

*winter 2022*

# **MI POOL NEWS**

**A PUBLICATION OF THE MICHIGAN TRANSIT POOL**

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Collective Intelligence  
& Continuous Improvement**

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***mtp***  
**MICHIGAN TRANSIT POOL**





**Michigan  
Transit Pool  
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Committee**

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**Kristy Pletzke**  
Treasurer

**Vedra Gant**  
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Ken Jimkoski

**Joe DeKoning**  
TRL Liaison

**Your ASU Team:**  
Glen Griffin

Kimberlee Hanes

Kristine Schreiber

Adam Wilberding

*Greetings*

from the Winter Wonderland known as Michigan! We're writing this in subzero temperatures... with frozen fingers and toes!!

*Annual Meeting Teaser...*

We hope everyone is staying safe and healthy, making the best of the winter months. We continue to follow Covid and the Omicron variant with respect to holding the MTP Annual meeting in person on May 17th and 18th in Port Huron. Hopefully, the virus will subside to the point to where we can gather safely in May! We anticipate sending the invitations in March should all indications allow an in-person meeting.

*Retirements and new Executive Committee Members...*

We would like to express our appreciation and gratitude to Chuck Moser and Delynn Klein for their dedicated service to the Michigan Transit Pool whose terms ended on November 30, 2021. We welcome Michael Brown and Ken Jimkoski to the MTP Executive Committee who began their term on December 1, 2021. Vedra Gant has been elected to the Secretary position filling Chuck's spot due to his retirement.

*Good Pool News and TIP:*

At the January 2022 MTP Executive Committee meeting we discussed the increasing commercial insurance rates and the advantage of being in a shared risk pool at the time of escalating insurance rates. At a time when insurance companies are collecting your non-refundable premiums and raising rates, most MTP members are receiving a refund from the 2019-2020 coverage year. This highlights the Pool's advantage of refunding your premium deposit in years with good claim activity! If you're aware of any other systems that might be struggling with insurance rate increases, please refer them to Glen and Kristine for an MTP quote at [ggriffin@asugroup.com](mailto:ggriffin@asugroup.com).

The MTP Executive Committee thought it would be a good time to remind you this would be a good opportunity to pay off any remaining balance from the 5-year repayment plan from the 2017-2018 retrospective adjustments with additional transportation funding and with retrospective refunds from the 2019-2020 coverage year that most systems are due to receive.

*Stay Safe & Warm!*

**Spotlight on:**



**Forty years** is a mile marker for any business. We are excited to say we celebrated our 40th Anniversary this year.

The Clare County Transit came to be in Harrison in 1981. It consisted of a fleet of two buses in a lean-to. We were founded out of concern that the elderly, low income, and mentally/physically challenged had no economical transportation to go to doctor appointments, pick up medical prescriptions, grocery shopping and general travel. In 1983 the Michigan Department of Transportation partnered with Clare County to support the mission of public transportation. Those early days have evolved into what we are today.

Our focus has been to make environmentally conscious decisions. Clare County Transit has been our current facility for over 11 years. It is equipped with solar panels to generate power and solar thermal panels to heat water for the building.

A portion of our property is dedicated to the Bee Pollination Project sponsored by the DNR. Electric buses are way to the future, and we will have two of them delivered to us next year.

The lack of qualified employees is a struggle for all businesses, especially in transportation. We are always thinking of new ways to reach those people to become a member of our team. Our latest effort is the "CCTC Job Fair on Wheels".

We accept applications and have a chance to talk to those prospective future team members.

The public transportation business is always changing and we have to be prepared to change with it. We keep a watchful eye on the future and never forget where we started.



# MTP Risk Management

## Adam Wilberding

### Collective Intelligence & Continuous Improvement

*Happy New Year to all MTP members and colleagues!*

As we begin 2022, it is worthwhile to share some thoughts about our risk management activities during the past year.

1.) Synergy. MTP risk management activities positively affect all members. We exercise a sort of “collective intelligence” among our membership. By that, I mean to say that we 1.) share ideas with each other that benefit the entire group and 2.) further develop a body of knowledge that continues to grow out of the group. This progress would not likely exist as a result of individual effort. The word “synergy” comes to mind, and a classic definition goes something like this... the combined effect is greater than the sum of their individual efforts. That cooperation allows us to accelerate the continuous improvement of our operations. We should all view this as extremely positive for MTP and its members.

