



# REAL-TIME RISK

Emerging Risk Management Issues For Oregon Local Governments

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## DOES YOUR COMMUNITY MEET NEW FEDERAL SAFETY STANDARDS FOR SWIMMING POOLS AND SPAS?

Before taking the plunge and opening your community pool or spa for the season, members should be aware of the compliance requirements of the federal **Virginia Graeme Baker Pool & Spa Safety Act** ("VGB Act").

The compliance deadline for year-round pools was December 19, 2008. Seasonal pools or spas opening after that date must be in compliance when they open.

The VGB Act is a federal law that affects public swimming pools and spas throughout the country. It is named for granddaughter of former Secretary of State James Baker, who died in 2002 after the suction from a spa drain trapped her under the water, and aims to prevent swimming pool and spa entrapment and evisceration. Certain measures, including approved drain covers, must be installed on public swimming pools and spas. In addition, pools with just a single main drain must have a system to prevent entrapment, and dual or multiple drains must be at least three feet apart.

The **Consumer Product Safety Commission (CPSC)** is responsible for interpreting the Act. A Compliance Guide was published by the Consumer Product Safety Commission at its website, [www.cpsc.gov](http://www.cpsc.gov). Specific information on the Virginia Graeme Baker Pool & Spa Safety Act can be found at <http://www.cpsc.gov/whatsnew.html#pool>.

CIS staff has been working with a committee to develop best practices for member Aquatic Facilities, including implementing VGB Act requirements.

CIS recommends members review their swimming pool filtration systems to determine if modifications are needed, especially if new covers and grates are required. Priorities should be wading pools, pools designed for young children, and spas.

We also recommend you review the Act and refer to up-to-date compliance information when budgeting for upgrades or maintenance to meet compliance. The Consumer Product Safety Commission maintains and updates a list of approved product suppliers on its website. It is important to note that there is no 'one size fits all' answer because of pool differences. Some entity pools may already meet the provisions of the requirements for entrapment prevention, but most will not.

**If your entity currently does not meet the requirements for the VGB Act, CIS recommends that you take the following steps:**

- Conduct an assessment of your facility to determine what drains need to be retrofitted with drain covers.
- Work with a local vendor to measure the size of drain cover and locate a manufacturer that can provide an approved/compliant drain cover.
- Purchase compliant drain covers and/or get on the waiting list ASAP for delivery.
- Develop a work plan that outlines what will take place when the parts arrive, how and when they will be installed (i.e. underwater repair vs. draining the pool).
- Contact the State of Oregon, DHS Health Division Aquatic Inspections staff to review work

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*"Priorities should be wading pools, pools designed for young children, and spas."*

## NEW FEDERAL SAFETY STANDARDS (continued)

plans.

- Analyze what risks are posed by your current drain and train or staff appropriately to reduce or eliminate any potential claim exposure.
- Document contacts, work orders, requests for proposal, and receipts related to compliance efforts with the Virginia Graeme Baker Pool & Spa Safety Act.

Since this is a national issue that has garnered much attention and applies to many pools, it is important to consider timely action in order to implement any changes. If you have a seasonal pool, make any changes prior to opening your swimming pool, if possible. Some approved drain covers and grates did not come to the market until late 2008/early 2009 and time will be required to install them. Some renovation projects may demand draining the pool. Another factor to consider in complying with the Act is that there will be a significant cost and time issue for your aquatic program.

CIS would like to hear from our member entities that have swimming pools and spas. Please contact your CIS Risk Management Consultant to discuss efforts to comply with the Act. If you are not in compliance, please report on how you have assessed risk, what you are doing to comply and how you are addressing related issues.

**(Please distribute this information with others in your entity as appropriate.)**

### Additional Resources

The CPSC currently has posted a "CPSC Staff Guide to Complying with the Law" on its website. The "Frequently Asked Questions" document is a key resource. [www.cpsc.gov](http://www.cpsc.gov)

In addition to the Consumer Product Safety Commission, some other organizations with information on this issue are:

- **National Recreation and Park Association** [www.nrpa.org](http://www.nrpa.org)
- **National Spa and Pool Foundation** [www.nspf.org](http://www.nspf.org)
- **State of Oregon Department of Human Services Public Health Division, Public Pool and Tourist Facility Program** <http://www.oregon.gov/DHS/ph/pl/index.shtml>

Contribution to this article from the Texas Municipal League.

### **COBRA SUBSIDY UPDATES**

President Obama recently signed the American Recovery and Reinvestment Act of 2009 (ARRA). Among many other provisions designed to encourage economic recovery,

the act included an employer-paid subsidy to help involuntarily terminated employees continue health insurance coverage.

CIS is addressing the changes and keeping members up-to-date through direct email announcements. Members may also stay informed of COBRA subsidy-related issues by visiting CIS' membership portal for the latest web postings, downloadable forms and links to related information.

