

# NIRMA's

Loss Prevention and  
Safety Department  
Monthly Newsletter

# NIRMA's Safety Shorts

Agenda Item # 34a

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## January Is "Get a Balanced Life Month"

"A well-balanced life is essential for personal effectiveness, peace of mind and living well. The challenge is to balance what we must do with what we enjoy and choose to do. This is not always easy. If, however, we are unable to reduce stress and manage a well-balanced life, there can be physical and/or emotional health consequences."



### GENERAL SAFETY

**By Chad Engle, Loss Prevention and Safety Specialist**  
**Money for Minutes Deadline, January 31, 2020**

Please remember to submit your safety committee minutes if you would like to be considered for 2019's Money for Minutes program. The submission deadline is 5:00 pm, January 31st, 2020.

To qualify for one of two \$500 awards your safety committee will have had to have met at least four times during 2019, once per quarter, and submit the meeting minutes to me for review. The minutes must contain discussion of how the committee recommends reducing the reoccurrence of all incidents that member experienced during the year. This includes worker's compensation, liability and property claims. If it was on your quarterly incident report, it needs to have been discussed.

Once all the minutes are submitted, I will verify the members met the requirements and draw our two \$500 winners.

### **Winter Related Slip and Fall Injuries**

Each Monday I receive a list of all the Workers' Compensation claims that were reported the previous week. Much to my dismay last week's report consisted of 50% ice related slip and fall injuries. I'd like to ask everyone from board chair all the way to part-time employees to please keep an eye on parking lots, sidewalks and entrances. If they need work let maintenance know. Follow up snow removal and ice melt are so important when trying to prevent falls, that we all need to keep an eye out for problem areas.

In addition, we all need to be personally accountable for our own wellbeing. Watch where you are walking, keep an eye out for ice and snow. Take the long way if you need to. Is your choice of footwear the best possible option given the weather conditions? These falls are preventable, I hate to think of someone getting seriously injured when it could have been prevented.

I hope everyone's holidays were joyous, here's to a healthy and prosperous 2020!

Please contact me at [chad@nirma.info](mailto:chad@nirma.info) or 1.800.640.6671 if you have any questions or would like to arrange for a training session.

Loss Prevention  
And Safety

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In the 2017 report, the NE DOT noted, "Many of our **rural fatalities** are the result of Roadway Departure crashes," which include running off the road, rolling over, and colliding with fixed objects (e.g. trees, guardrails poles, etc.).



## HIGHWAY DEPARTMENT

By Tim Baxter, Road Safety and Loss Prevention Specialist

### TREE AND BRUSH LIABILITY

Trees and brush growing on county rights-of-way and private property adjacent to county roads continue to cause significant liability risks to NIRMA member counties. The prospect of liability can follow when trees/limbs and brush block visibility of oncoming traffic, cause snow drifting problems, fall or blow down in high winds and obstruct roads or hit motorists' vehicles, block visibility of traffic signs, etc. Most of these issues on county rights-of-way can be easily resolved with a good tree and brush removal policy and program.

But NIRMA unfortunately also sees claims that arise directly from member county road department employees' efforts to cut trees and brush on private property to remove obstructions and improve sight distance. Such claims present a different kind of danger than the typical accident claim alleging a member county was negligent for failing to correct sight distance and other tree/brush issues on county rights-of-way. The risk of such claims may be unexpected or easily overlooked.

For example, in one instance, a member county sought permission of a private landowner to cut trees on private property for the purpose of curing sight distance problems, and the road workers ultimately took different and more trees than the landowner contemplated. The lawsuit in that instance was ultimately limited to an inverse condemnation cause of action. But there is an exclusion in the NIRMA coverage agreement for an inverse condemnation claim, and a dispute centering on the valuation of the cut trees is still pending in the Nebraska appellate court system, with thousands of dollars expended by the county on legal defense costs. Other similar scenarios can give rise to different causes of action such as trespass, negligence, and deprivation of due process rights, and NIRMA has processed claims arising out of facts like these in other member counties. Expert witnesses are often an additional cost involved in such a claim.

