

**Summer 2025**

# MI POOL NEWS

**A PUBLICATION OF THE MICHIGAN TRANSIT POOL**



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# It's Summer in the Witten!

Michigan  
Transit Pool  
Executive  
Committee

**Dave McElroy**  
President

**Kelly Bales**  
Vice President

**Jim Oliver**  
Treasurer

**Karen Mendham**  
Secretary

Mike Brown

Ken Jimkoski

Carrie Thompson

Staci Hitts

Mary Rice

Joe DeKoning  
TRL Liaison

Your ASU Team:

Glen Griffin

Bert Ganton

Kristine Schreiber

Adam Wilberding

## Since we last met:

### Annual Meeting:

Antrim County's Shanty Creek Resort was the site of this year's MTP Annual Meeting held on May 20-21st. The Cedar River Lodge was remote and beautiful, but it may be time for a change again. Generally, the Pool stays for two years at a site before selecting a new area to move on to. Please let us know if you have any thoughts to share or would like the Pool to visit your area - the site must be able to accommodate a group of 50-ish people for lodging, food service, meeting facilities and a nice golf course would be even more incentive! Don't worry, you don't have to do anything more than point us in the right direction... Glen and Kristine will do all the heavy lifting! Next year's Annual Meeting will be held **May 19-20, 2026.**

### Elections:

The MTP Full Board voted to re-elect **Mike Brown** (JATA), **Carrie Thompson** (CWTA) and **Staci Hitts** (MOTA). Congratulations, we look forward to continuing to work with all of you for another three years!

### A BIG welcome to Bert Ganton!

With the retirement of **Kim Hanes** last year, Senior Claims Examiner **Bert Ganton** became the dedicated MTP claims examiner. Bert has been with ASU since 2019 and brings with him an extensive background of auto liability claim handling experience. Bert previously handled SMART bus claims for five years.

### A note from Bert:

*I really enjoyed meeting so many of you at the annual outing! To let you know a little about myself, I graduated from Oakland University back in 1996, and started working in the insurance industry in 1998. I currently live in Hudsonville. I enjoy watching movies, and participate in a podcast where we analyze / criticize films. I also enjoy basketball and composing music. But mostly I am a family man, so I spend most of my free time with my wife and 2 girls.*



### MTP Member Management Changes:

*Welcome, we're looking forward to working with you!!*

**Marci Goodman**, Director of St. Joseph County Transportation Authority

**Erich Fix**, Director of Alger County Transportation

**Katie MacInnes**, Director of Clare County Transit Corporation

**Ryan Novotny**, Director of Macatawa Area Express Transportation Authority

*This newsletter provided by*



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# MTP Risk Management

## Adam Wilberding

### ***FTA Withdraws Fatigue Management Rulemaking – What Michigan Transit Leaders Should Do Now***

On July 1, 2025, the Federal Transit Administration (FTA) formally withdrew its Advance Notice of Proposed Rulemaking (ANPRM) on Transit Worker Hours of Service and Fatigue Risk Management (Docket No. FTA-2023-0018) [reference 90 FR 28700]. This move signals a significant regulatory pause on the long-anticipated development of mandatory fatigue risk management requirements for public transportation systems nationwide.

FTA was considering proposing minimum safety standards to provide protections for transit workers to obtain adequate rest thereby reducing the risk of fatigue-related safety incidents. The 2023 ANPRM allowed for public input in two areas: hours of service and fatigue risk management programs. FTA received 76 relevant comments in response to the ANPRM. As indicated in the Federal Register, these submitted comments were generally supportive of FTA action to mitigate transit worker fatigue but expressed concerns about the lack of available data needed to produce an effective rulemaking. So, after nearly two years, FTA announced it will no longer pursue a formal rule at this time, citing a need for further research and data collection on fatigue across diverse transit environments.

#### **What This Means for Michigan Transit Agencies**

While this withdrawal lifts the prospect of a near-term federal mandate, it does not diminish the critical safety implications of fatigue in transit operations. Fatigue remains a major contributor to reduced alertness, impaired judgment, slower reaction times, and an increased risk of preventable incidents.

Transit agency directors across Michigan, particularly those overseeing rural and small urban systems, should view this development as a call to proactively implement fatigue mitigation policies aligned with industry best practices, even in the absence of a formal federal requirement.

