

THE ICAP UPDATE

Third Quarter 2017

Plus

Police Personal Protective Equipment - How One Iowa Company is Contributing

News and Event Highlights from the ICAP Team

Disability Discrimination and Employer Best Practices



Third Quarter 2017

WHAT'S INSIDE



Image credit:
Kelly Hueneke, Iowa Waters (2017)
www.kellyhueneke.com

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Announcement!

County Risk Management Services, Inc. (CRMS) will host its first-ever continuing education event in January 2018! The one-of-a-kind educational seminar will be exclusive to agents and CSRs that work alongside CRMS to service ICAP and IMWCA member counties. Look for additional information in ICAP's Fourth Quarter Magazine, which will be released in September of this year!

COUNTY RISK
MANAGEMENT SERVICES, INC.
representing
 

ICAP'S 2017 EDUCATIONAL SUMMIT

With more than 100 guests in attendance at the event, which was held Wednesday, July 19, at the Hilton Garden Inn in Johnston, the 2017 Educational Summit was one for the books. Look for our full event recap in our Q4 magazine, which will be released in September of this year!

NEWS & EVENTS

what's happening. and when.

RAGBRAI

July 23-29, 2017

ISAC Scholarship Golf Fundraiser

August 2, 2017

ICAP Board Meeting

August 4-7, 2017

ISAC Annual Conference

August 23-25, 2017

Independent Insurance Agents of Iowa Annual Conference

September 13-14, 2017

Iowa League of Cities' Annual Conference

September 27-29, 2017

IMFOA Fall Conference

October 18-20, 2017



PRINTABLES FOR JULY & AUGUST ARE ONLINE

visit www.icapiowa.com/theblog to
download your copies.



ICAP AGENTS: SAVE YOUR SEAT!

ICAP's 2017 Agent Seminar will be held **Thursday, November 9, in Johnston**. Featuring five (5) CE credits, the Seminar will expand upon the materials presented at the 2017 Educational Summit. **Register now!**

visit www.icapiowa.com/agents to save your seat!

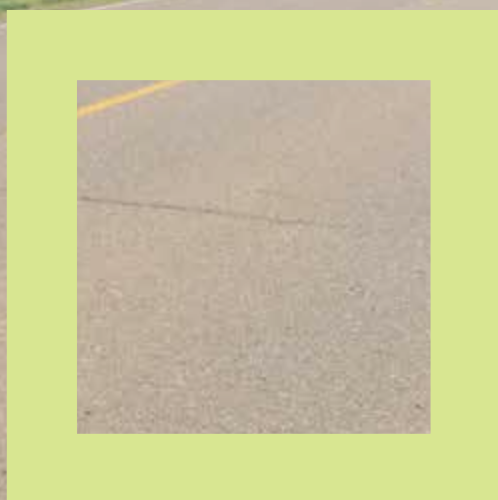


Every July, thousands of RAGBRAI riders roll into designated Iowa counties, towns and communities.

There are nearly 10,000 participants on any given day - a number that is inclusive of bicycle riders only, meaning the hundreds - if not thousands - of volunteers, businesses, emergency personnel and others are not included in the figure.

Staggering, isn't it? And it's only the beginning.

Click to see the daily route maps!





Dozens of Iowa communities and thousands upon thousands of riders participate in the **Register's Annual Great Bike Ride Across Iowa (RAGBRAI)** each year. The ride has a reputation for being challenging, humbling and incredibly fun.

But what is it? What could it mean? And what does your entity need to know?



RAGBRAI riders cycle along a given route each day, pedaling their way through Iowa communities and over many Iowa hills. Image credit: Des Moines Register

It's a ride intended to be fun; to celebrate Iowa communities; to enjoy scenic views; and to bond with other RAGBRAIers year after year after year.

The ride was actually started in 1973 by John Karras and Don Kaul, two reporters from the *Des Moines Register*.

Karras and Kaul invited the public to join them on a six-day bicycle ride across the state, which was intended to serve as inspiration for a column Kaul authored.

Participation the first year was low, with a mere 114 riders completing the full ride. The public's response, however, was overwhelming. So much so, it ultimately led the *Des Moines Register* to host the ride again the following year.

