

2015 Hospitality Law Conference- Effective GL Incident Response and Investigation



Accident and incident investigations are a critical element of any safety program in the hospitality industry. However, effective investigation programs can be impeded by inadequate training, organizational priorities, inadequate resources, resistance from person(s) involved and investigator subjectivity.

Why Investigate Incidents/Accidents?

Incident/Accident investigation has one primary goal: to prevent recurrence. It can also help in auditing the effectiveness of your overall safety program and recognizing system problems that can be rectified. This approach can reduce the potential for injuries resulting from the same basic or contributing factors.

Accident investigations are not to place blame, establish fault or to determine liability. They are designed to:

- Prevent similar accidents
- Reduce direct and indirect accident costs
- Identify and control risk exposures in order to improve methods, conditions, policies and procedures.
- Reveal training needs
- Add to knowledge of operations
- Be a core element of an effective safety and health program

Safety and Health Program Core Elements

A proactive safety and health program is one of the best ways to help you control your costs from an injury and property damage perspective. There are four main elements: management commitment and employee involvement, hazard analysis, hazard prevention and control, and safety and health training.

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1. Management Commitment and Employee Involvement

Management's commitment provides the motivating force and the resources for organizing and controlling activities within an organization. In an effective program, management regards worker and customer safety and health as a fundamental value of the organization and applies its commitment to safety and health protection with as much emphasis as with other organizational goals.

2. Hazard Identification and Analysis

A practical analysis of the organization involves a variety of examinations to identify existing hazards and conditions and operations. Unawareness of a hazard stemming from failure to examine it is a sign that safety and health policies and/or practices are ineffective. Incidence response and investigation are a part of hazard identification and analysis.

3. Hazard Prevention and Control

Where feasible, hazards are prevented by effective design. Where it is not feasible to eliminate such hazards, they must be controlled to prevent unsafe exposure. Elimination or control must be accomplished in a timely manner once a hazard or potential hazard is recognized. Specifically, as part of the program, organizations should establish procedures to correct or control present or potential hazards in a timely manner.

4. Safety and Health Training

Training is an essential component of an effective safety and health program. Training helps identify the safety and health responsibilities of both management and employees. Training is often most effective when incorporated into other education or performance requirements and job practices. The complexity of training depends on the size and complexity of the worksite as well as the characteristics of the hazards and potential hazards.



GL Incident Response

All companies strive to conduct their operations and perform services without causing harm to third parties. When an incident does occur, the organization's response, or lack of, can often influence the disposition of any general liability claims that often result. An effective response first starts, as discussed above, by establishing company policy and providing sound guidance to those in the organization most likely to encounter third party incidents.

The below flow chart provides recommended actions when one is addressed with a GL incident. The three major areas the organization must address are:

