

## CHAPTER VI FATALITY INVESTIGATIONS

- I) **General.** Fatality investigations must be opened within one (1) working day from the date it is reported or the date the Division of Compliance is made aware of the occurrence.
- A) **Definitions.** The following definitions apply for purposes of this chapter:
- i) **Fatality.** A death resulting from an employment incident or illness. All worker deaths at a worksite are presumed to be work-related for purposes of reporting.
  - ii) **Hospitalization.** In-patient admission to a hospital or medical facility. Treatment at an emergency room without admittance is not considered a hospitalization.
  - iii) **Next-of-Kin (NOK).** Immediate family member(s) or the person(s) listed as the emergency contact on the deceased's employment records. The NOK may designate another person(s) as the point of contact.
  - iv) **Reporting.** Notifying the agency within the required period after management, or its agent, becomes aware of an incident.
- B) **No Fatality Investigation Planned.** When KY OSH determines it will not conduct an investigation following notification of a fatality, the supervisor must provide supporting information, documentation, and a conclusion for not conducting an investigation.
- C) **Fatality Investigations.** The CSHO must inform the employer that an investigation will be conducted.
- II) **Action.**
- A) **Pre-Investigation Activities.** KY OSH is often the subject of public scrutiny in the conduct of fatality investigations; it is imperative the investigations are thorough, complete, and professional.
- i) **Supervisor.** When the fatality requires an investigation, the supervisor ensures the necessary forms are completed and reports the event to the director, commissioner, assistant director, and OSH Federal-State Coordinator (FSC). The director or designee provides all pertinent information to the secretary.
  - ii) **Preemption.** There may be situations when it is not clear whether authority to investigate fatalities is pre-empted. Follow the guidelines in Chapter IV.
    - (a) *General.* When KY OSH's authority is uncertain, the CSHO opens the investigation at once and does not let potential jurisdictional problems interfere.

- (1) When the director cannot resolve a jurisdictional issue, all pertinent information is relayed to the commissioner and FSC, who consults with the Office of the General Counsel (OGC). Clarification is provided as soon as possible.
  - (2) When KY OSH has previously determined that it does not have authority, the FSC is notified immediately.
- (b) When KY OSH jurisdiction is partial, an investigation is conducted as usual; and, all apparent violations are noted, including those for which jurisdiction is pre-empted. The FSC is notified immediately.
- iii) Preliminary Investigation. The supervisor, upon notification of an incident involving a fatality, must gather as much information as possible prior to scheduling an investigation. When possible, this is done immediately through discussion with the person reporting the incident. When KY OSH receives knowledge of the incident through the media, or sources other than a representative of the employer, KY OSH contacts the employer as soon as possible to obtain additional information when the supervisor believes such contact will result in a more effective investigation. Such contact may be considered an opening conference.
  - iv) Investigation Team. When an investigation team composed of experts in specific disciplines is necessary, the supervisor will advise the program manager. The program manager determines the composition of the team and directs the investigation or delegates a team leader. The team must proceed promptly to the scene.
  - v) Use of Expert Assistance. When the supervisor determines expert assistance is needed in the conduct of the investigation, he or she consults with the program manager upon the recommendation of the CSHO or team leader.
  - vi) CSHO Selection. The supervisor selects a CSHO and dispatches her/him to the site. The supervisor may also consider CSHO proximity to the investigation site when assigning a CSHO. Any CSHO assigned to conduct an investigation must have completed required OSHA Training Institute classes.
  - vii) Office of General Counsel. An attorney from the OGC is assigned to assist the CSHO and the supervisor during the investigation and informal conference.
    - (a) The attorney's role is to consult and assist in obtaining documents, determining standard(s) to cite, determining employee/employer relationships, multi-employer issues, etc. Although the attorneys are not overseeing or directing the investigation, they meet at least monthly with the CSHO and the supervisor to discuss the progress of the investigation and any other issues that arise. The CSHO and supervisor must discuss the findings with the assigned attorney prior to closing the investigation.
    - (b) When an employer's attorney(s) is involved in the investigation, the CSHO can coordinate document requests and interviews through the employer's attorney. When issues with the

employer's attorney arise, the CSHO and supervisor must refer the employer's attorney to the assigned OGC attorney. The OGC attorney must attend the closing and informal conferences when the employer's attorney attends.