RAGBRAI has been held every year since. It has grown annually, until being capped at 8,500 weeklong riders and 1,500 daily riders per year.

The ride is not only tremendous fun, but also wonderfully beneficial (in terms of economics) for the state, as well as the many Iowa communities that participate in the event and sit along its route on a given year.

But what else might such an influx of traffic and individuals mean for those communities? What risks does it pose, and what can be done to help mitigate the potential for a claim or a loss?

Janis Hochreiter shares a Loss Control perspective in the pages that follow. Read on to learn more!



No Need to Backpedal for RAGBRAI

Summer is officially here, which means RAGBRAI is right around the corner.

Participating communities have likely long been busy making preparations for the annual bike ride, which will bring thousands of new faces into member cities and counties that rest along the ride route this year.

RAGBRAI will also give way to several activities for pass-through and overnight communities. These activities must be addressed in advance of the event, so as to ensure RAGBRAI remains a safe and fun event for both riders and those in your

community.

There are many things to consider from a loss control standpoint if your entity happens to get selected as a “pass through” town or an “overnight” destination. The following are some of the key considerations; however, there are additional items to address that can be provided in the information packet available through RAGBRAI.

I have been working with several local communities to offer RAGBRAI-related loss control recommendations. Among them:

- 1** All primary roads on the bike route and at destination stops should be thoroughly inspected in advance and any cracks, potholes or uneven surfaces should be adequately repaired. This also includes any sidewalks or walking surfaces. These surfaces should also be cleaned and free of any loose gravel or foreign debris.
- 2** A current and updated Emergency Response Plan should be in place and be coordinated with the designated Emergency Management Agency. This plan should include designated emergency shelters in case of inclement weather.
- 3** The local fire department and EMS should be fully aware of this event and ready to go in an emergency situation.
- 4** All outside vendors participating in your community should provide certificates of insurance for their operation. The member entity should obtain an accurate list of all items being sold.
- 5** All food vendors should have a current Health Department Certificate in place and posted, and all vendors selling alcohol should have a current liquor license in place to cover the event.



Activities must be addressed and planned for in advance, so as to ensure RAGBRAI remains a safe and fun event for both riders and those in your community.

- 6** The location of any areas serving alcohol should be secured and monitored to prevent underage drinking or overdrinking.
- 7** Adequate sanitary stations and garbage removal should be in place and monitored.
- 8** All temporary electrical set ups should be inspected by a qualified electrical contractor.
- 9** The police/sheriff's office should play an integral role with this event from the beginning to the end and a strong presence is preferred.
- 10** All designated overnight campsites should be inspected and secured before the event. All trees should be inspected and any loose or rotten branches should be properly removed.

Again, the items listed above are only a few of the areas that should be considered from a loss control standpoint for RAGBRAI. If these items are in place along with other areas that need to be addressed, there should be no need to backpedal for RAGBRAI! Everyone participating in in this event can have a safe and exciting time.


Have questions regarding the recommendations above? Contact Janis! Click to email her now.



FOR RESOURCES TO HELP PLAN AND PREPARE FOR RAGBRAI OR A SIMILAR EVENT, VISIT ICAP'S RESOURCE ELIBRARY AT WWW.APEEPELIBRARY.COM.

There have been 62 line of duty deaths in the U.S. so far this year . Of those, 23 were caused by gunfire. There were 145 line of duty deaths in 2016, 66 of which were caused by gunfire. And in 2015, 43 of the 141 reported line of duty deaths were caused by gunfire. **That's 132 U.S. Law Enforcement deaths caused by gunfire in less than three years.**





“When a police officer is killed, it’s not an agency that loses an officer, it’s an entire nation.”

**-Chris Cosgriff, Officer Down
Memorial Page (ODMP) Founder**
www.odmp.org

TURN TO THE FOLLOWING PAGE TO:

- Learn what one Iowa man - a former marine - and his team are doing to help change such statistics;
- Discover police personal protective equipment that could be a fit for your entity; and
- Find out how you can use funds from the ICAP grant to purchase such equipment.



Let's start with the basics.

WHAT IS POLICE PERSONAL PROTECTIVE EQUIPMENT?

