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# Safety, Accidents, and Investigations: Be Prepared for the Unexpected

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*This article describes how to establish and maintain an accident prevention plan, respond to accidents in the workplace, and handle potential external investigations.*

As the economy moves forward in a slow recovery, employers vigilantly watch for new opportunities to cut costs. One sure way to reduce costs is to have a strong safety and health program (safety program). If you fail to have a strong safety program, you are exposing your company to potential increases in health care costs, penalties and fines, and lost productivity. Covering the basics in this area will protect your company and its employees.

Every employer that does work in the United States is subject to the safety and health laws issued by the Occupational Safety and Health Administration (OSHA) or the equivalent state programs. State programs must meet or exceed the requirements set forth by OSHA. Even if a company has only one employee, it must have an established safety program.

In order to have an effective safety program, you must have a written, active Accident Prevention Plan (plan), be prepared to respond to accidents effectively, and strategically handle external accident investigations.

## **DEVELOPING YOUR ACCIDENT PREVENTION PLAN**

The accident prevention plan is the core of any safety program. It will define potential safety issues in the workplace and outline how to reduce or eliminate those issues. It will guide you in implementing your safety program by including steps to act quickly and decisively should there be an accident, and it will offer steps on how to manage accident investigations and how to recognize when you need to seek professional advice.

Developing the plan allows employers and employees to work together on preventing safety and health hazards.

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### ***Step 1: Developing the Basic Accident Prevention plan***

Every company must assess its own worksite(s) for known and potential hazards. This allows the plan to be customized for each worksite, more accurately reflecting company safety issues. In addition, companies must periodically review their plan to ensure it reflects ongoing site needs. A generic, unchanging plan is not enough.

There are many elements of a basic plan. Development of the initial plan may feel overwhelming, but it will pay off in the end. If you assess each of these elements in order, step-by-step, you will develop a plan that allows you to be in compliance. The basic plan includes:

- An overview of the company's safety program;
- What to do in an emergency;
- The location of first aid kits;
- How to report injuries;
- How to report unsafe conditions;
- How to identify hazards in the work environment;
- Employee safety orientation (when a new employee is hired and when a job changes); and
- Safety meetings or a safety committee (depending on the company size).

Development of the plan is a team effort. The plan must include employees' involvement from every level of the organization. This allows for a more comprehensive review of work practices. When all levels of employees are involved, there is a better understanding of the safety issues related to their job and they are invested in establishing safe practices. Thus, the plan becomes more effective in practice.

### ***Step 2: Job Hazard Analysis***

Once you have met the requirements above, you must assess the work that employees are performing through a job hazard analysis, which is a survey of the tasks where injuries occur or could occur.

To conduct this analysis, first identify the possible ways an employee might become injured doing a particular job. Then, note possible causes of such potential injuries. Once you know the possible injuries and their root causes, you can more effectively address solutions or preventative measures. All of this information must be included in the written plan.

As an example, a particular job might require heavy lifting, which could cause injuries. Causes of those injuries might be from trying to lift items that are too heavy or are awkward in size, or from using inappropriate lifting techniques. As a result of a company's job hazard analysis, an employer may choose to include weight limits for individuals responsible for lifting items and provide training on proper lifting techniques.

It is advisable to conduct part of the analysis on the actual jobsite while the employee is in the course of his or her duties. This can help you notice less obvious safety considerations. For example, if an employee has an office job, one might think there are no pertinent safety issues. However, on further observation, one might note repetitive work, such as typing and using a date stamp, or physical lifting, such as sorting file boxes.

Below are examples of work duties that must be addressed in the written plan, should they be discovered in a job hazard analysis:

- Activities requiring personal protective equipment;
- Ladder use;
- Walking or working on surfaces more than four feet in elevation;
- Operation of machinery;
- Use of powered hand tools;
- Automobile or truck operation on public roads;
- Industrial vehicle operation (*i.e.*, forklifts, etc.);
- Use of chemicals, or proximity to chemicals; and
- High volume of repetitive work.

