Effective October 1, 2012, Florida adopted broad new regulations mandating the reporting of “known or suspected” incidents of child abuse, child sexual abuse or neglect (hereinafter collectively referred to as “child abuse”). With the enactment of House Bill 1355, colloquially referred to as the “Sandusky Bill”, the Legislature significantly expanded the existing obligations for the reporting of such activity; elevated the criminal sanctions associated with an intentional failure to report; and, provided for the imposition of substantial financial sanctions against universities or colleges whose administrators fail to report such conduct.

While the moral justification for passing this law is beyond reproach, there are important liability and risk management implications associated with this new legislation. This article seeks to identify those concerns and offer strategies for mitigating the associated risks.

Under Florida law everyone (“any person”), including a private citizen, is a mandatory reporter when it comes to the reporting of known or suspected child abuse. However, under the previous law reporting was only required if the abuse was known or suspected to have been committed by a parent, legal custodian or other person responsible for the child’s welfare. House Bill 1355 expanded the reporting obligation to encompass child abuse committed by any adult, or a known or suspected juvenile sex offender. The term “child abuse” is broadly defined in Florida Statutes to include the “intentional infliction of physical or mental injury” upon a child or engaging in an intentional act that could reasonably be expected to result in such injury. The term “mental injury” is newly defined to mean injury to the “intellectual or psychological” capacity of a child which impairs the ability of the child to function within the “normal range of performance and behavior”, as determined by expert testimony.
The statute allows the reporting of child abuse to be performed anonymously, except for certain professionally mandated reporters (teachers, law enforcement, physicians, child care workers, etc.) who are required to identify themselves when reporting abuse.

All such reports shall be made to the Department of Children & Families (DCF), via telephone call to said agency’s central abuse hotline (1-800-96ABUSE), fax or the DCF website. Following said report, DCF is required to immediately transmit reports of non-caregiver abuse to the appropriate Sheriff’s Office, for said law enforcement agency’s handling. DCF will continue to investigate abuse allegations against caregivers only. DCF is the sole designated recipient of said reports of abuse and the statute does not require separate reporting to any other person or law enforcement agency.

Under the new law, the knowing and willful failure to report known or suspected child abuse or knowingly preventing another person from reporting said conduct, constitutes a third degree felony. Notably, the statute contains no exemptions to the mandatory reporting requirement, even if one is aware of an ongoing law enforcement investigation of the incident. Accordingly, law enforcement officers, school administrators or other personnel who may be conducting their own active investigation of an incident or who may be aware that another law enforcement agency is engaged in an investigation of the alleged offense, are still under a mandatory obligation to report the suspected abuse to DCF, in the manner prescribed above. Finally, House Bill 1355 provides for fines up to $1 million to be imposed against any public or private university or college, whose administrators intentionally fail to report or prevent another person from reporting child abuse either committed upon premises of the college or during a school sponsored event.

As one can readily see, the reporting obligations imposed by this statute can create significant liability exposures for both individuals and their employers. Employers face potential vicarious liability for civil claims brought by injured parties due to the acts or omissions of their employees, in either making reports which prove to be unfounded, or in failing to make reports which may result in subsequent abuse or injury to the child. Admittedly, the law contains a provision which provides immunity from civil or criminal liability for “any person, official or institution...” making a “good faith” report of child abuse. See, Section 39.203, Florida Statutes. However, the immunity does not prevent an injured party from filing suit and the issue which will likely have to be litigated is whether the report was made “in good faith”. More importantly, there is no immunity for those circumstances in which the claim is based upon an alleged failure to make a report of abuse under the statute and those are the claims which will likely prove more problematic.

