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*The Risk Connection* is a publication of Local Government Risk Management Services, Inc., a service organization of the Association County Commissioners of Georgia and the Georgia Municipal Association, whose purpose is to educate and inform cities and counties about loss control methods and risk management.

The opinions expressed in this publication are those of the authors and are not necessarily those of the ACCG or GMA, and further, are not intended to provide specific legal advice. Readers should seek legal advice on specific concerns from their own legal advisors. Any questions or comments should be directed to: *Dennis Watts, Editor, 3500 Parkway Lane, Suite 110, Norcross, Georgia 30092, 678.686.6284, dwatts@gmanet.com.*

## Top 10 OSHA Violations

*Information extracted from an article by Tom Musick, associate editor of Safety and Health Magazine*

Local governments in Georgia do not fall under the Occupational, Safety, and Health Administration (OSHA) for compliance. In essence, we are self regulated. When you look at OSHA requirements, they do mirror many of the functions that local governments and their employees perform. You could also say that meeting OSHA standards is really meeting the minimum safe industry standards for many of these functions, and that following these guidelines makes sense.

Take a look at the top ten list. See if your employees perform these types of jobs or have exposure.

### Fall Protection

Outlines where fall protection is required, which systems are appropriate for given situations, proper construction and installation of safety systems, and proper supervision of employees to prevent falls. *6,500 citations.*

### Hazard Communication

Addresses chemical hazards – both those chemicals produced in the workplace and those imported into the workplace. Also governs communication

of those hazards to workers. State of Georgia’s Hazard Communication mirrors the federal standard, so in this case **local governments have to comply.** *4,456 citations.*

### Scaffolding

Covers general safety requirements for designing, erecting, and use. *4,681 citations.*

### Respiratory Protection

Directs employers in establishing or maintaining a respiratory protection program. Lists requirements for administration, procedures, selection, training, and fit testing. *3,626 citations.*



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## Lock Out Tag Out

Outlines requirements for hazardous energy control during servicing and maintenance of machines and equipment. *3,308 citations.*

## Powered Industrial Trucks

Covers design, maintenance, operation, and training of fork lifts, motorized hand trucks, and powered industrial trucks. *3,004 citations.*

## Ladders

Covers general requirements for ladders. *2,732 citations.*

# Constructive Feedback: The Most Effective and Least Used Tool in Reducing Risk

*By Dan Beck, Director, LGRMS*

I've been in safety and risk management for almost 25 years and have seen new programs every year that profess to be the key to reducing risk. As I frequently say, "There are no magic bullets," "There are no simple solutions," and "Good risk control comes from good management practices."

From my perspective, one of the most effective management practices is constructive feedback. The problem is that providing quality feedback is not always easy and/or comfortable. Therefore, most people tend to shy away from this opportunity to reduce risk. Constructive feedback is a critical component to improve any employee's performance. Employees should be provided regularly risk reduction feedback within both formal performance evaluations and informal day to day coaching.

Why do we shy away from providing feedback to employees, coworkers, and bosses?

I think it could be said in one word: "FEAR". We all have many internal questions, including: What will happen if I tell someone they are doing something wrong? Will they dislike or hate me? Will they call me out on my mistakes? Will they stop working or be less productive? What if I'm wrong? What if they are doing it the correct way?

## Machine Guarding

Covers guarding of machinery to protect operator and other employees from hazards, including those created by point of operation, rotating parts, flying chips and sparks. *2,540 citations.*

## Electrical wiring

Covers grounding of electrical equipment, wiring and insulation. It includes temporary wiring and splicing, such as flexible cords and cables. *2,264 citations.*

## General Electrical Requirements

Covers general safety requirements for designing electrical systems. *1,704 citations.*

We must realize that the "fear" is there for a reason. That any and all of these fears could come to be. Your coworkers could stop talking to you. Your employee could be less productive. Your boss could retaliate.

