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How to Run Your Own Investigation as a Result of a Workplace Accident

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As with any workplace investigation, the performance of an investigation into a workplace accident requires considerable preparation, skill, thought, speed, organization and discretion.

Without exception, the first priority must be to the provision of appropriate medical attention. If an accident is ever reviewed by a court or governmental authority, a negative impression will be created if it appears that the employer was more concerned about an issue other than the health of the worker.

Prior to an accident ever taking place, at least one company representative should be designated to be the person in charge of accident investigations. That representative should be well-grounded in workplace safety issues and already have plotted out a framework for conducting an investigation, so as to be prepared for the task. If that representative is not available to conduct the investigation, consideration should be given to using an outside professional. The key is to ensure that whomever manages the investigation is properly trained and prepared.

After ensuring that appropriate medical assistance has been provided, the internal investigation should begin as soon as possible. Pending possible arrival of the Ministry of Labour, the scene of the accident and any equipment or materials should not be disturbed.

The internal investigator should be sure to document, document, document! Meticulous notes must be kept and if appropriate, photos taken, with dates and times recorded. Take measurements. Proper documentation will be invaluable if a dispute subsequently arises as to what actually happened. If the company has internal security cameras, the video taken should be reviewed. If notes are subsequently typed out, save the original handwritten notes. All evidence collected should be carefully preserved in a safe and secure location.

Interview all witnesses regarding their observations of the accident, and what training they may have received regarding hazards, rules and warnings. If possible, obtain witness signatures to verify the accuracy of the information obtained.

If the accident appears to have been caused by employee wrongdoing, it may become necessary to exercise discipline. If so, it is prudent to have a second person with the internal investigator while anyone under suspicion is being questioned. The second person should assume the role of note taker, and the questioning should be conducted by the investigator.

If the accident involves equipment or other technical failure, consider retaining an outside technical expert to assess the cause of such failure.

Company training records, inspection schedules and prior corrective steps taken should be reviewed.

Although not part of the investigation process, be sure to fulfil

the accident reporting requirements under the Workplace Safety and Insurance Act and Occupational Health and Safety Act. The internal investigator should coordinate the information obtained with what is being reported to governmental authorities.

The investigator should be aware that the Occupational Health and Safety Act prohibits any reprisal as a result of anyone seeking to enforce his or her rights to a safe workplace. Care should be exercised to avoid any action during the investigation which might have the appearance of being a reprisal.

If contacted by a Ministry of Labour investigator, be aware that employers are required to cooperate with the Ministry's investigation. It should be kept in mind that the Ministry can lay charges against the company and individual employees, including management, as a result of an accident. In extreme cases, charges can even be laid under the Criminal Code. Companies and individuals are potentially liable to substantial fines or even imprisonment.

Corrective measures should be taken if indicated by the results of the investigation.

“Mistakes made during an investigation can result in irreversible harm to the company, individual employees and management.”

Finally, while, with proper training and preparation, a workplace investigation can be carried out internally, a caveat applies: if the accident is an obviously serious one, such as one requiring an ambulance, consider retaining the immediate assistance of a professional outside the company. Mistakes made during an investigation can result in irreversible harm to the company, individual employees and management. With proper precautions, liability can be reduced or even avoided.

The team at Sherrard Kuzz LLP has extensive experience assisting companies to prepare for and, where necessary, appropriately react to a workplace accident. For more information, please contact us.

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