

Training Your Organization's Emergency Action Plans

Introduction

Great emergency plans are a smart thing; training is *everything*.

If we don't get the words off the paper and into employees' heads, we have failed operationally, morally and legally.

Understanding the obligation of employers regarding training is critical. These are the Ten Commandments of workplace emergency training as required by law for every employer in the U.S. *without exception* for Emergency Action and Fire Prevention Plans.

Executive Summary

The 10 Commandments of Workplace Emergency Training

1. All U.S. employers *without exception* shall create and train Emergency Action and Fire Prevention Plans.
2. All U.S. employers shall create and train employees as their emergency team Training shall be annual at least.
3. Training all other employees is required by law.
4. Training Shall Be Annual at Least.
5. Training shall be at hire on day-one including full-time, temporary and contract workers.
6. Training shall occur in a classroom by a "qualified" trainer—qualified by dint of experience and/or training. On-screen training shall not substitute for classroom training.
7. Training Shall Occur if the Plan Changes or If the People in the Plan Change.
8. Training shall be for all hazards.
9. All emergency planning and training shall be site specific. No plagiarizing. No landlord plan can substitute for tenant's responsibilities under law.
10. The CEO is the responsible party civilly, personally and criminally.

To experts in workplace safety and security, the *Ten Commandments of Workplace Emergency Training* are self-evident truths. But, these experts also recognize that most senior managers in corporations, campuses and medical facilities are ignorant of even their core management responsibilities for personnel safety in the workplace. In fact, many employers' inside and outside lawyers are ignorant of these responsibilities. Workplace and worker law is a specialty unknown to most. But, once through this door, the documentation regarding the Ten Commandments is voluminous. Accordingly, we lay out here the legal rationale that proves these Ten Commandments.

This controlling documentation is manifested in federal, state and local statutes, regulations, codes and court decisions; plus administrative interpretations on part of authorities having jurisdiction—from your local Fire Marshal to OSHA regulators in Washington, D.C.

First Commandment

All U.S. employers without exception shall create and train Emergency Action and Fire Prevention Plans.

OSHA 29 CFR 1910.34:

“Every employer is covered. Sections 1910.34 through 1910.39 apply to workplaces in general industry except mobile workplaces such as vehicles or vessels.”

“General Industry” refers to any employer who is not a construction company, shipyard, vessel, vehicle or other selected industry. The regulations for these are even stricter.

“OSHA is not a town in Wisconsin.” Yet there are legions of employers who believe they are exempt. These regulations shall apply to corporation, campuses, medical facilities, non-profits, employers of any size or business model, federal agencies and, in most cases, state and local agencies. The only exceptions are some state and local facilities in some states.

29 CFR 1910.38 and 1910.39 cover Emergency Action Plans and Fire Prevention Plans, both required by federal law of every employer *without exception*. EAPs and FPPs are required in addition to what the state and local codes may require. All plans should be in concert.

Second Commandment

All U.S. employers shall create and train employees as their emergency team

OSHA 29 CFR 1910.38(e) Emergency Action Plans

“Training. An employer must designate and train employees to assist in a safe and orderly evacuation of other employees.”

Remember that police, fire and EMTs are *not* the first responders; they are the *official* responders. *Your employees are the first responders* by dint of physics, time and space. If you are injured, the employee standing over you is your first responder.

The regulations recognize this by requiring the employer to designate employees as the emergency team.

Third Commandment

Training all other employees is required by law.

OSHA 29 CFR 1910.38(f) Emergency Action Plans

“Review of emergency action plan. An employer must review the emergency action plan with each employee covered by the plan.”

OSHA 29 CFR 1910.39(d) Fire Prevention Plans

Employee information. An employer must also review with each employee those parts of the fire prevention plan necessary for self-protection.

Too many employers believe that if they train only their emergency response team that their job is done and legal. This is illegal.

