



# Montana Automobile Dealers Association

## SEPTEMBER 2020 NEWS BULLETIN

PRESIDENT'S MESSAGE:

### Recap 2020 - So Much Has Happened

We have had quite a year so far! Way, way back, in January, we rang in the New Year shouting that 2020 was going to be a year to remember, a year to make everything better – full steam ahead! The momentum was running fast forward, the energy was high, and the expectations for a stellar year were well on their way. Everyone at the MTADA office had grand plans for the upcoming Convention and Trap Shoot. Invitations were sent, venues were booked, and every detail, big and small, was

finalized. We really were ready for a fun and enjoyable eventful season.

And then, without hesitation, everything came to a screaming halt! Our attentions shifted, and everything focused on the health and safety of our friends, family, and everyone we care deeply about in the auto industry. Bruce and our Board of Directors decided to



**James Johnson**  
MTADA President

Continued on **PAGE 9**

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# It is Renewal Season!

I understand renewing your group health insurance is not something you and your peers typically get excited about. In fact, most of you likely cringe recalling past insurance increases crossing your desk with little time for you to do much about it. It is a crisis plaguing all American businesses but Montana businesses have the additional issue of limited competition with insurance carriers and insurance brokers. Unfortunately, many Montana businesses are experiencing inflated prices and inflated, hidden commissions with lackluster service and support (receiving your renewals late, little to no support during open enrollment, little to no member advocacy and support, etc.)

## But I have good news.

The Association’s Health Trust Board works diligently in managing their fiduciary duty to member dealerships and their employees. Transparent and reasonable contracts with local Montana hospitals and pricing protections with hospitals outside the state of Montana, have provided asset stability which has led to reasonable rates and high-value benefits. One such high-value benefit is patient advocacy services ensuring best care at a fair price. If this means a patient needs to travel, the Trust will cover their and a loved one’s travel expenses to get the care they need.

## The result of this diligence?

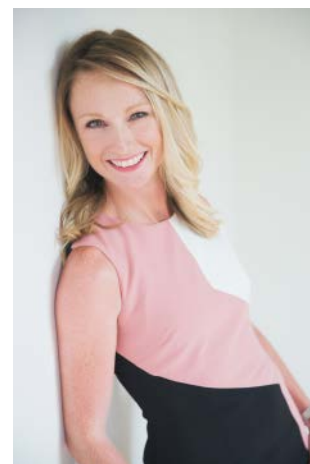
The Montana Automobile Dealers Association Group Benefits Trust is offering 2021 benefits at rate that is lower than what many dealerships have been paying in 2020.

**However, I recognize the Association’s Health Trust is not the right fit for all dealerships – especially those who do not have local hospitals willing to charge a fair and transparent price.**

For those dealerships, there are more options than what you have likely seen in the past. Associated Employers is a multiple employer welfare arrangement (MEWA) much like the MTADA’s Trust. They have been serving Montana businesses since 1995 and are extremely competitive. We also have the Mountain Co-op (formerly known as the Montana Health Co-op). They are gaining more attention from businesses as they continue to manage their assets and offer manageable increases, and in some situation decreases.

*Stay healthy. Stay in touch.*

**Erin Jimison**  
*MTADA’s Endorsed Insurance Consultant*



**Contact**  
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**ERIN JIMISON**  
Insurance Consultant for the MTADA



DIRECTOR'S MESSAGE:

# NADA Market Beat: New Light-Vehicle Sales Continue to Recover



**Don Kaltschmidt**  
NADA Director

*August's SAAR of 15.2 million units marked a 4.8% increase from July's SAAR of 14.5 million units but is down 11% compared with August 2019.*

New light-vehicle sales continued to recover in August from April lows. August's SAAR of 15.2 million units marked a 4.8% increase from July's SAAR of 14.5 million units but is down 11% compared with August 2019. And through eight months of 2020, new light-vehicle sales were off by 20.7% compared with the same period in 2019. Raw sales volume in August 2020 totaled 1.33 million units, representing a decline of 19.1% from August 2019. However, there were two fewer selling days last month than in August 2019, which also included the Labor Day sales weekend. While the differences in the sales calendar contributed to a lower raw volume of sales in August, the sale volumes this September will likely see a boost compared with September 2019.

