

MTM OSP/NSP Safety Conference
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Conducting An Effective Incident Investigation

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Introduction to Incident Investigations

All incidents – regardless of size or impact – need to be investigated. The process helps employers look beyond *what* happened to discover *why* it happened. Ultimately, this allows employers to identify and correct shortcomings in their safety and health management programs.

Types of Incidents

- Occupational injuries/illnesses
- Occupational fatalities
- Property damage
- Environmental releases
- Near misses

Value of Investigating

- Prevent recurrence
- Save lives
- Save money
- Demonstrate commitment to health and safety
- Promote positive workplace morale
- Improve management

Prevent Recurrence

- Investigations are incident-prevention tools used to identify the root cause of an incident
- If appropriate actions are taken to correct or mitigate the root cause, the recurrence of similar incidents can be avoided

Save Money

- According to the National Safety Council, workplace injuries and illnesses cost our economy $198.2 billion. That's over $0.5 billion per day
- Occupational Death- $910,000 loss to your company
- Lost Workday Injury- $28,000 loss to your company
- Recordable Injury Without Lost Workday- $7,000 loss
- Indirect Cost of a Workers Compensation Claim- 4.5 times the amount of the payout

What do Incidents Cost a Company?



Direct Costs = Insured Costs

Indirect Costs = Uninsured or Hidden Costs (Out of Pocket)

Examples:

1. Lost productivity.
2. Incident investigation.
3. Schedule delays.
4. Legal fees.
5. Hiring costs.
6. Training costs for new/replacement workers.
7. Property damage.
8. Decreased employee morale.
9. Tarnished reputation.

Four-Step Investigation Approach



A Systems Approach to Help Prevent Injuries and Illnesses

Step 1 – Preserve/Document Scene

Begin the investigation immediately after the incident is reported to help ensure the reliability of material evidence and memory

- **Material Evidence –** Tools and equipment can move or disappear from the scene
- **Memory –** As time passes, conversations with others and individual emotions distort witnesses' memories of what they actually saw and heard

Preserve the Scene

Most effective method:

- The scene may be coned, taped off, guarded, etc.
- Make sure any hazardous situations are controlled before continuing the investigation



Document the Scene

In addition to capturing the scene with video recordings, photographs, and sketches, take note of the following:

- Injured employee's name
- Injury description
- Date and location of the incident
- Personal observations
- Initial statements

Step 2 – Collect Information

- Incident information is collected through interviews, document review, and other means
- Because memories fade, interviews should be conducted in prompt manner – preferably as soon as the situation settles down and the scene is both safe and secure

Information Sources

- Interviews
- Equipment manuals
- Industry guidance documents
- Company policies and records
- Maintenance schedules, records, and logs
- Training records
- Audit and follow-up reports
- Enforcement policies and records
- Previous corrective action recommendations

Interview Tips

- Build rapport
- Ask open-ended questions
- Ask them to recount their version of the incident
- Allow the interviewee to complete their statements
- Repeat questions and answers for clarity
- Ask follow-up questions

Interview Do's and Dont's

- ✓Do explain who you are
- ✓Do be specific as to why you're there
- ✓Do be diplomatic and understanding
- ✓Do be adaptable
- ✓Do express concern and desire to prevent similar incidents
- ✓Do ask their opinion
- ✓Do thank them for their cooperation

- ✕Don't argue
- ✕Don't ask "yes/no" questions
- ✕Don't be defensive
- ✕Don't suggest answers
- ✕Don't accuse
- ✕Don't rush
- ✕Don't interview in a crowd