2.) Self-Inventory. The use of the Risk Management Self-Inventory form has continued to produce good fruits. We, again, are thankful to the Ohio Transit Risk Pool and Ken Reed for allowing us to review, revise and modify their Risk Management Self-Inventory form for our use. They remained available to answer questions and freely shared information about risk management practices. This ten-page self-inventory checklist focuses on four categories:

- Human Resources and Employee Training
- IT/Network Security
- Preventative Maintenance
- Emergency Preparedness

While onsite at member locations, this form has been used to review programming and identify opportunities for improvement. One such example of this process bearing good fruit is the Social Media Policy template. This resulted from one member’s need and was then able to benefit all members.

3.) New TAPTCO Training. MTP members enjoyed preferred pricing on the new TAPTCO Operator Training Courses. Due to the relationship between TAPTCO and the MTP, all members received a period of preferred pricing on the two, newly revised Operator Training Courses. Additionally, MTP authorized the purchase of three loaner courses: one Transit Operator and two Paratransit Operator courses. Several members have already benefited from borrowing these loaner courses.

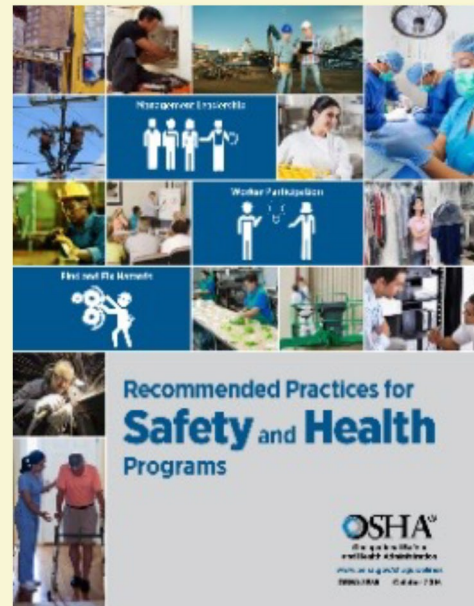
4.) Risk Management Committee. The quarterly Risk Management Committee meetings started in 2020 have been invaluable as a means to focus and refine the MTP risk management program. We are thankful for those members that have volunteered their time and talents. The Committee continues to steer our efforts and ensure that they are relevant to the needs of all members. Please consider joining the committee’s quarterly meetings via ZOOM. Even if you can only attend one meeting a year, we very much want, and need, your input.

*These are thoughts we wanted to share with all of you. They provide encouragement as we strive towards continuous improvement of our operations!*

In response to the Executive Committee's request, we will be presenting, OSHA's Recommended Practices for Safety and Health Programs, at the Annual MTP Meeting in May 2022.

OSHA recently updated the Guidelines for Safety and Health Programs that it first released 30 years ago, to reflect changes in the economy, workplaces, and evolving safety and health issues. The new Recommended Practices have been well received by a wide variety of stakeholders and are designed to be used in a wide variety of small and medium-sized workplace settings. The Recommended Practices present a step-by-step approach to implementing a safety and health program, built around seven core elements that make up a successful program, which include:

- Management Leadership
- Worker Participation
- Hazard Identification and Assessment
- Hazard Prevention and Control
- Education and Training
- Program Evaluation and Improvement
- Communication and Coordination for Host Employers, Contractors, and Staffing Agencies



The main goal of safety and health programs is to prevent workplace injuries, illnesses, and deaths, as well as the suffering and financial hardship these events can cause for workers, their families, and employers. These Recommended Practices use a proactive approach to managing workplace safety and health.

*Please join us for this presentation and learn how to take your program to the next level!*



# Legal Update on OSHA's ETS Mandate

by David Klevorn  
Murphy & Spagnuolo, P.C.

From the outset, it is worth noting that the updates and analysis in this article are ever changing. There were two prior drafts of this article written December 16, 2021 and January 4, 2022 which were both almost immediately rendered moot when the Sixth Circuit Court of Appeals panel and then Supreme Court issued decisions in an expedited turnaround which flipped the prior analysis on its head.

Though most employers who follow the news are well-familiar with OSHA's vaccine mandate and the legal battle that ensued, the goal of this article is to provide a general overview and update for employers. With the disclaimer that this article is being written as of January 28, 2022, and that there is no guarantee what the future will hold, the following is an overview of where things stand and how they got to this point.