After adjusting for daily selling rates, retail sales volume in August was off by 10% year over year, according to Wards Intelligence. Since April, fleet sales volume has decreased

more than retail sales volume. Fleet sales fell by roughly 32% compared with August 2019. While significant, it was actually a smaller fleet sales drop than in recent months, which averaged 66% in the April-July 2020 period. Vehicles sold in August spent less time on dealer lots and had lower average discounts compared with August 2019. According to J.D. Power, 45% of vehicles sold this August spent fewer than 20 days on the lot, up from 35% in August 2019. Average incentive spending per unit is expected to be \$4,105, down \$49 from August 2019 and \$848 from its high in April 2020.

Based on inventory levels at the beginning and end of the month, dealers turned roughly 50% of their inventory in August. OEMs have been working hard to restore production, especially in popular segments such as crossovers and pickups, but steady sales led to inventory levels rising only 0.9% throughout August. At the end of the month the industry-wide days' supply was 52 days, down

Continued on **PAGE 10**

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CHAIRMAN'S MESSAGE:

2021 NADA Show the Most Important Yet



Rhett Ricart  
2020 NADA Chairman

Each year dealers from coast to coast, as well as some from across the globe, join together at the NADA Show. The NADA Show is the Auto Industry Event of the Year and offers dealers and their teams the opportunity to learn the latest changes in the auto retail industry and explore shifts in the business environment to maintain dealership success. As all dealers are learning to navigate our business operations during the disruption brought with the coronavirus pandemic, attending the upcoming 2021 NADA Show in New Orleans will be more critical than ever before.

This is truly an unprecedented time; never before have dealers faced business hardship concurrently with a health pandemic. We need to further educate ourselves on how to manage this disruption and learn best practices for business success in an ever-changing environment. And NADA Show 2021 in New Orleans is the place to do it!

We are still learning the true impact of the pandemic to the economy, to our industry and to our businesses. While

I am optimistic for a quick recovery, I don't foresee full recovery by the time NADA Show takes place in January. We will need to leverage the expertise of our NADA staff and third-party vendors to refine the changes to our businesses.

We have all been in the trenches during this pandemic adjusting our processes, business plans, balance sheets and inventories—gathering best practices along the way. These valuable insights from the trials and tribulations of operating during the last three months will be just one of the many pieces dealers can learn in the three days of NADA Show. I encourage you all to attend and share these takeaways with your fellow dealers.

Please know that safety is our priority for the Show, and NADA is working through a detailed action plan to address social distancing concerns for members, attendees, exhibitors and show partners. For example, NADA will

Continued on PAGE 5

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**Chairman’s Message** CONTINUED FROM PAGE 4

provide face masks upon entry to any attendee or exhibitor who requests one; no-contact registration will be available; and more space will be available on the expo floor, as well as in the show’s educational sessions, general sessions and franchise meetings to allow for social distancing. We are very fortunate to be holding the 2021 Show at the Ernest N. Morial Convention Center in New Orleans, one of the largest facilities in the United States with more than a million square feet of space. The space will allow all dealers to attend safely while providing us the ultimate flexibility in adjusting everything from the expo floor to the meeting spaces as needed.

For our truck dealers, while the ATD Show will not be held this year, I invite all ATD members to attend the NADA Show and take full advantage of everything NADA has to offer including its educational workshop sessions, action-packed exhibit hall, and general sessions with inspiring keynote speakers.

I simply can’t stress the importance of the upcoming NADA Show more. Now is the time for us to learn from the experts at the Show and from each other. Mark your calendars for the most important NADA Show you will ever attend. Your attendance is vital. Attendee registration and housing will open July 20, 2020. ■

*To learn more about our new chairman, visit this link <https://www.nada.org/Ricart/>*

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LEGAL UPDATE

# AZ Dealer Data Law Upheld

As reported earlier, MTADA was successful with legislation proposed during the 2019 Legislative Session protecting the data dealers collect from customers and store in their DMS systems. For the first time, Montana law now regulates the way Plaintiffs' and third parties can access and use the DMS data in the face of the Plaintiffs' making access to the data by the dealer himself and other vendors doing business with the dealer burdensome and expensive. NADA formed a group to study the problem and recommend legislative solutions that protect the information of the consumer shared with the dealer. Following NADA guidance, the new Montana data protection language establishes the privacy of the data as the dealer's, prohibits unauthorized disclosure or use by Plaintiffs' and prohibits Plaintiffs' from imposing onerous, expensive requirements for dealers to access their data.