This type of claim is filed way too frequently and should serve as a reminder that the proper steps should be taken before entering private property and cutting trees and brush.

The very first priority of any road department, once it has identified that certain trees and brush are a safety issue, is to determine if said trees and brush are on private property. This is done by finding or establishing county right-of-way. The assistance of a surveyor is often needed.

If trees and brush are outside county right-of-way, the following steps should be followed:

- 1) Make personal contact with the landowner, explaining the county's desire to improve sight distance or whatever the problem with the trees and brush may be. Explain to the landowner that Nebraska State Statutes §39-1812 may impose a duty for the landowner to correct the problem. Explain to the landowner the safety concern and that he/she may be sued and face potential civil liability if an accident

## TREE AND BRUSH LIABILITY *continued*

### Loss Prevention and Safety

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Safety is a main concern of highway departments.

Trees allowed to grow unchecked can cover signs or limit the distance you can see down a road.

One of the most common causes of fatal and serious injury crashes on rural roads involves vehicles leaving the road and striking a tree.



occurs that can be directly traceable to his/her failure to remove the obstructing trees or brush. Document the date, time and details of the discussion with the landowner, and any agreement reached for the landowner to remove the trees/brush, including a deadline for doing so.

- 2) If the landowner does not agree to remove the trees/brush, or neglects to do so in a timely manner, the County's duty to perform the work itself is triggered. The County may fulfill its duty in one of two ways.

Option 1: in some instances, the County can obtain written permission. If the County is able to obtain permission, it must be reduced to writing, with full explanation of the exact location where the trees and brush will be cut and piled, and ideally a description of the type, size, and number of trees to be taken. The landowner should be required to sign off on the written permission. Good communication with the road workers is essential to make sure that permission is not exceeded. If the landowner does not want the county to remove trees and brush on private property, **THEN DO NOT DO IT**, and proceed with the steps in Neb. Rev. Stat. §39-1813 instead.

Option 2: the County can follow the steps in Neb. Rev. Stat. §39-1813, starting with a simultaneous notice to the County Board and County Attorney. The County Attorney then sends a formal notice to the landowner and the matter is prosecuted as a public nuisance.

If right-of-way survey shows the trees and brush are on county right-of-way:

- 1) Contact the adjacent landowners and explain the need of the County to remove said trees and brush. This goes a long way in developing good public relations with the taxpayers. Such reasonable advance notice to the landowners is also required under Neb. Rev. Stat. §39-301 before the County can remove any obstruction, so that costs of such removal can potentially be covered by the County in a subsequent county court action. Document any interaction with adjacent landowners' and include before and after photographs, should a problem arise so you can defend your actions in tree and brush removal claim, should one be filed.

Please contact me at [tim@nirma.info](mailto:tim@nirma.info) or call 402-310-4417 if you have any questions. Be Safe.

*Road/Bridge Sign and Flood Workshops are scheduled across the state in 15 different locations beginning January 14 in Sidney and ending February 27 in Fremont. For questions on training call Tim at 402-310-4417.*

Loss Prevention and  
Safety

## St. Michael's Shield Project

St. Michael's Shield has  
provided over 2,100  
lightly used vests to law  
enforcement officers  
throughout the world.

Actively serving law  
enforcement officers from  
any agency are eligible to  
request a vest  
(employment verification  
is required.)

For more information  
about proper vest  
selection and fit, please  
Visit the Justice

Technology Information  
Center's website:  
[PoliceArmor.org](http://PoliceArmor.org)

Please also visit the U.S.  
Department of Justice to  
see when their Bulletproof  
Vest Partnership Grant  
Funds are available.