Under Florida law, proof of the violation of a statute may be deemed to be a basis for the imposition of civil liability based upon a theory of strict liability (in the case of a statute enacted to protect a particular class of persons who were unable to protect themselves); negligence per se (in the case of a statute enacted to protect a particular class of persons from a particular injury), or evidence of negligence (in the case of other statutes which create a duty of care). Accordingly, depending upon the facts and circumstances involved, evidence establishing that an employee violated this statute, may ultimately either prove dispositive or go a long way towards creating an adverse liability determination against the employer. In addition to vicarious liability, an employer may also face liability associated with state law claims for negligent supervision or, in the case of governmental employers, Section 1983 claims brought pursuant to the 14th Amendment for “deliberate indifference”, and “failure to train”, with respect to those duties imposed by the statute. Clearly, if a claimant is able to clear the liability hurdle, the financial exposure associated with this type of risk could be significant. Additionally, it is highly likely that the alleged abuser will be judgment proof, and therefore the only viable, “deep pocket” defendant may well be a public or private employer, sued under one of the theories outlined above.
In order to respond to these liability and risk management concerns, it would seem prudent for employers, at a minimum, to implement the following risk management strategies:

- Adopt a concise written policy which tracks the reporting obligations of the law, and mandates strict compliance by all employees;
- Implement a training program for all employees to include discussion of the type of conduct that might constitute abuse or neglect, instruction on the mandatory reporting and the importance of maintaining the confidentiality of the process.
- Making employees aware of those resources which are available through DCF, Florida Sheriff’s Association, Florida Counsel Against Sexual Violence and other similar governmental agencies or private organizations, regarding the reporting of such conduct.

In conclusion, it would appear that this law, although certainly well intentioned, may have the unintended consequence of creating additional civil liability for individuals and their employers, associated with the reporting or failure to report child abuse. Under Florida law, absent a special relationship, there is no common law duty imposed upon a private citizen to affirmatively report the commission of a crime or prevent the misconduct of a third party and therefore this statute abrogates those common law rules.

The statute is problematic from an enforcement perspective because it is written in broad terms and is susceptible to diverse interpretations and conclusions by both law enforcement and the courts. Very little practical guidance is provided with respect to the specific type of conduct which will be considered to be “abuse” or “neglect”, which would trigger the obligation to report. For example, as we all know, opinions differ dramatically over whether the spanking of a child constitutes legitimate discipline or is instead “abuse”. Interestingly, the DCF website seems to imply that there is an obligation to report a child not wearing a seatbelt, as an instance of abuse or neglect. It is certainly conceivable that a court could ultimately determine that failure of the part of a citizen to report such conduct constitutes a violation of the statute. Given the very serious criminal and financial sanctions associated with a failure to report abuse, along with the exposure for civil damages, the Legislature should provide greater specificity regarding the nature and extent of these legal obligations.

Mr. Roper was admitted to the Florida Bar in 1985 and is admitted before the United States District Court, Middle, Northern and Southern Districts of Florida; the United States Court of Appeals, Eleventh Circuit; and the United States Supreme Court. Mr. Roper received his B.A. in 1981 from Florida State University and his J.D. in 1984 from University of Florida. While attending the University of Florida, he served as the Editor in Chief of the International Law Journal. He is a member of the Orange County Bar Association, The Florida Bar, Defense Research Institute, and Florida Defense Lawyers Association. Mr. Roper’s civil litigation practice includes civil rights and public entity law, products liability, construction litigation, employment law and insurance coverage, in both federal and state courts. He is also a frequent speaker at insurance, risk management, and other professional conferences.

Would you like additional copies of the Preferred News..?

Additional copies of the Preferred newsletter may now be printed in PDF format by going to www.pgit.org and accessing the Resources section of the website.

There you will find not only the most recent edition of the newsletter, but also previous editions as well, or if you like, you may also look up current and past articles of interest by utilizing the article index.
Preferred Launches New HR Risk Management HELPLINE
By Brian Hansen, Account Executive - Enquiron

Preferred Governmental Insurance Trust has recently and proudly announced a new benefit for members with claims-made Public Officials/Employment Practice Liability coverage with Preferred – one that is valued by employers at thousands of dollars annually.

The new Preferred HR Risk Management HELPLINE provides members with employment law-focused resources designed to control costs, save time, and complement the valuable services that Preferred provides today.

