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A Manager's Loss Control Guidelines for Preventing Claims Food Additives: Part II

by Gary A. Nesbit, CPCU

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Preventive Measures for Food Security

On January 9, 2002, the U.S. Food and Drug Administration published guidelines to minimize the risk of food being subject to tampering or criminal or terrorist actions. This article provides a summary checklist of these guidelines as means to evaluate and to enhance food security.

Targeted audiences for the new FDA Food Security guidelines include firms that produce, process, store, repack, re-label, distribute, or transport food or food ingredients or that prepare or distribute food at retail. These guidelines are also relevant to all sectors of the food system, i.e., from farm-to-table.

Operators of food establishments are encouraged to review and audit their current procedures and controls in light of the potential for tampering or criminal or terrorist actions, and make improvements. The implementation of enhanced preventive measures requires the commitment of management and employees to be successful and, therefore, both groups should participate in their development and review.

The following checklist is designed to evaluate an operations "Critical Infrastructure Protection" plan. Not all the items on this checklist will apply to every operation. However, the checklist will help identify those critical physical and cyber infrastructures of an operation, assess their vulnerability, and identify ways to mitigate the risks.

Food Establishment Operations

Security Procedures

- Security for food safety should be assigned to a qualified individual.

  Note: Position(s) responsible for receiving and addressing product concerns should include these responsibilities in their job descriptions and as part of their performance reviews.
- All employees should be trained to be alert to any signs of tampering with product or equipment, other unusual situations, or areas that may be vulnerable to tampering.
- **Note:** Employee training in this area should use specific examples of possible tampering so employees are familiar with what they are being asked to identify.
- **Note:** Input from employees should be obtained regarding examples that they have seen or are concerned about in regard to food/product tampering.
- Employees should be instructed on whom they should report potential and/or actual food/product tampering incidents.
- Each reported food/product tampering incident should be investigated.
- Each reported food/product tampering incident should be documented, including the results of the investigation.
- If the food/product tampering incident appears to include criminal activity, local law enforcement authorities must be contacted.

Supervision

- An appropriate level of supervision to all employees, including cleaning and maintenance staff, contract workers, data entry and computer support staff, especially new employees, must be maintained at all times.
- Conduct security checks of the premises for signs of tampering with product or equipment, other unusual situation, or areas that may be vulnerable to tampering.

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- **Note:** Frequency of security checks will vary greatly, from once a day to every few minutes, depending upon the nature of the operations and the exposure. Example: a secured warehouse may be checked once each shift whereas a public buffet may be checked every five minutes.

Mail/Packages/Deliveries

Physical and supervisory procedures should be in place to ensure the security of incoming mail, packages, and deliveries.

Physical Plant

Visitors & Customers

- If appropriate, inspect incoming and outgoing vehicles for suspicious, inappropriate, or unusual items or activity.
- Restrict entry to the establishment; this may include separate entry points for customers and business traffic.
- If appropriate, have a centralized check-in, checkout area for all visitors. Use of visitor badges, proof of identify, verification of the employee contact, sign-in and sign-out procedures may be needed.
- **Note:** Unsolicited visitors should never be allowed access to the facility.
- Areas involving food handling and storage should have additional access controls and restrictions.
- Access to and from locker rooms should be restricted.
- Access controls and procedures are to include everyone, including contractors, supplier representatives, truck drivers, customers, couriers, third-party auditors, regulators, reporters, visitors, employees' friends, and family members.

Physical Security

- Perimeter of the facility should be appropriately protected; this may include fencing or other deterrents.
- All access points should be capable of being secured; this includes doors, windows, roof openings/hatches, vent openings, trailer bodies, tanker trucks, railcars, and bulk storage tanks for liquids, solids, and compressed gases, to the extent possible (e.g., use of locks, "jimmy plates," seals, alarms, intrusion detection sensors, guards, monitored video surveillance).
- **Note:** Review any relevant federal, state, or local fire or occupational safety codes before making any changes.
- Minimize the number of entrances to restricted areas.
- **Note:** Maintain compliance with Life Safety codes and review any relevant federal, state, or local fire or occupational safety codes before making any changes.
- Maintain a formal key control program that is audited periodically.
- **Note:** Use security patrol (uniformed and/or plain-clothed) and video surveillance, where appropriate.
- Identify and minimize places that could be used to hide temporarily intentional contaminates.
- **Note:** Employees should be trained to report any unusual or suspicious containers.
- Provide adequate interior and exterior lighting, including emergency lighting.
- Implement a system of controlling vehicles authorized to park on the premises and/or enter the premises if appropriate.

Laboratory

- Control access to the laboratory (e.g., use of key cards or cypher locks).
- Note: Maintain compliance with Life Safety codes and review any relevant federal, state, or local fire or occupational safety codes before making any changes.
- Restrict the amount of laboratory materials and chemicals taken out of storage. Only a "working inventory" of laboratory materials and chemicals should be out at any time.
- Provide additional restrictive access control (e.g., use locks, seals, alarms, key cards, cypher locks) to sensitive materials and chemicals (e.g., reagents and bacterial, drug, and toxin positive controls).
- Maintain a written inventory of reagents and positive controls. Physical inventory audits should be done periodically.