<https://www.ojp.gov/bvp/basi/>



## LAW ENFORCEMENT AND CORRECTIONS

By Terry Baxter, Law Enforcement and Safety Specialist

### Line of Duty Deaths 2019

Everyone pretty much understands the hazardous of law enforcement work and in 2019 a total of 132 officers were killed in the line duty. A nationwide goal was to be Below 100 deaths, a benchmark that will have to continue on into 2020 and has not been met since 1943.

2019 law enforcement fatalities decreased by 18% over the previous year deaths. The realization of no deaths would be a fabulous endeavor, but unfortunately, not a reality, law enforcement officers will die each year.

Officers in 2019 lost their lives in the line of duty in many different ways. The top three leading cause of death were:

- 1) Gunfire (49-deaths);
- 2) Vehicle Accidents (23-deaths);
- 3) Heart Attack (16-deaths).

December proved to be the deadliest for law enforcement, where (18) officers lost their lives. Nebraska wasn't immune from this statistic, in 2019, Trooper Jerry Louis Smith, Jr. was killed on Thursday, June 20, 2019 after his patrol vehicle was struck head-on by another vehicle in Morrill County.

Texas lost the most officers, (19), followed by New York, (14) and California with (10) even as Nebraska and Iowa in 2019 discovered one officers life is one too many.

Handguns were the leading type of firearms used against law enforcement in 2019. Of the (49 )fatalities, (27) were shot and killed with a handgun, while others were shot with rifle and shotguns.

So how do we accomplish getting deaths below 100? In my opinion we need to focus on "complacency". Personnel who repeatedly are exposed to dangerous or violent situations become less concerned and cautious. Why, because nothing bad every happened and we get the feeling of being invincible. Complacency is habit forming, over time the absence of consequences causes a person to become lax and attention to detail is flawed.

Of the reported deaths in 2019, the average age of the officer killed was (43) years and the average length of service was (14) years. These are not "rookies", they were seasoned veterans that gave the ultimate sacrifice.

The main-focus of Below 100 is to influence culture by providing innovative trainings and awareness through presentations involving current trends in preventable line of duty deaths and injuries and the main goal is reduce line of duty deaths to fewer than 100 per year.

Loss Prevention and  
Safety

Save the Dates!



Coming soon!

April 8  
Divots Conference  
Center – Norfolk

April 9  
Champion Club  
Lincoln

April 15  
Civic Center  
Gering

April 16  
Haythorn Ranch  
Ogallala

April 17  
Holiday Inn  
Kearney

Our Spotlight Seminar  
Series this Spring will  
address many of the  
perils and pitfalls that  
can beset public  
officials

## LAW ENFORCEMENT AND CORRECTIONS

By Terry Baxter, Law Enforcement and Safety Specialist

### Line of Duty Deaths 2019 *continued*

Stay Safe! And Remember:

- 1) Wear Your Belt
- 2) Wear Your Vest
- 3) Watch Your Speed
- 4) WIN- What's Important Now?
- 5) Remember: Complacency Kills

Though this must begin with each officer taking a responsibility in their working habit, administrators have something at stake as a well, to ensure officers are focused on eliminating preventable line of duty deaths and injuries through constant awareness, through constant training and by holding officer's accountable for their actions. It's not about discipline – it's about safety.

Ensure your officers return home safe at the end of each shift, instill the importance of awareness, common sense and being ready for anything at any time. Let's hope 2020 is the year we see Below 100 line of duty deaths, a benchmark to start and work from.

Please contact me at: [terry@nirma.info](mailto:terry@nirma.info), or my cell at 402-686-9332 to schedule training involving law enforcement and/or corrections operations.

Save the Dates!

## Jail Liability Regional Seminars

February 12  
Western Nebraska Community College - Sidney

February 13  
Mid-Plains Community College - Ogallala

February 14  
Central Community College - Grand Island

February 18  
Southeast Community College - Lincoln

February 20  
Northeast Community College - Norfolk

Registration Opens - Monday, January 27