

100%

Safety

A PRACTICAL GUIDE FOR EMPLOYERS

How to navigate a workplace fatality

Guidance through the response,
the investigation and what follows.

100% Safety Inc.

Support through the hardest days.

Foreword & disclaimer

We have developed this guide as a reference to assist those going through the unfortunate event of a workplace fatality. If you are reading this after experiencing a workplace fatality, we are so sorry for your loss.

We hope this document provides a guiding light through a time of darkness for your organization.

This information is based on our own experiences handling these situations, both during and after the event. We are not OH&S lawyers.

We cannot stress enough how important it is to seek out and obtain legal counsel to assist and advise you through this process.

The content of this guide is intended to provide general information and is not to be relied on as legal advice or opinion.

Notes

Call 911 & contact OH&S

Call 911 first to get medical and emergency teams to the location.

The police or emergency services may declare the worker deceased at the scene, under the direction of a physician. This will start the process of government and next-of-kin reporting.

Ensure that next-of-kin information is provided to the police so they can contact the family of the deceased.

Emergency services will arrange for transportation of the body from the location.

Occupational fatalities are reportable to Alberta OH&S.

Prompt reporting is imperative to ensure a timely investigation and compliance with the OH&S Act.

Do not rely on the police or emergency services to make this call on your behalf. Failing to make the call can result in an OH&S order to implement reporting processes, as reporting is an obligation of the employer (or prime contractor) under the OH&S Act.

Notes

Next of kin notification

The police will call the family to notify them of the loss of life.

This information should come from government-regulated service providers before it comes from the employer.

This is not only because it is the duty of police officers, but also to ensure that the information is not passed on to the family before the worker has been confirmed deceased. A premature notification could cause unnecessary hardship and grief if the worker has experienced a significant, non-fatal injury.

The employer may wish to reach out after emergency services have made this call to offer condolences and pay their respects to the family.

Notes

Freeze the scene

Under the OH&S Act, the scene must be frozen. Specifically, the legislation states:

“Except as otherwise directed by a Director, an occupational health and safety officer or a police officer, a person shall not disturb or conduct work at the scene of an injury, illness or incident required to be reported under subsection (1), including the immediate area where the injury, illness or incident occurred, or alter, move or remove equipment, documents or other information that may be related to the injury, illness or incident, except insofar as is necessary in

- (a) attending to persons that are ill, injured or killed,
- (b) preventing further injuries, illnesses or incidents, and
- (c) protecting property that is endangered as a result of the injury, illness or incident.”

Notes

Take pictures

The scene must remain frozen and undisturbed, as stated in the previous step. However, this does not restrict an employer from taking photos of the incident scene, as long as the scene remains undisturbed.

This is paramount to ensuring that we collect as much evidence as possible before OH&S arrives and begins disturbing the scene, moving items or taking materials.

When OH&S arrives, investigators may ask all parties to vacate the area while they conduct their investigation.

They may also take materials, as authorized under section 34(e) of the Act. The employer will receive a receipt for any items taken.

Notes

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Retain an OH&S lawyer

Navigating major OH&S-reportable incidents can be daunting.

Will I get fined? Is there a chance of prosecution? What is going to happen?

An OH&S lawyer assists with the legal aspects of these incidents in multiple ways:

1. They provide legal privilege.
2. They review your documentation before submission to OH&S, including demand responses, final incident investigation submissions upon demand, and more.
3. They can review your orders to ensure that OH&S is not overstepping its administrative authority.
4. They can assist with reporting to your insurance company.
5. The organization will need legal representation if charges are laid.

An OH&S lawyer specializes in OH&S law. While the organization may have a corporate lawyer or contract lawyer, these are not the same as an OH&S lawyer.

Notes

Complete onsite interviews

While we want to allow personnel time to grieve when these incidents occur, it is imperative that we gather the information witnesses have while it is still fresh.

Gather your witnesses as soon as possible after the event and have them write out their statements about the events that took place.

It is good practice to let these workers know that OH&S will interview them as well when investigators arrive.

It is important to remind workers to be honest with OH&S, provide factual answers, avoid speculation or assumptions, and not speak on behalf of the organization.

Notes

Hire a qualified HSE consultant

Even if your organization has a safety representative, they may not have navigated an OH&S fatality investigation. An experienced, qualified HSE consultant can competently walk you through this process.

In some instances, your internal representative may also need crisis counselling and may not be up to the task of completing these investigations.

Our team has experience working through the steps and processes following occupational fatalities, including assistance with:

- WCB fatality reporting;
- Securing crisis counsellors;
- Retaining legal representation on behalf of the employer;
- Preparing both internal and OH&S incident report documents;
- Closing OH&S orders arising from the incident; and
- Drafting formal demand responses.

Notes

While OH&S is on site

It is important to cooperate with regulators while they undertake their investigation. However, we need to remember that OH&S is investigating on behalf of the government, and that investigation could lead to prosecution.

Investigators will take notes, photos, diagrams, materials, statements, etc.

Depending on the circumstances surrounding the fatality, they may refer the investigation for prosecution.

They have two years less one day to make this decision. Keep this in mind: communicate factual information only, and do not speculate.

Do not impede their ability to conduct their investigation.

Notes

Involve a crisis counsellor

Whether workers witnessed the event or were otherwise impacted by it, crisis counselling is more than likely going to be needed.

Keep in mind that psychological injuries are WCB-compensable, so spending money up front on counselling can assist in reducing WCB claims in the future.

If your organization provides worker benefits, crisis counselling options may be available through your benefits provider.

This step is crucial to helping workers unpack what happened and discuss their feelings and emotions following these events.

For more information on WCB psychological injuries, [click here](#).

Notes

Notify the WCB

When a worker has been declared deceased, the Workers' Compensation Board must be notified.