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- Missing reagents or positive controls or other irregularities outside of pre-determined normal ranges of variability must be investigated and the results of the investigation documented.
- Install procedures for reporting missing reagent or positive controls or other critical materials/chemicals to local law enforcement when appropriate.

Storage and Use of Hazardous Chemicals (e.g., cleaning and sanitizing agents, pesticides, processing aids)

- Hazardous chemicals storage areas are to be secured (e.g., key cards, locks, or cypher locks).
- **Note:** Maintain compliance with Life Safety codes and review any relevant federal, state, or local fire or occupational safety codes before making any changes.
- Access to hazardous chemical storage areas should be limited.
- Maintain a written inventory of hazardous chemicals. Physical inventory audits should be done periodically.
- Missing hazardous chemicals or other irregularities outside of predetermined normal ranges of variability, must be investigated and the results of the investigation documented.
- Install procedures for reporting missing reagent or positive controls or other critical materials/chemicals to local law enforcement when appropriate.

Pre-Hire Screening

- All new employees should be adequately screened (e.g, obtaining and verifying work references, addresses, phone numbers, education, etc.).
- Immigration status should be checked and documented with the U.S Immigration and Naturalization Service when appropriate.
- For predetermined and appropriate positions, a criminal background check with the appropriate law enforcement agency may be appropriate.
- Employee screening procedures, once established for the various positions, should be applied to all employees, including seasonal, temporary, contract, and volunteer employees.

Daily Work Assignments

- Managers and/or supervisors should know who is and who should be on the premises and where they should be located and what shift.
- Managers and supervisors should know which tasks each employee is authorized to do.
- Changes in work assignments should be properly communicated.

Identification

- A method of establishing positive identification and recognition (e.g., issuing photo identification badges with individual control numbers, color-coded by area of authorized access) may be appropriate.
- A method to ensure the collection of photo identification and other access control keys, cards, etc. should be in place.

Restricted Access

- Employees should have access only to those areas necessary for them to do their job functions (e.g., use of key cards, cypher locks to sensitive areas, color-coded uniforms and or badges, etc.). Review any relevant federal, state, or local fire or occupational safety or Life Safety codes before making changes
- A formal procedure should be in place to change combinations and/or collect the retired keys or card keys when an employee is terminated, either voluntarily or involuntarily, and additionally as needed to maintain security.
- Levels of access for all employees should be periodically reassessed.

Personal Items

- Personal items of employees should be restricted to specific areas, such as locker rooms, designated work areas, etc.
- Employees should not be allowed to bring personal items such as lunch containers, and purses into food handling areas.
- Establish a policy providing for regular inspection of contents of employee lockers (e.g., provide metal mesh lockers, company-issued locks), bags, and vehicles when on company property.

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Training in Food Security Procedures

- Provide food security training to all new employees, including information on how to prevent, detect, and respond to tampering or criminal or terrorist activity.
- Provide periodic reminders of the importance of security procedures.
- Promote employee buy-in (e.g., involve employees in food security planning, demonstrating the importance of security procedures to the employees themselves).
- Maintain documentation of all employee food security training activities.

Unusual Behavior

- Managers and employees should be instructed to be aware of unusual behavior by new employees or workers (e.g., workers who stay unusually late after the end of their shift, arrive unusually early, access files or information or areas of the facility outside of the areas of their responsibility; remove documents from the facility; ask questions on sensitive subjects; bring cameras to work, etc.).

Computer Systems

Food establishment operators should consider:

Access

- Access to computer process control systems and critical data systems should be restricted to those employees with appropriate clearance (e.g., using passwords, and firewalls).
- Access to computer systems should be immediately terminated upon voluntary or involuntary termination.
- Develop a system capable of tracking computer transactions.

Raw Materials and Packaging

Food establishment operators should consider:

Suppliers

- Use only known, appropriately licensed, permitted, or approved sources for all ingredients, compressed gas, packaging, and labels.
- Implement steps to ensure that suppliers and transporters practice appropriate food security measures (e.g., auditing for compliance with food security measures that are contained in the purchase and shipping contracts or letters of credit.
- Upon receipt of shipments but prior to acceptance, authenticate labeling and packaging configuration.
- Inspect incoming ingredients, compressed gas, packaging, labels, and product returns for signs of tampering (e.g., abnormal powders, liquids, odors) or counterfeiting (inappropriate product identity, labeling, product lot coding or specifications) where appropriate.
- Evaluate the utility of testing incoming ingredients, compressed gas, packaging, labels, and product returns for detecting tampering or criminal or terrorist activity.
- Request locked and sealed vehicles/ containers/railcars and obtain the seal number from the supplier, and verify upon receipt, make arrangements to maintain the chain of custody when a seal is broken or inspection by a governmental agency.
- Establish quarantine and release procedures when appropriate.
- Reconcile the amount received with the amount ordered and the amount listed on the invoice and shipping documents, taking into account any sampling performed prior to receipt.
- Supervise off-loading of incoming ingredients, compressed gas, packaging, labels, and product returns.
- Alert local law enforcement about evidence of tampering or counterfeiting.
- Keep track of ingredients, compressed gas, packaging, labels, salvage products, rework products, and product returns.
- Investigate missing or extra stock or other irregularities outside a pre-determined normal of variability and reporting unresolved problems to local law enforcement, when appropriate.
- Destroy outdated or discarded product labels.