The services are particularly valuable to public entity employers due to tighter budgets for legal/best practices support and because of the dangers and potential claims that public entity employers face on a daily basis. **Even one claim can cost an organization thousands of dollars.** The HELPLINE understands these risks and has helped hundreds of public entity employers to avoid those types of situations.

HELPLINE is sponsored by XL Insurance on behalf of the Preferred Government Insurance Trust of Florida at no cost to the members as a collaborative effort to mitigate employment related claims. The more a member leverages the service, the more value they realize, and the better prepared they are to face changing employment law/HR regulations and proactively address situations before they manifest as claims.

**HELPLINE Service Details**

Two contacts from each member are encouraged to leverage the below – both for federal and Florida specific resources

- Confidential, documented responses to specific employment law questions from real attorneys on over 50 HR risk management and employment law issues
- Online Unlawful Harassment Training for all supervisors and employees
- A state-specific employee handbook building tool
- Customizable HR risk management resources including Federal and State-specific forms and posters
- HR Express Updates including popular Questions of the Month and HR Alerts

**Next Steps**

If you are a member with an EPLI insurance policy through the pool, you have automatic access to this service. **However, you must speak with a HELPLINE Relationship Manager to launch the program for your organization and receive your personal access codes.** If you have not yet spoken with a HELPLINE representative, please expect their phone call shortly and you can also reach them directly at toll-free 877-568-6655 or visit www.pgithelpline.com/overview.

**Member Feedback**

The following feedback is from Preferred members who have already taken HELPLINE’s welcome call and begun to benefit from the value...
“Not only was my question answered, the attorney was extremely patient and thorough in her response… This program will be directly responsible for saving [us] from future liabilities. The person/people responsible for the concept of this service were visionaries. I was impressed with the idea of your service when introduced last week by the webinar, but today’s interaction completely surpassed my highest of expectations.”

“I love it!...The attorney access is great because lately I have dealt with some gray areas and I have had to phone our attorneys more frequently than usual. This is a great resource and will definitely lower our issues. It is a great idea that we have this with our membership with Preferred.”

“I think this is going to be great. We used to have a similar service but we were charged every time we asked a question. Sometimes we want to be hasty about terminating an employee and it is best to run it by an attorney first. This will definitely help us manage our risk. Also, the website is very user-friendly. It is a great asset that Preferred has provided us with!”

**Question of the Month**

Each month, the HELPLINE’s HR Express Update delivers a new Question of the Month, a popular question that is designed to foster proactive thinking about risk management. HELPLINE encourages members to ask the attorneys how the Questions apply to them specifically. Below is the October 2012 edition.

**Question:**

I was previously told when an employee makes a complaint about another employee but doesn’t want their name mentioned that they don’t have the right to be anonymous. What is the best way to tell the complaining employee that? What if they insist, do we still have to address the person that the complaint was made against?

**Response:**

The employer has a duty to, and thus must conduct, a prompt investigation of the allegations raised, and particularly if the allegations are in the nature of unlawful harassment, discrimination or other unfair treatment. Even if a complaint does not allege conduct that may be unlawful, from a policy and employee relations standpoint the employer should still seek to conduct a thorough investigation to ensure that no employees are violating its policies and that the work environment is safe and comfortable for all employees. Either way, the investigation must be conducted and this is true even if the complaining employee objects to an investigation or wants to remain anonymous.

While the employer can assure the complainant that it will not disclose his or her identity to anyone who does not have a legitimate need to know it, the employer cannot guarantee his or her anonymity; indeed in most cases it is impossible to interview witnesses or an accused employee without disclosing the allegations against them.

If the alleged harassment or other misconduct was not directed at the complaining employee, however, (and he or she merely reported what was observed or heard about), then in that case it may be possible for the employer to conduct its investigation by letting other witnesses and the accused employee(s) know that “it has come to the employer’s attention that … “ without disclosing the identity of the complainant.
On the other hand, if the complainant has alleged that he or she was the recipient of the harassment, mistreatment or other misconduct, then in that case the employer may need to present the allegations, including the complainant’s identity, to witnesses and the accused in order to obtain a specific response from them as part of a fair and proper investigation. Either way, the complaining employee should be obligated (by company policy) to cooperate in any such investigation, and can (and should) be disciplined consistent with company policy and past practice if he or she deliberately refuses to do so.

