Managing Through Disasters – Workplace Lessons From Recent Tragedies

January 1, 2008

The recent wildfires in California remind us that natural disasters and other crises can occur at any time and have dramatic impacts on our businesses. When such a disaster occurs, there is often little time to organize our business affairs in the midst of more pressing personal obligations. It is only after the crisis passes that we fully appreciate the impact on our company's operations, forcing us to struggle from behind the power curve to put our business affairs back in order and comply with the seemingly endless legal and regulatory burdens that often arise after a major disaster.

Fortunately, there is much that management can do in advance of a disaster to minimize the impact. Like many other aspects of business, the key is to be prepared. One step is to have a comprehensive Disaster Preparedness Plan, which contemplates in advance the various laws and regulations that come into play during a disaster and provides a roadmap and template for your company's regulatory compliance and disaster response efforts. Will your company be ready?

The Law and Liability

Workplace disasters can result from natural hazards, accidents and terrorism. When a workplace disaster occurs, many laws may be implicated. It is important that you understand and have a plan in place to deal with such issues. Determining how to sort through legal issues ahead of time will allow you to effectively and competently tackle all of the issues that arise when a disaster occurs. Below is a list of some of the laws that may impact your company's operations in the wake of a disaster:

1. **Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA):** Employees may be called to duty to secure damaged cities.

2. **Worker Adjustment and Retraining Notification (WARN) Act:** Employers may have to reduce their workforce by laying off workers. Such an event may trigger the notice obligations of the WARN Act.

3. **Occupational Safety and Health Act (OSHA):** In many cases, companies with 30 or more employees must have a written emergency action plan. Further, any accidents will have to be reported and documented to comply with the law.

4. **Death Benefits:** Employers are responsible for disbursing any life, insurance, accidental death and dismemberment compensation. State laws govern the payment of an employee's final paycheck and death benefits to beneficiaries.

5. **Medical Benefits:** Many states offer a grace period of 30 days after premiums are due to pay a month's premiums. Therefore, employers that want to continue to maintain coverage for their employees will have at least 30 days to pay the previous month's premiums. (This option should be confirmed with local employment counsel or by checking your state's website for updated information.)

William P. Steinhaus
Atlanta
Author
Proper and Casual Insurance: Employers should submit any losses to their insurance carriers as soon as possible. Many insurance policies have strict time limits for claims.

Workers' Compensation Claims: Employers will be responsible for reporting any on-the-job injuries that occurred during the disaster.

Paychecks: State laws govern the payment of wages.

Consolidated Omnibus Budget Reconciliation Act (COBRA): COBRA notices still need to be sent within 45 days of a “qualifying event.” This may be difficult or impossible if employees no longer have addresses due to the disaster. Thus, a communication should be made in some way, perhaps on the company’s website, that benefits will be terminated. An employer must give 30 days’ advance notice of such termination. However, administrators/employers may extend the election period beyond the 60 days to allow employees time to elect medical coverage.

Employment Taxes: Employers are still responsible for paying taxes to the government. However, the government often will extend the due date based on the severity of the tragedy.

Americans with Disabilities Act (ADA): Employees who are physically or emotionally injured may be entitled to a reasonable accommodation under the ADA.

The Disaster Preparedness Plan

Between bomb threats, violent incidents, fires, explosions and natural disasters, it seems inevitable that at some point your company will face a crisis. Without a plan, you are destined to approach disaster management from a state of chaos. The following are a few items your company can address in its Disaster Preparedness Plan to be better prepared.

Crisis Response Team

Many companies find that a Crisis Response Team is an ideal model for responding to a crisis. A typical Crisis Response Team would consist of individuals representing the various operational areas of your business to serve as a first responder for the company. A team will be able to better divide up emergency duties and ensure that no one person is responsible for the company’s entire disaster response. One official within the company should serve as the overall plan coordinator. Each facility should have an on-site plan coordinator. These plan coordinators should be filled by tested decision-makers who are accustomed to handling emergency situations. The local plan coordinators will work with local resources (such as the fire department, police department, Red Cross and community counseling services).

The Crisis Response Team should first determine what types of disasters or crises the company may be exposed to and identify any particular impact such disasters are likely to have on the company’s operations. Along with this exercise, the team should evaluate the priorities of the company. What is the company’s mission and how would it like to react in a crisis? For instance, a company may determine that its priorities are: first, protect human life; second, minimize risk of injury; third, protect physical assets; fourth, minimize losses; and fifth, resume normal business operations.