Operations

Food establishment operators should consider:

Security of Water

- Secure water wells, hydrants, storage, and handling facilities.
- Ensure that the water systems and trucks are equipped with back-flow prevention.
- Test for potability regularly, as well as randomly, and be alert to changes in the profile of the results.
- If applicable, monitor chlorinating water systems and equipment.
- Identify alternate sources of potable water (e.g., trucking from an approved source, on-site treating, or maintaining on-site storage).

Security of Plant Air

- Secure access to air intake points for the facility, to the extent possible (e.g., use of fences, sensors, guards, and video surveillance).
- Examine air intake points for physical integrity routinely.

Finished Products

Food establishments should consider:

Security of Finished Products

Keep track of finished products.

- Investigate missing or extra stock or other irregularities outside a predetermined normal range of variation and alert local law enforcement about unresolved problems, when appropriate.
- Verify and ensure that public storage warehousing and shipping (vehicles and vessels) practice appropriate security measures (e.g., auditing for compliance with food security measures that are contained in contracts or letters of guarantee).
- Perform random inspection of storage facilities, vehicles, and vessels.
- Request locked and sealed vehicles/containers/railcars and provide the seal number to the consignee (remember to consult any relevant federal, state, or local fire or occupational safety codes before making any changes).
- Advise sales staff to be on the lookout for counterfeit products during visits to customers and alerting management if any problems are detected.
- Evaluate the utility of finished product testing for detecting tapering or criminal or terrorist activity.
- Monitor closely the serving of food in open display areas (e.g., salad bars, open bulk containers).

Security

Food establishment operators should consider:

Response to Tampering or Criminal or Terrorist Event

- Have a strategy for triaging the event.
- Plan for emergency evacuations, including preventing security breaches during evacuation.
- Identify critical decision makers.
- Identify management staff that employees should alert about potential security problems.
- Identify 24-hour contact information for local, state, and federal police, fire, rescue, and government agencies.
- Identify a media spokesperson.
- Have generic press statements and background information.

Recall Strategy

- Identify the person responsible and a back up.
- Provide for proper disposition of recalled product.
- Identify customer contacts, addresses, and phone numbers.

Additional Steps

- Maintain any floor or flow plan in a secure, off-site location.
- Make employees aware of internal, fire, and police emergency phone numbers.
- Become familiar with the emergency response system and the Emergency Command Center operations in the state in which the facility is located.
- Make employees aware of the company officials to alert about potential security problems, and where they can be reached.

Evaluation:

Food establishment operators should consider:

Evaluation Program

- Evaluate the lessons learned from past tampering or terrorist events.

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- Annually review and test the effectiveness of strategies (e.g., conducting mock criminal, terrorist, or tampering event and mock recall, challenging computer security system) and revise accordingly—using a third party or in-house security expert.
- Perform routine and random food security inspections of the facility (including receiving and warehousing areas and intrusion detection system)—using a third party or in-house security expert.
- Verify that security contractors are doing an adequate job.

Emergency Point of Contact

U.S. Food and Drug Administration
5600 Fishers Lane
Rockville, MD 20857

If a food establishment operator suspects that any of his or her products that are regulated by the FDA have been subject to tampering or criminal or terrorist action, he or she should notify the FDA 24-hour emergency number at (301) 443-1240 or call his or her local FDA District Office. FDA District Office telephone numbers are listed at http://www.fda.gov/ora/inspect_ref/iom/iomoradir.html. The operator should also notify local law enforcement.

Additional Resources

USDA–Guidelines Food Producers, Processors, Transporters, and Retailers: Food Security Preventive Measures Guidance. http://www.cfsan.fda.gov/~dms/secguid.html

The Center for Infectious Disease: Research & Policy (CIDRAP) also guidelines on bio-terrorism and food safety. This is an excellent web site for additional information on food safety issues. http://www1.umn.edu/cidrap/ ■

OSHA 300 Log of Injuries and Illnesses

by Christopher D. Conti, CPCU, CSP

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Those interested may call for a low-cost electronic copy of the OSHA 300 and 300 A forms.

As OSHA continues to reach out to employers to encourage a higher level of compliance with OSHA standards, a simplified method of recording workplace injuries has been developed. The new OSHA Log of Occupational Injuries and Illnesses is simplified in format and language.

The OSH Act of 1970 requires (certain) employers to prepare and maintain records of work-related injuries and illnesses. Up to now, the required form was the OSHA 200 Log of Occupational Injuries and Illnesses.