#### **Recommended Best Practices for Managing Fatigue**

##### **1. Develop a Fatigue Risk Management Policy**

Adopt a written policy that defines fatigue, outlines its risks, and establishes expectations for safe scheduling, rest periods, and employee self-monitoring. Incorporate fatigue awareness into your agency's Safety Management System (SMS) framework.

## 2.) Review and Revise Scheduling Practices

- Avoid scheduling drivers for extended shifts exceeding 10-12 hours.
- Minimize split shifts and provide at least 8 consecutive hours off between duty periods.
- Monitor cumulative work hours and limit total weekly hours to reduce chronic fatigue risk.

## 3.) Implement Employee Fatigue Training

Provide regular training to operators, dispatchers, and supervisors on:

- Signs and symptoms of fatigue
- Effective sleep hygiene practices
- Legal duty to report fatigue-related impairments
- Company policy on reporting and addressing fatigue

Also, see Ken Reed's PowerPoint, "Fatigue Awareness in Transit," in the MTP resource library under the Member Only Materials tab.

## 4.) Encourage a Culture of Reporting and Rest

Establish a non-punitive process for employees to report fatigue without fear of discipline. Encourage drivers to take breaks and, if necessary, remove themselves from duty if they are unfit to operate.

## 5.) Leverage Technology Where Possible

Agencies with available resources may consider:

- In-vehicle driver monitoring systems that detect microsleeps or drowsy behavior
- Wearable alertness monitors or sleep-tracking tools (voluntary)
- Dispatch software with built-in work-hour tracking and fatigue alerts

## 6.) Monitor and Assess

Track fatigue-related incidents, absenteeism, and near-misses. Use these data to continuously improve fatigue mitigation strategies. Integrate findings into annual safety reviews and agency SMS updates.

## Looking Ahead

While the FTA's withdrawal of the ANPRM delays formal regulatory action, the responsibility for addressing operator fatigue remains with transit agencies. Directors are strongly encouraged to act now to protect passengers, employees, and the public by reducing fatigue-related risks.

If your agency would benefit from assistance in developing a fatigue management policy or training module, the Michigan Department of Transportation (MDOT) Office of Passenger Transportation may offer resources or templates upon request. Additionally, coordination with the Michigan Public Transit Association (MPTA) can provide access to peer-reviewed practices from agencies of similar size and operating environments.

Consider using the resources from the Amen Clinics as educational material. Dr. Daniel Amen, M.D., has long been a leading healthcare professional in the area of brain health. See his website for more information on chronic fatigue syndrome:

<https://www.amenclinics.com/blog/are-you-tired-all-the-time-here-are-9-reasons-why/>.

For more information or assistance in implementing a fatigue risk management approach, please contact your regional transit safety liaison or visit FTA's Safety Management Resource library at

<https://www.transit.dot.gov/regulations-and-guidance/safety/safety-management-resources>.

## Cyber-Security Threats & Incidents Affecting Public Transportation Agencies

Public transportation networks have become priority targets for cyber-criminals and nation-state actors because of their high public visibility, complex operational-technology (OT) footprints and historically lean IT budgets. In 2024-25 the transportation sector rose to a top-five target in North America, with ransomware campaigns against OT systems growing 46 percent year-on-year.<sup>1,2</sup> During a recent MTP Risk Management Committee meeting, members discussed instances of ransomware attacks and their effects.

Cyber threats to transit have accelerated from nuisance fare-machine hacks to sophisticated ransomware and state-sponsored intrusions that can jeopardize safety-critical OT. Agencies that treat cybersecurity as a core safety function – backed by TSA directives, FTA tools, and industry best practice – are best positioned to maintain rider trust and service continuity.

It is recommended that all members complete the FTA Cybersecurity Assessment Tool to benchmark maturity and identify gaps.

### Footnotes:

1. Fluid Attacks, "Attacks against the transportation sector: 10 recent critical security breaches," February 6, 2025.

2. Industrial Cyber, "New Honeywell 2025 Cyber Threat Report reveals ransomware surges 46 percent with OT systems as key targets," June 4, 2025.

## 2025 Risk Management Committee Meetings

Please consider attending one or more of the Risk Management Subcommittee meetings scheduled in 2025, which start at 9:00am and usually end by 10:00am no later than 10:30am.

