



Safety Shorts

General Safety, Highway, & Law Enforcement

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November is National Gratitude Month

Gratitude is the simplest way to change one's perspective of the world. It allows us to appreciate the positive, rather than focus on the negative aspects of our lives. Learning to be grateful helps us appreciate the little things in life that we tend to take for granted, which brings about a deep feeling of satisfaction that fulfills and nourishes us.

National Gratitude Month was an initiative started by Stacey Grewal, who believes gratitude to be an essential ingredient of a happy and fulfilling life. When one embraces gratitude, they immediately shift their focus from the negative to the positive things in their lives.

For more information: <https://nationaltoday.com/national-gratitude-month/>

HIGHWAY DEPARTMENT

By K C Pawling, Road Safety and Loss Prevention Specialist

You Are Not Exempt of Responsibility

A portion of my MSHA training this year was regarding Truck Safety and Operation. Like most of my trainings, this led to some great conversation regarding truck inspections and whether our county road departments are exempt from D.O.T. safety inspections. My first reaction was surely they are not exempt, but after discussion with a couple different county road departments that had the same belief, I thought this needed further investigation.

During my research, I contacted Lieutenant vonRenzell with the Carrier Enforcement Division of the Nebraska State Patrol. While Lieutenant vonRenzell agreed with me regarding the importance of pre- and post-trip inspections, he provided me the following:

Federal Motor Carrier Safety Regulations (FMCSRs) 49 CFR Part 390.3(f)(2) provides an exemption for certain entities:

Part 390.3

- (f) Exceptions.** *Unless otherwise specifically provided, the rules in this subchapter do not apply to—*
- (2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States;*

This is the part of the FMCSRs that covers the need to perform pre-trip and post-trip inspections. It is found in part 390 which is a subchapter of the 49 CFR and therefore inspection requirements do NOT apply to county government vehicles.

While we find that county governments are exempted from the Federal Motor Carriers Safety Regulations in the matter of inspections, this does not dismiss us from the responsibility of maintaining and operating safe vehicles in our county fleets. As governmental entities we should not need the oversight of another entity to keep the vehicles in our fleets in a safe operating condition. It should be an assumed part of our obligations as public officials.

Any driver of a commercial motor vehicle is expected to ensure that their vehicle is in a safe operating condition and maintain safe control of their vehicle while in operation. This responsibility includes notifying the owner of the vehicle of any deficiencies that are found prior or during the operation of the vehicle. If they are found operating an unsafe vehicle due to an obvious deficiency or due to an accident, the driver will be held accountable. The driver AND the county will likely be named in any suit that would be a result of any accident resulting from a deficient vehicle. The court cases found while researching this topic commonly cited the safety inspection reports of the vehicles involved in accidents, so expect the same for any litigation you are involved in.

In closing, I would like to finish with this. Even though the county is exempt of inspections I would recommend that you would treat your trucks as though they were not exempt. Have your trucks annually inspected and require your operators to do pre- and post-trip inspections. Make any necessary repairs to the trucks to avoid the litigation process that is sure to follow an accident. It will also save you and your operators some sleepless nights if an injury or heaven forbid, a fatality should occur.

This is just scratching the surface of this topic, If you would like to have further conversation regarding this topic I can be found at kcpawling@nirma.info or 402-310-4417.

LAW ENFORCEMENT AND CORRECTIONS

By Todd Duncan, Law Enforcement and Safety Specialist

Understanding the Fourth Amendment: Warrantless Searches & Seizures

The Fourth Amendment of the United States Constitution safeguards citizens from unreasonable searches and seizures, establishing a crucial balance between individual privacy and the needs of law enforcement. This month's Safety Short outlines key principles surrounding warrantless searches and seizures, providing law enforcement officers with essential knowledge for effective and lawful policing.

Fourth Amendment Basics

The Fourth Amendment states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." This legal framework requires officers to obtain a warrant based on probable cause before conducting searches or seizing property. Simply put, every search or seizure by law enforcement must be conducted with a search warrant unless one of the legally recognized exceptions exists.

Exceptions to the Warrant Requirement

1. **Consent Searches:** Officers must ensure that the consent is given freely and not coerced. It's important to clarify who has the authority to consent, particularly in shared spaces. While verbal consent is acceptable, written consent is always preferred.
2. **Stop and Frisk:** An officer may briefly detain (stop) a person, either on foot or in a vehicle, based on reasonable suspicion, for the purpose of determining a person's identity, address, and resolving the officer's suspicion of criminal activity. In such cases, officers must have specific and articulable facts that lead them to reasonably believe a person is involved in criminal activity. These stops may also be referred to as "Terry stops" "investigative detentions" or "field interviews." During such a stop, an officer may conduct a "frisk" of the person for weapons or dangerous items only if the officer has reasonable suspicion that the person may be armed. This type of warrantless search must be limited to a "pat down" type search, generally of the outer clothing, including those areas which may be within a suspect's immediate control.
3. **Search Incident to Arrest:** When an officer makes a lawful arrest, they may conduct a warrantless search of the arrestee and the immediate area within their control. This exception ensures officer safety and prevents the destruction of evidence.
4. **Exigent Circumstances:** In emergencies where waiting for a warrant could lead to imminent danger, destruction of evidence, or the escape of a suspect, officers may search without a warrant. Situations might include hot pursuit of a fleeing suspect wanted for a serious offense or responding to a reported crime in progress.
5. **Plain View Doctrine:** Officers may seize evidence of a crime without a warrant if it is in plain view during a lawful observation. However, the officer must have a right to be in that position and the evidence must be immediately recognizable as contraband or evidence of a crime.
6. **Automobile Exception:** Due to the inherent mobility of vehicles, officers may search a vehicle without a warrant if they have probable cause to believe it contains evidence of a