“Employees hate this stuff!” This is a myth invented by too many senior managements. Echoing a parade of research, National Opinion Research Corporation surveyed employees across all American workplaces. When asked what their most important workplace issue, 85% of employees responded, “safety.” All the issues you thought would come out #1—wages, sick leave, vacation—all came in a distant #2 at less than 50%. Surveys of trainees in workplaces like yours consistently report a 98% love of training and confidence that they now know what to do when an emergency strikes.

Fourth Commandment Training Shall Be Annual at Least

OSHA interpretation:

“Training must be conducted at least annually and when employees are hired or when their job changes. Additional training is needed when new equipment, materials or processes are introduced, when the layout or design of the facility changes, when procedures have been updated or revised, or when exercises show that employee performance is inadequate.”

Source: OSHA Fact Sheet, April 2004

Requiring annual training of complex procedures of *Life Safety* should not surprise. None of us learns to operate competently a vehicle or computer with only infrequent and long-separated training sessions. The same goes for workplace safety across a score of different threats. Whether it regards your emergency team or all employees, the requirement for training at least annually reflects the need to keep all employees skilled at emergency response.

We have lessons learned from employers who don't comply with annual training. Employees don't know who is in command; what specific movements are required of them for all kinds of emergencies such as shelter in place; the headcount system fails.

Remember, that under your fire code and national standards, drills are not training—by law. False alarms are not drills or training—by law.

Emergency Action and Fire Prevention Plan training shall be *at least* annually. More than annual training is triggered by redesigning, renovating, redecorating or restacking your space. If an employer has more than one floor, such renovation for just *one floor* triggers training for *all* employees at this site given the mobility of all employees in today's workplace.

How is *annual* defined for the employer's workplace calendar?

“OSHA interprets that to mean that employees must be provided re-training at least once every 12 months (i.e., within a time period not exceeding 365 days.) This annual training need not be performed on the exact anniversary date of the preceding training, but should be provided on a date reasonably close to the anniversary date taking into consideration the company's and the employees' convenience in scheduling. If the annual training cannot be completed by the anniversary date, the employer should maintain a record indicating why the training has been delayed and when the training will be provided.”

Source: Interpretation Letter 24 January 2007

Fifth Commandment

Training shall be at hire on day-one including full-time, temporary and contract workers.

OSHA 29 CFR 1910.38(f)(1)

Training shall occur “When the plan is developed or the employee is assigned initially to a job;”

OSHA 29 CFR 1910.39(d) Fire Prevention Plans

***Employee information.* An employer must inform employees upon initial assignment to a job of the fire hazards to which they are exposed.**

OSHA never defined “at hire.” Many employers interpreted this to mean within 30 or 60 or 90 days of hire. Then, in February 2013, after the death of a just-hired worker, OSHA’s Director, Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels, ruled:

"A worker's first day at work shouldn't be his last day on earth. Employers are responsible for ensuring the safe conditions of all their employees, including those who are temporary. Employers must train all employees, including temporary workers, on the hazards specific to that workplace – before they start working."

(https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=23640).

Sixth Commandment

Training shall occur in a classroom by a “qualified” trainer—qualified by dint of experience and/or training.

On-screen training shall not substitute for classroom training.

Emergency training in a classroom springs not only from the innate logic regarding the training of complex skills, but is augmented by OSHA’s insistence regarding “hands-on” training. OSHA’s Definition of “hands-on” training:

“Training in a simulated work environment that permits each student to have experience performing tasks, making decisions, or using equipment appropriate to the job assignment for which the training is being conducted.”

Source: Training Curriculum Guidelines

Webster’s (Merriam-Webster Online © 2005) definition of “hands on”:

“1. relating to, being, or providing direct practical experience in the operation or functioning of something (*hands-on* training); 2. characterized by active, personal involvement.”

Very often, employers wish it were so that any and all training can be successful and legal solely employing on-screen presentations. It is illegal for any employer to use on-screen training *exclusively* for the emergency team or for all employees. OSHA applauds any training by any means. *However, nothing can substitute for annual and at-hire training in a classroom.*

The Directorate of Compliance in Washington, D.C. enforces the regulations that apply to all employers. The OSHA Training Institute trains OSHA Compliance Officers—the people who come to your facility “to hail you or nail you.”