In order to fight these real fears you must realize two things:

- The consequences of not providing constructive feedback could be worse than your fears. Your coworker might stop socializing with you temporarily, but they will go home safely. You may lose some productivity temporarily, but in the long run it is the best thing for your organization. Ultimately, if you are unwilling to provide constructive feedback, your value to the organization will be questioned.
- Constructive feedback can and should be provided in a way that leaves the recipient wanting more and doesn't cause conflict. Of course, this is not easy and takes lots of practice, but it can be done.

How do you make feedback constructive?

## Have a Goal

If you can't think of a constructive purpose for giving feedback, don't give it. Before you start the feedback process, understand what you want to accomplish and develop a plan.

## Time and Location

Feedback should be given as close as possible to when the performance incident occurs, so that the events are fresh in everyone's minds. Adjust the timing of feedback based on the environment. Feedback should be provided in an area that provides privacy, and ease of comfortable communication.

## Describe the Facts Rather Than the Person

Describe what you observed in a clear, respectful manner. Refrain from referencing past issues or performance. Focus on the specific issue at hand.

## Provide a Balance of Positive and Negative Feedback

Provide specifics on what they did well and what they can improve upon. People distrust or devalue feedback that is consistently positive or negative.

## Express Appreciation Providing Positive Feedback

The more your feedback is focused on the specifics of their actions, the more it is appreciated. Provide your appreciation on the detail of their behavior and actions rather than just the results.

## Express Concern when Providing Negative Feedback

A tone of concern communicates a sense of importance and care and provides the appropriate level of sincerity to the message.

## Be Aware of Feedback Overload

Prioritize the issues with performance you observe. Select those that will have the most impact on the person's long-term performance. Providing feedback on a laundry list of issues will more than likely result in a less receptive recipient.

## Understand the Recipient's Perspective

Allow the recipient to explain the rationale and motivation for

their behavior and actions. Understand the root cause of the issue. You can't resolve any problem without understanding the root cause.

## Agree on a Resolution

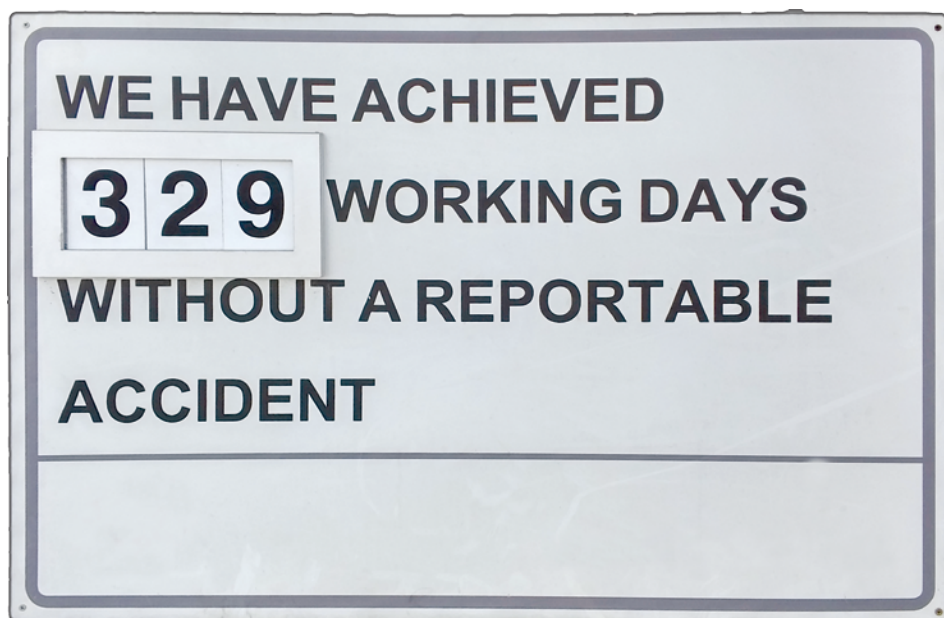
Suggest how you would like to see the issue addressed. Ask the recipient for their plan in changing their behavior or actions. Agree on next steps.

