

# Managing a Worksite Accident

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# Considerations When Managing a Worksite Accident

- 1) Be Prepared
- 2) The Site Investigation
- 3) Communicating with Media
- 4) Working with OSHA
- 5) Reporting
- 6) Follow Up

# Be Prepared

- 1) Prevention is best: have clearly communicated and documented policies for workplace safety and prevention of accidents.
- 2) Have a clear policy for what to do when an accident occurs and educate your employees.



# Be Prepared

## Have Clearly Communicated Workplace Safety Policies

OSHA considers the GC the “controlling employer, on multiple employer jobsites” and is responsible for job site safety.

GCs are required to make “reasonable efforts” →

1. Have a written safety program;
2. Must have employees who are trained to manage, maintain and enforce that program;
3. Must routinely inspect the site to identify and then correct any safety hazards; and
4. Coordinate with subs to correct their violations.

# Be Prepared

## Will Safety Policies Subject GC to more liability?

- Violations of OSHA are not enough to prove negligence as a matter of law, but can be used as evidence. Likewise, compliance with OSHA may not be enough to avoid lawsuit, but can be used as evidence.
- OSHA Regulations do NOT expand a state's common law duties
- A GC owes a "narrow duty": the GC's safety requirements and procedures must not unreasonably increase the probability and severity of injury. *Hoechst-Celanese Corp. v. Mendez*, 967 S.W.2d 354 (Tex. 1998).

# Be Prepared

## Have a Plan When an Accident Does Occur

- Who should handle immediate response;
- Who will handle controlling site and investigation;
- Who will be media point of contact;
- Create immediate crisis response plan;
- Provide employees with a resource of accurate information;

# Be Prepared

## Have a Plan When an Accident Does Occur

- Create list of what to be investigated and information to be collected;
- Create investigation and interview forms;
- Create procedure on documenting investigation;
- Select and train investigators;
- Have list of outside third parties (i.e., safety investigators, attorneys, etc.) to bring them in early on in process.

# The Site Investigation

## 1) RESPOND IMMEDIATELY

- Notify emergency responders and attend to injuries and damages.
- Secure site to ensure safety - goal is to prevent workers/public to additional hazards.
- Shut down/secure site to conduct investigation - goal is to prevent tampering with evidence.
- Notify company's response team - goal to determine depth of investigation needed.
- Notify personnel and workers' family members.



# The Site Investigation

## 1) RESPOND IMMEDIATELY

- Notify insurance carrier
  - Claims reported during the second week after an occurrence had an average settlement value that was 18 percent higher than that for claims reported during the first week;
  - Waiting until the third or fourth week resulted in claims costs that were 30 percent higher;
  - Claims not reported until one month after occurrence were typically 45 percent higher.

# The Site Investigation

## 2) GATHER INFORMATION

### ■ Witness Statements:

- Get statements in writing and signed (even if witness says that he did not see anything);
- Ask open ended questions;
- Conduct interviews in a quiet place;
- Ask who, when, what, why and how questions;
- Get phone numbers, addresses, any other details on witness.

# The Site Investigation

## 2) GATHER INFORMATION

- Gather/preserve records/documents that would be helpful;
  - Equipment logs, daily reports, videos on scene, onsite training materials, etc.
- Take photos and videos of scenes;
- Gather additional documents that are relevant;
- Collect necessary data, measurements or conduct testing (this may require expert);

# The Site Investigation

## 2) GATHER INFORMATION

- Find out information on injured worker:
  - age, department, job title, experience level, tenure in company and job, training records, and whether they are full-time, part-time, seasonal, temporary or contract

# The Site Investigation

## 2) GATHER INFORMATION

- Document the details of incident: location; objects or substances involved in event; conditions such as temperature, light, noise, weather; how injury occurred; whether preventive measure had been in place; events leading up to injury; what happened after injury.
- Document Characteristics of Equipment/Machinery or Work being performed at time of incident

# Communicating with Media



- This should be analyzed on case by case basis.
- When talking to media:
  - Appoint one person to discuss with media;
  - Do not run away, push cameras away or seem angry;
  - Do not accept responsibility, instead focus on empathy for victims and what you are doing to help.