Step 3 – Determine Root Causes

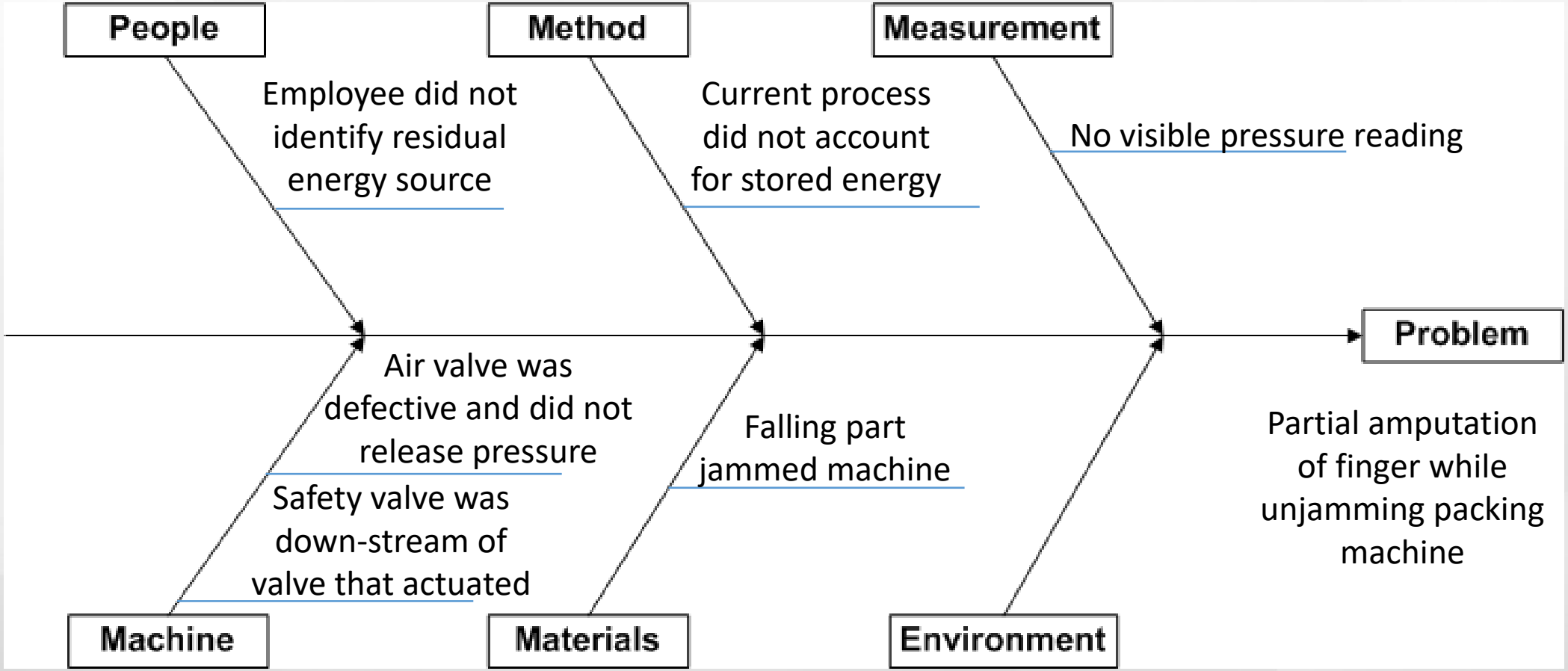
- Identifying the root cause goes beyond the obvious proximate or immediate cause of the incident and should not be used to find fault or blame
- Conclusions such as “employee was careless” or “employee did not follow safety procedures” do not identify the actual root cause of the incident
- The determination of the root cause requires persistent digging, typically by asking “Why” repeatedly

5 Whys

The Problem: A worker slips and falls, and suffers an injury.

- 1st Why: There was a puddle of oil on the plant floor.
- 2nd Why: Oil spilled from a compressor.
- 3rd Why: An oil leak from the compressor was not detected.
- 4th Why: The compressor was not inspected on a regular basis and repaired (if required).
- 5th Why and the Root Cause: The compressor was not in the maintenance system.