## Express your Support for Their Continued Success

Express your goal of their continued safety and the safety of the organization. Provide your role in meeting in this goal.

Remember, giving quality constructive feedback is not always easy or comfortable. Being able to give constructive feedback requires dedication and practice. Here is my recommended plan for how to accomplish this: Set a goal of providing quality feedback at least once a week, and tell your employees, co-workers, or bosses about this goal. Then, before providing feedback to someone, explain that you are practicing and want their evaluation of your feedback. After doing this multiple times, your talents will improve dramatically.

Good luck in reducing risk within your organization through the use of constructive feedback.



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## Eleventh Circuit Discusses False Arrest and Municipal Liability

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On September 1, 2016, the Eleventh Circuit Court of Appeals decided *Arnold-Rogers v. City of Orlando et al.*,<sup>i</sup> which serves as an excellent review of the law pertaining to probable cause to arrest, municipal liability and arrests in residences under the Fourth Amendment. The relevant facts of Arnold-Rogers are as follows:

Rodriguez and another officer, Jabel Hernandez, responded to a 911 call placed by Berghuis's wife, Jessica Wood. Berghuis and Wood told the officers that while Wood was driving with Berghuis as a passenger, they encountered Arnold-Rogers in her car. Berghuis and Wood reported that Arnold-Rogers bumped her car into Wood's vehicle. When Berghuis exited the vehicle to check for damage, Arnold-Rogers also came out of her vehicle and pushed Berghuis several times.

The officers then questioned Arnold-Rogers at her apartment. She denied touching Berghuis. Hernandez described Arnold-Rogers as belligerent and intoxicated during the conversation. After the officers reported to Berghuis that Arnold-Rogers denied anything had happened, he decided to press charges.

The officers then had Berghuis and Wood prepare sworn statements describing the incident in more detail. In his statement, Berghuis explained that Wood was driving when they came upon Arnold-Rogers's car stopped in a parking lot. After Wood drove around the car, Arnold-Rogers nudged Wood's car with her vehicle. At that point, Berghuis and Arnold-Rogers exited their vehicles. Arnold-Rogers then shoved Berghuis while yelling obscenities at him. When Berghuis tried to return to Wood's car, Arnold-Rogers followed him. Once Berghuis was sitting in the car, Arnold-Rogers blocked the car door,

reached into the car, and pushed Berghuis two more times.

After taking the written statements, the officers returned to Arnold-Rogers's apartment. Rodriguez claims that he asked – but never ordered – Arnold-Rogers to come outside, and she voluntarily complied. When Arnold-Rogers came outside, Berghuis identified her for the officers. Rodriguez then arrested her for burglary and battery.

Arnold-Rogers recounts her arrest differently. She claims that when the officers returned for a second time, Rodriguez ordered her to come out of her home. When she refused, Rodriguez reached inside, grabbed her arm, and yanked her outside. Arnold-Rogers claims Rodriguez then slammed her into a banister before placing her under arrest. Although the parties disagree about whether Arnold-Rogers voluntarily left her home or whether Rodriguez entered her home to arrest her, they agree that Officer Rodriguez made a warrantless arrest.

Arnold-Rogers spent the night in jail. The next day, at her initial appearance, the state court judge dismissed the burglary charge for lack of probable cause. Arnold-Rogers then posted bond and was released from jail. The State Attorney's Office declined to prosecute the battery charge.<sup>ii</sup>

Arnold-Rogers sued Officer Rodriguez for arresting her without probable cause and arresting her in her home without a warrant, consent or exigent circumstances. She also sued the City of Orlando and claimed that the city had a policy, custom or practice that caused her violation. The city and the officer filed a motion for summary judgment. The district court held that Officer Rodriguez had probable cause to arrest Arnold-Rogers and dismissed that claim on summary judgment in favor of the officers. The district court also granted summary judgment in favor of the city and held that Arnold-Rogers failed to show a policy, custom or practice caused her violation. Lastly, the district court denied summary judgment for the officer regarding the warrantless arrest in Arnold-Rogers's home because of the contradictory evidence. The case went to trial and

a jury found in favor of the officer, deciding that Arnold-Rogers was arrested outside her home.

