1. **What is AIPP?**

   AIPP (Accident and Illness Prevention Program) provides a framework for safety standards with the goal of reducing the pain and suffering associated with accidents and injuries to employees. AIPP is a requirement of the Bureau of Workers' Compensation (BWC) for self-insured group funds, such as PennPRIME, and self-insured entities in Pennsylvania.

2. **How can my entity receive assistance with AIPP?**

   - ✓ PennPRIME is available to assist you with questions, training needs, professional consulting services, and other resources.
   - ✓ Electronic versions of the documents in this manual can be found on the PennPRIME member-secured website at www.pennprime.com/aipp.
   - ✓ Other resources for each Element, including live and on-demand webinars, videos, PowerPoint presentations, fact sheets, tool box talks, checklists, and others are available on the PennPRIME website at www.pennprime.com/aipp.
   - ✓ Financial assistance for training, equipment, and services needed for AIPP initiatives is available through the PennPRIME Loss Control Funding program.

3. **How were the procedures developed?**

   The procedures were modeled after universally-recognized ***minimum*** safety standards and written by experienced loss control professionals who understand municipal operations and the hazards and challenges specific to the municipal environment. Additionally, input from PennPRIME members was solicited and incorporated.

4. **How are the AIPP 2020 resources different from the manual distributed in 2017?**

   The only substantive change is the addition of Element 14.11e – Trenching and Shoring. This was added at the request of several PennPRIME member Public Works Directors. The manual was redesigned to make it more user-friendly and allows for separate printing of checklists and procedures. Additional resources including live and on-demand webinars, videos, PowerPoint presentations, fact sheets, tool box talks, checklists, and others are listed directly within each Element.

5. My entity already has a procedure for some of the topics but they aren't the same as those in the AIPP manual. Can my entity keep its current procedure?

The procedures in the AIPP Manual are written to universally-recognized ***minimum*** safety standards for municipal operations. If your procedure isn't exactly the same, it is unlikely that it meets these ***minimum*** safety standards. It is much easier to simply adopt the procedures in the AIPP manual because changing your current procedure to meet ***minimum*** safety standards will result in the same procedure provided in the AIPP manual. The Bureau of Workers' Compensation granted group self-insurance fund status to PennPRIME because its members perform the same municipal operations. The Bureau further requires that since all members have the same risks, those risks be mitigated with the same safety procedures.

6. Can my entity modify the procedures in the AIPP manual?

The AIPP procedures can be customized to reflect the job title of the person responsible for overall administration of each Element, job titles of individuals who are assigned specific responsibilities within each Element, lists of entity-owned equipment, and other site-specific information. If there are extremely unique circumstances in your operation, PennPRIME will review your request for deviation to determine if it is warranted and if it will meet ***minimum*** safety standards. The Bureau of Workers' Compensation granted group self-insurance fund status to PennPRIME because its members perform the same municipal operations. The Bureau further requires that since all members have the same risks, those risks be mitigated with the same safety procedures.

7. **What are my entity's obligations if the collective bargaining unit opposes safety rules such as those in the AIPP Manual?** *Response developed by Campbell Durrant PC*

To effectively manage risk while providing essential services, municipal entities must implement policies that reflect key safety practices. Many of the employees who will be required to follow these policies are unionized and enjoy the protections of collective bargaining and the grievance process. Frequently, the question is asked: Can we implement a new policy if the union objects? The answer to this question is "yes" with respect to a typical loss control standard because it falls within management's prerogative.

It is worth addressing a fundamental misconception that is often voiced by union representatives and sometimes accepted by management. The misconception is that a municipal entity may not promulgate any new policies or rules without the blessing of the union. Contrary to this belief, policies that fall within an employer's managerial prerogative are considered non-bargainable. These topics include such areas as discretion or policy as to the functions and programs of the public employer, standards of services, overall budget, organizational structure and selection and direction of personnel.

Moreover, the reason for placing inherent managerial prerogatives outside of bargaining arises in part from the nature of the government. Not only are some topics essential to managing employees, but there are certain matters which strike at the heart of policy decisions directly implicating the public welfare[1]. A managerial prerogative is one that substantially outweighs any impact an issue will have on an employee (any regulation which is "essential for the proper and efficient function of a police force may remain subject to municipal management").[2] Standards designed to ensure safe driving and accident prevention fall within this category. Notably, a managerial prerogative may be non-bargainable even where the matter was previously addressed in a collective bargaining or a matter of past practice.

