



# THE Monitor

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BY MORGAN BLISS, CIH, CIE

**M**ost employers are subject to various regulations that require businesses to prepare for (and sometimes respond to) emergencies. Most employers want to know where in the regulations it says they are legally required to do this. Following is a summary of pertinent regulations for emergency preparedness and response.

*Employers must be in compliance with these requirements or their specific state plan requirements unless they fall under an exemption.*

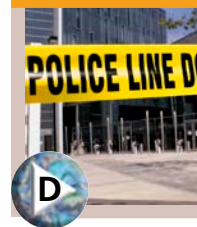
### REGULATIONS

#### OSHA

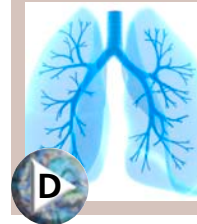
OSHA has set standards for emergency preparedness and response that apply to most workplaces in the U.S. as described in 29 Code of Federal Regulations (CFR) 1910 (OSHA, 2013). These standards are generally required of all workplaces  
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# 17 Mistakes Made in Emergency Plans

## How to Avoid & Correct Them

**M**ost organizational leaders believe their company emergency plans are state-of-the-art when, in fact, their plans are dangerously flawed. Their emergency plans do not comply with federal and state regulations, ignore many classes of personnel and rarely consider visitors. Additionally, coordination with local emergency services is nonexistent, and personnel training is haphazard and illegal. The risks to the organization are many and the exposures titanic. This article provides 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 can 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 nonresidential 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
- 4,690 accidental workplace deaths.

Sources: OSHA, U.S. Department of Justice, NFPA, American Red Cross, EPA

Risk always multiplies.

What is the fallout for an unprepared organization?

- 78% of organizations that suffer a catastrophe without a contingency plan go out of operation within 2 years;
- 90% of organizations unable to resume operations within 5 days of a disaster go out of business within 1 year.

Sources: Agility Recovery Solutions, Continuity Insights Management Conference, London Chamber of Commerce Study

### COMPLIANCE ISSUES: THE LAW

OSHA regulations apply to every employer in the U.S., without exception:

- All Employers Covered: 29 CFR 1910.34(a);
- 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;
- First Aid: 29 CFR 1910.151.

The following federal regulations may also apply to many organizations:

- Hazard Communication/MSDS: 29 CFR 1910.1200;
- Bloodborne Pathogens: 29 CFR 1910.1030;
- Spill Prevention Countermeasures and Containment (EPA): 40 CFR 112

State fire codes also apply to organizations.

*Most organizational leaders believe their company emergency plans are state-of-the-art when, in fact, their plans are dangerously flawed.*



## COMPLIANCE ISSUES: THE NATIONAL STANDARD THAT WILL TORPEDO ANY DEFENSE

NFPA 1600 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)]. This standard is law (shall) in California and Florida where 56 million residents experience and plan for earthquakes, sinkholes, wildfires, hurricanes, flooding and mudslides—and have formally done so since World War II. Their authority on planning is held high by courts everywhere.

The Fire Department of the City of New York enforces the most robust emergency planning law in the world—inspired by NFPA 1600. Standard & Poor's (S&P) uses this standard when auditing emergency, disaster recovery and business continuity to ensure resiliency. Even in states where NFPA 1600 is a "should" and not "shall," 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 U.S. Congress, California, Florida, New York City and S&P, 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. No longer can an organization's emergency plan simply address fire. All-hazards planning means that at least these requirements and foreseeable circumstances are addressed:

- active shooter;
- all-employee training;
- assembly area;
- bomb threat;
- chemical spills;
- contractors;
- disabled (any persons with special needs, including pregnancy, a temporary disability, etc.);
- drills;
- earthquake;
- emergency response team;
- emergency shutdown;
- evacuation procedure;
- explosion;
- fire prevention strategies;
- fire risk assessment;
- flood;
- headcount procedure;
- hostage;
- mandatory evacuation;

- pipe burst;
- power failure;
- severe weather/tornado/hurricane;
- shelter in place;
- spill cleanup;
- structural failure;
- suspicious package;
- team training;
- terrorism;
- visitors;
- workplace violence.

Search for any one of these emergency situations and you will find that such an incident has occurred 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, planning, training and drills must address OSHA, the state fire code and NFPA 1600.

### DOES YOUR PLAN INCLUDE ANY OF THESE 17 MISTAKES?

911 Consulting reviewed more than 500 emergency plans nationwide created for corporations, campuses and medical facilities, all of which had 200+ employees. Of those 500 organizations, only one was found to be OSHA-compliant.

Review of organization emergency plans reveals 17 common mistakes.

**1) Plans ignore critical audiences.** It is illegal to ignore emergency planning, training and drills for visitors, contractors, second and third shifts and 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 most likely to sue and win. Nearly all emergency plans ignore visitors regarding escort policy, evacuation, shelter in place, assembly areas, 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 undertrained employees to supervise an undrilled evacuation, conduct a never-used headcount and report to emergency service responders.

You are responsible for the safety of multiple contractors who regularly visit your worksite to care for computers, plants, coffeemakers and so on. OSHA designates you as the "host employer." You are required to include contract personnel regarding emergency planning, training and drills.