Effective January 1, 2002, the OSHA 200 Log of Occupational Injuries and Illnesses is being replaced by the much simplified OSHA 300. The Code of Federal Regulations (CFR) 1904.4 - 1904.7 is the section that explains the new rules. This improved form should reduce the amount of paperwork needed to comply with injury tracking.

The OSHA 300 Log is to record the annual injuries and illnesses in the workplace.

The 300 Log is used to classify work-related injuries and to note the severity of each case. The injury must be logged within seven calendar days.

The OSHA 300 A is the Summary of those injuries/illnesses that must be posted each year for three months, February 1 to April 30, after the appropriate columns have been tabulated.

The OSHA 301 is the OSHA Injury/Illness Report that gives the basic information and the details about the injured worker. If your Workers Compensation Injury Report meets the basic data of the 301, then the employer can use that form to comply. This form must be kept for five years.

Employees are allowed to access their individual 301 form or the equivalent substitute.

Each location of an employer must maintain and post the OSHA 300 Log if the location will be in operation for a year or more.

Exempt Employers

Employers with 11 or fewer workers do not need to maintain the OSHA 300.

The industries of real estate, finance, insurance, and retail do not need to comply.

Required entries to the OSHA 300 Log are:

- death (except from a commercial vehicle)
- loss of consciousness
- days away from work
- restricted work activity or job transfer
- any other significant work-related injury
- needle stick or cut by a sharp object contaminated with another person's bodily fluid
- any medical monitoring as required by OSHA
- tuberculosis infection, evidenced by a positive skin test of doctor diagnosis
- medical treatment, beyond first aid

First aid cases—those injuries that receive in-house care—do not need to be logged on the OSHA 300. First aid is generally defined as post-injury care:

- at the employer's location
- providing short-term, one-time treatment
- cleansing, flushing, and soaking
- multiple application of first aid is not medical treatment

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- administering non-prescription medication
- using hot or cold therapy
- draining fluid from a blister
- removing foreign bodies from the eyes
- any doctor visit for diagnostic purposes

Restricted work activity means a health care professional has prescribed keeping an employee from doing his or her normal routine functions of the job. Count calendar days starting with the first day after the injury up to a maximum of 180 days (six months).

Procedure for workers to report injures and illnesses to their employer must be developed and communicated. This can be as simple as a poster stating that all workplace injuries must be reported to the supervisor immediately.

The new 300 OSHA Log has delayed the requirement to log:

- hearing loss, when there is a 25 decibel or more shift @2000 hertz
- musculoskeletal or ergonomic injuries

Privacy concerns—names may be eliminated and the word "privacy" inserted for any injury to a reproductive system, a sexual assault, mental illness, HIV infection, needle sticks, or employee request.

If the data changes after you have made an entry, simply draw a line through the old entry and write the new information above it.

Injuries include: lacerations, fractures, bruises, electrocution, sprains, and others.

Illnesses are heat strokes, skin disorders, respiratory conditions, poisoning, and others. ■

To Calculate Your Incidence Rate:

$$\frac{\text{Total \# of Injuries and Illnesses}}{\text{Total Hours Worked by All Employees}} \times 200{,}000 = \text{Incidence Rate}$$

Homicide on the Job . . . Further Thoughts

by Charles H. Morgan, J.D., CPCU, CSP, ARM

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Introduction

Going postal. This is the image that comes to mind whenever one hears of an incident involving violence in the workplace. This is admittedly a serious and growing problem, and the intent here is not to trivialize the matter, but, rather, to explore a related topic that for a number of reasons is seriously underreported by the mainstream press. The subject at issue is death on the job, not from random acts of violence, but rather from conditions so dangerous as to render one or more fatalities a virtual certainty. The level of "danger" in these situations is not some technical violation of an arcane OSHA regulation, but rather a conscious disregard for minimal safety standards that creates a workplace that is literally life threatening. Under such conditions, the conduct of the ownership can and should be judged within the context of the criminal law for in truth the behavior of the management is in fact in violation of the law.

This article will discuss the historical circumstances that existed during the Industrial Revolution in this country, and how the right to a safe workplace encountered significant opposition from a surprising number of sources. That is, it will first lay the historical groundwork during the nineteenth century when Common Law doctrines provided immunity to a business owner for allowing potentially deadly conditions to exist at his firm. The 1911 example of the Triangle Shirtwaist Factory fire will then be discussed as the most appalling example of this situation, and how the consequences from this tragedy helped to shape the current climate in the American workplace.

The article will then "fast forward" to present some ground-breaking examples of criminal behavior in recent decades, and how the respective attorneys general have endeavored to apply the criminal law to workplace injury and death. The 1983 Film Recovery Systems case in Illinois was the first example of a successful prosecution (i.e., for manslaughter) of the management of a firm in which a fatality occurred on the job, but it is by no means unique. A few other examples will then be provided leading up to the 1991 Imperial Foods fire in Hamlet, NC, for which the owner was sentenced to almost 20 years behind bars. This latter case serves as a sort of "bookend" to the Triangle Fire of 80 years before, and offers a compelling lesson as to how much, and then again, how little has changed in the intervening decades.

