

OHS Investigations: What to Do in the First 24 Hours After a Serious Incident

By: Craig Alcock & Gurjot Sekhon

A serious workplace incident can trigger regulatory investigations, civil claims, reputational harm, and potential liability for employers, managers, and supervisors. Whether the incident occurs on a construction site, industrial facility, or corporate workplace, the decisions made in the first 24 hours can significantly affect an organization's ability to respond and manage risk.

Construction incidents often involve multiple parties, including owners, prime contractors, subcontractors, consultants, and workers from different employers. In these situations, preserving evidence, maintaining accurate records, and coordinating communications are particularly important, as multiple organizations may be subject to regulatory scrutiny arising from the same event.

Serious workplace incidents can also trigger employment-related issues, including employee interviews, work refusals, accommodation obligations, fitness-for-duty concerns, and disciplinary decisions. Employers should ensure these matters are addressed based on documented facts, in compliance with legal obligations, and in a manner that does not interfere with ongoing investigations. Coordinating with both OHS and employment counsel can help reduce legal risk and workplace disruption.

Key Takeaways

- Establish clear reporting triggers, timelines and accountability in advance
- Act immediately: report, secure the scene, and engage internal response
- Control information flow; route external communications through one lead
- Preserve evidence and obtain prompt, individual, fact-based witness accounts
- Cooperate with regulators while protecting legal privilege
- Keep records accurate, contemporaneous, and strictly factual – avoid speculation or backfilling

Serious incidents demand a disciplined, legally informed response. The first 24 hours set the tone for regulatory engagement, evidence integrity, and potential liability. A clear plan ensures your team reports promptly, preserves critical evidence, cooperates appropriately, and protects the organization's legal position.

What goes wrong when a serious workplace incident occurs, and the first 24 hours are unstructured:

- Delayed reporting or notifying the wrong parties
- Altering or cleaning the scene before authorities attend
- Unmanaged communications that harm privilege and reputation
- Statements include assumptions and cause
- Inconsistent notes and retroactive records that undermine credibility

These early missteps complicate and potentially compromise the investigation and increase exposure to the organization and individuals.

Why the First 24 Hours Matter

Potential consequences include:

- Administrative penalties
- OHS charges
- Supervisor liability
- Director and officer exposure
- Civil claims
- Insurance disputes
- Reputation damage

What workplace incidents must be reported?

- Determine if the event triggers reporting (e.g., fatalities, critical injuries, prescribed incidents)
- Notify required regulators and internal stakeholders without delay
- Use factual, concise descriptions; avoid speculation or legal conclusions
- Calendar follow-up deadlines and document what was reported, when, and by whom

How should an employer preserve an incident scene?

- Secure and restrict access; stop affected work as required
- Do not disturb the scene except to prevent further harm

- Identify, tag, and retain equipment, materials, documents, and digital data
- Log all preservation steps and any necessary alterations for safety

What should employers say to OHS investigators?

- Designate a single point of contact for regulators and law enforcement
- Provide access and records as legally required; keep copies of what is provided
- Take careful notes of all requests and attendance details
- Clarify scope and timing; request written confirmations where appropriate

How should witness interviews be handled?

- Identify and separate witnesses promptly; avoid group discussions
- Collect timely, factual accounts; note times, locations, and observations
- Avoid leading questions or coaching; record who took the statement and when
- Preserve drafts and final versions in an organized, dated file

When does legal privilege apply?

- Engage counsel early to assist with internal reviews
- Label privileged communications clearly and limit circulation on a need-to-know basis
- Keep non-privileged updates factual and brief; avoid opinions and blame
- Align internal, regulatory, and external messaging through the designated lead

Avoiding retroactive records:

- Do not backdate or “fix” documents, training logs, or procedures
- If gaps exist, prepare a dated corrective plan going forward
- Separate factual incident records from post-incident improvements
- Maintain an audit trail of all actions taken after the incident

Frequently Asked Questions

1. Can an employer conduct its own investigation after a workplace incident?

Yes, an employer is required to conduct its own investigation after a workplace accident.

2. Can the incident scene be cleaned before OHS arrives?

No, an employer is required to not disturb the scene, except to attend to persons injured or killed, prevent further injuries or incidents, or protect property endangered as a result of the injury or incident.

3. Should witness statements be collected immediately?

Yes, when practicable. Want the best recollection of events.

4. When should legal counsel be involved?

Immediately if possible, or early as practicable. Counsel should be involved when there is a reasonable prospect of litigation.

5. What records should be preserved?

All relevant data to the incident and individuals involved, including but not limited to, witness statements, photographs, equipment logs, training records, policies, investigation reports, and corrective action plans.

Conclusion

The first 24 hours following a serious workplace incident are often the most consequential. Organizations that prepare in advance, respond promptly, preserve evidence, and carefully manage communications are better positioned to meet regulatory obligations and reduce legal risk. Employers should ensure incident response protocols are established before an incident occurs, not after one.

Our Occupational Health and Safety, Employment, and Construction Law teams regularly advise employers, contractors, and project owners responding to workplace incidents, regulatory investigations, and enforcement proceedings.