On the other end of the spectrum, work rules that directly impact certain terms and conditions of employment must be bargained. These include: compensation, hours, working conditions, retirement, pensions and other benefits. Under this category, for example, policies regarding overtime and seniority are usually considered mandatory subjects of bargaining.

Even accident prevention policies, at some point, may have some impact on an employee. This reality does not mean that the municipal entity lacks the authority to implement the policy. Instead, if the union is not in agreement with the policy, the municipal entity should consider two additional questions to determine whether it has a bargaining obligation. First, is there an immediate and direct impact on an employee's compensation or working conditions? Second, does the policy prescribe penalties affecting employee compensation or working conditions? If the answers to these questions are no, the policy should not require bargained-for agreement by the union.

It makes sense to use a specific example to illustrate this point. A municipality implements a loss control standard to ensure that its motor vehicle operators maintain the legally required driver's license. Under this policy, the municipality ascertains through record check whether the employee's driver's license is valid every three years. The employee is required to cooperate so that the license information is verified by the state. If an employee does not have a valid license, that employee may not operate as a driver. When the municipality approaches the union, they object and say that the policy must be negotiated through the collective bargaining process. Is the union correct? No, because management has the prerogative of establishing this type of policy. While the policy might impact an employee's terms and conditions of employment, the municipality's interest substantially outweighs the impact it may have on employees.

What aspects of a policy might be subject to bargaining? The decision to establish a loss control policy is management's right, but the impact may still be subject to bargaining. If the policy will immediately impact a particular employee, this impact should be addressed with the union. Take the rule that an employee may not operate a municipal

[1] PLRB v. State College Area Sch. Dist., 337 A.2d 262, 264 (Pa. 1975)
[2] Plumstead Township v. Pennsylvania Labor Relations Board, 713 A.2d 730, 735 (Pa.Cmwlth.1998)

vehicle without a valid driver's license. There is no question that the municipality has the prerogative to require that its employees to be compliant with state law and has a compelling interest to comply with the law. This rule will not have an immediate impact unless, of course, there is an employee who is currently operating a vehicle without a license to do so. In that situation, the municipality must be mindful of the distinction between a safety policy and disciplinary action. The safety policy does not require suspension, dismissal or any particular disciplinary action. However, the effect can be to remove the employee (appropriately) from regular duty. The municipality should not assume that the policy enables a harsher penalty than that which is likely to be upheld. If an employee's license is suspended for 30 days around the time that the policy is implemented, the only prescribed action is that the employee should not be driving during that period. Again the municipality has a compelling reason for this policy and the restriction on driving. At the same, this does not mean it has an equally clear right to take a particular disciplinary action and it must determine whether it is appropriate to reassign, suspend, or take other disciplinary action.

The more probable scenario is one where the union claims a right to bargain the future impact on employees. When a policy sets out specific disciplinary penalties, it may be subject to bargaining. Staying with the driver's license policy that restricts an employee's ability to drive if not in compliance, the policy does not institute disciplinary penalties. Again, the municipality has the right to establish the policy and the restriction on driving but should be mindful of the distinction between the policy and disciplinary action. Under this example, the municipality will only face difficulties implementing the policy if it does not have strong personnel policies and practices. If this is the situation, there are a few basic ways to establish a framework for better managing these situations. First, you should have updated and accurate job descriptions. The job description for any employee who regularly operates a vehicle should include clear requirements for having a valid license and maintaining a driving record that is not littered with safety violations. Personnel policies should include provisions for disciplinary action relating to the core functions of an employee and basic public policy considerations. Once these building blocks are in place, it becomes much easier to handle objections to the policy and to enforce that policy when violated.

The takeaway for this topic is not that employers should move away from reasonable efforts to reach agreement with the union as it relates to establishing or enforcing policies. It is always better to have the union "buy in" and those representatives with foresight will do so when they have a mutual interest. However, this ideal does not translate into doing nothing when a union reflexively objects to your effort to establish policies aimed at the safe delivery of services. When this type of objection is made, it is crucial to remember that the obligation to establish and follow safety rules and to comply with applicable laws is for the benefit of all -- the partner of an employee who should not be driving, the citizen who might be injured in an accident, and the taxpayer who will ultimately pay more if you do not enforce reasonable safety policies. These managerial prerogatives are too important to set aside because of a general objection.