One of the most telling lessons from the Imperial Foods fire is the way in which such incidents are reported by the press. As will be discussed in detail below, there appears to be an inherent bias shared by the members of the mainstream press, which serves to cause reporters to misconstrue the "proximate cause" of such events, thereby preventing them from perceiving criminal behavior for what it is. This bias is only overcome after the local DA has sought and obtained an indictment for manslaughter or a related charge. By then, of course, the event has become "yesterday's news," and the chronicle of the criminal action is consigned to oblivion. While this might appear to be nothing more than an interesting footnote to the underlying story, this pattern of reporting has important consequences for American society. That is, far from being the "watchdogs" that the third estate fancies itself as being, they are more accurately "lapdogs" to industry, engaging in a conspiracy of silence.

This conspiracy has two important consequences that must be understood. In the first place it makes the job of the prosecutors more difficult by suggesting that they are perhaps being overly zealous in the discharge of their obligation to society. Secondly, this pattern of reporting masks the true extent of this problem in today's workplace. The truth of the matter is that these incidents are more common than a casual reading of the daily papers would suggest, and it is important for all safety professionals to be aware of the magnitude of the problem.

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The Industrial Revolution

As the era of industrialization evolved over the course of the nineteenth century, the American workplace became an increasingly unsafe environment for those so employed. While the incidence of work-related illness and injury was escalating at an alarming rate, the owners and managers of American industry remained largely immune from accountability. That is, there were two related doctrines at Common Law that precluded a lawsuit for damages by a worker who may have been seriously injured on the job. These Common Law defenses were the Fellow Servant Rule and Assumption of Risk. The first of these concepts held that with respect to any injury or death that resulted from a negligent act of a fellow worker, such negligence would be imputed to the injured co-worker thereby defeating any claim for damages that he might otherwise be entitled to pursue. The second doctrine was closely related to comparative negligence, and held as a matter of law that any injured worker should be denied a recovery on the theory that he willingly exposed himself to the perils associated with the work site.

As the nineteenth century gave way to the twentieth, social reformers grew increasingly vocal in their condemnation of the unrestrained danger inherent in American industry. While many of these critics such as Upton Sinclair were primarily interested in sweeping social reform rather than merely implementing workplace safety procedures, their work cast a harsh light on some of the more shocking practices then prevalent in America. Sinclair's 1903 expose, "The Jungle," depicted the shocking state of affairs in the meatpacking industry in Chicago, and ultimately led to the creation of the Food and Drug Administration.

What was particularly unsettling to these social critics was the trend toward the consolidation of economic power in the so-called "trusts" of the early twentieth century. In other words, as the American workplace was becoming increasingly dangerous, the individual worker was ever less able to safeguard his own interests in view of the massive concentrations of economic power then emerging in America. This disparity in bargaining power was further highlighted by the trend in western Europe toward the creation of workers compensation programs. On March 25, 1911, however, an event occurred in lower Manhattan, which was to prove as galvanizing to society at that point in time as the recent events of September 11 proved to be in ours.

The Triangle Fire

The Triangle Shirtwaist Company was located off the east side of Washington Square in lower Manhattan, occupying the top three floors of the allegedly fire-proof Asch Building. There were roughly 500 employees on site when a fire broke out near closing time on Saturday afternoon, March 25, 1911. Initially the employees reacted calmly when the word of the fire spread as they had been assured that the building's state-of-the-art construction rendered it fire proof. (It is, in fact, still standing and is currently part of the campus of New York University.) Unfortunately, however, the fire had originated on the eighth floor and spread rapidly due to the large volume of fabric that was present. The initial calm response quickly turned to panic, particularly for those on the ninth and tenth floors.

While the fire department arrived shortly after the outbreak of the blaze, they soon realized that even with the stepped up pressure in the hydrants, their hoses could reach no higher than the sixth floor. Further complicating the situation was the fact that the management had locked some of the escape routes for fear that the mostly Jewish and Italian immigrants might be tempted to steal some of the cloth and other material used for making the shirtwaists. It was reported, in fact, that a nightly ritual involved the searching of the purses of all of the employees on the way out of the plant at closing time. This undue concern for property rights bears a striking similarity to the facts of the Imperial Foods fire discussed below.

Thus, due to a combination of these factors the situation rapidly deteriorated, and as panic spread, people began to jump

from the upper floors in a scene reminiscent of the World Trade Center. The rate of descent was so great that even when the fire department was poised with nets in place, the bodies simply tore through the fabric hurtling through the sidewalk deadlights into the basement below. In all, 146 employees died.

Isaac Harris and Max Blanck, the owners of the firm, were indicted on charges of manslaughter, first and second degree, in April. In their subsequent trial, however, they were exonerated of all charges as the defense was able to persuade the jury that the "panic" and "ignorance" of the immigrants were the causes of their death, and not the locked escape routes.

The hue and cry that followed the tragedy had a more lasting impact. That is, by the following year, New York and Wisconsin had enacted workers compensation statutes, with the rest of the states rapidly following suit. The fire also led to the development of the National Fire Protection Association's Life Safety Code as well as other developments in fire fighting standards and procedures.