At this point the subject employee has already come forward with his or her complaint. Ideally he or she should put the complaint in writing, but if the employee refuses, the employer should document the conversation that already occurred with the employee so there is written evidence that it took place, and have the employee sign it (indicating any corrections). The employer should then interview witnesses, review any relevant documents, and then let the accused co-worker know of the allegations and give him or her an opportunity to respond to them. If it appears that the co-worker has engaged in improper behavior, the company should consider taking appropriate corrective action warranted by the results of the investigation and consistent with company policy and practice, and this is true even though the employee who complained has asserted that he or she wanted to remain anonymous (or did not want to get anyone in trouble, or anything along those lines). Indeed, if the co-worker has engaged in unlawful misconduct, the employer has no choice but to take appropriate action. The employer should ensure that the investigation and outcome are properly and thoroughly documented and stored separately from personnel files (although disciplinary action should of course be in the appropriate employee file). The employee who complained is not entitled to know all of the facts associated with the outcome, and can simply be advised, once the investigation concludes, that it was handled properly and should not occur again. He or she should also be told and understand that he or she will suffer no retaliation for having come forward, and you should make clear to him or her that if he or she believes or perceives that he or she is or has been retaliated in any way for having complained, he or she should let management know immediately so that further appropriate corrective action can be taken.


Preferred would like to welcome the following new members...

City of DeBary
City of Sarasota
Tice Fire & Rescue District
Academic Solutions Academy
Herons Glen Recreation District
Delray Beach Housing Authority
Einstein Montessori School Orlando East
Brownwood Community Development District
Broward Charter School of Science & Technology, Inc.
Preferred Says Goodbye to a Longtime Friend

Submitted By Ann Hansen, Director of Operations - Public Risk Underwriters, Inc.

The Preferred Board of Trustees is saying goodbye to one of its own. Mr. Joseph Gilliam is retiring in January. Joe has been the Clerk of the Court for Gilchrist County for the past 16 years and a Preferred Trustee since March of 2002.

When asked what he would miss most about the Clerk’s office he said “The people, both the staff and citizens. In the Clerk’s office you have the opportunity to meet a lot of people. There’s always something new and different to deal with!” Joe is looking forward to retirement and plans to spend a lot more time fishing on the Suwannee river.

We wish our friend and colleague much happiness in retirement and thank him for his dedication and guidance during his tenure with Preferred.

Preferred Welcomes New Trustee

Submitted By Ann Hansen, Director of Operations - Public Risk Underwriters, Inc.

We are pleased to announce Mr. Warren Yeager was elected as an alternate Trustee at the September 13, 2012 Preferred Board of Trustee meeting and upon Joe Gilliam’s departure in January will fill the seat vacated by Joe.

Warren currently serves as the District 5 Commissioner with Gulf County. He was first elected in 1992 and served until 2000. In 2001 he was appointed to the Port St. Joe Port Authority by then Governor Jeb Bush and served in that capacity until 2008 when he was again elected as a Gulf County Commissioner. He is the business development manager for Preble-Rish Consulting Engineers. Warren and his wife Jacque have two children and four grandchildren.

We look forward to working with Warren and welcome him to the Preferred Board of Trustees.

Pictured (L to R) Preferred Trustee Joseph W. Gilliam - Gilchrist County BOCC, Clerk of Courts & Preferred Trustee Chair Dwight E. (Ed) Wolf, II - City of Wildwood, Mayor
The Preferred Governmental Insurance Trust has been awarded the Government Financial Officers’ Certificate of Achievement for Excellence in Financial Reporting for the second consecutive year for its 2011 Comprehensive Annual Financial Report.

Preferred joins over 260 governments in Florida and over 50 of its members in achieving recognition for its government accounting and financial reporting above and beyond annual audit requirements.

