

Protecting Your People and Your Posterior Does Your Emergency Plan Include Any of These 17 Errors?

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Introduction

Most organization leaders believe their company emergency plans are the state-of-the-art. In fact, their plans are dangerously flawed.

They don't comply with federal and state regulations. They ignore many classes of personnel, and rarely consider visitors. Coordination with local emergency services is nonexistent. Personnel training is haphazard and illegal. And they could never withstand the scrutiny of a jury.

The risks to the organization are many, the exposures are titanic.

This article will arm you with information for creating an emergency plan that complies with regulations—and protects your people, your organization *and* your posterior.

Why Plan?

Risk never sleeps.

Emergencies can strike any organization with a direct hit, or clobber anything within a wide path. In the past year, organizations were vulnerable to these reported emergencies:

- 4.1 million workplace injuries
- 2 million incidents of workplace violence; two people are murdered every day in the workplace
- \$2.6 billion of property loss from non-residential structure fires
- 349,500 fire department responses to hazardous material spills
- 45,000 natural and manmade disasters
- 111,500 structural fires in commercial buildings
- 3.8 million concussions per year reported to emergency rooms
- 10,000 incidents of sudden cardiac arrest at work, and
- 5,071 accidental workplace deaths

(Sources: OSHA, Department of Justice, National Fire Protection Association, American Red Cross, EPA)

Risk always multiplies.

What's the fallout for an unprepared organization?

- 78% of organizations who suffer a catastrophe without a contingency plan go out of operation within two years.
- 90% of organizations unable to resume operations within five days of a disaster go out of business within one year.

(Sources: Agility Recovery Solutions, Continuity Insights Management Conference; London Chamber of Commerce Study.)

Compliance Issues: The Law

OSHA is not a town in Wisconsin. These OSHA regulations apply to every employer in the United States, *without exception*:

- Emergency Action Plan 29 CFR 1910.38
- Fire Prevention Plan 29 CFR 1910.39
- Exit Routes: Design 29 CFR 1910.36
- Exit Routes: Maintenance 29 CFR 1910.37
- All Employers Covered 29 CFR 1910.34(a)
- First Aid 29 CFR 1910.151

In addition, the following federal regulations apply to many organizations:

1. Hazard Communication/MSDS (OSHA)
2. Bloodborn Pathogens (OSHA)
3. SPCC (Spill Prevention Countermeasures & Containment/EPA)

Your state fire code also applies to your organization.

Compliance Issues: The National Standard That Will Torpedo Any Defense

Finally, there is NFPA 1600. This National Fire Protection Association standard spells out requirements for emergency preparedness, disaster recovery and business continuity, along with drills, exercises and training.

NFPA 1600 is recognized in law as *the* standard by the U.S. Congress [PL 108-458, §7305(a),(b)]. In actuality, NFPA 1600 is a standard that consists of “shoulds” and not “shalls.” But any litigator will convince jurors that those “shoulds” are expected to be “shalls.” Jurors will assume that you a) knew the regulations and standards, b) gambled with *Life Safety* of your personnel, c) have deep pockets, and d) need to learn a lesson that sends a message to all organizations.

Consider that when you are sued for *failure to plan* and *failure to train*, you will be asked during your deposition and at the trial, “Is it your testimony that NFPA 1600 is good enough for the United States Congress but not good enough for *you*?”

Organization leaders must plan accordingly.

All-Hazards Planning

One critical feature of NFPA 1600 is the need for all-hazards planning. This is not your father's emergency plan! No longer can your plan simply address fire. All-hazards planning means that you must address *at least* these requirements and foreseeable circumstances:

1. Emergency response team
2. Team training
3. All-employee training
4. Drills
5. Evacuation procedure
6. Fire risk assessment
7. Fire prevention strategies
8. Headcount procedure
9. Assembly area
10. Flood
11. Pipe burst
12. Shelter in place
13. Chemical spills
14. Workplace violence
15. Active shooter
16. Hostage
17. Bomb threat
18. Severe weather/tornado/hurricane
19. Explosion
20. Structural failure
21. Emergency shutdown
22. Earthquake
23. Power failure
24. Mandatory evacuation
25. Suspicious package
26. Terrorism
27. Spill clean-up
28. Visitors
29. Contractors
30. Disabled (any persons with special needs, including pregnancy, a temporary disability, etc.)