Workers Compensation

As most people are aware, workers compensation statutes involve a trade-off between the worker's right to compensation for wage loss and medical treatment in exchange for the employer's being immune from liability for the injury. That is, it is a no-fault system in which the employee has an unquestioned right to compensation in exchange for foregoing the option of seeking damages from the employer for any fault in causing the injury. This concept is generally termed the "exclusive remedy" provided by the comp system.

For the next 70 years or so, both parties were more or less satisfied with the nature of the bargain. In many cases, however, one or both parties saw room for improvement. As far as the injured worker was concerned, the statutory level of benefits provided were often inadequate, whereas the employer often became frustrated that no matter how "negligent" the injured party had been benefits would be paid and his rates would go up. Generally speaking, though, both sides were content with the basic framework for handling workplace injury. In 1983, however, an incident occurred in Chicago that caused a serious reconsideration of the status quo.

Film Recovery Systems

Film Recovery Systems was a Chicago-based firm in the business of reclaiming silver from spent photographic film. In the process, sodium cyanide was utilized to effect the extraction of the precious metal, but significant quantities of airborne cyanide gas were generated as well. The employees appeared to have all been recent Polish immigrants that could neither read nor speak English. Rather than provide the workers with the manner of personal protective equipment that was warranted for an environment such as this, the management instead elected to scrape the skull and crossbones from the sides of the canisters. The rationale presumably was that even these workers would have recognized the international symbol for poison. Unfortunately in 1983, a 53-year old employee by the name of Stefan Golub died from the chronic exposure to cyanide.

Following an extensive investigation into the facts of the case, the Cook County district attorney secured indictments for murder against five Film Recovery officials. After an eight-year series of lengthy trials and appeals, three of the managers were sentenced to three-year terms for manslaughter.

This case was a landmark in the annals of American jurisprudence for a number of reasons. The "exclusive remedy" doctrine discussed above tended to reinforce the limited liability protection historically accorded to corporations through the ages. That is, a corporation was a separate and distinct legal entity, and the potential liability that could be imposed on its shareholders was long held to be limited to the loss of their original investment. Furthermore, for a person (or entity) to be convicted of a capital crime such as murder or manslaughter, the requisite mental state (or mens rea) must be proven to exist to establish the underlying "intent" required for these kinds of convictions. Clearly, it was thought to be an oxymoron for a corporation to be able to formulate "intent." Accordingly, it was long an established

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article of faith that corporations and criminal law were mutually exclusive.

In view of the importance of the Film Recovery case, there is a considerable amount of analysis to be found in various law reviews and other legal publications. A Washington University (St. Louis) law professor, Kathleen Brickey, wrote one of the more insightful pieces in the *Notre Dame Journal of Law, Ethics & Public Policy* in 1987 (Volume 2, page 753). In the law review piece she rightly noted that the verdicts "sent shock waves through the nation's business community." Bearing in mind that the piece was written before what has since become a trend, her concluding paragraph is reflective of some of the benefits to having a role for the criminal justice system "when management crosses the line." The concluding paragraph is as follows:

> Perhaps, then, it is not inappropriate that the criminal justice system should play a role in the regulatory process when management crosses the line. It may play a particularly effective role at that, for the prosecutor has at his disposal the coercive investigatory powers of the state. His investigation, moreover, is immune from the automatic stays in bankruptcy proceedings that permit witnesses and claimants to die and evidence to grow stale before the truth can be found and the blameworthy judged accountable. Perhaps, upon reflection, the criminal justice system will prove to be a highly desirable regulatory alternative because of the swiftness and sureness of its response.

It is worth noting that one of the drawbacks to having district attorneys involved in the investigation and enforcement of "criminal" behavior is the high standard of proof that is required to obtain convictions. Accordingly, such prosecutors will frequently seek indictments for lesser charges where the burden of proof is not so daunting. The Pymm Thermometer case is an example of such legal maneuvering.

In New York in 1990, the two brothers who owned and operated the Pymm Thermometer Corporation were indicted for "assault with a deadly weapon" for subjecting their employees to dangerous levels of toxic mercury fumes during a reclamation operation. The rationale for the assault charge is that the offense is manifested in the degree of apprehension instilled in the minds of the victims, and therefore the defendant's intent need not be addressed. Accordingly, a Brooklyn jury found them guilty of this lesser charge and sentenced them to 26 weeks in jail, a $10,000 fine, and five years on probation.

Other states that have utilized the criminal justice system for enforcement purposes in recent years include Massachusetts, California, Texas, Wisconsin, Michigan, and Colorado. To date, however, no incident has been dealt with more harshly than a fire in a poultry plant in Hamlet, NC, in 1991.

The Imperial Food Products Fire

In what seemed like a grisly reprise of the Triangle Fire 80 years before, Emmet Roe's poultry processing plant in Hamlet, NC, burned down on September 3, 1991. Like Max Blanck and Isaac Harris before him, Roe was concerned that his employees might be stealing his property, chicken parts in this case, and thus he took the precaution of locking the emergency exits. Unfortunately, on that day a hydraulic line burst above a large vat of grease and smoke and flames quickly engulfed the plant. Of the 230 Imperial employees, 90 were in the plant when the fire started, and 25 were killed, and 56 injured. There were no windows in the plant, and thus the victims died as a result of the locked exit doors. For his role in sealing the exits, he was sentenced to 20 years in jail, with eligibility for parole in two and one-half years.