Fishbone Diagram

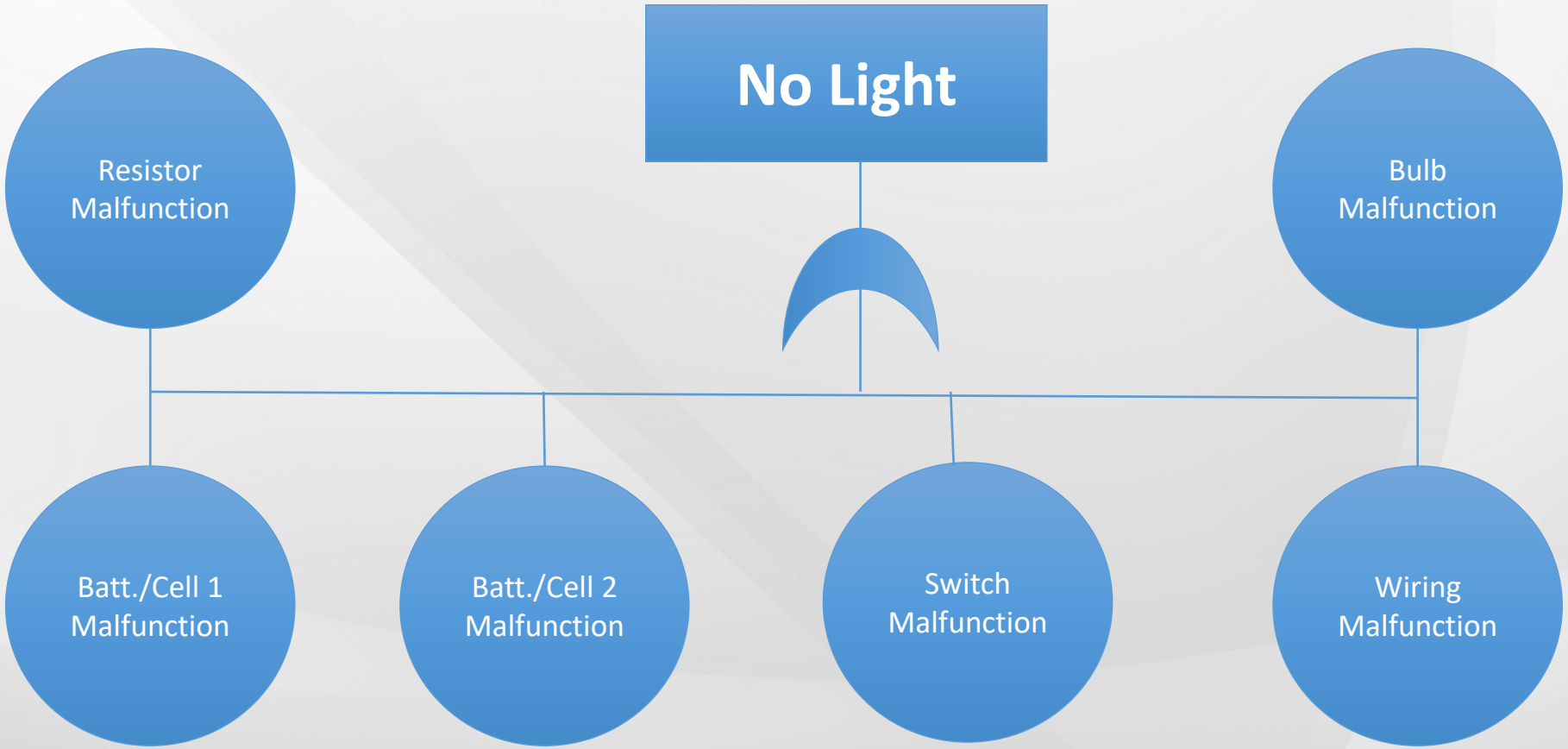


Fault Tree Analysis ("FTA")

Flashlight Example



FTA on Flashlight



Using FTA to Calculate Probability

- Bulb Failure Rate = 0.001
- Wiring Failure Rate = 0.0001
- Resistor Failure Rate = 0.002
- Switch Failure Rate = 0.003
- Batt./Cell Failure Rate = 0.004