Google any one of these and you'll find that there has been an incident in an organization like yours, somewhere in the U.S. in the last 12 months. None of these issues is aberrant or uncommon.

In summary, your planning, training and drills must address:

- OSHA
- State Fire Code
- NFPA 1600

Does Your Plan Include Any of These 17 Mistakes?

We have reviewed over 400 emergency plans nationwide created for corporations, campuses and medical facilities, all of which had 100+ employees. Of those 400 organizations, we found one that was OSHA-compliant. *One!*

Our review of organization emergency plans reveals 17 common mistakes:

1. Plans Ignore Critical Audiences

It's illegal to ignore emergency planning, training and drills for:

- Visitors
- Contractors
- 2nd/3rd shifts
- Weekend employees

Visitors are the least likely to know your facility and the most likely to freeze, panic or incur injury during an emergency. Even worse, visitors are the most likely to sue—and win. Nearly all emergency plans ignore visitors regarding escort policy, evacuation, shelter in place, assembly areas and headcounts, and so on.

Plans also ignore employees who work late. What procedures do they follow during an after-hours emergency? Typically, the chain of command is not around, leaving under-trained employees to supervise an un-drilled evacuation, conduct a never-used headcount, and report to emergency service responders.

Most work sites are regularly visited by multiple contractors who care for computers, plants, coffee makers and so on. *You are responsible for their safety.* OSHA designates you as the host employer. You are required to include contract personnel regarding emergency planning, training and drills.

You can't outsource risk. You can share it by creating a contract that divides the labor of planning and training with each contractor's employer. But, in the end, *you are always responsible for everyone* on your premises in an emergency.

2. Headcounts Are Not Planned or Conducted

Federal law requires that you account for all personnel [1910.39(c)(4)]. Therefore, you must conduct headcounts in any emergency for:

- Visitors
- Contractors
- 2nd/3rd Shifts
- Weekend employees

Most employers report to us that 50% to 90% of employees don't show up at assembly areas for the headcount. In urban high rises, the no-show rate may reach 100%. Nevertheless, your responsibility is ironclad. You have to be able to answer the Fire Chief's question, "Is everyone out of your space? Can you account for everyone?"

Implied in the requirement for a headcount is the need for an assembly area. Yet, many companies have no designated assembly area. It will be difficult, if not impossible, to conduct a headcount without an agreed-upon location for everyone to assemble.

3. Organization of the Emergency Response Team is Flawed in Two Ways

First, many organizations appoint only one or only several people to be in charge during an emergency. Yet very few employers organize an emergency response team and train team members annually, as required by law. Per OSHA 29 CFR 1910.38 (c): "...employer must designate and train employees to assist in a safe and orderly evacuation of other employees." Emergency Response Team training must be specific to the team and its duties. Thus, team training needs to differ from that for the balance of employees.

Second, organization plans fail to assign anyone to command:

- Visitors
- Contractors
- 2nd/3rd shifts
- Employees who work weekends

4. Command & Control During Emergencies Is Weak or Non-Existent

It's not clear-cut in most organizations who's in charge whenever the top people are offsite. When senior emergency managers are absent, are you confident with who's left in charge of your people and assets?

Also, there are not enough commanders for a real crisis. Half of the three or five people on your call list will be unavailable in any emergency because of offsite appointments, travel, illness or vacation. Moreover, the federal government's standard is one *supervisor in an emergency for every five people* to be supervised (DHS National Response Framework). When you count visitors and contractors, you don't have enough people to search and clear floors, organize assembly areas, conduct headcounts and move panicked—often untrained—people around in dynamic circumstances.

5. Failure of Cell Phones, Power and IT Are Not Addressed

Cell towers become overwhelmed and unusable almost immediately in any emergency. Traditionally, power and IT are the first two systems to fail or be unavailable during an emergency.

If you can't communicate, you can't respond.

The answer is inexpensive two-way radios. However, users must be trained and users must carry them at all times in order to have them during an unexpected crisis. Otherwise, radios become useless paperweights in evacuated offices.

6. Training Fails to Comply with Federal Law

Training is mandatory for all personnel. Moreover, training must be conducted in a classroom setting where trainees can ask questions and get answers. On-screen training alone is illegal. However, on-screen training can *supplement* classroom training.