When developing a plan, the employer must tailor it to the specific safety needs of each position. Avoid being overly general, such as saying that employees must "be careful," when they really need detailed procedures to be safe. On the other hand, do not be so specific as to remove the employee's responsibility of using common sense.

### ***Step 3: Training***

Even the best plan is not effective when it is only on paper. Employers must still train their employees on safety requirements. This includes job-specific training for each and every employee and manager. Training must be done when an employee is hired or changes job duties and whenever the plan is updated or modified. Any training provided should be documented in writing. Ensure that your company's plan outlines the

training requirements for each type of position. Then implement steps to make sure your employees stay current on their training.

#### ***Step 4: Ongoing Review***

Once the plan has been implemented, the company must regularly review it to ensure relevancy and effectiveness. The type of review process can vary, depending on what is outlined in the plan. At the very least, the plan should include annual audits, review of audit findings, implementation of audit findings, and accident investigations. The plan should be reviewed at least annually to determine if it is accurately reflecting the current safety needs of the company.

The annual audit will be very similar to the development of the initial plan. While not as extensive, it should be thorough enough to confirm the plan continues to meet the safety and health needs of both the employer and employees. Review of the plan should include looking at safety measures and goals expressed in the initial plan, and should, like the original plan, involve all levels of employees. Once the audit is completed, it is critical that any findings be reviewed and appropriately implemented. This includes retraining all employees affected by changes made to the plan.

Every accident should be recorded on an OSHA Form 300 and investigated as to its cause and future preventability. Any findings from such investigations should be used to update your plan.

### **BE PREPARED TO RESPOND TO ACCIDENTS EFFECTIVELY**

Accidents can happen, even with a plan in place. While most incidents are easily addressed, you must prepare for an unexpected event. Employees will look to management for guidance on how to act and move forward.

Being prepared allows you to immediately put the emergency plan into action, confidently addressing the needs of all who are impacted and avoiding missing key elements. If you are prepared in advance, you will be able to weather any incident, no matter the extent of the injury. Below are the major steps you should take:

1. In the case of a major injury or fatality, first seek medical attention for everyone in need;
2. After the injured are cared for, ensure the facility is secure and that no one else can be harmed or injured;
3. Do not disturb the scene, except to perform first aid and/or to prevent further injuries;

4. Report the incident to government agencies, as required by law. OSHA requires the reporting of any injuries or illnesses that result in death, loss of consciousness, days away from work, restricted work activity or job transfer, or medical treatment beyond first aid. Verify reporting timelines for your applicable jurisdiction; and
5. Once the scene is secured and the proper authorities have been notified, the employer should immediately conduct an internal investigation.

Accidents should be fully investigated by the employer. The investigation team should include both management and employees. Setting up and training the investigation team before an accident will allow for immediate action. An investigation should include, at a minimum:

- Interviews with those who witnessed the accident and/or who have relevant knowledge of the event;
- Visiting the site where the incident occurred (it is important to remember that until the site is released by all agencies involved, you cannot move anything except to provide first aid or to prevent another accident);
- Review of your company's existing accident prevention plan;
- Review of existing protective and safety equipment; and
- Review of manufacturer's recommended uses and operation manuals for any equipment involved in the accident.

The quality of your internal investigation can affect the outcome of any possible external investigation.

Once the internal investigation is complete, the employer must act on what it has learned. This includes updating the plan to reflect the results of the investigation. Failure to act on what is learned from the investigation could expose employees to potential hazards and lower morale, while also exposing employers to potential citations and fines. It is recommended that you contact legal counsel to address internal investigations and the anticipated external government agency investigations.

### **STRATEGICALLY HANDLE EXTERNAL ACCIDENT INVESTIGATIONS**

The sight of an agency investigator can bring stress to any workplace. If you have a well planned approach on how to address these investigations, you will go a long way toward reducing that stress.

In situations where there is a mandatory investigation by an enforcement agency, such as in a fatality investigation, contact your legal counsel early in the process. This allows you to get legal advice from the very beginning of the investigation and not have to spend time back-tracking once the matter moves to possible citations and fines.

