

## PREPARING FOR THE FIRST 48 HOURS OF A FATAL ACCIDENT

KEVIN ELLIOTT AND KARA O'NEILL ARE HEALTH AND SAFETY LAWYERS AT EVERSHEDS SUTHERLAND, SPECIALISING IN WORK-RELATED FATALITIES. HERE THEY OFFER SOME INSIGHT ON HOW ORGANISATIONS, IN THE EVENT OF A WORKPLACE FATALITY, CAN BEST PREPARE TO RESPOND TO A FATAL ACCIDENT.

A major health and safety incident can be an extremely challenging time for any business. How the business responds and reacts to that incident in the first 48 hours can be critical to the final outcome, both in terms of what action the regulator may take and how the press and public perceive the incident.

This article provides high level guidance on the steps an organisation should take in order to ensure that it is in the best position to respond to a workplace fatality.

As a starting point, it is critical that the organisation has an effective crisis management plan in place which has been properly communicated to the key people who will lead any investigation. The plan should contain clear roles and responsibilities, for example: who will deal with the regulator, who will deal with the media, and who will communicate updates to your employees. The plan should also be tested periodically to check its effectiveness.

Make sure you have put in place periodic [health and safety training for directors](#) and key individuals within the business so they are aware of the powers of the regulators and the process by which they may carry out an external investigation. This will ensure the organisation is fully prepared when they arrive on site in the event of a fatal accident.

In the event of a serious incident, legal advice should be sought at the earliest available opportunity in order to ensure you are able to effectively handle communications with the police, regulators and/or local authority from the outset. For that reason you should ensure you have [24/7 contact details](#) of specialist health and safety lawyers; encourage those lawyers to visit your premises and get to know your organisation. Note that you cannot be legally compelled to use the lawyers put forward by your insurance company.

Identify who within the organisation will be trained in speaking to the media. You need to be able to rely on an informed and capable spokesperson who can talk about the matter at hand but also about any previous incidents or cases which the media may throw at them during an interview.

### THE FIRST 48 HOURS: CHECKLIST

As indicated above, the way in which the first 48 hours following a fatality is handled can often shape, or at least influence the shape of, the future external investigation by regulators. Some key points for organisations to consider are as follows:

- Solicitors must be notified and if necessary attend on site. The value of the advice and support on site of an experienced health and safety solicitor in the immediate aftermath can be considerable.
- Ensure that a lawyer invokes legal privilege over the investigation so that a regulator cannot seek disclosure of any documents generated following the incident unless you choose to waive privilege. It is essential that this is put in place quickly (and before the investigation begins) so that legal privilege is not lost.
- Notify insurers. This will probably be a requirement under an organisation's Public or Employers' Liability Policy, but insurers may also provide indemnity in respect of costs. You are not legally required to instruct the lawyers appointed by the insurance company, you are free to select the lawyers of your choice.
- Establish an internal investigation team. The investigation should be carried out promptly and should include statements from those whose evidence will assist the investigation to identify what has happened. All relevant documents (e.g. training records, risk statements, method statements) should be collated.
- Ensure employees are reminded of the need to avoid speculation, particularly in written form (including emails / posts on social media) whilst the internal investigation team is carrying out its investigation.
- Support should be provided as is necessary and appropriate to the deceased's family. This should be done as soon as possible after the incident occurs as managing this relationship is key.

- Counselling and other support should be arranged for those employees who either witnessed the accident or the aftermath of the accident.
- A key single point of contact should be established to act as liaison with the regulators to deal with all requests (such as to interview individuals or obtain documents).
- The services of PR consultants should be utilised (either an internal department or an external consultant). All press enquiries should be directed to a single point of contact and all employees must be briefed not to speak to the press.
- It is likely that an organisation will be obliged to notify the death pursuant to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (this may not always be the case, such as where the death involves contractors in certain situations, or for certain road traffic deaths).

**For more information, please contact:**

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