(c) A copy of all written communication between Department of Workplace Standards' staff and OGC attorney(s) must be included in the LGL tab of the casefile.

viii) Other Agency. When another State or Federal agency participates in the investigation, the director, commissioner, assistant director, and FSC must be notified. The program manager and supervisor must ensure the CSHO and/or team members are fully instructed in the relationship with the other agency(s) and area(s) of responsibility.

**B) Investigation Procedures.** Every reasonable effort must be made to determine the cause of the incident, whether a violation of safety and health standards, regulations, or the general duty clause occurred.

i) Scope. Fatality Investigations must include a complete evaluation of the circumstances of the incident consistent with the purposes outlined above. The CSHO must use all reasonable resources to thoroughly investigate the incident. The cause of a fatality must be stated in the Narrative. When the cause of a fatality is not readily apparent and cannot be reasonably determined, the Narrative must document why the cause of the fatality was not determined.

ii) Comprehensive Investigation. Depending on the circumstances surrounding the incident, it may be necessary to conduct a comprehensive investigation, before, concurrent with, or after the incident investigation. Other areas or operations at the site may have hazards similar to those that caused the incident; and, if so, they must be brought to the employer's attention immediately.

iii) Abbreviated Opening Conference. Investigations of fatalities require the CSHO get to the location as soon as possible. The CSHO may reduce the time spent in the opening conference by limiting remarks to the bare essentials of identification, the purpose of the visit, and the request for an escort by employee and employer representatives. The CSHO must inform the employer that a more extensive discussion of other opening conference topics, including a records review, will be conducted.

iv) Interview Procedures.

(a) The CSHO must identify and interview all persons with knowledge of the incident, including, but not limited to, employees, employee and employer representatives, first responders, police officers, medical responders, bystanders, and management, as early as possible.

(b) The CSHO must conduct employee interviews privately and advise the individuals of discrimination protections.

C) **Next-of-Kin.** As soon as practicable after opening the investigation, the CSHO must compile a list of deceased employees' names along with the names and contact information for the NOK. The CSHO must contact the NOK as soon as possible. This gives the CSHO the opportunity to establish rapport with the NOK and communicate that the incident is being investigated. Care must be taken to ensure sensitivity and tact are exercised during all communications, including any correspondence sent to the NOK. The CSHO must document all communications and attempted communications with the NOK.

- i) When the NOK cannot be determined through employment records or interviews, the CSHO must make an effort to identify the NOK through a search of police records, hospital admission records, coroner's records, newspapers, and any other available source. When the search does not identify a NOK, the casefile must include documentation to reflect the search.

**NOTE.** Contact with the NOK requires professional judgment on the part of the CSHO. In some situations, these procedures may not be followed exactly. For instance, in some small businesses, the employer, owner, or supervisor may be a relative of the deceased. In such circumstances, NOK letters may need to be edited.

- (a) The CSHO must attempt to contact the NOK prior to the initial notification letter being mailed. The CSHO must request work-related information concerning the fatality and encourage the NOK to contact the CSHO with any additional information.
- (b) When the NOK does not want to be involved or updated, the CSHO must document the NOK's request.
- (c) The CSHO must ensure the following is explained during the initial communication with the NOK:
  - (1) KY OSH inspects the worksite(s) to determine whether a violation of safety and health standards has occurred;
  - (2) Investigations may be comprehensive in nature or limited to hazards associated with the fatality;
  - (3) The investigation may take up to six (6) months to complete;
  - (4) When KY OSH determines the employer violated a safety or health standard(s) or regulation(s), the agency may issue citations and penalties;
  - (5) That releasable portions of the casefile will be made available free of charge to the NOK; and
  - (6) At any time during the investigation, the NOK may contact KY OSH to inquire about the status of the case or to ask questions.