Arizona enacted similar legislation. Reynolds and Reynolds and CDK filed suit in Federal Court in Phoenix against the state of Arizona on July 29, 2019 seeking an injunction prohibiting implementation of the law. They alleged in their complaint that the new law is rife with constitutional shortcomings because the law:

- is preempted by Federal copyright law;
- interferes with and impairs Plaintiffs' contractual rights to control third-party access;
- results in a taking of Plaintiffs' property because they must provide unlicensed third parties with access to their DMS systems, and
- violates places an undue burden on interstate commerce without any legitimate public purpose.



R. J. "Jim" Sewell, Jr.  
MTADA General Counsel

US District Court Judge G. Murray Snow held a hearing on the Motion for Preliminary Injunction on June 2, 2020. He denied the Motion by Order dated July 24, 2020. ADP and R+R have appealed Judge Snow's decision to the 9th Circuit Court of Appeals and MTADA is in the process of submitting an Amicus Curiae (Friend of the Court) Brief in support of Judge Snow's decision. The Montana Attorney General will be filing an Amicus Curiae Brief as well. The Briefs are due on October 1, 2020.

Snow's analysis of the Plaintiffs' arguments gives a clear indication that the case is in big trouble on the merits. He noted in his analysis that the Plaintiffs' claim to ownership of the data and assertion of the right to charge for it are of recent origin. He said:

"... Plaintiffs' claims are further undermined by evidence that their own leadership "was very much in favor of the dealer being able to make their own choices around what providers they

Continued on PAGE 7



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**Legal Update** CONTINUED FROM PAGE 6

were using for data integration and what third-party companies they used to provide software services in addition to the DMS”

“... It was not until “2015, roughly in that time period” that CDK “started to raise prices to the third parties who were providing services” to dealers. . . . Thus, there is no customary practice of charging authorized third-party integrators significant fees to access a dealer’s protected data.

Preliminary to addressing each of the constitutional claims, he noted that to be entitled to a preliminary injunction, the Plaintiffs were required to show that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm without an injunction; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. Likelihood of success on the merits is “the most important” of the four factors. Judge Snow didn’t think they had much of a chance to succeed on the merits.

He found no merit in the argument that the law violated the Copyright Act because the Plaintiffs’ computer source code is not at risk of being exposed to or modified by the

dealer’s authorized integrator’s accessing data fields and thus no violation of the Copyright Act could occur.

Snow next addressed the impairment of contracts and undue burden on interstate commerce claims. He noted that the test for substantial impairment examines “whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial. He pointed out that the dealer law never mentions the “structure” or “organization” of Plaintiffs’ data. Rather, it prohibits Plaintiffs from placing an “unreasonable limitation or condition” on the “scope or nature of the data that is shared with an authorized integrator,” on “the ability of the authorized integrator to write data to a dealer data system,” or “on a third party that accesses or shares protected dealer data or that writes data to a dealer data system. Since under the law access to the data requires that a third-party integrator comply with the “Star Standards” or similar there is little if any risk of data corruption. Snow further held that even if the law “substantially impaired” Plaintiffs’ contractual rights, Plaintiffs have not shown a likelihood of success on the

Continued on **PAGE 12**

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Helena!*



## President's Message CONTINUED FROM PAGE 1

push our convention to November, and finally decided in the best interest of everyone, it would be safer if we just postponed our convention until June of 2021. I am sure you have seen the emails, but I just wanted to share one more time here that we will not be having a convention this year. This will be the first time in 106 years, that MTADA has not held a convention. I just want to say that we appreciate all our dealers, partners, and sponsors, and thank you for your understanding as we navigate these uncharted waters with the rest of the industry.

