Shifting Liability
What you need to know about the new credit card standards

You've almost certainly heard of, or have even been affected by, one of the recent and many data-breaches impacting millions of Americans’ private financial information. To combat these very costly events, Visa, Mastercard, American Express, and Discover will all soon be moving from the traditional magnetic-striped credit cards to ones with computer chips embedded in them (called EMVs).

Why is this more secure? The magnetic strips we are all familiar with are prime targets for counterfeiters because the data they contain is unchanging from use to use. On the other hand, every time an EMV card is used for payment the chip creates a unique transaction code that changes every time it is used.

How does it affect WBMA members? Today, if an in-store transaction is made using a fraudulent card, the liability for losses that result generally fall on the issuing bank and/or payment processor (i.e. not you). After October 1st, the liability for card-present fraud will shift to “whichever party is the least EMV-compliant in a fraudulent transaction” (i.e. you the dealer).

Do you have to have new credit card terminals before October? Short answer... No. During the transition most cards will have both a magnetic strip and EMV card. You will still be able to use your current terminals, but beware... If you choose not to upgrade, you and your company will likely be on the hook.

Employers vs. Marijuana
Why changing times don't necessarily mean your drug policy has to change ... just yet

The question: In a state that has legalized the recreational use of marijuana, can an employer continue to enforce a drug-free policy that includes testing for cannabis?

What we know: With I-502 becoming law, Washington State made the recreational use of marijuana legal for individuals 21 and older. Despite common misperception, it is still unlawful to consume marijuana in public as well as operate a vehicle under the influence of it. When Colorado enacted their own recreational pot law it contained a specific provision stating that employers did not have to accommodate for pot smokers, and in fact, were permitted to have drug-free policies restricting marijuana use. What about Washington you ask? Unfortunately the law is silent on the issue leaving the impending battle up to the court system.

Supporting an employer’s right to test: In 2011, the Washington State Supreme Court held in Roe v. Teletech that employers were not required to accommodate for the use of medical marijuana, even when it is used exclusively away from the workplace on an employee’s own time. Additionally, as long as marijuana use is illegal under federal law any employer that engages in interstate commerce, receives any federal funding or employs federal contractors may without controversy, continue to enforce their drug-free policy.
Since a Commercial Driver's License (CDL) is governed by federal regulations, US DOT rules still apply; meaning zero tolerance for your drivers. However, in 2013 the Obama Administration announced that they would not use their federal preemption powers over Washington and Colorado’s marijuana laws meaning the courts are likely to revisit their earlier rulings in the near future. So, stay tuned...

**What to do in the meantime:**
In the cases where an employers’ right to test has been upheld there was clear existing policies, medical marijuana was the type of use at focus, and they were almost all at-will employees. With more and more states adopting similar laws, all WBMA members should consider doing the following until the courts provide more clarity:

1. Review your current drug-free policies to ensure they are clear and unambiguous;
2. Clearly state why the policy is being implemented (“Even if it’s as simple as stating a commitment to the health and safety of employees.”)
3. Provide a clear description of prohibited behaviors
4. Clearly explain the consequences for violating the policy, keeping them consistent with existing policies.
5. Reevaluate the parameters for when you will conduct drug testing. (pre-employment, random, for cause)
6. Reevaluate what form of drug testing will be used. (This may help address the ambiguity of what “under the influence” means. Why? Washington DUI law distinguishes between “active” compounds (a.k.a. THC) and inactive metabolites that may be in their system. An employee may challenge termination or discipline if the drug tests showed only the presence of only inactive metabolites.
7. Educate your employees on your policy and how it applies to state and federal laws.

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**About the Author/Disclaimer:** Tom Rider is Manager of Member Services for the Western Building Material Association. He is committed to being a valued resource to its members particularly on regulatory compliance issues affecting building material suppliers. Unless stated otherwise, this regulatory newsletter is written by him. He is a lawyer, but respectfully he is not your lawyer (unless you have been in his office and signed a contract). This communication is not intended as legal advice, and no attorney client relationship results merely by reading it. Please consult your own attorney for legal advice.

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**DID YOU KNOW:**

**WE ARE NOT ALONE ...**

It’s no secret that building material suppliers are facing a crisis when it comes to succession planning; i.e. finding future leaders to take over their businesses. What you might be surprised to learn is that financial institutions (credit unions in particular) are facing the same uphill battle of recruiting/retaining qualified people to replace their aging leadership. An industry expert speaking to the Credit Union League recently stated that over the next 10 years, 50% of credit union CEOs would be retiring.

**CALENDAR OF EVENTS**

**ESTIMATING WORKSHOP**
JUNE 17 & 18, 2015 AND JUNE 30 & JULY 1
OLYMPIA, WA

**WBMA’S ANNUAL CONVENTION**
NOVEMBER 3-5, 2015
TULALIP RESORT – MARYSVILLE, WA

Visit us on the web at: [www.wbma.org](http://www.wbma.org)

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