BD&P
LAW FIRM

Don’t Learn OH&S in Real Time: What Employers Should Have in Place Before an Incident

By Craig Alcock and Gurjot Sekhon

Executive Summary

Employers should establish documented training records, assign incident response roles, maintain accessible safety records, understand scene preservation requirements, and have a plan for regulatory communications before an incident occurs. These five areas can significantly influence the outcome of an OH&S investigation. In many OH&S investigations, the issue is not whether an employer complied with its obligations, but whether it can prove that it did.

A worker is seriously injured on site. As emergency responders arrive, an Occupational Health and Safety (OHS) officer begins an investigation.

The organization's preparedness is immediately put to the test:

- No one can confirm who is responsible for the site.
- Training records cannot be found or are incomplete.
- No one knows who is responsible for notifying the regulator or preserving evidence.
- The scene has been disturbed before documentation.
- Different employees give inconsistent statements.
- The internal report speculates on fault before the facts are confirmed.

What should have been a controlled, compliant response quickly becomes a disorganized investigation with increased legal exposure.

OH&S Incident Readiness Checklist

- Training records are complete and accessible
- Incident response roles are assigned
- Safety documentation can be produced quickly
- Procedures for preserving the incident scene are understood
- Investigation communications are coordinated
- Legal counsel can be engaged quickly when required

Why Preparation Matters

Regulators expect employers to have systems in place before an incident occurs. The actions taken in the first hours following a workplace incident can significantly affect an investigation. Strong safety programs, clear responsibilities, and organized documentation help employers demonstrate due diligence and respond effectively.

1. Can you prove your workers received required training?

Providing appropriate and adequate training is a part of an employer's obligation.

Training records should clearly identify who attended, when the training occurred, what topics were covered, and whether refresher training was completed where required. Documentation for supervisors and contractors should also be maintained where applicable.

Incomplete or inconsistent records are a common issue during investigations. If an employer cannot produce evidence that required training took place, regulators may question whether it occurred at all.

2. Could you produce critical safety records today?

Important safety records should be organized, current, and stored on a readily accessible system. During an investigation, employers may be asked to produce policies, safe work procedures, inspection reports, maintenance records, hazard assessments, and training documentation with little notice.

Organizations should also identify who can access these records during an emergency, including after regular business hours if necessary. A well-organized document management process can reduce confusion and support a more efficient response.

3. What must employers do immediately after a serious workplace incident?

Following a serious workplace incident, the priority is always to protect workers and provide any necessary emergency assistance. Once the situation is safe, employers must also consider their legal obligations regarding the incident scene.

Preserving the scene is a legal requirement. Altering equipment, moving materials unnecessarily, or cleaning the area before it has been documented may compromise an investigation and create additional compliance concerns.

Employers should ensure required notifications are made promptly and that responsibility for coordinating the initial response is clearly understood. Documenting the scene through photographs and notes will assist in preserving important evidence.

4. Who should communicate with OH&S investigators?

A coordinated response depends on clear communication. Employers should identify in advance who is responsible for communicating with regulators, coordinating internal information, and managing external communications where necessary.

Managers and supervisors should understand their roles if they are asked to speak with investigators. Information provided should be accurate, factual, and based on what is known at the time. Speculation, assumptions, or attempts to assign blame before the facts have been established can create unnecessary legal risk.

Consistent communication helps ensure that the organization responds professionally while avoiding confusion during a stressful situation.

5. When should employers contact legal counsel after an incident?

Legal guidance is often most valuable at the outset of a serious workplace incident. Early involvement can help employers understand their reporting obligations, respond appropriately to regulator requests, and navigate the investigation process.

Legal counsel can also assist in reviewing investigation reports, advising on communications, and helping organizations avoid unnecessary statements that may increase liability. Where appropriate, early legal involvement may also assist in protecting privileged communications and ensuring the investigation is conducted effectively.

Seeking legal advice early is not about avoiding accountability. It is about ensuring the organization responds in a way that is informed, compliant, and consistent with its legal obligations.

Preparation is the difference between a controlled response and a crisis. Employers that establish clear responsibilities, maintain organized records, document training, and understand their legal obligations are better positioned to respond effectively when a serious incident occurs.

Are you Prepared for an OH&S Investigation Today?

Many employers discover gaps in their incident response process only after an investigation begins. A proactive review can help identify and address those gaps before regulators do.

Contact BD&P's **Occupational Health and Safety** team to assess your incident readiness and strengthen your response protocols.

Craig Alcock is a Litigation Partner at BD&P who advises employers on occupational health and safety, regulatory compliance and incident response. He helps organizations manage workplace risk, navigate regulatory investigations and develop practical strategies to meet their legal obligations.

Gurjot Sekhon is an Employment Associate at BD&P who advises employers on occupational health and safety, workplace compliance and regulatory matters. He works with clients to address workplace incidents, manage risk and navigate complex health and safety obligations.