Remaining meetings:

- 9/3/25 – Changed from 9/2/25 (too close to Labor Day)
- 11/4/25

Both in-person and ZOOM attendance options are available. Your input helps to develop future risk management programming. We value your input; we want your input!



## Smarter Contracts for Smarter Transit

by Lindsay N. Dangi  
Murphy & Spagnuolo, P.C.

We see a lot of transit entities asking for contract review regarding grant contracts, complex bus purchases, microtransit arrangements, or high dollar agreements, but in the world of public transit, every contract matters. Whether you're purchasing software, hiring a janitorial company, purchasing uniforms, leasing vehicles, or hiring a third-party operator, how you draft and structure your vendor and contractor agreements can affect your legal exposure, your funding compliance, and your operational risk. Further, if your transit agency receives federal funding through the Federal Transit Administration or operates under grant funds which are governed by the Michigan Department of Transportation Master Agreement, sloppy or incomplete contract language could compromise your funding.

### Provisions to Consider

While I cannot comprehensively cover every necessary contract provision here, here are some clauses you may not have thought of that you might want to consider:

**Incorporating Documents.** If you have had documents leading up to the contract such as an RFP or a proposal, you can put a clause into your contract to incorporate these agreements by reference or attaching them as an exhibit to make sure that any promises or conditions that are contained in those documents are also included in the final contract. Usually vendors or contractors make big promises in their marketing materials or their proposal regarding the quality of their work or customer service offered and you'll want to make sure those promises are incorporated into the final contract. This will ensure the vendor or contractor is bound by these materials that enticed you to enter into the contract.

**Independent Contractor Status.** When your transit agency brings on a contractor, it's important to make clear that they're operating independently and not as your employee, partner, or part of a joint venture. That distinction can help protect your agency from potential employment claims, tax complications, and being dragged into liability for something the contractor does wrong. A well-drafted provision can make that separation clear and help reduce your chance of exposure.

**Confidentiality.** Often when interacting with a vendor or contractor you need to provide them with access to your data, systems, and information. While some records of public entities may be subject to disclosure under FOIA, there are numerous exceptions. For example, under Section 13(1)(a) of the Freedom of Information Act and Michigan Court Rule 1.109, information like dates of birth, social security numbers, driver's license numbers, passport numbers, and financial account numbers all are confidential and exempt from disclosure. Further, Sections 13(1)(g) and (1)(h) protect any information privileged by any statute or court rule.

This includes information prepared in anticipation of litigation like accident reports, communications with attorneys and ASU about potential litigation, any surveillance or information gathered by a licensed private investigator, and for public entities you have a deliberative process privilege which protects information about internal government agency discussions during the decision-making process before a final decision is reached. If you are providing a contractor or vendor with access to your systems or information they may necessarily come across this information. You may want to make sure such information is protected from unnecessary disclosure.

**Ownership of Data and Information.** We live in an era of creativity and invention. You can build into your contracts that any work the vendor or contractor creates for your agency during the term of the contract that you own that work product under what is called a “work made for hire” under the U.S. Copyright Act. This matters because at some point, you may want (or need) to end your current contract, whether it’s due to expiration or a switch to a new vendor. If your agreement doesn’t clearly state that you retain ownership of your data, your contractor might not be obligated to return it. That could mean losing access to years of critical information, which can be difficult and costly to replace.

**Statements to the Media.** As entities in the public eye, often statements about partnerships or new contracts make it into the news in some way. You can put into your contracts that all statements to the public – including statements about any accidents or injuries - must first be approved by your transit agency. This ensures you can make sure the information in the public is accurate. More importantly a provision like this can help avoid unintentional admissions that could increase your litigation risk.

**Insurance.** When drafting the insurance provisions in your contract, it’s not just about making sure the contractor carries enough coverage for the work. You can require that your transit agency be named as an additional insured, that you’re notified if the policy is canceled or changed, and that the contractor’s insurance is primary and your transit insurance is excess, secondary, and non-contributing. That way, your transit agency’s coverage only kicks in if absolutely necessary.

**Indemnification.** It is important to make sure that if the contractor or vendor does something wrong or causes some injury or damage your agency is not held responsible. I’ve seen many contracts that actually shift liability to the transit entity and disclaim liability of the contractor. These provisions can be easy to miss, so it’s smart to read them closely and flag anything that doesn’t sit right.