The Directorate’s written interpretations of their training requirements are:

“Use of computer-based training by itself would not be sufficient to meet the intent of most of OSHA’s training requirements;

“Our position on this matter is essentially the same as our policy on the use of training videos, since the two approaches have similar shortcomings:

“OSHA urges employers to be wary of relying solely on generic, ‘packaged’ training programs in meeting their training requirements;

“In an effective training program, it is critical that trainees have the opportunity to ask questions where material is unfamiliar to them;

“OSHA believes that computer-based training programs can be used as part of an effective safety and health training program to satisfy OSHA training requirements, provided that the program is supplemented by the opportunity for trainees to ask questions of a qualified trainer, and provides trainees with sufficient hands-on experience;

“OSHA does not believe that the use of computer-based training will, in the majority of cases, enable trainees to achieve competency in substantially less time than the required minimum duration for training. Therefore, the use of computer-based training will not relieve employers of their obligation to ensure that employees receive the minimum required amount of training.”

Source for above five quotes: OSHA letter to ENTERGY Gulf States Utilities of 22 November 1994 as corrected 2 June 2005.

“I am saying that life safety is difficult if not impossible to train on screen; that employees better be able to answer the Compliance Officer’s questions on emergencies.”

**Source: Art Buchanan, Director, Office of General Industry Enforcement,
U.S. Department of Labor, OSHA, Washington, D.C. 20210,
to Mr. Mitchell, 14 November 2006.**

OSHA has taken this stance re on-screen training for decades:

“Interactive computer-based training can serve as a valuable training tool in the context of an overall training program. However, use of computer-based training by itself would not be sufficient to meet the intent of most of OSHA’s training requirements. Our position on this matter is essentially the same as our policy on the use of training videos, since the two approaches have similar shortcomings. OSHA urges employers to

be wary of relying solely on generic "packaged" programs in meeting their training requirements...In an effective training program, it is critical that trainees have an opportunity to ask questions where material is unfamiliar to them.

Source: OSHA interpretation 11 June 1997

OSHA's stance is even "text book:"

"Exclusive use of screen-based training for emergency response is not acceptable. Screen-based training in all of its forms can never be the sole vehicle of training for emergencies. It can be used only as a supplement to the direct verbal inter-play between experienced, highly-knowledgeable trainers and the trainees."

Source: Rick Kaletsky, Safety Consultant and Retired OSHA Compliance Officer of 20 years. He served as OSHA Area Director of both the Hartford, CT and Bridgeport, CT Areas. He is the author of *OSHA Inspections: Preparation and Response*, National Safety Council, 10th Printing.

Seventh Commandment

Training Shall Occur if the Plan Changes or If the People and the Facility in the Plan Change.

OSHA 29 CFR 1910.38

(F) An employer must review the emergency action plan with each employee covered by the plan:

- (1) When the plan is developed or the employee is assigned initially to a job;**
- (2) When the employee's responsibilities under the plan change; and**
- (3) When the plan is changed.**

Regarding renovations:

"Additional training is needed when new equipment, materials or processes are introduced, when the layout or design of the facility changes, when procedures have been updated or revised..."

Source: OSHA Fact Sheet, April 2004

Eighth Commandment

Training Shall Be for All Hazards.

All-hazards planning and training have been mandated for decades by national law and standards:

1. Stafford Act, Public Law 93-288
2. National Incident Management System (NIMS by Department of Homeland Security)
3. Incident Management System (ICS by DHS)
4. National Response Framework (NRF by DHS)
5. Public Law 110-53 (PS-Prep by DHS)
6. Standard & Poor's (S&P)
7. NFPA 1600 Standard on Disaster/Emergency Management & Business Continuity (National Fire Protection Association).

All of these standards mandate all-hazards planning and training for the workplace.

