



New Rules On Chemical Safety Board Investigations

Insights

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The U.S. Chemical Safety Board (CSB) announced that it has developed a new policy on employee participation in investigations. The Board hopes to greatly expand the role played by employees in determining the root cause of incidents and promoting facility safety as a part of every CSB Investigation. The policy was approved by a unanimous vote of the Board after a roundtable convened by the CSB in 2011 involving accident victims, family members, and employee representatives.

The CSB is an independent federal agency created to investigate industrial chemical accidents. However, the CSB has attempted to expand its jurisdiction to cover any type of explosion occurring at a worksite. While the CSB does not have enforcement powers, it skillfully utilizes press releases and the media to publish its findings in order to get companies to implement its recommendations.

Here are the elements of the new policy:

If the CSB initiates an investigation at a union-represented site, the CSB will promptly identify and notify facility unions of its plans to investigate. At nonunion sites, the CSB will seek to identify other employee representatives, such as employee members of any established Health and Safety Committee, or other employee representatives, if possible.

The CSB will also seek participation by contract employees and their representatives, similar to facility employees, and will establish direct, face-to-face communications with employee representatives from the onset of its investigations.

The CSB will allow and encourage employee representatives to accompany the CSB team during site inspections and tours, and take measures to avoid interference by any party with the proper exercise of employee participation. The CSB claims that such participation is often critical for understanding complex processes and learning of important safety concerns and hazards.

Where necessary to obtain information, CSB investigators will conduct separate meetings with employee representatives. During CSB interviews, any non-supervisory employee may be accompanied by another non-supervisory employee, a personal attorney, or a family member.

Employee representatives will then have the opportunity to review and comment upon evidence and equipment-testing protocols, and to observe testing, similar to the opportunities for companies and

equipment testing protocols, and to observe testing, similar to the opportunities for companies and other parties. Employee representatives will also have access to any test results, to an extent equivalent to other parties, and may review and comment on the factual accuracy of CSB reports, recommendations, and interim statements of findings prior to public release.

CSB intends to monitor the implementation of the policy to ensure that participation by facility employees and representatives in CSB investigations does not result in prohibited whistleblower retaliation. Documented instances of retaliation will be referred to appropriate federal enforcement agencies.

According to CSB Chairperson, Dr. Rafael Moure-Eraso, the CSB over the next few months plans to develop a brochure for employees as well as a new web page summarizing the new policy. Information on the CSB can be found on their [website](#).

Employers should be conscious of the expanded role that the CSB has developed in implementing the new policy. This is in line with the Obama Administration's emphasis on expanded employee rights and whistleblower complaints as well as enforcement against employers.

For questions, please contact the Fisher Phillips Workplace Safety and Catastrophe Management Practice Group at (404) 231-1400, or the Fisher Phillips attorney with whom you regularly work.

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