- (d) Following initial personal contact, the CSHO must send an Initial Next-of-Kin Letter to the NOK within five (5) working days. When the CSHO cannot make personal contact with the NOK, an edited Initial Next-of-Kin Letter may be sent to the NOK. A copy of the letter must be retained in the casefile and the date the Initial Next-of-Kin Letter was sent must be entered into OSH Express. The minimum contents of the initial contact letter are:
- (1) The purpose and scope of the investigation;
  - (2) A request for information relevant to the investigation. This request includes an offer to meet and discuss any information they may have; and
  - (3) A statement offering information such as :
    - (a) Being informed of investigation milestones;
    - (b) The offer to answer questions; and
    - (c) The releasable portions of the casefile will be made available free of charge to the NOK.
- (e) Follow-up communications are vital. These communications allow the CSHO to provide updates on the status of the investigation and provide the NOK with an opportunity to ask questions. However, the CSHO may not divulge privileged information such as the name of potential witnesses or discussions with cabinet legal personnel. This exchange should occur periodically until the investigation is complete and the findings are communicated to the NOK.
- (f) KY OSH will exchange investigation updates including, at a minimum, the investigation findings letter, citations and penalties, and the informal conference process.
- (g) After the closing conference, the CSHO must contact the NOK to explain the findings and address any questions. When information changes, the NOK must be updated.
- (h) When the CSHO cannot contact the NOK, the CSHO must document the attempts to contact the NOK.
- (i) *No Proposed Citations*. When citations are not proposed, the CSHO must explain the findings of the investigation to the NOK after the closing conference. The CSHO must be prepared to discuss and explain the following:
- (1) Citations are not issued solely because there was a fatality.
  - (2) The CSHO inspected the worksite(s) to determine if a violation(s) of a safety or health standard(s) or regulation(s) occurred.

- (3) The investigation did not substantiate a violation(s) of a safety or health standard(s) or regulation(s).
- (4) Releasable portions of the casefile are available free of charge to the NOK through an open records request to the OGC.
- (5) Within five (5) working days of closing the case, the program manager sends a case closure letter to the NOK. The case closure letter must contain a copy of the casefile narrative.
- (6) When the CSHO cannot contact the NOK, the CSHO must document the attempts to contact the NOK.
- (j) *Proposed Citations.* After the closing conference and before the issuance of citations, the CSHO must contact the NOK to explain the alleged violation(s), proposed penalty(ies), reduction factors, violation classification, abatement requirements, informal conference, and contest procedure. The CSHO must also explain how to make an open records request and that releasable portions of the casefile will be made available free of charge to the NOK.
- (k) The CSHO must explain that communications between KY OSH and the NOK will continue until the case becomes a final order of the KY OSH Review Commission.  
  
**NOTE.** The CSHO should emphasize that civil penalties are not based on the occurrence of a fatality.
- (l) Upon confirmation the employer received the citation(s), KY OSH sends the Citations Issued Next-of-Kin Letter to the NOK including a copy of the Citation and Notification of Penalty as well as a copy of the Narrative.
- (m) Only the director can make changes to the citation and penalty after issuance. When a supervisor recommends the deletion of a citation in a fatality case, he or she will contact the director to discuss the recommendation. A written memorandum of the recommendation and decision must be included in the casefile.
- (n) After an informal conference, the program manager must send the NOK a letter detailing changes in the citations, penalties, or abatement dates as the result of the informal conference.
- (o) Once an employer files a notice of contest, only the commissioner has the authority to make changes in the citations and penalties.
- (p) Within five (5) days of assignment, the attorney assigned to litigate a fatality case must send the NOK a letter notifying him or her the case has been referred to the OGC,