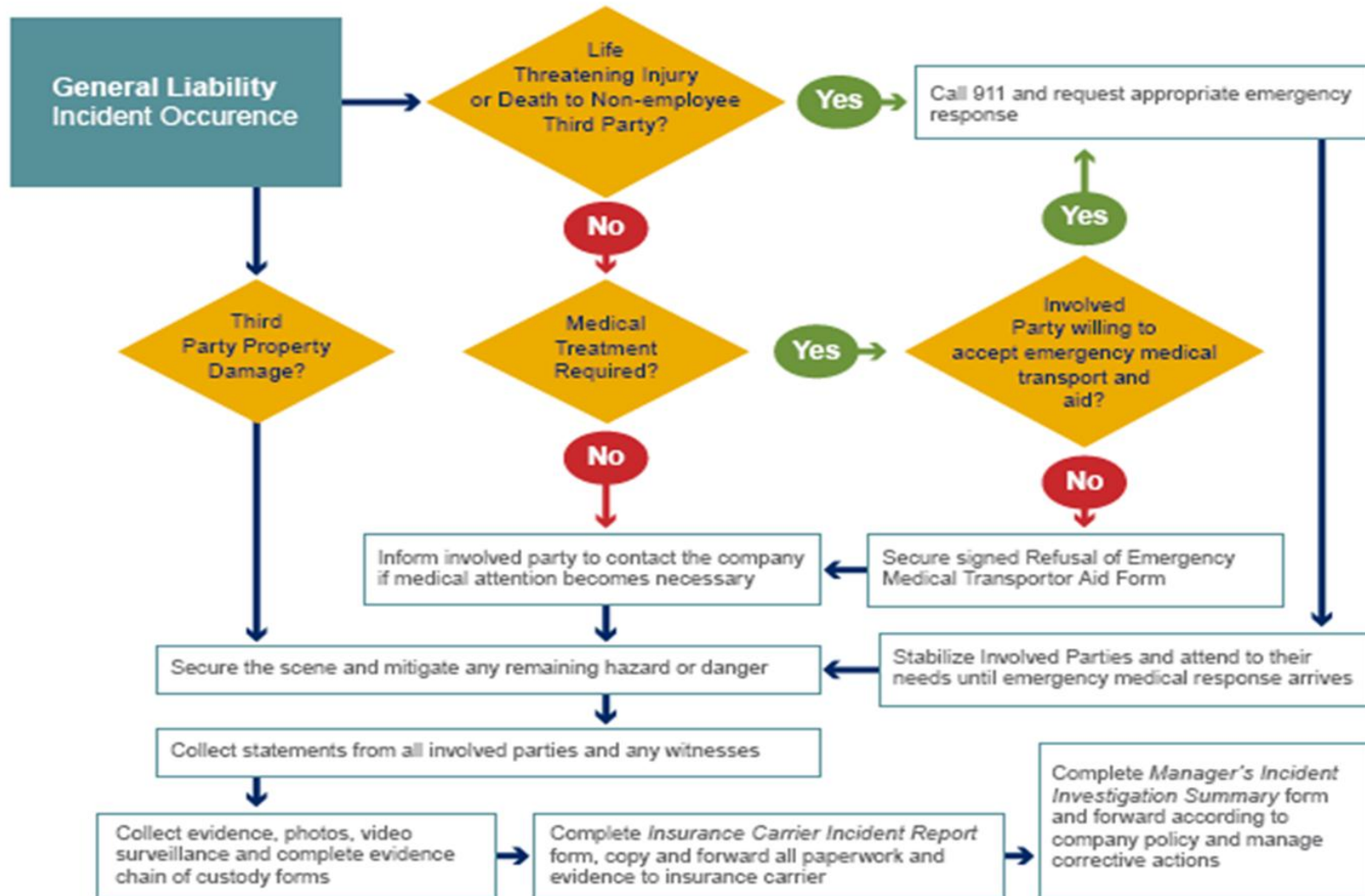
- Addressing those injured first,
- Securing the scene and mitigating any remaining hazard or danger
- Completing/documenting the incident along with conducting the incident investigation.

Also it is very important to prepare staff to know what to do and what not to do during a general liability incident response. Figure one below details what to do and not do. These ideas can be incorporated into the organization's emergency management crisis plan and practiced during the testing and training sessions. It is also advisable for those involved in GL incidents involving customers and others who inquire about the incident or seek information from the organization to be coached on what information they can provide and what information they cannot.

GL Incident Investigation

An incident investigation should be accomplished following every accident. The purpose of investigating an incident is to determine the root cause so that similar accidents can be prevented, not to assign fault. Each investigation should be made as soon after the incident as possible. A delay of only a few hours may allow important facts to be destroyed or removed. An organization should have a good incident report form and an incident investigation form as part of their incident response plan and process. These documents help identify important information to obtain and document. Know that the depth of the investigation will be determined by the severity of the accident.

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Liberty Mutual Loss Control service is advisory only. We assume no responsibility for management or control of customer safety activities nor for implementation of recommended corrective measures. This report is based on information supplied by the customer and/or observations of conditions and practices at the time of the consultation. We have not tried to identify all hazards. We do not warrant that requirements of any federal, state, or local law, regulation or ordinance have or have not been met.

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Figure 1 What to do and not do during a GL incident response

What to Do and What Not to Do

| What to Do | What Not to Do |
|--|--|
| Respond to the incident immediately. | Attempt to move involved parties if they appear injured, unless in imminent danger. |
| Call 911 if incident involves serious injury, death, criminal activity or significant property damage. | Apologize for the incident. |
| Stabilize involved parties, if necessary, until emergency medical response arrives. | Admit fault or responsibility. |
| Mitigate, contain or establish separation from any ongoing hazard or danger. | Assign blame or argue with the injured party about the cause of the incident. |
| Secure the scene and prevent unauthorized entry. | Detain involved parties against their will. |
| Show compassion for injured parties. | Reprimand an employee at the scene of an incident. |
| Act courteously. | Mention insurance. |
| Act professionally. | Offer to pay medical expenses. |
| Collect contact information and statements from ALL involved parties and ANY witnesses. | Tamper with/destroy/hide evidence or misrepresent facts of causation. |
| Preserve evidence; collect photos of the scene and available video surveillance. Secure video and photos – take pictures after the incident from several angles without the claimant in the pictures. Take a picture in the direction the claimant was walking. | Discuss the incident with anyone other than company representatives that need the information. Under no circumstances discuss the incident with outside parties unless approved by management. |
| Complete incident report, evidence chain of custody, refusal of emergency medical transportation or aide, and incident investigation report. Report incident and forward all related documents and evidence to the company's insurance carrier as soon as possible and according to company policy; no matter how slight the injury. | Permit investigators to take pictures at the scene without Supervision and Management approval. |
| Inform involved parties that a company representative will contact them to follow-up on the incident. | Self-transport or allow another company representative to transport involved parties for medical treatment or elsewhere. |
| If no injury is apparent as a result of the incident, request that involved parties notify the company if they eventually choose to seek medical attention. | Insist involved parties complete any paperwork if they refuse to comply. |

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Incident Reporting Form

Use this form to report any workplace accident, injury, incident, close call or illness.
Return completed form to the Operations Supervisor, or Management.