Once the team identifies the risks facing the company, they should take the lead in putting together the company’s Crisis Response Manual, assimilating relevant materials from each of the company’s operating units and adopting sensible policies and procedures that each employee may follow in the aftermath of a disaster. This manual should be readily accessible by employees and management. For example, in addition to making hard copies of the
materials available in each office, the company might distribute USB flash drives containing
the disaster plan to key employees and members of the Crisis Response Team. Additionally,
the materials should be available on the company’s intranet and/or extranet website.

Crisis Response Manual

As with any aspect of an effective Disaster Preparedness Plan, there is no set format or
requirements for a Crisis Response Manual. Rather, the manual should consist of policies,
procedures, contact information, and reference materials that make sense for your
company’s operations and the community. The Crisis Response Team should serve as an
effective way to survey your company’s operations and determine what type of material
will be most helpful to your employees and management. Some examples of the types of
information that a typical Crisis Response Manual might contain are:

- Phone numbers and names of those who will be involved in the response effort. It
  should have home, office and cell numbers.

- Phone numbers and names of others who will need to be contacted – resources in the
  various communities, your boss, outside counsel, inside counsel, your secretary,
governmental affairs, etc.

- Emergency contact information for each employee in each facility. This information
  should have an emergency contact outside the home of the employee.

- A checklist of response procedures. This checklist should include information
  concerning CPR, the requirements of OSHA for bloodborne pathogens, shutdown
  procedures, search and rescue as well as hazardous materials emergency response.

- One page summaries of the laws implicated and actions to be taken by the local plan
  coordinator. For example, a sheet on administering benefits to employees in a time of
  crisis.

- A statement for the media.

- A sheet containing information on how communication should be made to employees
  and customers including: the company’s Internet website; the company’s extranet
  (internal) website; an emergency website; a toll-free emergency phone number
  outside the local area code; and fliers to be distributed to local governmental or
  assistance agencies.

Central Command

Each facility should have an alternative location to administer the disaster plan. This will
allow for a centralized place of operations and maintain a sense of continuity in crisis. Each
facility may also want to stockpile one week’s worth of supplies for key employees and
families. When considering where to have a central command for a facility, a company
should also determine evacuation routes and plans, should it be necessary to leave the
facility during a disaster.

Test The Plan And Keep It Up To Date

A “dress rehearsal,” while difficult because it interrupts daily operations, is advisable. Such a
test run will allow the company to see how practical their disaster policies and procedures
are to implement and will reveal deficiencies that must be rectified before a real crisis. The
company may choose to test parts of the plan so as to not disrupt the entire company or
facility at once. The importance in rehearsing is that each employee understand how to
execute his or her role during an emergency.
It is also critically important to keep the plan and information in the Crisis Response Manual up to date. Changes in personnel information and facilities need to be reviewed often. It would not be effective to have a manual that had inaccurate phone numbers.

**The Key – Communication**

As with any plan, the key is communication. Once your company has a plan established, it is important to communicate that plan to your employees. Each employee, and certainly each member of management, should have a clearly defined role in the company’s plan. Employees should also understand in advance of a disaster what the company will provide to them in terms of a few key areas in their lives once they have been turned upside down by a disaster.

For example, your employees are most likely going to be most concerned about gaining resources and information for the major areas in their lives: financial, physical, emotional, employment, and life sustaining. How and if employees gain this information from their employer can play a significant role in not only their recovery but also the recovery of your business. Employees that have these resources and answers to these questions are more likely to be able to get back to work faster and to be happier because they have the information they need to provide for their families.

This is an opportunity for the company to shine. As a company, you may want to go above and beyond to help employees with recovery. Here are a few ways you could accomplish that:

1. Continue paying wages.
2. Continue paying benefits.
3. Provide the basics, such as food, water, housing.
4. Relax internal administration requirements for medical coverage and leaves of absence.
5. Offer flexible working arrangements.
6. Provide resources and emotional support through an Employee Assistance Program (EAP).

Prior to a workplace disaster, an employer should provide employees with laminated pocket cards that contain emergency information and resources. As discussed above, this card could contain how the employee should gather information concerning benefits, emotional support, and more. A toll-free emergency number should be included as well as any website information. The toll-free emergency line should contain information concerning benefits, alternate work locations, working hours, and other resources.

**Conclusion**

Frank Lloyd Wright once said: “I know the price of success: dedication, hard work, and an unrelenting devotion to the things you want to see happen.” The challenge is to make this happen at your facility, office, building and workplace. Now is the time to start, if you have not already.

Note: This article was published in the January/February 2008 issue of The Employment Law Authority.