On a more positive and happier note – we were able to hold our 4th annual trap shoot this week! The event was small, as social gathering is still limited to less than 50 people. However, spirits were high and so were the scores (at least for a few shooters). Our top three shooters shot a 46, 44, 44, respectively. For those of you that do not shoot trap, the highest score you can get is 50, so these folks did pretty dang well! Great job everyone! The same day as our shoot, Vice President Pence was speaking in Bozeman. We lost a few attendees, so they could go support and speak at his event,

but lucky for us, these folks came all the way back to Helena, just to stop by and say hi to everyone after a very long day of speaking! How great is it that we are also a high priority on their list as the VP! This speaks highly to the work that our association has done the past few years to build these relationships and keep the communications going! - Small plug but make sure you are supporting both the state and national PAC's as these are the folks that are listening and helping us keep our industry one of the most powerful in the nation.

As I wrap of this letter, I just want to say thank you to each and everyone of you. This has been a difficult year for all of us, and hopefully there is a small glimmer of light at the end of the tunnel. Remember that Bruce, Deb, and Heather at the MTADA office are always there to help you along the way in any situation that you may encounter. We have 3 more months of 2020, so let's make this last quarter the best yet!

**Take care everyone. ■**

*James Johnson is the Dealer Principal at High Plans Motors, Inc. in Wolf Point, Montana*



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## Director's Message

CONTINUED FROM PAGE 3

from 55 days in July 2020 and 61 days in July 2019. And days' supply for the crossover, pickup and SUV segments all remain below the industry benchmark of 60 days.

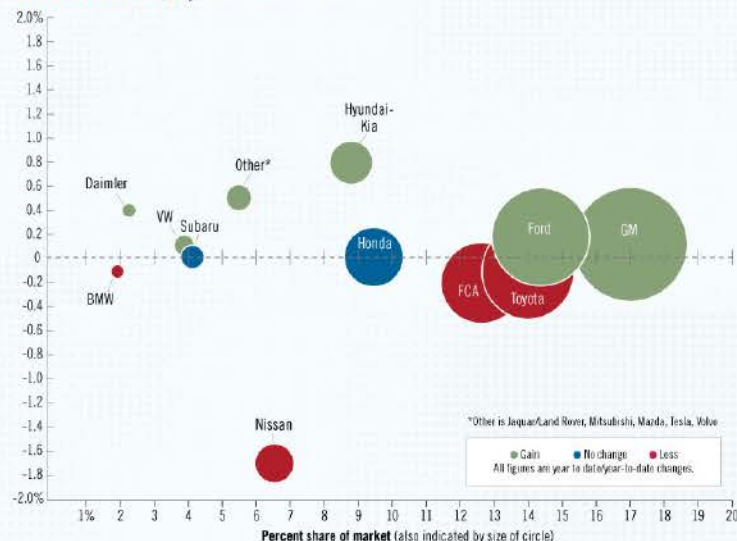
These inventory constraints—coupled with low consumer confidence, persistently high unemployment, and tightening credit standards—still present some economic headwinds. However, given steady monthly gains in retail sales and the expectation that inventory levels will continue to rise, we remain optimistic about the new-vehicle sales recovery for the rest of the year ■

### U.S. Light-Vehicle Sales

(Seasonally Adjusted at Annual Rates)

	Aug 2020	Y/Y %	Jan - Aug 2020	YTD/YTD %
Total Car	3.56	-22.3%	3.22	-33.3%
Total Light Truck	11.63	-6.8%	10.27	-15.7%
Domestic Light Vehicle	11.91	-10.1%	10.37	-21.5%
Import Light Vehicle	3.29	-13.9%	3.11	-18.2%
Total Light Vehicle SAAR	15.19	-11.0%	13.48	-20.7%