This is documenting an:

Lost Time/Injury
 First Aid
 Incident
 Close Call
 Observation

Details of person injured or involved (to be filled in by person injured / involved if possible)

Person Completing Report: _____ Date: _____

Person(s) Involved: _____

Equipment or Truck ID: _____

Event Details

Date of Event: _____ Location of Event: _____

Time of Event: _____ Witnesses: _____

Description of Events (Describe tasks being performed and sequence of events):

*if more space is required please use the back of this sheet

Was event / injury caused by an unsafe act (activity or movement) or an unsafe condition (machinery or weather)? Please explain:

| TO BE COMPLETED ONLY IF LOST TIME/INJURY OR FIRST AID WAS REQUIRED | |
|--|--|
| Type of injury sustained: | |
| Cause of lost time/ injury or first aid: | |
| Was medical treatment necessary? | Yes _____ No _____ If yes, name of hospital or physician: |

Signature of Employee: _____ Date: _____

Signature of Supervisor: _____ Date: _____

Incident Investigation Report

Use this template to record your investigation findings and outline your recommendations as explained in Liberty Mutual Reference Notes RC 195 Accident Investigation and RC 6215 Core Elements of a Safety and Health Program. The extent of detail will be dependent upon the severity of the event.

I. Incident Investigated

(Date of incident, individual(s) involved and location of incident)

II. Summary of Investigation Finding

How did the event occur, who was involved, what happened? This section should detail all of the relevant facts of the investigation into the event including but not limited to: witness interviews, environmental conditions/hazards, photos, records, equipment involved, etc.

III. Investigation Analysis

a. What were the events that contributed to the incident? (Remember root causes of accidents often result from a combination of contributing factors such as: unsafe physical conditions, unsafe actions, inadequate policy and procedures, etc.)

b. What was the cause of the incident?

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GL Incident Investigation (continued)

Checklists as a guide for incident investigation for most common GL exposures provide an excellent template of items to address when conducting an investigation. They are systematic, useful in assisting in gathering information and can be a means to document an investigation. However, they do not address all operations or exposures and do not prioritize the greatest exposures. Checklists are best used for common, routine type of events. Serious incidents often require the need for external consultants, legal or other professionals to conduct the investigation. Also for serious events consider the use of legal counsel to conduct or guide the investigation.

As part of the incident response plan a hospitality organization should consider investigation checklists for common GL exposures. Those can include but not be limited to:

- Slip, trip and fall by guests in the bathtub/bathroom
- Slip, trip and fall in the pool area
- Slip, trip and fall due to wet floors
- Slip, trip and fall exterior and parking lot
- Animal/insect bites
- Investigations involving guest security and safety
- For those with restaurants:
 - Liquor liability
 - Foodborne illness
- Theft and vandalism
- Elevators

Checklists can be easily obtained. It is recommended to consult with your agent/broker or insurance carrier, industry association, or legal counsel to obtain general checklists. Once obtained, management, risk manager, safety committee or other designated individuals can adapt these general checklists to fit the individual needs of the organization and make them part of the incident response and investigation plan.



After the Investigation

Little is to be gained from the incident response and investigation process if the data is not reviewed, analyzed and addressed for trending and analysis and other risk management purposes. Taking this information for safety committee and management review is important to determine the issues of that particular incident are addressed as well as applying what were the lessons learned from this event.

As an organization analyzes its incidents and losses, management, safety committee, risk managers can address the following issues:

- Hazard inspections and assessments – are they being done, how often, formal or informal, retaining records, documenting inspections.
- Examine the policy, procedures and controls you have in place – are they adequate to limit the chance of an incident? What are industry best practices? Can you transfer or limit risk?
- What does the loss trending and analysis tell? Where are your strong points concerning safety and where are your weakest?
- Training? More needed? Is it effective?
- Benchmarking—both internal and external. How do we compare both internally and industry averages?
- What can we do to get better?

To have an effective safety and health program it needs to be constantly evaluated and monitored. As stated previously management and employee support and commitment is essential to having a successful safety and health program. A good program will have all thinking safety first in both their personal and professional life.

Having a safe organization is important not only from a dollar and cents perspective but because it is the right thing to do.