Arnold-Rogers appealed the grant of summary judgment regarding the probable cause claim against the officer, the summary judgment in favor of the city, and the decisions made by the trial court regarding evidence at trial regarding the in-home arrest claim.

The first issue the court examined was whether district court erred when it granted summary judgment for the officer regarding whether there was probable cause to arrest Arnold-Rogers. The court first looked at the law related to this issue and stated

Under the Fourth Amendment, “[a] warrantless arrest is constitutionally valid only when there is probable cause to arrest.” *Holmes v. Kucynda*, 321 F.3d 1069, 1079 (11th Cir. 2003). An officer has probable cause to arrest “if the facts and circumstances within the officer’s knowledge, of which he or she has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense.” *Williamson v. Mills*, 65 F.3d 155, 158 (11th Cir. 1995).<sup>9</sup> Probable cause does not require the same “standard of conclusiveness and probability as the facts necessary to support a conviction.” *Lee*, 284 F.3d at 1195 (internal quotation marks omitted). In deciding whether probable cause exists, arresting officers “are not required to sift through conflicting evidence or resolve issues of credibility, so long as the totality of the circumstances present a sufficient basis for believing that an offense has been committed.” *Dahl v. Holley*, 312 F.3d 1228, 1234 (11th Cir. 2002); see also *Rankin v. Evans*, 133 F.3d 1425, 1441 (11th Cir. 1998) (“Generally, an officer is entitled to rely on a victim’s criminal complaint as support for probable cause.”)<sup>iii</sup> [emphasis added]

The court then examined Arnold-Rogers’s arguments regarding this issue and reiterated that the officer was entitled to rely on the sworn statements provided by the witnesses and the victim that Arnold-Rogers shoved the victim multiple times. The court went on to state that “officers are not required to resolve



credibility issues in deciding whether probable cause exists . . . ”<sup>iv</sup> The court then held that since no reasonable jury could conclude that that the witness and the victim were not reasonably trustworthy, Officer Rodriguez had probable cause to arrest Arnold-Rogers for battery; therefore, the decision of the district court was affirmed regarding probable cause to arrest.

The court next examined the issue of municipal liability. The court examined the law related to this issue and stated:

It is well established that the City “cannot be held liable under § 1983 on a respondeat superior theory.” *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 691 (1978). Instead, “a plaintiff seeking to impose liability on a municipality under § 1983 [must] identify a municipal policy or custom that caused the plaintiff’s injury.” *Bd. of Cty. Comm’rs v. Brown*, 520 U.S. 397, 403 (1997) (internal quotation marks omitted). Thus, the City “is not automatically liable under section 1983 even if it inadequately trained or supervised its police officers and those officers violated [Arnold-Rogers’s] constitutional rights.” *Gold v. City of Miami*, 151 F.3d 1346, 1350 (11th Cir. 1998). Instead, a municipality may be held liable under § 1983 for failure to train under “limited circumstances.” *City of Canton v. Harris*, 489 U.S. 378, 387 (1989). These limited circumstances occur “only where the municipality inadequately trains or supervises its employees, this failure to train or supervise

is a city policy, and that city policy causes the employees to violate a citizen’s constitutional rights.” *Gold*, 151 F.3d at 1350. <sup>v</sup> [emphasis added]

Thus, in order to defeat summary judgment in favor of the city on this claim, the plaintiff must show

1. the city did in fact inadequately train its officers,
2. this failure to train is a city policy, and
3. this policy of failing to train caused the officer to violate the plaintiff’s rights.