According to Policeone.com, an online resource for officers and departments, **Personal Protective Equipment is designed to protect officers from serious injuries or illnesses resulting from contact with chemical, radiological, physical, electrical, mechanical or other hazards. It covers a variety of devices and garments such as goggles, coveralls, gloves, vests and gas masks, explosive ordnance disposal (EOD) and other equipment protecting against weapons of mass destruction (WMD equipment.)**

Also included under the umbrella of personal protective equipment are tactical body armor and plates, which are becoming more popular amongst police and sheriff departments. What's led to their increased popularity?

Need.

Blake Waldrup, CEO of RMA Armament in Centerville (a longtime ICAP member!), stated the demand for hard armor has increased in the wake of law enforcement shootings around the nation .

"We've started to see individuals buy hard armor plates more and more over the last year or so - really, after the officer shootings in Dallas," Waldrup commented.

"The pieces are essential for law enforcement personnel. And not just for the specialty teams. They are needed for the everyday officers, troopers and patrol who are in the field and on the job."

Take his word for it - Waldrup knows a thing or two about being in the field and on the job.

After a career in the U.S. Marines and positions serving local law enforcement (including as an officer in Dysart, Iowa), Waldrup started RMA Armament, which designs and manufactures composite body armor.

Such armor is one of the many types of police personal protective equipment that is growing in use.



RMA uses a patented ceramic tile array to greatly reduce crack propagation in its level IV rifle plate. According to the company, the tile array essentially tells the ceramic where to crack upon impact, mitigating the damage and integrity to the rest of the plate and ensuring full protection on other parts of the ceramic. Photo Credit: Kelsey Kremer/The Des Moines Register via AP

Police departments and individual officers have started investing in protective body armor, which may include:

- concealable armor;
- correctional armor;
- tactical armor;
- female armor;
- K-9 armor;
- ballistic shields; and
- accessories including carriers and hangers.

A great many Iowa communities - including a number of ICAP members - have already purchased body armor; several members have even purchased body armor directly from RMA.

"Being a former officer and former marine, (RMA

founder and CEO) Blake knows what is really important. He knows what it's like to wear body armor and put your life into a product's hands," Ruff continued.

"Our primary, most important goal is protecting officers. First and foremost, it's about doing our part to get them home safe at the end of the day."

That is the ultimate goal of such armor, and it's one body armor manufacturers don't take lightly.

In fact, most companies manufacturers make multiple types of body armor plates, in order to provide options suited to the needs of a given entity.

Read on to learn more about the various types of such armor and discover what plate(s) might be a good fit for you!

Turn the page to learn more about selecting body armor and other personal protective equipment.

WHAT TO LOOK FOR WHEN SELECTING BODY ARMOR

How do you know what is right for you?

There are many different factors to consider when selecting body armor, most of which are dependent upon a department and its needs. In exploring options, PoliceOne.com recommends law enforcement departments:

1. **Identify their threat level**
2. **Understand the National Institute of Justice (NIJ) standards**
3. **Know the difference between stand-alone and in-conjunction armor**
4. **Choose the right armor and get the right fit**

RMA further advises individuals should consider:

1. **Ballistic capability**
2. **Weight of the plate**
3. **Price of the plate**

Many municipalities are limited by budget, which pushes them towards the highest round plate.

These plates tend to be on the heavier side, but often come with a cheaper price tag.

This might be appropriate for certain departments, but others might be better accommodated with a lighter plate.

The majority of companies selling body armor plates

will consult with officers to identify what they need, and determine a “best fit” from there.

Many companies also offer a discount to law enforcement personnel, and some may even offer special sizing and product customization.

Officers can inquire about such offerings by contacting a given company directly.

SOFT, CERAMIC, POLY(ETHYLENE) ...

THERE ARE MANY DIFFERENT MATERIALS, FITS AND COMPONENTS TO CONSIDER WHEN SELECTING BODY ARMOR. DO THE RESEARCH BEFORE DECIDING WHICH IS BEST FOR YOU!

POLICE PERSONAL PROTECTIVE EQUIPMENT

What other options are there?

As with most things, there are a great number of manufacturers and providers to choose from when it comes to police personal protective equipment.

Most items have various models, options, sizings and offerings to select from, and some can even be custom-created in order to meet the specific needs of a given entity.

