

The Ontario Recreation Facilities Association Inc. (ORFA) is often contacted for information or guidance regarding the need for a valid driver's licence to operate an ice resurfacer. Although there is no legal requirement to hold a valid Ontario driver's licence to operate this piece of equipment, there are some underlying factors that need to be considered when discussing the issue of having and maintaining a valid driver's licence.

An employer will often require that job applicants hold and maintain a valid driver's licence for operating vehicles as a condition of employment. However, few actually monitor the employee's driving record throughout their employment - this is changing.



Obtaining a Driver's licence

To obtain a drivers licence in Ontario, you must be 16 years of age or older. You must pass a vision test and demonstrate that you can see well enough to drive safely. These same criteria should be used as the foundation when allowing any person to operate any unlicensed vehicle such as an ice resurfacer or grounds keeping equipment.

The province of Ontario has different licences depending on which kind of vehicle you want to operate. The most common class of licence is the G class (includes G1 and G2) - for cars, vans and small trucks.

Higher levels of licencing are required for equipment with air brakes or with significant weight or when transporting a large passenger load.

Suspension of Driving Privileges

Driving in Ontario is a privilege not a right; and as with any privilege it can be taken away. If you lose your driving privileges or if they are revoked, suspended or removed you may not be able to operate equipment specifically unlicensed vehicles such as an ice resurfacer, grass cutting equipment, boat, atv or golf cart. It is important that you advise your supervisor if any of the following suspensions occur:

- Medical suspension
- Discretionary HTA suspensions
- Mandatory HTA suspensions
- Administrative drivers licence suspension (ADLS)
- "Warn Range" suspension
- Novice driver violations

If you decide to drive while suspended it will be addressed under the *Criminal Code*. If convicted of such a violation, you will be given a further suspension of one year for a first offence and two years for a subsequent offence.

Employers are Beginning to Utilize a "Casual Driver Declaration Form" for Employees

Some operations have implemented a "Casual Driver Declaration Form". The form makes workers accountable for having and maintaining a valid licence, appropriate insurance with a minimum public liability clause of \$1,000,000.00, a personal licenced vehicle in road working condition pursuant to the HTA, and not had their licence revoked or suspended in the last 3 years. The form is most often signed off by the worker and manager with a hard copy placed in the worker's human resource file.

Be aware that driving infractions that occur while operating a vehicle owned by your employer are transferable to your personal insurance rating and

may have an impact on your personal insurance coverage. You may also be held personally accountable for serious driving infractions that result in civil litigation.

Discuss your employment driving requirements with your personal insurance broker to ensure that you are adequately and properly covered while driving at work.

Raising the issue of “driver training” at the JHSC meeting is a positive approach given what is at risk. There is a variety of quality driving training programs designed to improve driver capability as well as help to assess new or aging driver competency.

Are Employers Insured When Suspended Workers Have An Accident?

It's important that everyone know the insurance rules as they apply to "prohibited drivers". The Frank Cowan Company indicates that a claim could be denied if the accident involves a driver “prohibited” by the automobile policy. It is important to know the specifics of your automobile policy regarding “qualified” drivers. The insurance policy only covers drivers who have a valid driver's licence.

In Ontario, the Ontario Automobile Policy, under Section 8, Statutory Conditions states very clearly that:

4. (1) The insured shall not drive or operate or permit any other person to drive or operate the automobile unless the insured or other person is authorized by law to drive or operate it.”

So if an employee has their licence suspended, they have no insurance coverage while driving any vehicle. They become a "prohibited driver" under the Ontario Automobile Policy. This is a big risk for both the employer and employee.

Accident Reporting Responsibilities

Employees who are in accident while at work must report the incident. There will be several layers of reporting to be considered. An incident report should be generated to meet the requirements of the OHS. The completion of a WSIB accident report form may also be required. In addition, the vehicle

insurance carrier may also seek a written report of the event. It is important for all drivers to know their reporting obligations prior to taking control of any work vehicle.

Can You Be Fired If You Lose Your Licence?

There are many variables to consider when workers lose their driving licences.

1. Original job posting - The posting sets the foundation of basic worker competency as a condition of employment.
2. The municipal or employer policy for obtaining and maintaining a valid driver's licence.
3. Union contract.

It is important that you clearly understand the terms and conditions stated in all documents that may govern this matter.

You should consider contacting a Union steward should you find yourself in such situation. Legal Counsel is another good resource as they may be able to determine if current policy is sufficient and if it has been properly maintained and applied; and if there are any possible alternatives to maintaining an employee/employer relationship.

Sample Licence Suspension Back to Work Policy

Where an employee's licence is suspended/revoked or downgraded due to a legal conviction for a period of one (1) year or less, and this is the first such occurrence, the employee shall be suspended from work without pay for the period of the suspension, unless the employer can provide alternate employment for the employee or it is shown that the employee can continue to perform work for the employer without undue burden on the employer;

The reassignment of the employee is at the discretion of the employer and will take into account the following:

- length of the suspension and the nature of the offence;
- the availability of alternate work;
- the qualifications of the employee and the ability to perform the alternate work if found;

Management must constantly review and update driver's licence policies with staff. Good managers will not only require employees to sign off on workplace policies at the beginning of their tenure but equally important they will also review the employee/employer relationship.

Source: Frank Cowan Company News and Views July 2007

MVRs -How are your Drivers Doing?

When a new driver is hired, motor vehicle reports (MVRs), usually form part of the hiring process. This is considered good due diligence because no one wants to hire a driver with a record of traffic violations, accident convictions or whose licence is currently under suspension or has lapsed.