Training must be:

- Annual
- At hire
- When the plan changes
- When people in the plan change

All personnel in these programs must be trained annually and at hire:

- Contractors
- Employees who work weekends
- 2nd/3rd Shifts

Training must be conducted by a “qualified” trainer—qualified by experience or by training in the discipline. The Business Manager or HR Director who shoehorns training for emergency response into the orientation or the annual sexual harassment seminar has not fulfilled the law.

People respond the way they have been trained. And untrained people either freeze or panic.

7. Fire Extinguisher Training Is Illegal

No federal or state agency requires the use or training of portable fire extinguishers posted in your facility. *OSHA requires that you have a use policy.* “Use” or “Don't Use” are both legal policies. Declare your preference as the employer, then train your employees in that policy.

If you decide to ask employees to use fire extinguishers in an emergency, you must train employees in their use. Conference room training with a video alone is illegal. OSHA requires that classroom training must be augmented with a live burn outside. Training must be annual.

8. Illegal Evacuation Maps

Many landlords post a single map at elevators or a main entrance. However, what your landlord provides in no way fulfills your requirements as the employer. OSHA requires that *every employer*

show *every employee* how to evacuate from *every part* of your space [1910.38(c)(2)] via two routes [1910.36(b)(1)]. So, a single map in the lobby or lunch/break room does not suffice under any circumstance. There must be maps in every part of your space.

9. No Hazard Communication Plan

Many organizations have chemicals on site. Even the chemicals used by the cleaning crew could qualify your organization for a Hazard Communication Plan (OSHA 29 CFR 1910.1200). If you, or your landlord, has an MSDS (Material Safety Data Sheets) binder, then you probably need a HazCom Plan.

If you have an MSDS binder, but lack a Hazard Communication Plan, you are in violation of the most cited OSHA regulation in the U.S.

HazCom is an “Employee Right to Know” law. The law requires that a written HazCom Plan be trained with all employees at least once, and whenever new chemicals are introduced to the facility. For most organizations, this means annual training.

10. Medical Emergency Planning Lacks a Standard of Care

Medical emergencies are far more likely to occur in your workplace than a fire or workplace violence. Have you established a formal, written Standard of Care? Does it include employees, visitors and contractors?

OSHA requires (1910.151) that if the employer can’t guarantee emergency response for medical treatment in less than four minutes, the employer shall train employees in first aid and CPR. No fire chief or EMS director in the U.S. will guarantee response in less than four minutes from the time of the 911 call to the moment when their EMT reaches the side of your injured.

Are your people annually trained in CPR? Automated External Defibrillators? In first aid? How many are trained? Are their certificates of training current and on file?

Your Standard of Care must specify when to call 911. Also, employees must be prohibited from transporting anyone to an outside medical facility on their own or under your direction. What happens when the injured party loses consciousness, or experiences a seizure (or worse) during transport? The liabilities to the management, the individual and the injured are titanic.

11. No First Aid and Bloodborne Pathogen Plans and Training

OSHA says that any employer that can’t guarantee trained medical personnel can reach an injured person on site in less than four minutes shall train employees in 1st aid. Since there is no Fire Chief or EMS Director anywhere in the U.S. that will make guarantee, then you must train employees in 1st aid. Then, OSHA says that any employer that train personnel in 1st aid shall also have a Bloodborne Pathogen Plan (29 CFR 1910.1030) and train it to all those trained in 1st aid. Many employers will also train all employees to at least the awareness level in Bloodborne Pathogens.

12. Disabled and Special Needs Personnel Are Ignored

The Department of Homeland Security, the Americans with Disabilities Act and state fire codes require that every employer have an emergency plan for Special Needs Personnel. This plan must be integrated into your Emergency Response Plan and your Emergency Response Team’s training.

Special Need Personnel include all who are visibly disabled, and those who are move slowly, are hard of hearing, pregnant, on crutches, etc. Your planning must include:

- Visitors
- Contractors
- 2nd/3rd shifts

- Employees who work weekends

13. Procedures Are Copied and Pasted from Other Organizations

Transplanting emergency planning policy and procedures from one organization to another is epidemic. Borrowing another organization's or HQ's procedures may seem economic, efficient and innocent. In reality, it is dangerous and illegal, thereby exposing the organization and its leaders to even more liabilities.

All plans must, by law, be site-specific. Assuming that one organization is identical to another is a classic mistake. Trying to convince regulators and jurors of this will be a naive hope and a certain failure.