**Governing Law and Venue for Disputes.** If you’re contracting with a company that operates in multiple states, they may try to include terms that apply their home state’s laws or require disputes to be resolved in a court outside your state. If that’s not addressed upfront, you could end up having to travel out of state or hire out-of-state counsel just to enforce your rights if something goes wrong. It’s worth considering whether you want to negotiate to keep the governing law and venue local to your transit agency.

## FTA and MDOT Requirements

If you receive federal funding through the FTA, the FTA has a list of required and recommended clauses for federally funded procurements. If your contract lacks a mandatory clause and there's a dispute, you risk noncompliance with your grant obligations. This could have significant financial consequences.

The FTA requirements are consistently being updated. The most recent version of mandatory clauses can be found at:

**[www.transit.dot.gov/funding/procurement/third-party-procurement/third-party-contract-provisions-matrix-may-2025](http://www.transit.dot.gov/funding/procurement/third-party-procurement/third-party-contract-provisions-matrix-may-2025)**. Some provisions are applicable to all contracts and others are applicable only to contracts for certain items or contracts over a certain dollar amount. Again, I do not have space to cover each mandatory clause here, but here are a few you may not have thought would apply to all contracts that receive FTA funding:

**Federal Tax Liability and Recent Felony Convictions.** This is from the latest Master Agreement Section 4(g) recipients of FTA dollars agree that “prior to entering into any Third Party Agreement...the Recipient will obtain...a certification that the Third Party...Does not have any unpaid Federal tax liability...[and] Was not convicted for the felony criminal violation under any Federal law within the preceding 24 months.”

**Seat Belt Use.** This is from the latest Master Agreement Section 34(a) and applies to all contracts, whether there is a driving component or not. Under this section, recipients of FTA dollars agree to include in all third party contracts funded in any part by FTA “on-the-job seat belt use policies and programs for its employees and other personnel” when operating company owned vehicles, rented vehicles, and even their personal vehicles.

**Distracted Driving.** Similarly, this provision applies to all FTA funded contracts regardless of whether there is a driving component to the agreement. The provision can be found in the latest Master Agreement Section 34(b). Under this section, recipients of FTA dollars agree to include in all third party contracts funded in any part by FTA, “workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award.”

It's not uncommon for FTA grantees to assume that attaching a vendor's quote or invoice and labeling it a contract will cover their bases. But that kind of approach may leave out important terms, protections, or required provisions—potentially opening the door to confusion or risk down the line. It's something worth reviewing carefully before finalizing an agreement.

MDOT has similar provisions and requirements. Recipients of MDOT funds are given a copy of the most recent MDOT Agreement for Public Transportation Projects and given requirements for third party contracts. Not only can this Master Agreement contain additional mandatory clauses,

such as adhering to MDOT's insurance minimums, using the latest MDOT approved templates, and including certain flow-down provisions to your third party contractors, but also it often requires approval by MDOT of agreements over a certain dollar value. Be sure to check your Master Agreement to make sure there are not additional obligations to avoid any state-level grant issues.

## **Bottom Line:**

It can be tempting to cut corners when you are under pressure to get services going or secure a vendor fast, but rushing the process can lead to legal headaches later. A little more time upfront can save you from major issues down the road. Retaining a lawyer to review your contracts on the front end can flag any missing requirements and tailor the contract to cover the specific transaction you contemplate.

Contracts work best when they're written while everyone is still optimistic about the deal. When everyone is getting along is the perfect time to clearly lay out the obligations and expectations. If things go sideways later, you will already have the structure in place to protect your agency and hold everyone to what was agreed. Your contracts are more than just obligatory paperwork. They are tools to safeguard your funding, your riders, your infrastructure, and your reputation. When done right, the contract terms and conditions become your first line of defense.

*The general information provided in the above article is for general education purposes only and in no way constitutes legal advice as every situation is different. MTP members should consult with their attorneys for specific guidance. If your agency needs support developing transit-compliant procurement templates or reviewing vendor agreements, we would be happy to discuss your individual situation with you further.*

***THANK YOU FOR LETTING  
US BE A CONTINUED  
PART OF YOUR JOURNEY.***



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