WHAT TO DO WHEN AN ACCIDENT, INJURY OR FATALITY OCCURS AT A JOB SITE

Sometimes, despite all the safety precautions at a job site, an accident occurs and employees are injured or, worse, killed. This Sidebar discusses what to do when an accident, injury or fatality occurs at your job site.

First, when an accident or fatality occurs, you should focus your efforts on offering support to the family of the injured or deceased employee. A company representative of management should be present at the hospital. There should be no hesitancy in assuring all involved that the company will take all necessary steps to determine the cause of the accident. Some companies may wish to offer financial assistance for funeral arrangements, contacting long-distance family members and arranging for family transportation. A company should not hesitate to offer this assistance for fear that it gives an appearance of culpability for the accident or fatality.

When a death or critical injury occurs on a construction site, it is not only the victims and their families that suffer. Depending on the nature of the accident, some or all of your company’s employees may be emotionally affected by the events. Consider providing your employees with access to an employee assistance program, which may be able to provide a counselor to help employees handle grief and other emotions associated with the accident. If an accident results in a fatality, or three or more employees are hospitalized, it must be reported to the Occupational Safety and Health Association (OSHA) within eight hours of the accident. A failure to report a fatality or covered accident is an OSHA violation.

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Your company’s insurance carrier should also be notified of the accident or fatality. In most cases, this may be accomplished by notifying your insurance agent. All potential carriers should be contacted, including the carriers for your workers’ compensation and general liability policies. These policies must also be reviewed to ensure any specific notice requirements are met. Once the carrier is notified, it will likely begin its own investigation.

While your insurance company will do its investigation, it is helpful to conduct your own internal investigation. Your investigation can begin by interviewing attending physicians and hospital personnel while at the hospital. If possible, determine whether drugs and/or alcohol may have been a factor in the accident. If drugs and/or alcohol are suspected, ask how to ensure that blood samples are tested. In most states, if a drug test reveals an employee had drugs in his system, a presumption arises the injury was caused by illegal drug use unless the drugs were lawfully prescribed by a physician and taken in accordance with such prescription. The presumption also arises if an employee refuses to submit to a drug or alcohol test. The presumption puts the burden of proof on an employee to show an injury was not caused by drug use or intoxication. If an employee cannot overcome the presumption that drug use caused an accident, his workers’ compensation claim will be denied.

Your on-site investigation should begin as soon as possible after the accident. You should photograph or videotape (or both) the job site and the conditions surrounding the accident. All company vehicles and other items left on the job site should be searched. Ideally, your attorney should be present while interviewing each employee who was present during or close to the time of the accident. The investigation should conclude with you having a thorough understanding of the facts, including what work was being performed at the time, what safety practices were in effect, why any safety precautions may not have been taken, what factors may
have contributed to the accident and whether any employees from other companies were involved.

Lastly, be sure to review the company’s contract for its work at the project where the accident or fatality occurs. Many construction contracts contain an indemnification clause requiring the roofing contractor to indemnify and defend the general contractor and/or owner in the event either suffers a loss as a result of any personal injury at the job site. If this is the case, your insurance carrier should be notified of this fact. If your contract contains an additional insured provision, your carrier may be covering any claim made against the general contractor and/or owner providing another reason to ensure any applicable notice requirements within the policy are met.