Unfortunately, it is not possible to know for certain exactly what measure of punishment was meted out for this crime as the mainstream press quickly lost interest in the matter. That is, there is an authoritative study of the press coverage by two noted criminologists, John Wright and Francis Cullen (*Crime & Delinquency*, January 1995, Volume 41, Issue 1, page 20). They conducted a comprehensive analysis of the coverage of the incident by 10 regional and national papers including the *New York Times, The Wall Street Journal,* and the *Los*

Angeles Times. The general consensus was that the real story in this matter was the failure of North Carolina OSHA to inspect this 100-year old plant at any point during the 11 years that it operated as a poultry plant. Only after an indictment was obtained against Roe did any of the coverage address the underlying criminal nature of the locking of the doors. Of course, by then, the coverage, if any, of the incident was buried deep within more newsworthy events. From a total of 34 stories during the first week of the incident, only six stories reported that he had in fact been convicted and was headed to jail.

As Wright and Cullen point out, not only is this skewed coverage irrational, but it has distinctly negative consequences for society at large as well. In other words, by permitting the pervasive liberal bias in the press to record this tragedy as a regulatory failure of sorts, the media is actually abnegating its responsibility to assist in the deterrence of criminal activity. Their conclusions are as follows:

> The lack of coverage devoted to the outcome of the case—the manslaughter convictions—also is noteworthy. Again, although it was a major case of **corporate** violence (emphasis in the original), the criminal conviction of the company's owner either was not covered or was covered in a relatively short report placed deep within the pages of the newspaper. This coverage thus limited the power this conviction might have had to exert educative or deterrent effects; that is, to have educated the public about the moral boundaries of **corporate** risk-taking and to have shown **corporate** managers that creating or tolerating safety hazards can make them criminally liable.

The Future

While one must always be somewhat circumspect in predicting future trends based on recent developments, it would seem reasonable to expect the enhanced utilization of the criminal law to continue in the workplace. Recent disasters such as Bhopal and the Exxon Valdez have served to subject the "corporation" to more scrutiny and therefore accountability.

Of course this erosion of the principle of "limited liability" for corporations can also engender reactions that are somewhat extreme themselves. While campaigning for the Republican nomination, Texas Governor George W. Bush espoused a doctrine that he argued would make such legal entities more "human." The proposed technique for achieving this enhanced degree of accountability would seem to be rather excessive, however. That is, he was actually advocating jail time for investors in corporations that are guilty of such outrages as Union Carbide and Exxon. He contended that "if investment in one company is likely to land you in jail, you'll invest in another instead." Whatever the reader may feel about this proposal, it is submitted that this measure of accountability is entirely too broad and unrealistic.

On a more reasonable note, there is currently a bill pending in the Parliament of the United Kingdom on "corporate killing" in response to a recent rash of fatal train wrecks. That is a person could be convicted of manslaughter for either "reckless killing," or "killing by gross carelessness." The essential element for both charges is that the defendant's "conduct causes the death of another. . . . "

While the prospects for such a bill actually becoming law are by no means clear, what does seem to be inevitable is that corporations will continue to be held to increasing standards of accountability throughout the industrialized world. ■

General Outline of OSHA-Related Rights and Responsibilities are Outlined in a New Fact Sheet

The new OSHA job safety and health fact sheet provides a good overview for any employee safety program and safety manual. This new fact sheet explains how OSHA contributes to job safety and health; which employees are covered by OSHA, employer rights and responsibilities; employee rights and responsibilities, and where to find more safety and health information.

Employee Safety in Financial Institutions

Editor's note: *This article is an internal publication of the Risk Control Department of St. Paul Fire & Marine Insurance and is reprinted here with permission.*

The financial services industry has long been considered a relatively low hazard operation from a worker safety standpoint. Yet, each year, many employees suffer workplace injuries while working in banks and other financial institutions. Unsafe conditions and procedures contributing to employee injury and illness need to be addressed in this industry—just as in any other setting.

This technical guide identifies the most common workplace exposures in financial institutions. Managers and employees need to be aware of these exposures and knowledgeable of the controls that can assist in reducing the potential for injury.

Basic OSHA regulations are designed to protect employees from injury on the job. The OSHA standards for the financial services industry is General Industry (29 CFR 1910). Certain OSHA publications (or comparable state publications) are required in your safety and health activities:

- OSHA workplace poster (Job Safety & Health Protection)
- recordkeeping requirements and the necessary forms

Recognizing the Exposures

There are two types of injuries that constitute the majority of workplace injuries in financial institutions. **Slip/Trip/Fall—** contributing factors may include flooring behind teller lines, in offices, and other areas; condition of mats, carpeting, and rugs; floor outlets, equipment cords run across floors; and employee footwear. **Ergonomic** (repetitive motion, strains)—contributing factors may include improper workstation design and layout, arrangement of equipment, and materials handling (including bulk coins).

