director's Office recommends that the Beach Patrol Organizations convene a committee to address signage.

### **Critical Incident Debriefing**

There are two parts to the Critical Incident Debriefing procedure. The first part is to check on the well-being of your personnel, and the second part is to review the incident to determine the effectiveness of the response.

#### ***Personnel:***

Maintaining the mental health of our personnel should be a top priority. Lifeguarding is a public safety operation, and personnel will see and experience traumatic incidents that they may have never experienced in the past. They include the loss of life, amputations, cardiac arrest, medical events, injuries to fellow employees, and much more. The effects of these incidents on personnel vary greatly; some may react negatively during the incident, others may suffer long-term stress, and others will move on to the next incident with little or no effect on their well-being.

Agency leaders and supervisors need to recognize the signs of stress or mental decline and speak with each individual in private to see how the event affected the responder. The agency

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<sup>25</sup> <https://acmjif.org/wp-content/uploads/2016/06/Beach-Signage-Guidelines.pdf>

leader should refer the employee to an Employee Assistance Program if necessary. The development of these procedures should be discussed with your Municipal Attorney and your human resources department. Each event is unique, and the law is very complex; we want to ensure that our personnel are properly cared for.

### ***Incident Debrief:***

Every critical incident needs to be documented; who, what, where, when, how and if known why? All personnel on the scene need to be identified and debriefed on what occurred. An operational debrief should be conducted within 72 hours of the incident. The debrief should be done in private, in a secure place, and isolated from the media and the public. Attendance should include the agency leader, duty officer, safety officer, training personnel, and everyone who was present at the incident. The debrief should consist of a complete review of the incident, what was done correctly, what needs improvement, and how our response can be improved. Documentation is encouraged (policy decision); if the information is documented and deficiencies or training improvements need to be made, the agency leader must ensure that a plan of action is developed. The plan of action may include policy changes, deployment of new or additional equipment, and training.

The link provided below is an example of the Cooper Hospitals Employee Assistance Program. There are several providers throughout the State, and research as to which provider would best meet your needs must be explored. Policies, cost, hours of service, experience in dealing with first responders, and geography are some of the factors that need to be considered.

<https://www.cooperhealth.org/services/employee-assistance-program>

### **Conclusion**

This document was written to help our clients mitigate the risks of operating a Lifeguard agency. The topics discussed are some of the current challenges that face our leaders and management personnel. The ideas expressed were to prompt your thoughts and to prepare for litigation. Never forget that New Jersey is number one when it comes to litigation, and we need to be prepared to answer questions and defend our decisions by using best business practices.

If you have any questions, please feel free to reach out to Keith Hummel at [khummel@jamontgomery.com](mailto:khummel@jamontgomery.com) or 856-552-6862.