In one extreme instance, a brand-name preparatory school transplanted much of its emergency plan from another equally-well known prep school—even including the latter school's copyright. The emergency response procedures and titles of response personnel weren't even changed. While this is an extreme example, those who borrow and modify will not be spared from the wrath of a regulator or competent litigator.

The exposure to the borrower and the lender are breathtaking.

Moreover, given the fact that nearly all organization's emergency plans fail to comply with federal and state standards, *bad plans are being copied*. As the saying warns, "When you copy from an 'F' student, you get an 'F.'"

14. "That's the Landlord's (Building Manager's) Responsibility"

We hear this one all the time.

No federal or state regulation permits landlords or building managers to supplant a tenant organization's legal requirement to have an Emergency Response Plan. The landlord/building manager may need an emergency plan of his own for his own employees and to manage the tenant population. Since building managers are one key to success in any emergency, let's hope *your* landlord/building manager has a robust emergency plan.

Unfortunately, the vast majority of landlords/building managers have no plans, or have lousy plans. Their main deficiency: the lack of command, control and communications.

Often the three to five building personnel who will command or coordinate an emergency have two-way radios. However, they do *not* have radio communication with tenant organizations that are on the move during an emergency.

Moreover, with a few exceptions (New York City), building managers are not well trained to command anything beyond their facility duties, thereby leaving tenant populations on their own in an emergency.

If you're depending solely on your landlord/building manager to successfully command your employees and their *Life Safety* during an emergency, you are not only in violation of law, you have abdicated your moral responsibility to your employees' emergency response.

15. Plans Are Out-of-Date

For those few organizations that have emergency plans, many are not up-to-date regarding:

- Best practices
- National standards
- Laws and regulations
- Training

- Drills
- Command/Control/Communications

Out-of-date plans, with out-of-date training, and no recent drills will not be treated politely by regulators and jurors.

16. “No one enforces this stuff. No organization has plans. I’m willing to chance it without a real plan.”

Senior managers in Fortune 100 companies have told us this more than once. *Yikes!*

Please note how this position plays out. You will have an incident. Then all the many agencies and litigators will drop on you like a ton of broken glass. Or, an upset employee, an angry ex-employee or a competitor will call OSHA. The agency gets 160,000 phone calls to its 800 number every year. “Even the phone call is free.” The agency has the statutory obligation to investigate every complaint. OSHA keeps the complainant anonymous by law.

Also note that violation of law is often considered negligence on its face by any state or federal court. Violation of standards often creates the presumption of negligence. Courts love NFPA standards. The Supreme Court of the United States ruled that, “Courts must in the end say what is required; there are precautions so imperative that even their universal disregard will not excuse their omission” on part of a defendant. [The T.J. Hooper, 60 F 2d 737 (2d Cir. 1932)].

So, get out your checkbook and start writing a number with many commas and zeros.

17. “We’ve Never Had Trouble or Incidents. So, I Don’t Think We Need a Real Plan. We’ve Been Lucky So Far”

Yes, but *luck is not a strategy*. It will not be a standout on your resume to have to explain that luck was your strategy when it comes to the *Life Safety* of your people.

Summary

Risk never sleeps. Risk always multiplies.

The statistics on risks to organizations are overwhelming. You want to believe that your organization is different, that these risks do not apply to you. But the numbers are so big and pervasive that you can’t outlast or hide from them.

The compliance standards include OSHA, your state’s fire code and NFPA 1600. The last includes 29 pages of “shoulds” recognized by Congress that, in the hands of a litigator, turn into “shalls.” Often, you can add in EPA and many other federal, state and local regulations not touched on here.

Planning must be all-hazards to meet the standard. No longer can you just plan and train for fire. The modern organization’s Emergency Response Plan has a robust table of contents.

Recommendations

All organization owners and managers should objectively and coldly examine their emergency plans. In the case of 99% of organizations, you should seek expert help to assess your current situation. The state of the art of emergency planning and the snarky attitude you will find with owners, stockholders, regulators and jurors demands that you get expert help either internally or outside. Then determine what it will take to get you prepared and compliant.

You need a site-specific, compliant plan that you train, drill and exercise to respond to foreseeable risks that threaten your people every day. You need a plan that you can share with emergency services, customers/clients and regulators, your board and jurors.

Only then will you be able to sleep at night knowing, that you have protected your people and your posterior.