- **CIS's Administration of the COBRA Subsidy, including**
  1. **Small Employer Impact - NEW**
  2. **Notices**
  3. **Subsidy Approvals/Denials**
  4. **Employer Premium Payment Credits**
- [For Individuals Currently on COBRA Continuation Coverage](#)
- [For Individuals who lost group health coverage between 9/1/08 – 2/28/09](#)
- Log onto our member portal for a [List of COBRA Eligible Employees in Your Entity](#). If you are not yet an authorized portal user, please ask your supervisor, online administrator or click [here](#) to contact CIS.

## NEW EMPLOYMENT RULES EFFECTIVE JANUARY 1, 2009

### Increase Employer Responsibility to Accommodate Employees With Disabilities

Employers, are you aware of recent amendments to Americans with Disabilities Act (ADAAA)? The rules increasing employer responsibility to accommodate the special needs of employees with disabilities went into effect January 1, 2009.

The basic legal definition of “disability” remains the same:

- A physical or mental impairment that substantially limits one or more major life activities
- A record of such an impairment; or
- Having been regarded as having such an impairment.



What the act’s amendments did change is the meaning and scope of the terms within the definition, including the terms “substantially limits” and “major life activities.”

Court rulings, over time, narrowed the meaning of the term so that very few people met the requirements. Congress amended the act in an effort to broaden the class of people meeting the standard and, thus, to include more people with disabilities in the workplace.

The Equal Employment Opportunity Commission (EEOC) is crafting language, under direction from Congress, to reinterpret the term “significantly restricted” and set a standard that is easier to meet.

[CIS](#) will post updates on this topic as they are made public. For the time being, employers need to be aware of several major changes in the law (ADAAA):

1. **Mitigating Measures will not be considered.** – In the past, beneficial effects mitigating a person’s disability were considered when determining whether an employer needed to make accommodations for an employee’s disability. In other words, if an employee used medication, a hearing aid, mobility device or other means of overcoming disabilities, employers could consider the employee “whole” and not provide any accommodation. Under the new law, mitigating measures will **not** be considered. This includes assistive measures such as,:

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

Except:

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.”

2. **Major life activities – definition expanded** to include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, *operation of major bodily functions, including functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.* **Courts are encouraged to more broadly interpret the ADA, to afford more individuals protection under the law.**
3. **“Regarded As” – definition expanded** to include: of disability discrimination against an individual because of an actual or perceived physical or mental im-

**NEW EMPLOYMENT RULES EFFECTIVE JANUARY 1, 2009** (continued)

pairment, *regardless of whether the individual is perceived as being substantially limited in the impairment.* This does not apply to short-term disabilities (less than 6 months). ***Although individuals who fall under the “regarded as” section of the ADAAA are not entitled to reasonable accommodation from employers, they may bring a lawsuit by way of civil rights laws.***

4. ***Episodic and/or disabilities in remission – will be considered*** if it would substantially limit a major life activity when active.

**MESSAGE TO EMPLOYERS: ENGAGE IN DIALOGUE**

Congress clearly sent a message to employers that they should not ignore the special needs of employees with disabilities. The new legislation requires employers to actively engage in a dialogue with employees about their disabilities.

The amendments shift the focus of ADA law away from defining disability, to determining whether an employer has discriminated against an employee due to a real or perceived disability. This increases the burden of proof on employers to show their awareness of the law and effort to accommodate, where necessary. CIS urges employers to keep clear record of discussions, decisions and measures taken to accommodate employees.

For additional questions and answers related to ADA law and amendments, as well as links to other related resources, visit [ADA.GOV](http://ADA.GOV).

**JUNE 30, 2009 DEADLINE: NO NAME, NO CLAIM FOR VOLUNTEER COVERAGE**

CIS wants to alert members to important workers' compensation requirements for covering volunteers. Local governments must comply with Oregon law in order for volunteers to be covered under workers' compensation. (ORS 656.031, 656.041 and 656.046)

To secure workers' compensation coverage for volunteer workers a public entity must:

1. Have its governing body pass a **resolution** designating the categories of volunteers to be covered
2. Complete a **Volunteer Election Form** that describes the work duties to be performed in each class of volunteer work, estimates of the number of volunteers in each class, and identifies an assumed wage to be used as the basis for premium payments and payment of benefits.
3. Maintain a roster of active volunteers in each category and update monthly.



**CIS encourages members to use the electronic roster available through our [member portal](#). This tool ensures timely and accurate record-keeping, verification of coverage by claims in the event of a volunteer claim, and a method of verifying volunteer exposures for audit purposes.**

Beginning July 1, 2009, in the event of a claim for a volunteer worker, CIS will verify that volunteer resolution and elections are current and on file and that the volunteer worker's name is on the electronic volunteer roster. Our position will be “no name/no claim” unless provided with a valid reason for not having the name on the roster on or before the date of injury. Additional online details at [CIS/Workers' Compensation/Volunteers](#).

If you have questions on coverage for volunteer workers, please contact your risk management advisor/agent or risk management consultant.