This is not your father's Fire Plan. The standards mandate that planning and training for the workplace incorporate a long list of emergencies including all man- and nature-made crises. Any emergency that is a *foreseeable circumstance* shall be planned and trained in the workplace. Since terrorists crashed planes into high-rise office buildings, there is no such thing as a workplace emergency that can't be foreseen. Google any "what-if" scenario in your industry and you will find just that emergency has happened to a workplace like yours.

The most clear and authoritative standard regarding the need for all-hazards planning and training for any employer's workplace is NFPA 1600.

NFPA 1600 all-hazards planning is:

1. Recognized in law twice by the U.S. Congress in the wake of the 9/11 Commission's reports.
2. S&P, the folks who set your credit rating, have changed their audit standards over several years to include examination of Emergency Action, Disaster Recovery and Business Continuity Plans. Their battle cry is "resiliency." If an employer's readiness is poor because of a lack of planning and training, then the employer's ability to return to full operations and pay invoices and payroll is compromised. This, says S&P, should be recognized in setting your credit rating. Their standard is NFPA 1600.
3. FDNY (Fire Department of the City of New York) administers the most robust planning law in the world. Their inspiration is NFPA 1600.
4. California, Florida and Connecticut have mandated NFPA 1600 in their fire codes. California and Florida have had the most robust emergency planning in the U.S. since WWII because every kind of emergency is experienced in these two states. 56 million Americans live in California and Florida—one out of six Americans. Courts recognize these states and their authority.
5. NFPA has been writing standards since 1896. Every state's fire code is constituted almost entirely by NFPA standards. State and federal courts love NFPA including the Supreme Court of the United States.

Ninth Commandment

**All emergency planning and training shall be site specific.
No plagiarizing. No landlord plan can substitute for tenant's
responsibilities under law.**

There is no surprise that all emergency planning and training shall be site specific. All regulations from OSHA, EPA, other federal and state agencies are focused on the employer's site.

That said, there are legions of employers that take other sites' emergency plans and apply this paperwork to their site. This plagiarism often comes from an employer's headquarters or an multi-facility safety or security group; often, it will be a colleague or a downloaded template that is plagiarized. This "emergency planning by cut-and-paste" leads to training that is generic, not site specific and thus illegal. This also rules out any and all stand-alone, off-the-shelf, third-party programs and videos that the employer might make available on its intranet or rack up as a conference room video.

Many employers have a wide variety of facilities from high rises to low rises; in cities with widely divergent regulations and procedures. What training might work in a low rise is silly—no, dangerous—for a NYC high rise. What works in a San Francisco high rise does not work for a Chicago high rise.

If the planning is plagiarized, then the training is not site specific and thus illegal.

The landlord's plan is not your plan. There is nothing promoted or implied in any federal, any state or any local law, regulation or code that permits any tenant employer to substitute the landlord's plan for the tenant's plan. If the landlord does have a plan, it's often part of a tenant manual rather than stand-alone plan. Landlord's plans are almost always out of date. With the exception of New York City, almost all landlord's plans are incompetent. Even in NYC, landlord's plans are often out of date and incomplete in their all-hazards approach.

Landlords are uniformly bad at emergency planning. They hate this stuff. It promotes work and time investment thereby subtracting from their profitability.

Landlord training—if there is any—almost always focuses on drills (which are not training under any state's fire code) or focused exclusively on fires and stairwell familiarization. These efforts are not policed with sign-in sheets and compulsory attendance. Any tenant that purports their landlord's plan is their plan is negligent and in violation of federal law regarding planning and training of EAPs and FPPs.

This illegal planning is transparent to any compliance officer or expert examining this substitution and/or plagiarism.

Tenth Commandment

The CEO Is the Responsible Party Civilly, Personally & *Criminally*.

Quoting regulations is easy enough. But, someone at the employer has to have responsibility for implementing health and safety regulations. Who at your workplace is the responsible party?