crime. This exception recognizes the need for prompt action to secure evidence before it can be moved or concealed.

Arrest Warrants and Home Entry

Officers may search the residence of a defendant named in an arrest warrant if there is probable cause to believe the defendant is home at the time of the search. A search warrant is not required in such cases.

- This search is limited to searching only for the defendant. Officers may search only in areas of the residence where the defendant could be located. Once the defendant is located and taken into custody, or a complete search has failed to locate the defendant, no further search of the residence is permissible under the arrest warrant exception.
- This exception applies only to the defendant's own residence. It does not permit officers to search another person's home without a search warrant even if there is probable cause to believe the warrant defendant is in the other person's home. In order to search the home of another person for a warrant defendant, officers must obtain a search warrant or one of the exceptions to the search warrant requirement must be present (e.g., consent).

Legal Considerations and Best Practices

While these exceptions provide flexibility, officers must be well-versed in their application to avoid violations of the Fourth Amendment. Key considerations include:

- **Documentation:** Always document the circumstances surrounding any warrantless search or seizure. This includes the rationale for the action taken and the evidence collected.
- **Training and Awareness:** Regular training on Fourth Amendment rights and relevant case law is essential for officers to navigate complex situations without infringing on constitutional rights.
- **Respect for Rights:** When feasible, officers should seek consent or a warrant, prioritizing transparency and respect for individuals' rights.

Conclusion

The Fourth Amendment plays a vital role in protecting civil liberties while allowing law enforcement to perform their duties. Understanding the nuances of warrantless searches and seizures is essential for maintaining the integrity of law enforcement operations and upholding the law. By adhering to constitutional guidelines and best practices, officers can effectively balance their responsibilities with the rights of the citizens they serve.

For questions or more information on training opportunities, contact NIRMA's Law Enforcement and Safety Specialist Todd Duncan at (402) 742-9220 or tduncan@nirma.info.

GENERAL SAFETY

By Chad Engle, Loss Prevention Manager and Safety Specialist

Winter Loss Prevention

Last year, my November article focused on this same topic and while I am feeling a tinge of laziness, I am not going to apologize. Every time, and I am not exaggerating when I say every time, there is a winter weather event in Nebraska involving any amount of precipitation, NIRMA members experience countless slip and fall events. Many involve member employees and result in workers' compensation claims and many involve workplace visitors that result in premises liability claims. Sometimes it seems that we believe these types of incidents are inevitable, but this could not be further from the truth. Slip and fall incidents are preventable. Let us review some practices that if followed will greatly reduce the chances of anyone falling and suffering an injury:

- **Wear appropriate footwear:** Choose boots with good traction and slip-resistant soles. When necessary, use cleats or traction devices for extra grip on ice.
- **Watch where you are walking:** Sounds simple, and it is. Look at where you are stepping so that you can avoid icy patches and snow-covered areas. This also helps you avoid tripping.
- **Use handrails:** Stairs are a common place for falls to occur, use the handrail when entering or exiting buildings. Handrails offer a last chance to save yourself if you lose your balance or footing.
- **Be cautious on steps:** Take your time and be extra careful when stepping on or off curbs, porches, steps and in or out of your vehicle.
- **Avoid distractions:** Focus on what you are doing and the hazards you encounter.
- **Choose the safest path:** The safest path to your destination may not be the shortest, take it anyway. Walk slowly and be mindful of avoiding a fall. I cannot tell you how many times I have heard, "I was trying to be careful and walk across the ice."

As a property owner we have a duty to take reasonable steps to ensure the safety of those visiting our property. Regarding snow and ice removal this includes the following:

- **Timely removal of snow and ice:** Parking lots, sidewalks and entrances should be cleared prior to whatever time employees are required to arrive. This ensures it is also done prior to opening for business.
- **Application of ice melt or traction material:** Applying ice melt, salt, sand or other methods to walking surfaces to improve traction.
- **Documentation:** Written documentation of when snow was removed, when ice melt was applied, and how much was applied is invaluable information when defending a slip and fall claim.
- **Follow-up inspections:** Continual re-inspection of parking lots, sidewalks and entrances to determine if additional snow removal or ice melt application is required. Document this as well.

Following the steps listed above protects visitors and employees from falls and injuries and protects the member county or agency by putting them in the best defensible posture possible. Please let me know if you have any questions. As always, I can be reached at 1.800.642.6671 or chad@nirma.info.