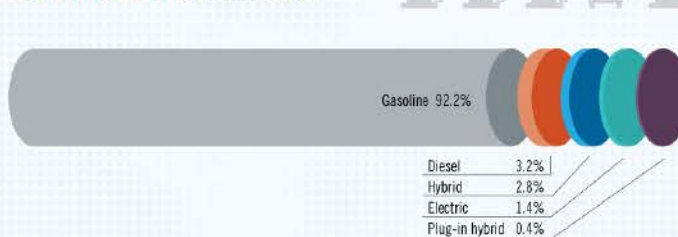
### Market Share, by manufacturer



### Market Share, by segment



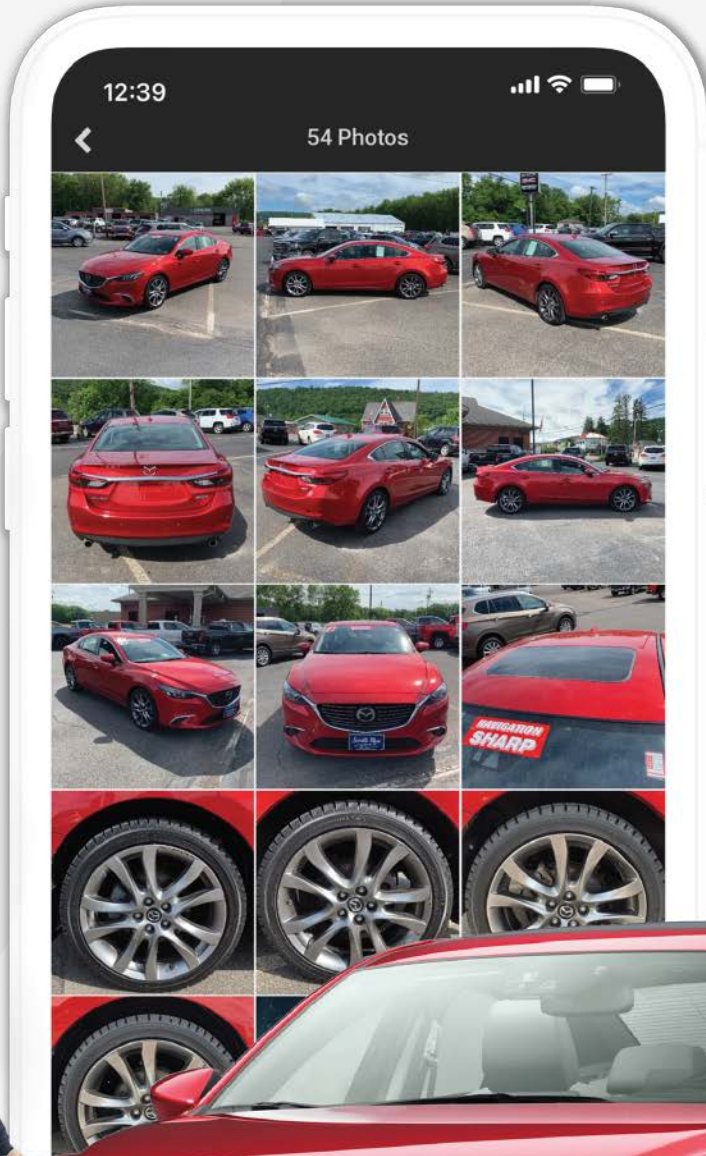
### Market Share, by powertrain





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## Legal Update CONTINUED FROM PAGE 7

merits of their Contracts Clause claim.

Once a statute is found to substantially impair contracts, the next determination is whether the law is “drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose. Snow notes that the standard of review is less stringent in the context of impairment of a private agreement than when the State itself is a contracting party. Since the revenue the Plaintiffs receive from third party integrators is probably only about 5%, Snow didn’t see the impairment as being substantial in any event.

Snow found that the law serves several legitimate purposes. Among them the protection of Arizona consumers from serious market problems caused by the potentially anti-competitive behavior of the Plaintiffs. Further, the law serves a legitimate and significant public interest related to legitimate areas of local concern - namely as a cybersecurity measure to protect consumers and by placing limits on

Plaintiffs’ ability to abuse their market position to monetize the private data of unwitting consumers. Whether the legislation is wise or unwise as a matter of policy is a question with which the Court was not concerned.

Lastly, Snow held that the law did not amount to “taking” of the Plaintiffs’ property. He said the impact of the law is more akin to interference arising from some public program adjusting the benefits and burdens of economic life to promote the common good than it is to interference with property that can be characterized as a physical invasion by government and law specifically allows the Plaintiffs to recover any direct costs incurred in providing dealer access to an authorized integrator.

