

# Review of Emergency Plans and Procedures:

## *Criminal Liability for Job Site Construction Accidents*

Prepared by:  
Cheri Turnage Gatlin and Chris Meyer  
*Burr & Forman LLP*



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# **Criminal Liability for Job Site Construction Accidents**

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## **Review of Emergency Plans and Procedures**

### **a. Clear directives on the who, what, when, where**

Some job tasks require involvement from specially qualified and designated personnel. A "qualified person" may be defined as "one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project." A "competent person" is defined as "one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them." By way of training and/or experience, a competent person is knowledgeable of applicable standards, is capable of identifying workplace hazards relating to the specific operation, and has the authority to correct them. Some standards add additional specific requirements which must be met by the competent person. Some of the job tasks that

require a competent person, qualified person or a registered engineer to perform are identified herein. This list is not all inclusive, and it is the responsibility of the contractor to identify, and staff the job appropriately.

Your ability to have the person available to respond to an accident is critical.

### **Ensuring Compliance with Federal and State Regulations**

- a. Ensuring that each job site has the requisite safety equipment, in appropriate quantities

OSHA regulations require employers to protect their employees from workplace hazards such as machines, work procedures, and hazardous substances that can cause injury. Employers must institute all feasible engineering and work practice controls to eliminate and reduce hazards before using PPE to protect against hazards.

#### **Engineering Controls**

If ... You can physically change the machine or work environment to prevent employee exposure to the potential hazard, Then ... You have eliminated the hazard with an engineering control.

Examples . . . (1) initial design specifications; (2) ventilation; (3) substitution with less harmful material; (4)

enclosure of process; (5) isolation of process; (6) change the process.

### Work Practice Controls

If ... You can remove your employees from exposure to the potential hazard by changing the way they do their jobs, Then ... You have eliminated the hazard with a work practice control.

Examples . . . (1) job rotation of workers; (2) wet methods; and (3) housekeeping and maintenance.

- b. Confirming that all supervisors and employees have attended necessary training courses and are well versed in company safety procedures

As discussed above, safety training is the critical first step in avoiding workplace injuries—including those which might give rise to criminal liability. Paramount to properly taking this step is the requirement that jobsite supervisors, forepersons, etc. understand the substance of this training at a heightened level. It is also critical that supervisors be well versed in all company policies related to safety, including compliance with OSHA, state and any local safety regulations. The ability to demonstrate proper training to all employees and supervisors to investigators in the event of an accident is of utmost importance.

- c. Conducting audits of job sites, with an eye toward safety hazards, mandatory posters, etc.

Most employers only think of safety audits when it is time to prepare for a potential OSHA inspection. But why not utilize safety audits to catch potential hazardous conditions or policies before a workplace accident occurs?

Perhaps the best defense against injury and loss, construction-site-safety inspections are the most effective means of identifying hazardous conditions at the worksite. As discussed, construction sites require constant monitoring and observations to keep ahead of safety issues.

Utilizing safety professionals to identify potential OSHA violations, liability issues, risk exposures, and offer strategies for mitigating hazards before they damage your company's reputation and injure employees is a sound strategy to avoid incidents that give rise to heightened, or criminal, liability. Through job site safety inspections and observations at your construction projects, third-party professionals can develop a practical, tailored analysis of safety issues, along with recommendations for remediation of problems. Many vendors that offer these services employ the same methodologies and standards employed by OSHA and the insurance industry—or your own safety standards—as the basis for our review. The inspections can also be scheduled as announced or unannounced.

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