- introducing himself or herself, and asking the NOK to contact the attorney with questions regarding the litigation process.
- (q) The attorney assigned to prosecute the fatality case must notify the NOK by letter informing him or her of the date, time, and location of any administrative hearing.
  - (r) When the case is closed in the OGC, the assigned attorney must send the NOK a letter informing him or her that the case has concluded. The letter will include a recitation of the settlement or final decision, if the case went to a hearing, as well as copies of pertinent documents, such as the Order of Settlement and Settlement Agreement, hearing officer's recommended order, or the decision and order of the commission.
- ii) The following letters are normally sent to the NOK.
- (a) *Initial Next-of-Kin Letter*. Sent by the CSHO within five (5) working days after initial contact with NOK.
  - (b) *No Citations Next-of-Kin Letter*. Sent by the director or designee within five (5) working days of case closure when no citations are recommended. This letter is the final Next-of-Kin Letter.
  - (c) *Citations Issued Next-of-Kin Letter*. Sent by the director or designee within five (5) working days of the employer's receipt of the citation(s).
  - (d) *Informal Conference Next-of-Kin Letter*. Sent by the director or designee within five (5) working days of the informal conference explaining any resolution or lack thereof.
  - (e) *Next-of-Kin Contest Letter*. Sent by the director or designee within five (5) working days of when a contest is received.
  - (f) *Attorney Assigned Next-of-Kin Letter*. Sent by the OGC attorney within five (5) working days of assignment.
  - (g) *Next-of-Kin Hearing Letter*. Sent by the OGC attorney within five (5) working days upon scheduling of a hearing.
  - (h) *Final Next-of-Kin Attorney Letter*. Sent by the OGC attorney when the casefile is returned to the Division of OSH Compliance.
  - (i) *Initial Follow-up Next-of-Kin Letter*. Sent by the CSHO within five (5) working days after the opening of a follow-up investigation and initial contact with the NOK for the follow-up investigation. The letters above must be sent again, as applicable, for the follow-up investigation to inform the NOK of the findings.

- iii) When a NOK letter is returned as undeliverable, the letter and envelope must be date stamped and included in the casefile. The address on returned NOK letters must be verified for accuracy. When accurate, KY OSH will call the NOK to confirm the address. All attempts to obtain the correct mailing address must be documented in the casefile.

**NOTE.** In some circumstances, it may not be appropriate to follow these exact procedures; i.e., in the case of a small business, the owner or supervisor may be a relative of the victim. Modify the form letter to take any special circumstances into account or do not send the letter, as appropriate. Any deviation from these procedures must be approved by the next line supervisor and the reason for deviating documented in the casefile.

#### D) **Special Situations.**

- i) Agency Cooperation. When other agencies are involved, the CSHO or the team leader works with the other agencies as closely as possible to:
  - (a) Obtain all available information concerning the fatality; and
  - (b) Assist in the investigation of the fatality.
- ii) Rescue Operations. KY OSH has no authority to direct rescue operations and should not attempt to direct the rescue. KY OSH has the authority to monitor and inspect the working conditions of employees engaged in rescue operations. When the CSHO is aware the employer intends to use a rescue procedure that may be in violation of a standard, regulation, or the general duty clause and the CSHO believes less hazardous procedures are available, the employer must be advised.
- iii) Emergency Situations. Emergencies may necessitate immediate rescue work, and any loss of time may increase injuries or fatalities.
  - (a) As long as the potential exists to save a life, the employer or responding agency(s) will not normally receive citations for violations of standards and regulations during emergency situations.
  - (b) When the potential to save a life no longer exists, citations for violations of standards and regulations may be issued. When rescue operations are addressed by a specific standard or regulation, citations may be issued for violations of those requirements.
- iv) Multi-Employer Worksites. The CSHO must document the contractual and actual relationship between employers at the worksite. The CSHO must attempt to obtain copies of contracts between the employers.
- v) Public Information Policy. The CSHO must not respond to media inquiries. All media inquiries must be referred to the cabinet's media liaison or public information contact.