

ACCIDENT INVESTIGATIONS

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Quick! There has been a serious accident at your job site, with a life-threatening injury. What do you do? This piece will take you step-by-step through a good accident investigation that will help in a lawsuit, without getting down in the weeds of what OSHA or other regulatory schemes require. Those are topics for another time.

So here are the basic steps:

- 1) **Get first aid to the victim.** This is super obvious. Get help to the injured immediately and show your concern, regardless of what happened.
- 2) **Secure the scene.** The reason for securing the scene is also obvious, but to make sure we are clear, I will say it must be done so the look of the scene and all evidence are preserved for appropriate authorities and investigators. Stop any work that is anywhere in the vicinity of the accident. Make sure nobody else comes onto the scene of the accident. This is not a “lockdown” situation, so I won’t say “nobody out” in addition to “nobody in.” But someone on your team has to make sure your company knows who was around the scene of the accident. Preserve the scene exactly. Do not change anything!
- 3) **Call your lawyer.** If you have not had to have a lawyer in the past, congratulations! But you do now. That lawyer should quickly talk to you about what to do, but most importantly ask you to conduct an investigation “in anticipation of litigation.” When should you and your lawyer anticipate litigation after an accident? Every time! All accidents will not turn into formal lawsuits, of course, but you must anticipate litigation when a significant accident occurs. If your lawyer instructs you to do an investigation, and it is done “in anticipation of litigation,” the results of that investigation should – emphasis on should – be considered that lawyer’s work product and not available through discovery to any parties in a lawsuit. In simple terms, you should be able to protect at least most of your investigation from the person suing you if your lawyer has you do an investigation and you and your lawyer anticipated a lawsuit. So call your lawyer right away (and document when you did), and definitely call BEFORE you do any investigation!
- 4) **Call your insurance agent.** Bigger, national insurance companies have teams that they dispatch quickly to serious accidents and do thorough investigations. But those resources are no good if you don’t call your insurance agent right away. I have handled cases where investigators from other states got to an accident scene within hours, and it made a huge difference in the evidence that

was gathered. Even if you do not feel an accident is serious enough to be reportable to your insurance agent, go ahead and report it because you do not want to have an argument about coverage later because of your failure to quickly report an accident. Insurance policies can be very tough on time limits for reporting accidents, so report right away.

5) **Take pictures.** Have someone on your team take pictures of every aspect of the accident scene, from all angles. We know what they say about the impact of pictures versus words, and I have seen it in numerous lawsuits. Even things that may seem insignificant, like a piece of equipment that is not in the immediate scene of the accident or the angle of the sun at the time of the accident, can have a huge impact on a lawsuit. So take numerous pictures and have some documentation on exactly who took them and exactly what time. Keep the pictures, in whatever digital format they may be (but not just your phone), and documentation related to them in your file on your investigation.

6) **Take statements.** Take short, simple statements from all people that were even halfway close to the scene. Have those folks write out the statements in their own hand so there cannot be any suggestion that you put thoughts in their heads. Make sure they write legibly, of course. Get them to include their home addresses and their cell phone numbers, as we know some folks in construction move around quite a bit and can be difficult to find years later. I can't emphasize enough how important it is to get statements from everyone that might possibly know anything that could help. I have had several lawsuits where a statement was not taken because the person did not actually see the accident, but it turns out they heard something right after the accident that had a huge impact on the case. So get statements from everyone.

7) **Send to your lawyer.** Right away, send the pictures, statements, and anything else you gathered in your investigation to your lawyer. This is part of the "in anticipation of litigation" idea that is required to protect the results of your investigation. If you do not quickly send your investigation to your lawyer, then someone can argue that you must not have really been concerned about a lawsuit. Your lawyer will need to know what your investigation revealed to give some guidance on what experts might be needed quickly, etc. He may need to be present for expert inspections. In short, your lawyer has to know quickly all that you know about the accident.

8) **Media.** Talk to your lawyer about what you will say, if anything, if contacted by the press. Significant construction accidents are frequently big news, especially in smaller towns. So have someone designated to speak for the company in these situations, and have that person discuss it with your lawyer right away, before a reporter puts someone on the spot. Make sure all your employees know to

not say anything and to refer any member of the media (in today's broadest sense of "media") to the company spokesman.

Use the steps above as a guide to put together your company's plan on accident investigations. Make sure your employees know the plan. Following a plan like this could really make a huge difference in a big lawsuit on a serious accident, and maybe save your company.

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