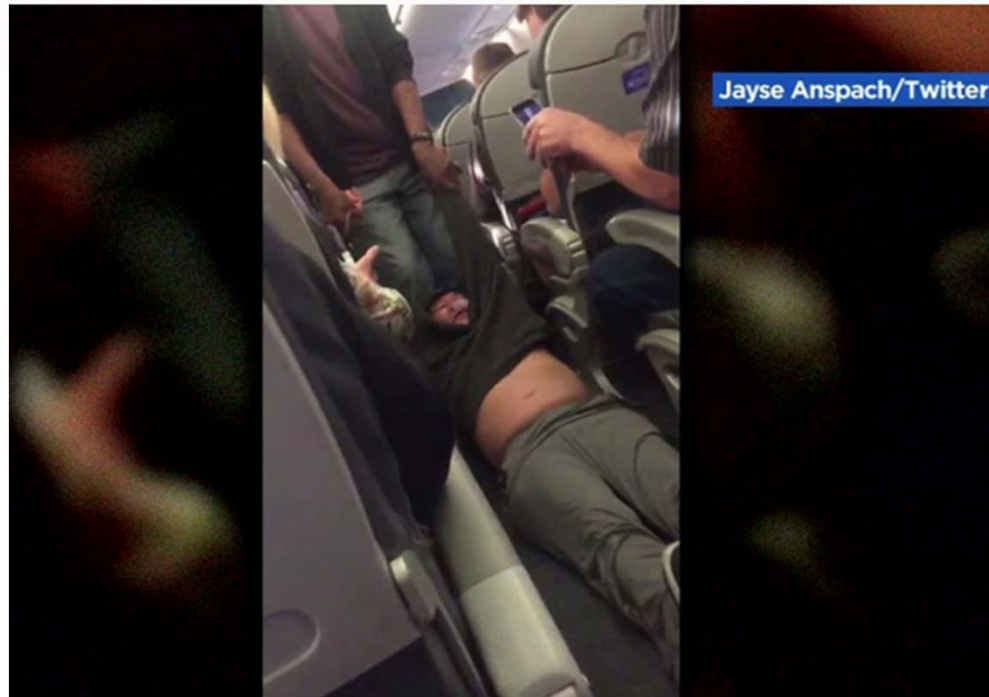
# Communicating with Media

Examples of BAD interviews/handling of events:



BP CEO: "there is no one that wants this thing over more than I do. You know, I'd like my life back."

## Examples of BAD interviews/handling of events:



April 10, 2017 – Chief Executive in written statement:  
“This is an upsetting event to all of us here at United. I apologize for having *to re-accommodate these customers.*”



# Working With OSHA



- When do you have to report to OSHA?
  - When an employee is killed on the job OR
  - Employee suffers a work-related hospitalization, amputation, or loss of an eye.
- A fatality must be reported within 8 hours.
- An in-patient hospitalization, amputation, or eye loss must be reported within 24 hours.

# Working With OSHA

- Determine who will communicate and work with inspector;
- Know your safety procedures and rules in place;
- Organize OSHA logs and know and provide evidence of safety inspections to show that you were following safety protocols;
- Hire legal counsel or OSHA expert to help work with OSHA and any other governmental entity investigating incident;

# Working With OSHA

- Consult counsel before allowing OSHA to take photos or videos.
- Conduct mock OSHA inspection;
- Honestly provide information that is requested, but do not volunteer and keep tabs on what is provided.
- Prepare employees for OSHA interview and maintain attorney-client privilege.

# Reporting

## 1) Recount incident and facts gathered;

- Include background information of events leading up to accident;
- who was at job site before, during and after;
- include incident timeline;
- follow up events;
- witness interviews and contact information;
- summary of evidence, including photos, videos, documents reviewed, etc.;
- details of equipment involved;
- any history of injured employee;
- details of actual injury;
- details of any interviews with first responders.

# Reporting

2) Include theories of immediate and underlying causes;

- Typically multiple causes for an accident involving equipment, environment, and people (procedures not understood or followed) or management (allowed shortcuts).

3) Include list of backup documentation, witness interviews, photographs, and other evidence gathered and reviewed;

4) Consider follow up interviews necessary, even with first responders;

# Reporting

5) Include summary of who and when you reported incident (workers comp carrier, other ins. carrier, OSHA, etc.);

6) Preserve any attorney-client privileges for reporting;

- Must be able to demonstrate that the internal investigation was conducted for the purpose of obtaining legal advice;
- Attorneys should direct and initiate internal investigation;
- Investigative work can be delegated to non-attorneys' agents, as long as an attorney is directing and overseeing their work;
- Consult legal counsel before sharing information;
- Clearly mark/designate document "Attorney-Client Privileged"

# Follow Up

- 1) Follow up with injured employee
- 2) Make necessary changes to safety policies and procedures for future prevention;
- 3) Assess need for training employees;
- 4) Provide resource for employees to ask questions after catastrophic event;
- 5) Make necessary changes to site to ensure handling of future;

# Follow Up

- 6) Research past OSHA violations;
- 7) Make sure workers' comp carrier is on notice and other relevant carriers;
- 8) Follow up on your coverage available and coverage of subs or other players.



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