## The OSHA Mandate Litigation Update and Overview

On November 5, 2021, OSHA issued an Emergency Temporary Standard ("ETS") for workplace vaccine or testing mandates. In general, this ETS applied to certain employers with 100 or more employees, and required that employers develop, implement, and enforce a mandatory COVID-19 vaccination policy or in the alternative a policy allowing employees who are not fully vaccinated to elect to undergo weekly testing and wearing of face coverings at the workplace.

OSHA's ETS was intended to go into effect immediately, with the first compliance effective dates on January 4, 2022 – 60 days after the publication of the ETS. However, on the very same day OSHA published the ETS, there were a plethora of legal challenges filed in courts across the country. The earliest and most prominent injunction came from the Fifth Circuit, which first issued a temporary stay on November 6, 2021 for legal briefing purposes, and then issued its official **Opinion staying the enforcement** of the mandate on November 12, 2021.

In that Opinion, the Fifth Circuit ordered that the enforcement of OSHA's ETS "remains stayed pending adequate judicial review of the petitioners' underlying motions for a permanent injunction," and further ordered that "OSHA take no steps to implement or enforce the Mandate until further court order."

Given the additional volume of legal challenges that ensued – both from OSHA seeking to overturn the stay with an emergency motion, as well as challenges from employers in other jurisdictions, the Judicial Panel on Multidistrict Litigation chose by random selection to have one appellate court to hear all of the cases. Under the JPML's decision, the Sixth Circuit had jurisdiction to decide everything about the mandate, including the Fifth Circuit's issued Stay and all the pending challenges.

On December 17, 2021, the Sixth Circuit dissolved the Fifth Circuit's stay of the ETS. It is worth noting that the Sixth Circuit court did not make a decision on the merits of the vaccine mandate on the whole. Instead, the panel was addressing whether or not the stay was proper under the preliminary injunction standard of a likelihood to ultimately prevail on the merits of the case. Though a dissenting Judge opined that there was a likelihood of success so that the stay of enforcement should remain in place, the majority opinion of two Judges held that OSHA did not exceed its statutory authority and that the legal challenges to the ETS were not likely to succeed. An appeal to the Supreme Court swiftly followed.



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On January 13, 2022, the United State Supreme Court reversed the Sixth Circuit and issued its own stay preventing immediate implementation of the workplace vaccine or testing mandate, following much of the similar logic behind the Fifth Circuit's original stay. In a 6-3 opinion, a majority of Justices found that the challengers to OSHA's mandate were likely to prevail on the merits, and thereby issued a stay in the interim.

Following the Supreme Court's opinion, on January 25, 2022 OSHA announced that it would be "withdrawing the vaccination and testing ETS" effective January 26, 2022 – but it was not withdrawing the ETS "as a proposed rule." Essentially, this means that OSHA is working to finalize its permanent COVID-19 Health Standards, and it is still proposing to include the vaccination-or-test rule, but any such rule would go through the more traditional "notice and comment" procedures rather than being issued by Emergency Temporary Standard.

### Where Does All This Leave Covered Employers?

For now, there is no legal requirement on employers who were formerly subject to OSHA's ETS to have a vaccination or testing mandate. Employers are still free and able to do so if they wish, and many already had workplace policies in place given the limbo that the legal seesawing process left most employers in for the last few months, but the main takeaway is that for now there is no obligation.

That said, employers who have not yet crafted a workplace policy should still be prepared to do so and monitor OSHA's proposed rules with its permanent COVID-19 Health Standards likely to come down later in 2022 – participating in the notice and comment procedures if they wish to have input.

There is no telling what exactly the future may hold. OSHA may attempt to issue a smaller scale, targeted ETS for specific industries, or it may just proceed with the proposed rule. Given some of the language in the Supreme Court's opinion, it is possible OSHA goes an entirely different route if it is worried that regulating coronavirus response measures would not be considered a "workplace" hazard by the highest court.

For now, employers who were formerly subject to the ETS no longer have to take into consideration its enforcement mechanisms. There still remains OSHA's "General Duty Clause" – a requirement that employers provide their employees with a working environment "free from recognized hazards that are causing or are likely to cause death or serious physical harm."

Our office encourages covered transit entity employers to monitor the proposed rules and permanent standards which may come down in 2022, and to seek counsel from their attorneys if they have any questions regarding the drafting or implementation of any policies or related concerns.

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*The general information provided in the above article in no way constitutes legal advice as every situation is different. MTP members should consult with their attorneys for specific guidance.*