

Risk Management Policy

Applicable Legislation:

Environmental Protection Act, R.S.O. 1980

Occupational Health and Safety Act (OHSA), R.S.O. 1990

Occupiers' Liability Act, R.S.O. 1990

Trespass to Property Act, R.S.O. 1990

Workplace Safety and Insurance Act, R.S.O. 1997

Intent:

To summarize the University's risk management systems for various civil and statutory liabilities and to promote employer and employee due diligence in all loss control activities.

Definitions:

civil liability

liability usually arising from incidents or situations involving employees, students, visitors, or third parties. Civil liabilities are classified as owner's liabilities or as vicarious liabilities. Civil liability risks can be underwritten by insurance.

due diligence

taking all precautions reasonable in the circumstances to protect health and safety.

fiduciary duty

the duty owed by persons in positions of trust to act in the best interests of others.

negligence

an unintentional harm caused by a failure to meet the standard of care. To establish negligence, four factors must be confirmed:

- the defendant owed duty of care to the plaintiff;
- the defendant breached that duty of care;
- damage or harm did occur;
- breach of duty was a proximate cause of the injury.

occupier

the person who has physical possession or responsibility for and control over the condition of the premises, the activities therein, and the persons allowed onto the premises.

occupier's liability

associated with liabilities arising from ownership of real property; the duty of care to make premises reasonably safe for all persons entering by taking reasonable precautions to protect such persons from foreseeable harm; applies to conditions on the premises, and the conduct of third parties on the premises.

personal liability

persons are held liable for negligence that is not shared by an employer.

premises

includes land, structures, and water.

rural premises

includes cultivated fields, orchards, pastures, woodlots, and farm ponds.

statutory liability

institutional or individual liability associated with breach of statute. Statutory liability risks cannot be underwritten by insurance.

tort law

encompasses actions in negligence or breach of the general duty of reasonable care towards an individual.

vicarious liability

the imposition of liability on one person for the actionable conduct of another based solely on the relationship between the two parties (e.g. the liability of an employer for the actions of an employee).

Policy:

1. The University shall carry adequate insurance for its risk management needs, for the protection of its officers, directors, supervisors, and employees acting in good faith, and for catastrophic losses to physical, financial and other assets.
2. The University reserves the right to require agreement documents and liability insurance policies from third parties (e.g. contractors, conference groups etc.) using University facilities or property, that indemnify the University from specified claims or actions.
3. No department, employee, or agent of the University shall initiate claims or agree to settlements or actions on behalf of the University without consulting the Risk and Insurance Manager in Financial Services.
4. The University shall, at the discretion of the Vice-President, Finance and Administration, retain legal counsel for employees facing prosecution for civil actions or statutory offences arising from the course of their duties.
5. Property insurance policy deductibles shall normally be the responsibility of the department experiencing loss.
6. Personal possessions of faculty, staff, and students on University property shall not be covered by University insurance policies.
7. All departments and all members of the University community shall be responsible for taking appropriate initiatives for due diligence and reasonable care for risk management and loss control.
8. Activities and situations that present unique or potential liabilities to the University shall be reported to the Risk and Insurance Manager. (See the Financial Services Insurance Policy TR.21 and Safety Policy 851.01.15 concerning Potentially Hazardous Events, and Safety Policy 851.06.23 concerning Field Trips.)
9. The Risk and Insurance Manager shall be consulted about proposed contractual agreements between the University and other parties.

Guidelines:

The need for an integrated approach to safety and risk management is underscored by the fact that, in Canada, failures in management or supervisory systems accounts for 70% to 80% of all loss incidents (e.g. personal injuries, property damage, thefts, environmental liabilities).

The University's risk management systems are generally categorized as:

1. property management systems;
2. environmental risk management systems;
3. occupational and public health and safety management systems;
4. liability management systems.

Property management systems include, for example, those for asset protection (e.g. fire detection and suppression systems), property theft and damage insurance, and security measures. Contact the Risk and Insurance Manager about property insurance policy coverage and deductibles.

Environmental risk management systems include engineered systems (e.g. emission control and monitoring systems in campus buildings) and campus services such as the hazardous waste management program offered by Environmental Health and Safety. Many initiatives that promote environmental responsibility and environmental protection are procedural.

The *Environmental Protection Act* prescribes responsible care requirements in the event of spills or releases. (See Safety Policy 851.01.03 concerning the *Environmental Protection Act*, and Safety Policy 851.04.04 concerning Spills to the Environment and Reporting.)