Take a look at select protective equipment options below!



And take note: **most Police Protective Equipment purchases are eligible for funding through The ICAP Grant!**

What does this mean for your entity? It means you could potentially receive up to \$1,000 to spend on such gear, no strings attached.

Every ICAP member is eligible to receive grant funds; if your entity has not yet applied for the grant this year, do so now! Visit the grant page of the ICAP website (www.icapiowa.com/grant) to apply or learn more.

Have questions or need assistance with the application process? Contact Kasi Koehler via kasi@icapiowa.com or call 1-800-383-0116 for assistance!

Neither ICAP nor its representatives endorse RMA Armament or its products. This article is intended for informational purposes only, and should not be misconstrued as an endorsement or representation of any RMA product. ICAP recognizes there are many options for police personal protective equipment, and recommends each department evaluate internally and work with its ICAP Loss Control representative to identify the best fit for his/her entity.

Click to apply for the grant now!
One minute is all you need.

THE AMERICANS WITH DISABILITIES ACT OF 1990 (ADA) MAKES IT UNLAWFUL TO DISCRIMINATE IN EMPLOYMENT AGAINST A QUALIFIED INDIVIDUAL WITH A DISABILITY. THE ADA ALSO OUTLAW DISCRIMINATION AGAINST INDIVIDUALS WITH DISABILITIES IN STATE AND LOCAL GOVERNMENT SERVICES, PUBLIC ACCOMMODATIONS, TRANSPORTATION AND TELECOMMUNICATIONS.

Vetter v. State of Iowa, DNR, et al:

Disability discrimination and best practices for employers engaging in the interactive process

THE AMERICAN WITH DISABILITIES ACT AS AMENDED (“ADAAA”) AND THE EQUIVALENT IOWA CIVIL RIGHTS ACT (ICRA) CONTINUE TO BE SIGNIFICANT AREAS OF LIABILITY FOR IOWA CITIES AND COUNTIES. WHAT MUST AN EMPLOYER DO IN SITUATIONS TO ASSIST OR ACCOMMODATE A DISABLED EMPLOYEE?

Article by Amy L. Reasner, Lynch Dallas, P.C.
<http://www.lynchdallas.com/our-attorneys/amy-l-reasner/>



Recently, the Iowa Court of Appeals provided guidance to employers once they learn of an employee's disability: employees must engage in a timely, good-faith, interactive process with the employee *and* provide the employee with a reasonable accommodation, if possible.

A prompt and appropriate response by the employer will boost employee morale and reduce the risk of future injuries to the employee.

In *Vetter v. Iowa Department of Natural Resources* (Iowa Ct. App. 2017), the Iowa Court of Appeals affirmed a jury verdict in favor of Plaintiff John Vetter on May 17, 2017, regarding his disability discrimination claims.

The jury awarded Mr. Vetter over \$688,000 in back pay, front pay and emotional distress damages. (This figure does not include the amount owed to Mr. Vetter's attorneys under the Iowa Civil Rights Act, as a prevailing party.)

Mr. Vetter had worked for the DNR since 1976. He experienced an on-the-job back injury in July of 2011, underwent surgery that November, and returned to work with "light duty" in January 2012. That September, Mr. Vetter had a functional capacity examination ("FCE") which resulted in permanent restrictions on his ability to carry a certain weight and which limited the time he could sit, stand, walk, squat and bend.

Those permanent restrictions were communicated to the DNR in January 2013.

What happens next (as far as the record in the case) is the crux of Mr. Vetter's failure to accommodate his disability claim.

The Court recited as follows: that human resources, legal and two consultants met, discussed and then prepared two workplace assessments considering Mr. Vetter's permanent restrictions and his essential job functions. They were considering whether Mr. Vetter could be reasonably accommodated. While they consulted Mr. Vetter's supervisor, they did not consult Mr. Vetter about his job functions or any accommodations he may need to perform his job functions. Big mistake!

The workplace assessments included the following job accommodations:

1. Job rotation every two and a half hours; and
2. Purchasing a customized tractor for Mr. Vetter.

Mr. Vetter later contended that the evaluators based their suggestions on flawed information and that the accommodations proposed were not necessary.