.001 + .0001 + .002 + .003 + (.004 + .004) = 0.0141

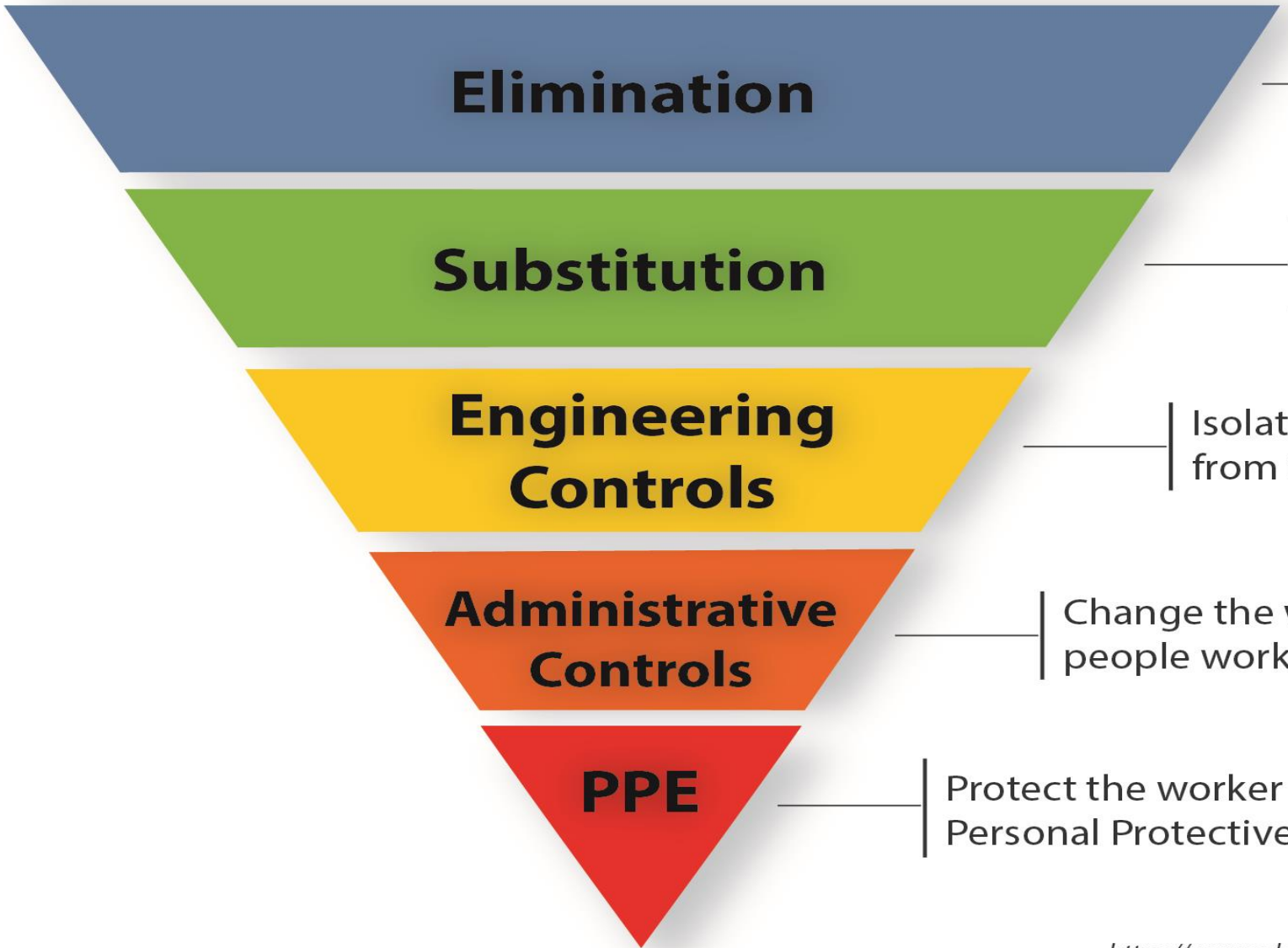
Step 4 – Implement Corrective Actions

- The investigation is not complete until corrective actions have been implemented to address the root cause of the incident
- Be open to different solutions and more than one answer to problem. Actions shouldn't be evaluated as "right" or "wrong," but rather by the degree of effectiveness towards preventing recurrence

Hierarchy of Controls

Most effective

Least effective



Physically remove the hazard

Replace the hazard

Isolate people from the hazard

Change the way people work

Protect the worker with Personal Protective Equipment

Image by NIOSH
https://www.cdc.gov/niosh/topics/hierarchy/default.html

Control Measures

- **Elimination** removes the hazard at the source. This could include changing the work process to stop using a toxic chemical, heavy object, or sharp tool.
- **Substitution** is using a safer alternative to the source of the hazard. An example is using plant-based printing inks as a substitute for solvent-based inks.
- **Engineering controls** reduce or prevent hazards from coming into contact with workers. Engineering controls can include modifying equipment or the workspace, using protective barriers, ventilation, and more.

Control Measures

- **Administrative controls** establish work practices that reduce the duration, frequency, or intensity of exposure to hazards. This may include work process training, job rotation, ensuring adequate rest breaks, limiting access to hazardous areas or machinery, or adjusting line speeds.
- **PPE** is equipment worn to minimize exposure to hazards. Examples of PPE include gloves, safety glasses, hearing protection, hard hats, and respirators.

Reportable Incidents

- The death of any employee as a result of a work-related incident must be reported to OSHA within 8 hours
- The in-patient hospitalization of one or more employees, an amputation, or the loss of an eye, as a result of a work-related incident, must be reported to OSHA within 24 hours
- If the incident is reportable, contact your counsel (internal and/or external) upon preserving the scene and prior to reporting the incident to OSHA so the investigation is protected as attorney work product

Preserving Protection

Gathering information:

- If data needs to be gathered internally, counsel should outline (in writing) what should be gathered and state that it is for the purpose of rendering legal advice
- Information should be collected by someone in the client group and forwarded directly to counsel
- Confidential information and communications should be directed to counsel and higher level managers that are clearly part of the client group

Preserving Protection

- Do not forward emails from outside or in-house counsel to anyone without first checking with counsel
- Do not potentially waive the privilege by discussing the fact that an investigation is taking place, its process, or any conclusions with anyone unless counsel is present or the communication is at counsel's express direction
- Keep notes or communications containing attorneys' mental impressions, opinions, and the like separate from investigatory materials that will be disclosed in furtherance of a claim or defense