In this case, Officer Rodriguez testified in a deposition that he was trained by the city to make warrantless arrests in residences, even when there were no exigent circumstances. Based on this, the court noted that a reasonable jury could conclude that the city inadequately trained Officer Rodriguez regarding arrest in residences without consent or probable cause. This is because:

an officer violates the Fourth Amendment by making a warrantless arrest of a person in his home absent exigent circumstances or consent. See *Payton v. New York*, 445 U.S. 573, 589-90 (1980); *McClish v. Nugent*, 483 F.3d 1231, 1238 (11th Cir. 2007) (“The Fourth Amendment . . . does not permit an officer to . . . forcibly remove a citizen from his home [without a warrant] absent an exigency or consent.”). <sup>vi</sup> [emphasis added]

However, Arnold-Rogers must also show that the city had a policy of inadequately training its officers. Regarding this, the court stated:

It is true that a plaintiff may prove a municipality had a policy of inadequate training “by showing that the municipality’s failure to train evidenced a deliberate indifference to the right of its inhabitants.” *Gold*, 151 F.3d at 1350 (internal quotation marks omitted). A plaintiff establishes deliberate indifference by showing that the municipality knew of its inadequate training yet “made a deliberate choice not to take any action.” *Id.* <sup>vii</sup> [emphasis added]

This can be shown by presenting evidence that the city knew of its deficient training and then made a conscious choice not to take action to train properly. The court then noted that Arnold-Rogers presented no evidence of a city policy or custom of deliberate indifference regarding training on in-home arrests and, as such, summary judgment in favor of the city was proper.

Lastly, the court examined the Arnold-Rogers argument regarding whether certain evidence should have been admissible at trial. The court concluded that the trial court did not err in the case. This will not be discussed as it is outside of the scope of this article.

As such, the court of appeals affirmed the decision of the district court.

### Notable Points for Officers from This Case

- Officers need probable cause to make an arrest. Probable cause to arrest is defined as “facts and circumstances within the officer’s knowledge, of which he or she has reasonably trustworthy information, would cause a prudent person to believe, under the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense.”
- In deciding whether probable cause exists, arresting officers “are not required to sift through conflicting evidence or resolve issues of credibility, so long as the totality of the circumstances present a sufficient basis for believing that an offense has been committed.”
- Generally, an officer is entitled to rely on a victim’s criminal complaint as support for probable cause.
- To make a warrantless arrest inside the suspect’s residence, the officer needs to be in the residence by consent or through the existence of exigent circumstances.

### Endnotes

- |   |                       |
|---|-----------------------|
| i. No. 15-13198 (11th Cir. Decided September 1, 2016 Unpublished) | iv. <i>Id.</i> at 13  |
| ii. <i>Id.</i> at 4-6   | v. <i>Id.</i> at 16   |
| iii. <i>Id.</i> at 12   | vi. <i>Id.</i> at 17  |
|   | vii. <i>Id.</i> at 18 |

## Health & Wellness Corner

### Sandwich Slimdown: Swap out the Bread to Save Calories

By Leigh Richey, LGRMS Health and Wellness Representative

Who doesn't love a sandwich? They are delicious, easy to make and transport, and full of endless possibilities. From restaurants to sub shops to your brown bag lunch, sandwiches are everywhere. I'll venture a guess that the leftover turkey from Thanksgiving got made into at least one sandwich. The problem is that sandwiches tend to be very high in calories, and the carb-heavy bread can take a good chunk of the blame.

Want to slim down your sandwich? Here are some calorie-saving bread swaps to try.

#### Cabbage

Cabbage . . . the world's most popular vegetable, but the United States' seventh. Cabbage leaves are thick enough to hold all of your sandwich fixings; just steam or boil the large outer leaves to soften them and make them easier to chew.