MTADA will keep you advised of further developments. ■

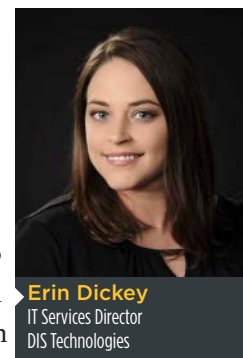
## IT Security Tip #196: Scammers are Using COVID-19 Contact Tracing Schemes!

Scammers are posing as COVID-19 contact tracers and attempting to trick people into handing over their personal and payment information according to a National Public Radio report. The scammers are using phone calls, texts, and emails to tell people that they’ve recently been in contact with someone who was diagnosed with COVID-19, and they ask for financial information before they continue. While a real contact tracer may text you to let you know that they’ll be calling shortly, Montana Attorney General Tim Fox said they’ll never ask for payment info. Additionally, texts from real contact tracers won’t contain links to click.

Another sign of a scam is if the caller gives you the name of someone who tested positive for COVID-19, or if they say they’ll tell you the name after you give them your information. A legitimate contact tracer won’t give out the identity of the person who tested positive.

“Contact tracing is an important part of managing the spread of COVID-19,” said Fox. “Unfortunately, there are scammers trying to profit from the confusion and fear surrounding the coronavirus.” Don’t give out any financial information, and never pay someone who claims to be a contact tracer.

***Please inform your family and staff to be on the lookout for this type of scheme. Stay well! ■***



**Erin Dickey**  
IT Services Director  
DIS Technologies

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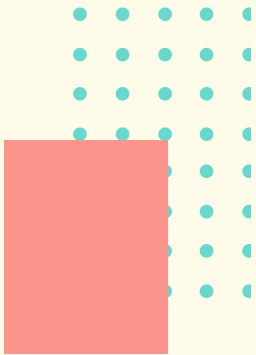
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## Workers' Compensation & COVID-19



As you know, information concerning the new coronavirus and COVID-19, the infectious disease it causes, is dominating the news media and general public discussion. And, government at all levels, businesses and the public at large are struggling to cope with the disruption in everyday life. Employers and employees alike are reacting to the situation through better hygiene practices, physical distancing and remote work where possible. Although there are few known confirmed COVID-19 cases in Montana, it is expected that they will become more commonplace as the virus spreads. To better inform our policyholders regarding the workers' compensation insurance implications we are publishing some common questions and answers.

### **If my employee falls ill because of the new coronavirus, is that covered under my workers' compensation insurance?**

A claim for a coronavirus infection may be compensable (accepted) if the employee can prove that the disease was contracted in the course and scope of the employment. That means the employee must establish by objective medical evidence that the employee has been diagnosed with COVID-19 disease and must establish by a preponderance of the evidence (more probable than not) that the cause of the infection was due to an exposure at work. That proof will likely have to be established by proof that the infection was contracted through a known work-related exposure. For instance, if an employee falls ill from the coronavirus and a co-worker (also an official employee) then falls ill with COVID-19, the co-worker may be able to establish that the illness was due to contact with the other infected employee at the workplace and have a compensable claim. The first employee who fell ill will have to establish that the illness resulted from a workplace exposure, such as an infected customer as opposed to a community exposure.

### **If I suspect that an employee has COVID-19 from the new coronavirus and I send that person home, does that result in a covered workers' compensation insurance claim?**

The fact that an employee is sent home because it is suspected that the employee may have the disease caused by the new coronavirus does not in itself provide a basis for being a compensable claim. In order to be compensable, that employee will have to prove a test positive for COVID-19 and that the infection resulted from an exposure while at work.

### **If I require my employees to work from home and an employee trips over a dog while taking a work-related telephone call, does that result in a covered workers' compensation insurance claim?**

Under those facts, the claim will likely be compensable similar to a trip and fall that occurs while at your place of work. Remote employees present challenges for employers given that the employee's home becomes the workplace. Workplace safety becomes more difficult, as does accident investigation. It is prudent for employers to establish specific work hours for remote employees as well as requiring timely reporting of accidents for the protection of both, the employee and the employer.

Need more information? Contact Montana State Fund's safety team at **800-332-6102** or visit **safemt.com**.





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