Preferred is the only insurance trust in Florida to earn GFOA recognition for financial reporting and is one of less than 20 similar trusts nationwide to earn this distinction.

In accepting this certificate of achievement at the last Board of Trustee meeting, Chairman Ed Wolf congratulated the Preferred Pool Controller, Tom Cox, and his staff in achieving the award for the second year in a row and thanked them for their high level of service to the Trust.

Please join our board, administration and finance staff in celebrating the ongoing commitment of your Trust to excellence and to remaining clearly preferred.
Would like to wish its Members, Agents, Business Partners, and their families a Happy Holiday Season.
City of Bradenton Police Department Awarded Law Enforcement Re-Accreditation for Ninth Year in Row

Submitted By Pubic Risk Underwriters of Florida, Inc. - Safety & Risk Management Department

Bradenton Police Department Awarded Law Enforcement Re-Accreditation On September 27, 2012, the Commission for Florida Law Enforcement Accreditation (CFA) unanimously voted to award re-accreditation status to the City of Bradenton Police Department during their Fall Conference, which was held in Sarasota.

The City of Bradenton Police Department was originally accredited in 2003, and has been in full compliance for the past nine years. The City of Bradenton Police Department's Full Compliance On-Site Assessment Report (July 25, - 27, 2012), remarked that the Bradenton Police Department was in compliance with 215 applicable standards, with no discrepancies.

CFA Team Leader, Captain Mark Foxworth of the Fernandina Beach Police Department stated, “All agency members were found to be knowledgeable of the accreditation process, and to have embraced the process as part of their daily duties and delivery of law enforcement services.”

“This process is just validation that the men and women of the City of Bradenton Police Department continuously demonstrate excellence, and professionalism by complying with up to date polices and procedures that are set forth by the law enforcement accrediting body for the State of Florida,” said Bradenton Police Chief Michael Radzilowski.

Preferred Governmental Insurance Trust would like to congratulate the City of Bradenton Police Department on its outstanding efforts.

BE IN THE MEMBER SPOTLIGHT...

We would like to share your best practices, risk management expertise, success stories, and the accomplishments of your entity and employees with fellow members in our next news letter.

If interested, please contact:
Mike Stephens - Safety & Risk Management Consultant
Email: mstephens@publicrisk.com Phone: 321-832-1658
HOLIDAY MESSAGE CRYPTOGRAM

ACROSS:
2. A large bank of snow
5. A packed rounded handful of snow for throwing
6. Some birds and animals do this to elude winter
8. Process by which snow or ice changes to water
10. Tool used to measure temperature
13. Spike of ice that hangs from something
18. A vehicle made to be driven in the snow
20. A man made of snow
22. A sudden rush or feeling of being cold
23. Some animals and reptiles do this to survive the winter
24. Large mass of snow that slides down a mountain

DOWN:
1. Plant that blooms red in winter
3. Severe winter storm with intense cold, high winds, and heavy snow
4. A winter condition known for damaging vegetation
7. Heavy or thick piece of clothing worn outdoors to keep warm
9. Key weather ingredient needed for rain, sleet, hail, or snow to occur
11. The result of water, snow, and mud mixing on the ground
12. Structure designed to contain a fire for heating an indoor dwelling
14. This is the result of water freezing
15. Having an extremely cold temperature
16. Word that is used to describe the sound of a sneeze
17. Breed of canine that is good at pulling sleds
19. Season between autumn and spring
21. Type of evergreen tree used for winter holiday decorating

KEY STAFF CONTACTS:

As a member of Preferred your first call should always be to your agent, if however you need help beyond your agent please feel free to contact us as indicated below:

Marketing:
marketing@publicrisk.com
321-832-1455
Kurt Heyman

Operations:
ahansen@publicrisk.com
321-832-1510
Ann Hansen

Loss Control:
mstephens@publicrisk.com
321-832-1658
Mike Stephens

Claims:
liabilityclaims@pgcs-tpa.com
866-683-7710
Julius Hajas