The WCB will:

- Provide partial funding for burial, cremation and memorial expenses;
- Provide a fatality award benefit;
- Provide grief counselling services to spouses or partners and immediate family members; and
- Provide other financial support under the WCB Act.

Find more information here: [WCB Fatality & Survivor Benefits](#).

Notes

Gather documentation and pertinent information

Within 24-48 hours of OH&S leaving the incident scene, the organization can expect to receive demand letters.

These letters will identify exactly what OH&S needs to perform its investigation. This can include engineered drawings, preventative maintenance records for equipment, and worker competency and training files. It will always include witness statements taken by the employer from workers on site.

Gathering this information as soon as possible ensures timely compliance with OH&S demands.

DO NOT fabricate missing documentation.

If the organization does not have the documentation OH&S is asking for, legal counsel can advise on the steps to take to answer the demand truthfully.

Notes

Start your investigation

Under section 33(6) of the OH&S Act, an employer is obligated to:

- Carry out an investigation into the circumstances surrounding the injury, illness, incident or workplace exposure;
- Prepare a report outlining the circumstances of the injury, illness, incident or worker exposure and the corrective action, if any, undertaken to prevent recurrence of the injury, illness, incident or worker exposure; and
- Ensure that a copy of the report is readily available and provided to an officer on demand.

When OH&S has completed its investigation, it will demand the company's investigation report.

It is imperative that this investigation report be vetted by legal counsel.

Getting started on this investigation as soon as possible is crucial to meeting the demand deadline.

Notes

Identify causal factors. Implement corrective actions.

Under section 33(6)(b) of the OH&S Act, corrective actions are required to prevent recurrence.

These corrective actions must be documented in the investigation report that will be submitted to OH&S.

Take a good look at what happened and why. What can the organization do to prevent recurrence?

If something was found to be missing through the demand process, such as training or competency, we can anticipate receiving orders to come into compliance. This would be a good place to start when identifying corrective actions.

Dig deep when completing the investigation. Look at the overall operating and management system.

Notes

Don't forget what went well

While the premise of an incident investigation is to find out what happened, why it happened and what we can do to prevent recurrence, it is important to remember to identify positives.

The investigation report provided to OH&S upon demand is one of the documents legal counsel will use to defend the organization if charges are laid.

For this reason, finding the “good” in what happened is also imperative to show where the organization was in compliance at the time of the incident.

This is something that often gets missed; however, it is crucial for your legal representatives.

Notes

Ready for orders

Where information requested through demands cannot be provided to OH&S, the organization can anticipate receiving OH&S orders.

Where an area was unsafe or a piece of equipment was involved, the organization can anticipate stop-use or stop-work orders.

An HSE consultant can assist with compliance with these orders through activities such as:

- Developing internal training;
- Developing formal hazard assessments;
- Retaining engineers to certify equipment and materials that are not certified;
- Retaining industrial hygienists to take samples; and
- Updating HSE programs to meet the requirements of the orders.

Notes

Ready for orders Part 2

OH&S orders will come with a deadline for compliance. This is normally 30 calendar days but may be less, depending on the nature of the order.

If an OH&S order has a deadline that the employer believes is unachievable, the employer can request an extension from the lead OH&S investigator.

Keep this in mind if your organization receives numerous orders at one time.

Stop-use and stop-work orders will not come with a deadline. These orders will remain in place until the employer can prove compliance.

Notes

Communicate with the employees

Under section 33(6)(d) of the OH&S Act, the report must be made readily available to workers once the investigation is complete.

Before this, the organization may wish to hold a safety stand-down or an all-hands meeting to relay what happened.

This can assist in quelling rumours, assumptions and speculation while offering information about support to those affected by the incident.

Before holding these meetings, it is recommended that the company statement be vetted by legal counsel to ensure that factual information is covered while the incident is still under investigation.

Notes

Wait, find, fix.

The last thing the lead OH&S investigator will ask for when conducting the investigation is your internal incident investigation report.

Once this is completed, there may be no further communication with the OH&S officer, except to close any outstanding orders.

At this point, the employer waits. This can be very stressful, as OH&S has two years less a day from the date of the incident to lay charges.

During this time, OH&S may perform facility inspections at the organization, depending on the state of compliance during the investigation.

It is recommended that the organization perform a gap assessment through its HSE consultant to find and fix any other instances of non-compliance. This can help the organization avoid additional orders arising from inspections outside the scope of the incident.

Should charges be laid, your OH&S lawyer will walk you through this process.

Notes

Media & social media

Media

While not a step in the fatality investigation, it is important to understand that the media may show up. The organization may want to prepare a brief statement in case of a request for comment. Should the organization wish to make a statement, it is recommended that legal counsel vet it before it is released.

It is important to tell everyone within the organization who the spokesperson is and remind them not to speak to the media on behalf of the organization while an active regulatory investigation is ongoing.

Social media

It is also important to remind all workers to refrain from posting critical information, photos or confidential information about the incident or the organization on social media while an active regulatory investigation is ongoing.

Personnel should be reminded not to speak on behalf of the organization and to be respectful of the next of kin and the deceased.

Notes

References

OH&S legal representation

[F2 Legal Counsel - click here](#)

[Field Law - click here](#)

[Bennett Jones - click here](#)

Crisis counsellors

[Insight Psychological - click here](#)

[Fire Fly - click here](#)

Government of Alberta resources

[Death Investigation Procedure](#)

[OH&S Investigation Process](#)

[OH&S Reporting Requirements](#)

[Death on Scene Response for MFRs](#)

Help for families

[Threads of Life](#)

[Federal Death Benefit Information](#)

Notes

GET IN TOUCH

Support when you need it.

If your organization needs assistance navigating a workplace fatality, reach out to us for help.

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Notes