

Practical guide to workplace incident investigation

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This column often focuses on decisions from the courts, and on highlighting what has gone wrong in various businesses. This month, for a positive change, the focus is on what you can do to get things right when dealing with a workplace incident.

If a serious harm incident occurs in your workplace, there are a number of things you should do. These include ensuring no one disturbs the scene (except to give medical treatment or avoid property damage), and reporting the incident to the Department of Labour (by calling 0800 20 90 20 and then submitting the standard notification form available at www.dol.govt.nz within seven days of the incident). You should also notify the victim's family or support person, advise your lawyer (if the incident is severe) and your insurance company (if you have statutory liability insurance) of the accident.

In the following days you should talk to other staff and contractors to keep them informed about what happened, visit the victim and offer your support, make immediate changes in your business (if necessary) and/or conduct training sessions so everyone working in the area where the incident occurred is aware of the hazards and procedures to prevent another incident. Lastly, you should investigate the incident and assess its cause and any relevant significant hazards to prevent it from re-occurring.

Depending on the nature of the incident and the seriousness of the harm, the Department of Labour may send an inspector to investigate. If an inspector arrives on the scene, he or she must prove his/her identity, and then is likely to assess the scene and ensure the hazard that hurt the victim is controlled. The inspector may take photos, measurements, sketches or samples and ask staff and contractors for statements. The inspector can also require you to disclose documents held onsite.

It is always sensible for you to co-operate with the Department of Labour during the investigation process. Being helpful may make the inspector less inclined to take enforcement action, and is always a

mitigating factor if a prosecution ensues. To control, or at least influence, the investigation process it is worthwhile trying to agree a plan with the inspector at the beginning of the investigation.

As part of your regular health and safety training, you should look to educate your staff and contractors about how to communicate with an inspector when approached during an investigation. For example, did you know employees (as opposed to the employer) don't need to answer an inspector's questions if they don't want to?

An inspector may seek to conduct formal witness interviews under caution. Again, employees do not need to answer the questions,

although you will almost always want to encourage them to do so. An employer must attend an interview, but you can select the person you wish to act as the formal company representative and speak on behalf of the company. Importantly, you should remember the company representative is not required to give any answer or information which

may incriminate the business or the individual personally. It will usually be sensible to engage the services of a lawyer to attend any interview under caution to help avoid inadvertent self-incrimination.

It is important to ensure all relevant helpful material is disclosed to the inspector. You'd be amazed how many businesses don't do this and instead keep helpful information private. If you have a comprehensive internal investigation report that analyses the incident, identifies the causes and sets out the measures taken to avoid a repeat, think about disclosing it to the inspector unless it includes something that may be damaging (and, even then, consider disclosing it in an amended form).

Ultimately, the Department of Labour will form its own view about the incident and about whether enforcement action is appropriate. Ensuring the inspector sees you as reasonable and responsible is the best way to persuade an inspector that no further action is required.

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