

Business & Law Newsletter

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CASE MANAGEMENT: What Employers Should Know about Disaster Preparedness and Response

**FOR MORE INFORMATION
ON THIS TOPIC,
PLEASE CONTACT:**



Monica Alvarez

Associate, Collin County
2801 Network Blvd., Suite 600
Frisco, Texas 75034
469.287.3905 Direct
monica.alvarez@strasburger.com

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In the aftermath of the Katrina and Rita disasters, we believe this an ideal time to remind employers how important it is to have in place an emergency action plan and review important information about other legal obligations that arise when disaster strikes.

OSHA EMERGENCY ACTION PLANS

The federal Occupational Safety and Health Act (OSHA) requires some employers to maintain an Emergency Action Plan (EAP) for their worksites. An EAP describes the actions employees should take to ensure their safety if a fire or other emergency occurs. The EAP must be in writing, kept in the workplace, and available to employees for review. However, an employer with 10 or fewer employees may communicate the plan orally to employees. A well developed EAP and proper employee training (such that employees understand their roles and responsibilities within the plan) may result in fewer and less severe employee injuries and less structural damage to a facility during emergencies. On the other hand, a poorly prepared EAP may lead to a disorganized evacuation or emergency response, resulting in increased confusion, injury, and/or property damage.

Putting together a comprehensive emergency action plan that deals with issues specific to a worksite is not difficult. It usually involves taking what was learned from a workplace evaluation and describing how employees will respond to different types of emergencies, taking into account a specific worksite layout, structural features, and emergency systems. Most organizations find it beneficial to include a diverse group of representatives (management and employees) in this planning process and to meet frequently to review progress and allocate tasks. At a minimum, an EAP must include:

- (1) **Procedures for reporting a fire or other emergency.** Who is responsible for dialing 911 or an internal emergency number, or pulling a manual fire alarm?
- (2) **Procedures for emergency evacuation, including type of evacuation and exit route assignments.** Who is authorized to order an evacuation, under what conditions is an evacuation necessary, how to evacuate, and what routes to take?
- (3) **Procedures to be followed by employees who remain to operate critical plant operations before they evacuate.** This includes procedures which employees should take before and while evacuating such as shutting windows, turning off equipment, and closing doors behind them. Additionally, identifying who will operate fire extinguishers or shut down gas and/or

Who will your employees call in case of an emergency or evacuation?

electrical systems and other special equipment that could be damaged if left operating or create additional hazards to emergency responders.

- (4) **Procedures to account for ALL employees after evacuation.** This might include procedures for designated employees to sweep areas, check offices and rest rooms before being the last to leave a workplace, or conducting a roll call in the assembly area. Additionally, many employers designate an “evacuation warden” with whom each employee checks in after an evacuation.
- (5) **Procedures to be followed by employees performing rescue or medical duties.** This includes the duties, responsibilities, and names of employees assigned with rescue and medical tasks. Most small organizations rely on local public resources such as the local fire department or hospital to provide these services.
- (6) **The name or job title of every employee who may be contacted by employees who need more information about the plan or an explanation of their duties under the plan.** This includes the names, titles, departments, and phone numbers of employees who can be contacted for additional information or clarification of some aspect of the plan. Additionally a list of key personnel who should be contacted during off-hours emergencies should be developed.

Under OSHA, employers are also required to designate and train employees to assist in a safe and orderly evacuation of other employees. Employers must review EAPs with each employee covered by the plan usually (1) when the EAP is developed or the employee is assigned initially to a job; (2) when an employee’s responsibilities under the plan change; and (3) when the EAP is modified. Effective plans often call for re-training employees annually and include drills in which employees can practice evacuating their workplace and gathering in the assembly area.

Although they are not specifically required by OSHA, other important items may be included in the EAP, such as:

- (1) The site of an alternative communications center to be used in the event of a fire or explosion; and
- (2) A secure on- or offsite location to store originals or duplicate copies of accounting records, legal documents, your employees’ emergency contact lists, and other essential records.

A very simple EAP will suffice in offices, small retail shops, and small manufacturing settings where there are few or no hazardous materials or processes, and employees evacuate when alarms sound or when notified by public address systems. More complex plans are required in workplaces containing hazardous materials or workplaces where employees fight fires, perform rescue and medical tasks, or delay evacuation after alarms sound to shut down critical equipment.

OTHER OBLIGATIONS CONTINUE DURING DISASTER SITUATIONS

Requirements imposed by OSHA are not suspended by natural disasters. The obligation to provide employees with a safe and healthful workplace applies even after disaster strikes. For example, asking employee to perform recovery or cleanup tasks which could be considered hazardous may violate OSHA standards.

The Family and Medical Leave Act (FMLA) is also not suspended because of a disaster. If an employee is entitled to FMLA leave (perhaps due to injuries sustained in the disaster or that arose in the normal course of events) then the employee should be allowed to apply for FMLA leave.

Similarly, the duty to send COBRA notices in a timely manner to employees is not placed on hold during a crisis situation. Eligible employees who are affected by discharges or layoffs must receive COBRA information in a timely manner and employers are not relieved of their COBRA reporting obligations. Employers should contact any third party company who sends COBRA notices for them to ensure that it has a contingency plan, especially in cases where U.S. mail deliveries are affected. If you use a third party vendor to send out COBRA notices, check to see whether the company's contingency plans are covered by your contract with them.

Finally, employers may want to contact their third party insurance administrators to ensure that employees receive information about hardship loans issued by some retirement plans or information of potential sources of emergency cash available to them under 401(k) plans or other employee plans or savings accounts.

FLSA – WORK PERFORMED DURING A CRISIS IS EXEMPT WORK

Fortunately, under the Fair Labor Standards Act (FLSA), employers may use exempt salaried employees to clean up facilities and damaged worksites without losing the exempt status of the employees. The FLSA provides that an exempt employee will not lose the exemption by performing work of a normally nonexempt nature (such as clean-up activities) because of the existence of an emergency. Thus, when emergencies arise that threaten the safety of employees, a cessation of operations or serious damage to the employer's property, any work performed in an effort to prevent such results is considered exempt work. For example, a mine superintendent who pitches in after an explosion and digs out workers who are trapped in the mine is still a bona fide executive. The caveat is that exempt employees who work long enough after the crisis period has passed may be eligible for overtime pay for all work over 40 hours in a workweek. ■

COLLIN COUNTY OFFICE

Hall Office Park
2801 Network Boulevard, Suite 600
Frisco, Texas 75034
469.287.3900 • 469.287.3999 Fax

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