You cannot 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 all personnel must be accounted for [1910.39(c)(4)]. Therefore, you must conduct headcounts in any emergency for visitors, contractors, second and third shifts and weekend employees.

Most employers report to us that 50% to 90% of employees do not 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 must 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 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, second and third shifts and weekend employees.

**4) Command and control during emergencies is weak or nonexistent.** It is not clear-cut in most organizations who is in charge when the top people are offsite. When senior emergency managers are absent, are you confident in who is 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 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

do not 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 cellphones, power and information technology (IT) is 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 to become unavailable during an emergency. If you cannot communicate, you cannot respond.

The answer is inexpensive two-way radios. However, users must be trained and must carry the radios at all times so they can use 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. Onscreen training alone is illegal. However, onscreen training can supplement classroom training.

Training shall be:

- annual;
- at hire;
- in a classroom where questions can be asked and answered;
- when the plan changes;
- when people in the plan change;

All personnel in these programs must be trained annually and at hire, including contractors, weekend employees and second and third shifts.

Training must be conducted by a "qualified" trainer—qualified by experience or by training in the discipline. The business manager or human resources 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 freeze or panic.

**7) Fire extinguisher training is illegal.** No federal or state agency requires the use or training of por-

table fire extinguishers posted in your facility. OSHA requires that you have a use policy. "Use" or "Do Not 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 at 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)]. 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 binder, then you probably need a hazard communication 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. Hazard communication is an "Employee Right to Know" law. The law requires that all employees be trained on a written hazard communication plan 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 the 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 cannot “guarantee” (their word) emergency response for medical treatment in less than 4 minutes, the employer shall train employees in first aid and cardiopulmonary resuscitation (CPR). No fire chief or emergency medical services director in the U.S. will guarantee response in less than 4 minutes from the time of the 911 call to the moment when the emergency medical technician reaches the side of your injured.

Are your people annually trained in CPR, automated external defibrillators and first aid? How many are trained? Are their certificates of training current and on file?

Your standard of care must specify when to call 9-1-1. 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 pathogens training.** OSHA states that any employer that cannot guarantee trained medical personnel can reach an injured person on site in less than 4 minutes shall train employees in first aid. Since no fire chief or emergency medical services director anywhere in the U.S. will make that guarantee, you must train employees in first aid. OSHA also states that any employer who trains personnel in first aid shall have a bloodborne pathogens plan (29 CFR 1910.1030) and train it to those trained in first aid. Many employers will train all employees to at least the awareness level in bloodborne pathogens.

**12) Disabled and special needs personnel are ignored.** U.S. Department of Homeland Security, 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 both your emergency response plan and your emergency response team’s training. Special needs personnel include all who are visibly disabled, and those who move slowly, are hard of hearing, pregnant, on crutches, etc. Your planning must include visitors, contractors, second and third shifts and weekend employees.

**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 headquarters’ procedures may seem economical, 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 were not even changed. While this is an extreme example, those who borrow and modify will not be spared from the wrath of a regulator or a competent litigator. Exposures to the borrower and the lender are many.

Moreover, given the fact that nearly all organizations’ emergency plans fail to comply with federal and state standards, bad plans are copied. As the saying warns, “When you copy from an ‘F’ student, you get an ‘F.’”

**14) “That is the landlord’s (building manager’s) responsibility.”** No federal or state regulation permits landlords or building managers to supplant a tenant organization’s legal requirement to have an emergency response plan. Landlords/building managers may need an emergency plan of their own for employees and to manage the tenant population. Since building managers are one key to success in any emergency, landlords/building managers should have a robust emergency plan.

However, most landlords/building managers have no plans or have bad ones. Their main deficiency is 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 depend solely on your landlord/building manager to successfully command your employees and their life safety during an emer-

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gency, 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.

Regulators and jurors do not like out-of-date plans, with out-of-date training, and no recent drills.

**16) "No one enforces this stuff, and no organization has plans. I am willing to chance it without a real plan."** Please note how this position plays out. You will have an incident. Then 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 receives 200,000 phone calls to its 800 number every year (up from 160,000 in 2006). The agency has the statutory obligation to investigate every complaint. OSHA keeps the complainant anonymous by law.

Also note that noncompliance of law is almost always considered negligence by any state or federal court. Violation of standards often creates the presumption of negligence.

Courts love NFPA standards. The U.S. Supreme Court 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)].

**17) "We have never had troubles or incidents, so, I do not think we need a real plan. We have been lucky so far."** Yes, but luck is not a strategy. It will not be a standout on your resume to explain that luck is your strategy when it comes to your employees' life safety.

#### CONCLUSION

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. However, the numbers are so great and pervasive that you cannot outlast or hide from them.

Compliance standards include OSHA, your state's fire code and NFPA 1600. The last is recognized by Congress, California, Florida, New York City and S&P. These authorities will be used by any litigator. Often, you can add 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 examine their emergency plans. In the case of 99% of organizations, expert help should be sought to assess the current situation. Determine what it will take to be 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. ☺

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