Regarding all the responsibilities in our commandments, there is no surprise that the CEO is the responsible party civilly. The Supreme Court of the United States has gone further by making the CEO's responsibility not only civil but also personal and *criminal*. In two cases, SCOTUS listened to all the excuses. "I'm busy." "I'm not 'personally concerned' with these regulations" "I have 'dependable subordinates' in whom I have 'great confidence.'" "We're too big and spread out for me to be responsible."

SCOTUS listened to all these arguments then ruled that the CEO has a "responsible relationship" to the application and implementation of federal regulations.

When it comes to public health and safety, more stringent regulations are applied and often upheld in court. "The only way a corporation can act is through the individuals who act on its behalf," said SCOTUS. CEOs have "supervisory responsibility reposed in them by a business organization not only a positive duty to seek out and remedy violations but also, and primarily, a duty to implement measures that will insure that violations will not occur."

A corporate agent (and his managers), through whom the corporation committed a crime, was himself guilty individually of that crime. SCOTUS ruled the jury was given the proper instruction to find guilt not solely on the basis of respondent's position in the corporation, but by "responsible relation to the situation" and "by virtue of his position...authority and responsibility."

The CEO is the responsible party *civilly, personally and criminally*. The SCOTUS decisions don't let all other senior managers and line supervisors off the hook. They too can be held responsible at court civilly and criminally. Like the captain of a ship, however, the CEO is the ultimate responsible party at your workplace.

Does your CEO know this? Shouldn't s/he? Wouldn't you?

See UNITED STATES v. PARK, 421 U.S. 658 (1975) and
UNITED STATES v. DOTTERWEICH, 320 U.S. 277 (1943)

Conclusion

All employers shall have EAPs and FPPs in addition to their local plan requirements. Training all employees in all-hazards emergency response for that specific site at least annually and at hire, in a classroom employing a qualified trainer is the law for every employer without exception. The CEO is the party responsible to ensure all this happens.

Overall, the OSH Act's *General Duty Clause* embraces all employers' and all employees' obligations under law:

29 USC 654

Each employer:

- (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;**
- (2) shall comply with occupational safety and health standards promulgated under this Act.**

Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

There is an 11th Commandment that too many employers want to be true.

“No authority cares about this. I can ignore the law.”

There are two easy examples of how this negligence will come back to nail any employer. First, if your workplace has an emergency that injures or kills an employee, contractor or visitor, then compliance officers, litigators, judges, juries, directors and employees will all deem the CEO and the employer liable. Second, one CEO in a big city with 800 employees in a professional services setting just got a letter from OSHA. The letter was two short paragraphs. “We have had a complaint that you do not have a compliant EAP and FPP. Please send us your written EAP and FPP and your employee training records for the last three years in the next 10 days. Sincerely...” Using a 46¢ stamp, the CEO got called out for documentation that can't be plagiarized in a few days.

Stunningly effective, simple and cheap.

Plus—and no surprise—SCOTUS has already addressed this:

“There are precautions so imperative that even their universal disregard will not excuse omission.”

See *T.J. Hooper*, 60 F2d 737 (2d Cir. 1932)

There are those at many employers itching to find the loop hole that can be threaded to wiggle them out of all-hazards training, or annual training, or classroom training, or training at hire. Almost always, this itch and wiggle is about saving money and staff time.

This is a fool’s errand.

This kind of squirming and whining will look transparently petty and unprofessional to any compliance officer, litigator, judge, jury and family after an incident that injures or kills one of your people.

The CEO is the responsible party under federal law.

You can run, but you can’t hide.

About the Expert

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Bo Mitchell was Police Commissioner of Wilton, CT for 16 years. He retired to found 911 Consulting which creates emergency, disaster recovery and business continuity plans, training and exercises for organizations like GE HQ, Hyatt Hotels HQ, MasterCard HQ plus 31 university, college and K-12 campuses. He serves clients headquartered from Boston to LA working in their facilities from London to San Francisco. Bo is a Certified Emergency Manager, Certified Protection Professional and Certified in Homeland Security. He has earned a total of 22 certifications in emergency management and organizational safety and security.

Bo also serves as an expert in landmark court cases nationally that will result in billion dollar settlements.