But, do you apply the same due diligence to your existing drivers? Are driver abstracts pulled on a regular basis? Are you confident that your current drivers all hold valid drivers' licences?

Why is it important to pull MVRs on existing drivers? It could impact your insurance coverage. A claim could be denied if the accident involves a driver "prohibited" by the automobile policy. It is important to know the specifics of your automobile policy regarding "qualified" drivers.

In Ontario, the Ontario Automobile Policy, under Section 8, Statutory Conditions states very clearly that:

4. (1) The insured shall not drive or operate or permit any other person to drive or operate the automobile unless the insured or other person is authorized by law to drive or operate it."

Both the Nova Scotia and Prince Edward Island automobile policies prohibit drivers whose licences are under suspension from driving or operating automobiles. The New Brunswick automobile policy, under Statutory Conditions, states that no one will drive or operate an automobile while prohibited from driving under any court order.

Managing drivers is a critical part of any fleet safety program. Regular MVR checks can help you protect yourself against any possible insurance issues in the future.

Sample Driver's licence Policy

1. Employees who operate City/Town vehicles/equipment must possess a valid drivers licence of the appropriate class.

2. The City/Town shall conduct Drivers Abstract searches once per year for employees who regularly operate vehicles/equipment to verify a valid drivers licence and record. Employees who may operate City/Town vehicles/equipment only on occasion will be required to sign out the vehicle/equipment by completing a form which indicates that they have an appropriate level valid drivers licence in good standing. **[Note: Some operations are conducting abstract checks as many as 4-times each year.]**

3. An employee who operates City/Town vehicles/equipment shall file a copy of a valid drivers license with the employer at the time of hiring and should be prepared to produce an up to date copy of the document at anytime upon request.

4. An employee who operates City/Town vehicles/equipment shall immediately notify the employer, in writing, of any change in the status of their driver's licence including but not limited to suspension, temporary removal or change in status. Failure to do so will result in disciplinary action up to and including termination of employment.

5. An employee who operates City/Town vehicles/equipment without a valid driver's licence will be subject to immediate termination of employment.

6. A probationary or temporary contract employee, who is required to possess a valid driver's licence of the applicable class as a condition of employment with the City/Town; and who has said licence cancelled, suspended or downgraded shall have their employment terminated immediately.

7. The following rules apply where an employee, as a condition of employment, is required to possess a valid driver's licence and notifies the employer:

a) Temporary or Permanent Loss of Licence for Medical Reasons

- i) Where an employee's licence is suspended/revoked or downgraded for medical reasons, the employer will endeavour to place the employee in suitable alternative employment, within the City/Town workforce;
- ii) The alternate work shall not displace existing full time permanent employees;

b) Licence Suspensions Due to Non-Medical Reasons

i) Where an employee's licence is suspended/revoked or downgraded due to non-medical reasons, the employee may have their position with the City/Town terminated. Each situation will be reviewed on a case by case basis with any consequence to be determined at the discretion of the employer.

Did you know? Auto policies only insure vehicles that by law must be licenced. Therefore, an ice resurfacers, when on the road, would not be insured under an auto policy nor could it be added to an auto policy. Rather, liability coverage would extend from the Commercial General Liability Policy.

Ice Resurfacers should not be driven on the road but rather transported on a flat bed.

Contact your municipal insurer for details of your coverage.

Conclusion

Having and maintaining a clean drivers abstract has never been more important in the workplace. Your driving habits may be placing more at risk than a losing a few demerit points. Employees should maintain a clean driving record and report any driving privilege reductions to your employer as soon as possible.

Additional Resources

- For official purposes, please refer to the *Highway Traffic Act*, the *Motorized Snow Vehicles Act* and the *Off-Road Vehicles Act of Ontario*.
- For more information about driver licencing, visit <http://www.mto.gov.on.ca>
- To request a copy of this book in an alternate format, contact Publications Ontario at 1-800-668-9938 or (416) 326-5300 or on the Internet at www.publications.serviceontario.ca

- Consequences of driving while prohibited <http://www.ottlegal.com/en/criminal-cases/driving-while-disqualified.html>
- MVRs - How are your Drivers Doing? <http://www.frankcowan.com/fcc/pages/client-resources/publications/pdf/2007-July-MVRs.pdf>

To verify a valid drivers licence through the Ministry of Transportation

- Call 1-900-565-6555 (\$2.50 per check applied to phone bill)
- To obtain a Driver's Licence Check visit MTO's website. (\$2.00 per check payable by Visa or MasterCard) <http://www.mto.gov.on.ca/english/dandy/driver/record.shtml>
- Obtain a drivers abstract at Driver and Vehicle Licence Issuing Offices, Driver Exam Centres or Service Ontario Kiosks (\$12.00 to \$13.00 per abstract)

Disclaimer 2011

©Ontario Recreation Facilities Association Inc.,

The information contained in this reference material is distributed as a guide only; it is generally current to the best of our knowledge as to the revision date, having been compiled from sources believed to be reliable and to represent the best current opinion on the subject. No warranty, guarantee or representation is made by ORFA as to the absolute correctness or sufficiency of any representation contained in this reference material and ORFA assumes no responsibility in connection therewith; nor can it be assumed that all acceptable safety and health measures are contained in this reference material, or that other or additional measures may not be required in particular or exceptional conditions or circumstances.

While ORFA does not undertake to provide a revision service or guarantee accuracy, we shall be pleased to respond to your individual requests for information at any time.

Reference to companies and products are not intended by the publisher as an endorsement of any kind.

T. 416-426-7062 F.416-426-7385
www.orfa.com info@orfa.com