Disability discrimination and employer best practices (continued)

The DNR concluded the suggested accommodations “would have a detrimental impact on DNR’s business needs and that such accommodations would result in an undue burden on the DNR and State of Iowa” and terminated Mr. Vetter’s employment. Mr. Vetter disagreed and filed a charge of discrimination, then a lawsuit.

The jury found in his favor and the Iowa Court of Appeals agreed with the jury finding there was direct evidence of an adverse employment action because of Mr. Vetter’s disability. The Court also held that, “[i]n spite of its knowledge of [Mr.] Vetter’s disability, the DNR failed to include [him] in the process of determining which accommodations would be necessary to allow him to perform his job duties.”

The Court cited several Iowa cases holding that the Iowa Civil Rights Act requires “an interactive process that engages the employee and employer to work in concert to achieve a reasonable accommodation.”

The good faith interactive process – when and how: Vetter makes clear **the interactive process means actually interacting with the employee!**

Often, employers are fearful about meeting with the employee to discuss permanent restrictions and job



functions – fearful that it is somehow discriminatory to even talk about a person’s limitations or fearful that they are violating federal medical confidentiality rules. If the interactive process is done right, these issues should not trouble an employer.

So, what do you do if you are in this employer’s position? It is a two-step process.

First, you should meet with legal, the supervisor and human resources to determine if there is a disability, if the person is qualified for the position and if there are reasonable accommodations to permit the person to perform his or her essential job functions and obtain the same workplace opportunities that those without disabilities enjoy. (See, e.g. *U.S. Airways, Inc. v. Barnett*, 534 U.S. 391 (2002).)

You will need to ascertain precisely what the essential job functions are (see description!).

Second, **meet with the employee** and have the same

DATA FROM FEDERAL COURTS SHOW 9,373 NEW SUITS [REGARDING THE AMERICANS WITH DISABILITIES ACT AND DISCRIMINATION IN EMPLOYMENT] WERE FILED DURING THE TWELVE-MONTH PERIOD ENDING SEPTEMBER 30, 2016. THIS WAS A 28 PERCENT INCREASE OVER THE PREVIOUS YEAR.

<http://trac.syr.edu/tracreports>



REMEMBER:

Not all disabilities are visible. Moreover, just because a person has a disability, does not mean they are disabled. According to the Americans with Disabilities Act of 1990 (ADA) an individual with a disability is a person who: has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.

discussion – seek his or her input and ideas. Does the employee truly perform those job functions or is this an outdated job description? Are the functions essential or peripheral? If you remove the functions, does it fundamentally change the position? What does the employee think is a reasonable accommodation? Do you need help from a consultant to identify accommodations?

If one meeting does not solve the inquiries, set another one.

Courts describe the process as “flexible.” But Courts also firmly state that “both parties, not just the employer, have an obligation to participate in the interactive process.” (See *Magnussen*, 787 F.Supp. 2d at 956-57 citing *Kratzer v. Rockwell Collins, Inc.*, 398 F.3d 1040, 1045 (8th Cir. 2005).)

When you have either identified a reasonable accommodation (or accommodations) or have concluded there are no reasonable accommodations, the interactive process ends.

If one party prematurely quits the process or does not offer solutions, that party can be assigned the “breakdown of the interactive process” by a court in a motion for summary judgment. (See, e.g., *Kratzer supra*.)

The employer should try to implement a reasonable accommodation preferred by the employee if it can. But, the employer by no means is required to do so if there is another, acceptable reasonable accommodation.

If the employee rejects a reasonable accommodation offered by the employer, a court may find the employee was not qualified for the position.

Check out www.eeoc.gov/eeoc/internal/reasonable_accommodation.cfm for more helpful information on the interactive process and reasonable accommodations. And, of course, always consult with your attorney!

Ms. Reasner has represented a number of ICAP members in cases related to the Americans with Disabilities Act. Her general practice areas include labor and employment law, insurance defense, and internal investigations. Ms. Reasner has handled FMLA matters as well as risk avoidance in matters involving employee hiring, discipline, and discharge. Also an experienced trial lawyer, she defends employers in courts and before arbitrators in all types of matters. Learn more at www.lynychdallas.com.