OSHA investigations are usually in response to an accident or complaint. They may also be prescheduled as a routine check or follow-up to a previous investigation. You cannot ignore OSHA or state program inspectors when they arrive for an investigation. Any delay in allowing the agency access to the facility may result in creating an adversarial response from the agency. You need to ensure that you have a strategy in place should you be investigated, and consider involving legal counsel in that strategy.

Investigations can result in citations, fines and in some cases, jail time. This makes a plan even more critical. An investigation by OSHA or your state program inspector will have four basic components:

1. The opening conference;
2. Document request;
3. Employee and management interviews; and
4. A closing conference.

In addition, if citations are issued, there could be a subsequent appeal.

### ***The Opening Conference***

When OSHA or the state program inspectors arrive, they must conduct an opening conference with management and employees. As the employer, this is your first opportunity to find out the reason for the investigation. This may be straight forward, for example, you had an accident OSHA is investigating, or obscure, for example, OSHA received an anonymous complaint. Regardless of the reason, OSHA is there. This is your opportunity to start a dialogue with the agency. At the opening conference you should be able to determine how the agency intends to conduct the investigation and get an indication of the potential issues that may be raised. OSHA has six months from the opening conference to complete the investigation and issue any citations.

### ***Records Requested by the Inspectors***

During the investigation, OSHA or the state program inspector will ask you to produce your current plan. This request will include several parts of the plan, including those sections that relate directly to the accident or the complaint being investigating. While the focus will be

on the accident or complaint, the investigation can, and most likely will, reach beyond the single incident.

Most inspectors will seek to have these documents produced in an expedited manner. While you want to be cooperative, you do not have to blindly follow the timeline that the inspector sets. You have the right to review the records before they are produced and to have the records reviewed by your attorney for confidentiality issues. You may also want to consider designating some documents as trade secrets, which may prevent their disclosure to third parties. *Remember, any document produced to a government entity becomes a public record subject to public disclosure requests.*

During the document production phase, you will want to ensure you are providing only those documents requested. It is not uncommon for an employer to produce more material than requested, and then find out the extra material it provided resulted in an expanded investigation. The inspectors are not operating in a vacuum. They can and will expand an investigation beyond the original complaint/accident if they believe a possible violation exists.

### ***Interviews with Employees and Management***

Simultaneous with the records request, OSHA or the state program inspector will move forward with employee and management interviews. These interviews will, at a minimum, include employees who were exposed or injured, and supervisors and key management members responsible for safety and health at the company. Everyone interviewed has the right to have legal counsel or an employee representative present. If a union is involved, then the union will likely have an employee representative present at each member's interview. Those interviewed can request to have a manager or legal counsel present as well. It is important to work with your employees so they feel comfortable if they make this request.

The inspector will attempt to limit who can be present during the interviews. This should not deter an employer from requesting the opportunity to be present at all interviews. Management should never go into an interview with an inspector without legal counsel. Regardless of when and where the interview takes place, it is considered to be on the clock. You must allow the interview and you must pay for the employee's time spent in the interview.

### ***The Closing Conference***

Once OSHA or the state program inspectors complete the investigation, they will hold a closing conference. This is when they will provide the employer with the results of their investigation. In some jurisdictions this can be as detailed as providing you with a draft of the actual

citations they intend to issue. This is the opportunity for the employer to provide any additional materials to show why the citations should not be issued. It is not, however, the time to argue why a particular citation is incorrect.

During this conference, the employer should attempt to gather as much information as possible about why inspectors believe there is a potential violation. This is your opportunity to conduct informal discovery. At the end of this conference, an employer should have a good idea of what citation the agency will issue and the evidence supporting those citations.

### ***Appeal of the Citations***

Once citations are issued, you have a short time to appeal or request an informal or reassumption hearing. Since everything said at these informal hearings can be used against you in the formal appeal, it is recommended that you have legal counsel at any such hearings and during any subsequent appeals.

Remember, the time you spend developing a safety program today is an investment that will save your company money and increase employee morale in the long run. When an accident does occur, following the steps provided above will change your company's experience from that of a potential train wreck, to that of a slight detour, enabling you to more easily get your company back on track. Do your part to ensure your company is prepared for the unexpected.