Want to ensure that your house won't stink after cooking the cabbage? Keep the cook time under five minutes (just two minutes longer doubles the gas production). You can increase the amount of antioxidants by selecting red cabbage (six times the antioxidants) or savoy cabbage (three times the antioxidants) over green cabbage.

#### Lettuce

If you've ever eaten lettuce wraps at an Asian restaurant, you know where this idea comes from. Either wrap a giant lettuce leaf around your sandwich goodies (like a lettuce burrito) or make slices of "lettuce bread" by using two leaves to build your sandwich. Iceberg lettuce (America's most popular varietal) has essentially zero nutritional value; select the outer

leaves of romaine or bibb lettuce for a sandwich with some phytonutrient benefits.

Some restaurant chains offer lettuce buns as a bread alternative, so be sure to ask the next time you eat out!

#### 100-Calorie Flat Sandwich Buns

Sure it's still bread, but they have around half the calories of your average pair of bread slices. They come in a ton of varieties, just check your grocery store shelves. Choosing a whole grain type will add extra fiber to your diet.

#### Portabella Mushroom Caps

Portobello mushroom caps are a very low-calorie alternative to bread. They have only about 25 calories each but fill you up! Bake or grill them until tender and then assemble your sandwich. This one isn't super hand-friendly, so you may want to opt for a fork and knife.

#### High Fiber Tortilla with 100 Calories or Less

Tortillas can be a great alternative to carb-heavy slices of bread, but you have to be careful when shopping for them! Many tortillas or wraps are extremely high in calories. Wraps high in fiber tend to be lower in calories, but read the label carefully to be sure. A good example is La Tortilla Factory large low carb whole wheat tortillas – only 90 calories and 13g of fiber.



# Workplace Safety: Did You Know?

Did you know that the construction, storage, manufacturing, and transportation industries account for 50% of all fatal and serious accidents at work? Local governments fall in this category.

Did you know that over 141 million days are lost annually due to accidents at work? The average is thirty-five days per injury.

Did you know that, in a survey, 35% of workers feel their jobs put their health at risk?

Did you know that overexertion accounts for 25% of all workplace injuries? According to Liberty Mutual Safety Index, overexertion – injuries caused by lifting, pushing, pulling, holding and carrying – costs businesses \$12.75 billion in direct annual expenses and accounts for more than 25% of the national burden. Furthermore, “Fall on Same Level” ranks as the number two cause of disabling injury that drives direct costs of \$7.94 billion, or 15.8% of the total injury burden.

Did you know that 35% of workplace accidents involve hand and finger injuries? That 70% of those were not wearing protective gloves? And that 30% of those wearing gloves were wearing the wrong glove for the job?

Did you know the top five common contributing causes of hand injuries were carelessness, lack of awareness, boredom with the job, and disregarded safety procedures?

Did you know that good workplace safety programs decrease worker injuries by 50%? According to the American Society of Safety Engineers, a comprehensive workplace safety program can decrease the likelihood of a workplace injury by up to fifty percent.



## Nine Interesting Health and Safety Facts

- About 3.9 million employees are disabled at work in any given year.
- One work-related injury occurs every eight seconds.
- Accidental overdose of iron pills is the leading cause of poisoning deaths among children.
- Fire kills more Americans each year than ALL other natural disasters combined.
- Nature requires over five years to get rid of a cigarette butt.
- Of the 42,000 traffic fatalities in recent years, 41% were alcohol related.
- About eight out of every ten adults will have a back injury in their lives.
- On average about 400 people die from excess heat (heat stroke) each year.
- Occupational skin diseases costs \$1 billion annually in worker comp costs claims.





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# Safety Bulletin

## Workplace Safety



## *What Don't You Know?*



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February 14	Macon
February 23	Tifton

**Local Government  
Safety Coordinator 3**

February 28	Cornelia
March 2	Cartersville
March 7	Macon
March 14	Tifton

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