Best Practices

- Understand that despite best efforts, some information is discoverable
- Train Investigators and Auditors
  - Writing skills and language
  - Thoroughness
  - Chain of custody, evidence preservation
  - Develop communication plan at the outset
  - Develop pre-plan for investigating and involving counsel
- **Work closely with counsel**
- Involve counsel early for maximum protections

Case Study

- On January 31, 2023, at 10:30 a.m. a forklift accident occurs in the warehouse area of your facility.
- An employee driving a forklift struck another employee in the back who was walking by. Tragically, the employee passes away on the on the way to the hospital. You later learn the certification for the forklift driver had expired 2 months ago.
- After the incident, you, the management, call 911 immediately and EMTs arrive within 10 minutes. Proper protocol, including calling the company nurse, donning proper personal protective equipment, and stabilizing the employee, was followed to care for the employee prior to being loaded into the ambulance.

Immediate First Steps – The First Day

- EMTs have been called and provided their services.
- The Police arrive and take photos of the scene and ask a few questions. Cooperate with their efforts. Before they leave, make sure to get their approval to release the scene of the incident.
- If the death doesn't occur at the facility, have no less than 2 supervisors go to the hospital to visit with the injured employee. Be mindful of OSHA reporting requirements.
- In the event of a death, designate at least 1 supervisor to travel to the home of the deceased employee and deliver the tragic news to the next of kin. Offer the company's deepest condolences and give the next of kin contact information about who to contact in the event of questions.
- Contact your counsel (internal and/or external) so that the investigation of the incident is protected as attorney work product.

Immediate Steps – Late First Day/Second Day

- Contact all insurers that may provide insurance relating to the accident, including your workers' compensation carrier. Ask if funeral expenses will be paid immediately. If not, arrange for the payment of those expenses directly by company. Make sure WC carrier makes first report of injury to state WC commission.
- Contact your employee assistance program about providing counseling services to employees.
- With assistance from counsel, interview the driver of the forklift. Have him taken to a drug testing facility and have him tested for drug use.
- Place the forklift driver on administrative leave until the results of the drug screening and preliminary investigation is complete.
- Within 8 hours of learning about the fatality, contact OSHA. You can contact the agency via phone or electronically. The latter is preferable. (Bonus- what if the driver was a contractor?)
- You have 7 days to update your OSHA 300 log.
- Contact a public relations firm to assist with responses to press inquiries.

Immediate First Steps – Late First Day/Second Day

- Disable the forklift and place it out of service. If can be done without altering the equipment, place it outside under a shed away from the elements.
- With assistance of counsel, interview all eyewitnesses to the incident.
- Contact the family and ask if they need any assistance and let them know that funeral expenses will be covered. Arrange for food to be hand delivered by company management to the family's home and flowers to be provided at funeral; make a donation to deceased employee's favorite charity in his or her honor.
- Schedule appointments for employees who desire counseling sessions.
- If opposing attorneys or investigators arrive wanting to look at the accident scene or equipment at issue, don't allow them access.
- Submit Freedom of Information Act Requests to all first responding agencies for copies of their investigation file. This includes OSHA.

Immediate Steps – Late First Day/ Second Day

- Conduct a walkthrough of the area where the incident occurred to determine quickest route to the area when OSHA arrives and correct any hazards in plain view.
- Have counsel issue a litigation hold letter, providing that all documents, equipment, video, and other records relating to the incident are preserved. Have the litigation hold notice sent to all managers in the company.
- Allow employees to have a bereavement period away from work. Don't force them to participate in any interviews, including internal interviews or with OSHA, until they are ready.
- OSHA will arrive following a fatal incident. Likely the same day. Upon their arrival, meet with them in a conference room. Have your counsel present or at least on the phone during the opening conference.
- During the opening conference, walk-around, and all other parts of the inspection, anything said to or in front of OSHA by a supervisor can be used against the company. Define the scope of the inspection.

Immediate First Steps – Second/Third Day

- Allow all employees who desire the opportunity to attend the deceased employee's funeral. No less than 3 managers, preferably at least 2 at the corporate level, should attend.
- Do not allow OSHA to interview employees on the day of the funeral or wake. Such a request is unreasonable.
- Once the equipment is released by OSHA and the police, have the safety features of the forklift inspected by a third-party without altering the machine.
- Hire an expert, if necessary, to inspect the equipment.
- Contact the manufacturer of the forklift and give it no less than 14 days to conduct its own non-invasive inspection. Once the family has counsel, afford them the same opportunity.
- If the third-parties decide to inspect the forklift, have your expert and counsel attend the inspection.
- Determine if discipline is required for the driver of the forklift.
- Stand down for forklift drivers may be appropriate. Retrain all of them? How do you document it?

Questions?

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Thank you!!

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