Evaluating the Workplace

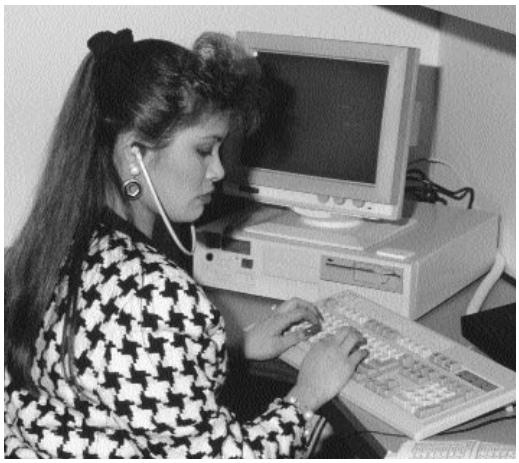
Management should conduct an initial workplace evaluation to identify existing exposures. A schedule can also be established to conduct routine evaluations throughout the year. Evaluations should be documented and any exposures identified should be included in a plan of action for correction or improvement. Common items to evaluate should include the following:

Slips/Trips/Falls

- Tile or hard surface flooring—should be smooth and level with a slip-resistant surface; floor cleaners (for mopping and waxing) should also have a slip-resistance factor.
- Stairs or ramps—each step should be level, ramp surfaces smooth, handrails in place (also check for slip-resistive surface on stairs and ramps).
- Carpet, mats, rugs—there should be no tears, runs, or pulls; check for buckled areas; rugs and mats should be smooth and flat with no curled up corners or edges.
- Cords—use cord managers or clips to run cords behind furniture and equipment and keep them out of employees' feet; avoid running cords/wires across floors or in traffic areas; use a cord floor strip whenever cords in work areas cannot be avoided.
- Employee footwear—should be appropriate for job duties; slip-resistant soles; heels in good condition.

Repetitive Motion/Strains

- Standing—mats should be provided for standing positions; check counter height versus employee height; is a stool provided for sitting where possible?
- Sitting—provide a chair with a stable base (5 casters vs. 4), adjustable height, lumbar support, and arm rests; employees' feet should rest comfortably on the floor or a foot rest so that knees are at or slightly higher than waist height.
- Workspace/cubicle/desk—chair as described above; top of VDT screen at



or slightly below eye level (horizontal line); adjustable keyboard tray with mouse pad next to keyboard (employees' forearms should be parallel to the floor).

- Frequently used items should be in close range to reduce reaching and turning (phone, pencils/pens, tablets, printer, etc).
- Document holder should be used to reduce turning head or straining to see.
- Adequate lighting should be provided; glare can be reduced or controlled by position of screen or use of a glare-reducing screen.
- Lifting aids and employee training should be provided for lifting or moving equipment or materials (including files and bulk coins).

Making the Necessary Adjustments

If and when exposures are identified during an evaluation, management should set a timeline for correction or improvement. This does not necessarily mean a large expense to management. Some items can be corrected by simple adjustment or relocation of existing equipment (relocating wires, adjusting PC screen height, or relocating a PC to reduce glare, reorganizing desk spaces so frequently used items are close by, etc.). Where improvements do incur expense, management should prioritize the areas of exposure and set a goal to have improvements completed by a desired date.

Conclusion

Banking may not be the most hazardous place for employees to work; however, employees and customers are exposed to injury on a daily basis. With the above information, management should have the basic knowledge of what to look for and how to address exposures when they are identified. ■

Habla Español? Agency Unveils Spanish Language Web Page

OSHA is reaching out to Spanish-speaking employers and employees, with a new Spanish language web page. This initiative by the U.S. Labor Department is to help Hispanic workers stay safe on the job. Hispanics have a 14 percent job fatality rate, yet constitute 11 percent of the workforce. Labor Secretary Elaine Chao has directed OSHA to form a task force to educate workers and their families about the risks.

In announcing the new web page, found on OSHA's web site (http://www.osha.gov), Chao stated, "Job safety and health depends on employees and employers knowing what they must do to ensure workplace protections. That starts with understanding vital, basic information about preventing injuries, illnesses, and fatalities." She added that more than 10 million Americans speak little or no English, and one in five does not speak English at home.

The page focuses on several areas, among them an overview of OSHA and its mission, how to file complaints electronically in Spanish, worker and employer rights and responsibilities, and a list of resources.

Join us in Orlando, FL!

CPCU Society • Annual Meeting & Seminars
October 19 - 22, 2002 • Orlando, Florida

The CPCU Society's 58th Annual Meeting and Seminars will be held on October 19-22, 2002, in Orlando, FL.

The Loss Control Section will be presenting an exciting and informative seminar on "Crisis Management and Business Resumption (9/11)" on Sunday, October 20, from 1:45 - 3:45 p.m.

Watch your mailbox for a special Annual Meeting and Seminars issue of the *CPCU News* coming in May!

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