The internal responsibility system with joint health and safety committees in numerous University workplaces is the foundation for the safety culture at the University. The statute which presents the greatest potential for supervisory and faculty liability is the *Occupational Health and Safety Act*, R.S.O. 1990. (See Safety Policy 851.01.02). In Ontario, the health and safety of workers is the responsibility of the people in charge of the workplace operations. Faculty are considered to be supervisors under the Act when directing the activities of employees engaged in research or teaching activities. Graduate students are considered to be employees under the Act when performing teaching duties and service work for the University. They are not considered to be employees when undertaking activities in pursuit of their advanced degrees. **Fines levied upon employees convicted of offences under OHSA are personal; they cannot be paid by the employer.** For further information about OHSA requirements, request a copy of the document titled *Due Diligence in Occupational Health and Safety* (January 1998) from Environmental Health and Safety.

Employees are insured for occupational injury and disease under the *Workplace Safety and Insurance Act 1997*. This Act prohibits civil action by employees against employers and their agents. (See Safety Policy 851.04.01)

Tort law proceedings against the University or against employees of the University can arise when a party claims injury due to lack of reasonable care. The University of Guelph, its officers, directors, supervisors, and employees are covered under the Canadian University Reciprocal Insurance Exchange (CURIE) for general liabilities arising from civil actions brought by students or third parties (see www.curie.org/). Details about the comprehensive general liability insurance policy (and all exclusions) may be obtained from the Risk and Insurance Manager. General information about insurance coverage may be found at the University's web site: www.fin.uoguelph.ca/Manuals/Man-TOC.htm Insurance notwithstanding, individuals found to be negligent in a civil loss of reputation and professional status.

The *Occupiers Liability Act* defines the liability of all occupiers of land. It protects occupiers of most rural land from being sued for damages by most people who come onto their land. The Act obliges all landowners to prevent harm by conditions on the property or by activities on the premises. The basic *duty of care* is generally interpreted as what a reasonable person would do in the circumstances. If an occupier is aware that children regularly play on his/her land, the standard of care that must be taken may be higher. This basic duty of care does not apply to entrants who willingly assume their own risks or who are deemed by law to assume their own risks (e.g. people who know the possible dangers and freely accept the risks, anyone who enters a premises with the intention of committing a criminal act, non-paying entrants entering rural premises for recreational purposes, and all entrants on most rural property who do not have express permission to enter). Rural occupiers are under the basic duty of reasonable care towards employees, entrants for business purposes, and others who enter with permission for non-recreational purposes.

The Trespass to Property Act provides protection from trespass to land should the occupier wish to prevent others

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from entering, or wish to control the use of the land. The Act facilitates recreational use of private land by promoting a simple marking system to indicate where and how the property may be used. Anyone who enters the premises or engages in a prohibited activity on the property, without express permission, is guilty of an offence, as is anyone who fails to leave the premises immediately after being told to do so. Entry onto property such as lawns, orchards, gardens, fields, woodlots on agricultural land, land enclosed to keep animals in, and other land under cultivation is prohibited. Notice by signs need not be given. It is an offence to enter any property where signs have been posted showing that entry is prohibited; e.g. "No Trespassing", "No Entry", "Keep Out". The occupier may enforce the Trespass to Property Act by identifying himself and asking the trespasser to leave, or by requesting assistance from a police officer.

General information about occupiers' rights and responsibilities is available from the Ministry of the Attorney General, 416-326-2200. Specific guidance for University facility managers (e.g. at rural agricultural properties) may be obtained from the Risk and Insurance Manager or from Environmental Health and Safety. Risk Identification, Assessment and Management Continuous improvement in safety performance results from ongoing risk identification, assessment, and management. A systematic approach is recommended to ensure employer/employee due diligence and responsible care. Ask yourself the following questions:

1. What aspects of the workplace or job can cause serious harm or even death?
2. What is the likelihood of occupational or public exposure to the harmful conditions?
3. What workplace or environmental conditions can be quantified by scientific measurements?
4. What controls are presently in place to protect against harm?
5. What must be done to eliminate or control the harmful conditions? Strategies include elimination, isolation, containment, substitution, energy barriers, administrative controls, and personal protective equipment.
6. Who needs to be notified and who needs to be alerted about the potentially harmful conditions?
7. What training, instruction, and supervision are needed for employees and students?
8. What monitoring, inspections, or surveillance is needed in the workplace?
9. What immediate actions must I take for responsible care and due diligence?

Your responses to these questions will prompt necessary actions for safety and risk management and will promote success in accident prevention and loss control.

For further information about environmental health and safety, risk assessment, loss control, and liability management, please contact:

Manager, Environmental Health and Safety: 519-824-4120 Ext. 52048

Director, Security Services: 519-824-4120 Ext. 52050

Risk and Insurance Manager, Financial Services: 519-824-4120 Ext. 58752

Also, see [Safety Policy 851.01.13](#) [1] concerning Reporting Hazardous Conditions.

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