

WORKING WITH LEGAL COUNSEL The Role of Safety SMEs in Workplace SIF Investigations

By James A. Junkin

Workplace serious injuries or fatalities (SIFs) are tragic events that demand thorough investigations to determine the root causes and establish accountability. Attorneys representing clients in such cases often seek the assistance of subject matter experts (SMEs) to navigate the complexities of the investigation process.

This article explores the crucial role of SMEs in workplace SIF investigations and how their expertise can significantly impact legal proceedings. Before delving into the specifics of SME involvement, it is essential to understand the legal landscape surrounding workplace incidents. Attorneys handling these cases must be well-versed in OSH regulations, relevant state and federal laws, and industry-specific standards. A comprehensive understanding of these legal frameworks forms the foundation for a successful investigation.

Attorneys play a pivotal role in workplace SIF investigations. Their responsibilities include gathering evidence, interviewing witnesses, analyzing documentation, and representing their clients in legal proceedings. However, the complexity of industrial incidents often requires specialized knowledge beyond legal expertise. SMEs bring invaluable technical knowledge to the table. In the context of workplace incidents, this could include professionals with backgrounds in engineering, safety management, industrial hygiene or other relevant fields. Their expertise allows them to assess the technical aspects of the incident such as equipment failures, structural integrity or process malfunctions.

Determining the root causes of a workplace incident is a critical step in building a strong legal case. SMEs are equipped to conduct thorough root-cause analyses, identifying contributing factors that may include equipment failures, human error, inadequate training or systemic deficiencies in safety protocols. Workplace safety regulations vary across industries and jurisdictions. SMEs with a deep understanding of these regulations ensure that the investigation is conducted in compliance with relevant standards. This expertise is crucial for attorneys seeking to establish liability based on violations of safety protocols and regulations.

SMEs can serve as expert witnesses during legal proceedings. Their testimony adds credibility to the case and

provides the court with a comprehensive understanding of the technical aspects of the incident. This can be instrumental in influencing the court's decision and ensuring a fair and just outcome for the involved parties. A successful workplace SIF investigation requires a collaborative approach between attorneys and SMEs. Effective communication and cooperation between these professionals enhances the quality of the investigation and strengthens the legal case.

An SIF investigation is a crucial process undertaken to thoroughly examine and understand the circumstances surrounding a workplace incident that resulted in an SIF. The goal is to identify root causes and implement corrective measures to prevent similar incidents in the future. Here are the general steps involved in an SIF investigation:

- Immediate response actions should ensure that immediate medical attention is provided to those injured. Activate emergency response protocols to address any life-threatening situations.
- Preserve the incident scene to the extent possible. Restrict access to prevent

contamination of evidence. Document the initial condition of the scene.

- Comply with legal requirements by promptly reporting the incident to relevant authorities, such as occupational safety agencies. Provide necessary details about the incident.

- Assemble a team with diverse expertise, including safety professionals, SMEs, management representatives and, if necessary, external investigators.

- Conduct a thorough examination of the incident scene. Document physical evidence, take photographs and create sketches. Preserve any equipment involved in the incident.

- Interview witnesses, including those directly involved in the incident and individuals who may have relevant information. Gather their accounts to understand the sequence of events.

- Examine relevant documents such as safety records, training logs, equipment manuals and maintenance records. Identify any deviations from established procedures.

- Utilize appropriate root-cause analysis methods (e.g., fishbone diagram, five-why method) to identify the underlying



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factors contributing to the incident. Consider both immediate causes and systemic issues.

- Verify compliance with OSH regulations and other applicable laws. Identify any regulatory violations that may have contributed to the incident.

- Compile the findings into a comprehensive report. Include details about the incident, root causes, contributing factors and recommended corrective actions. Ensure clarity and accuracy in the documentation.

- Present the investigation findings to management. Discuss the implications, proposed corrective actions and strategies for preventing similar incidents in the future.

- Develop and implement corrective actions based on the investigation findings. These actions may involve process changes, equipment upgrades, enhanced training programs or other measures to address identified weaknesses.

- Use the lessons learned from the investigation to enhance overall safety and prevention strategies. Integrate findings into ongoing safety training and continuous improvement processes.

- Communicate the investigation findings and corrective actions internally to employees and externally to relevant stakeholders, as appropriate.

- Periodically review and assess the effectiveness of implemented corrective actions. Adjust as needed and continuously monitor workplace safety.

A well-conducted SIF investigation contributes not only to understanding the specific incident, but also to creating a safer work environment by addressing systemic issues and preventing future occurrences. However, SMEs must work closely with attorneys to ensure a seamless transfer of information between legal and technical domains. A letter of engagement for investigation services should be executed between the SME and legal counsel as quickly as possible following the incident to ensure that all information gathered by the SME is under attorney-client privilege. By combining legal expertise with technical insights, attorneys and SMEs can build a comprehensive case that addresses both the legal and technical dimensions of the incident. This approach increases the likelihood of a favorable outcome for the client.

Preparing information for trial as an expert witness is a critical aspect of ensuring that your testimony is effective and credible, and supports the legal case at hand. Here are key considerations for

expert witnesses when preparing information for trial:

- Objective expertise.** Clearly understand your role as an objective, unbiased expert. Your primary duty is to provide the court with an honest, impartial, professional opinion based on your expertise.

- Case familiarity.** Acquire a deep understanding of the specific details of the case. Familiarize yourself with all relevant documents, evidence and legal arguments to ensure that your testimony aligns with the particulars of the case.

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- Legal standards and guidelines.** Be well-versed in the legal standards, guidelines and requirements relevant to your area of expertise. Understand how your findings relate to applicable laws, regulations and industry standards.

- Communication with attorneys.** Maintain open communication with the attorneys involved in the case. Work closely with them to understand the legal strategy, key arguments and specific points that they wish for you to address in your testimony.

- Clear and concise reporting.** Present your findings in a clear, concise manner. Your written reports should be easily understandable to individuals who may not have technical expertise. Use visuals and examples to enhance clarity.

- Thorough documentation.** Keep meticulous records of your analysis, methodologies and any relevant data. This documentation not only supports your testimony but also helps you withstand cross-examination.

- Critically assess opposing opinions.** If there is an opposing expert, thoroughly review their work. Understand their methodologies and be prepared to address any points of contention during cross-examination.

- Preparation for cross-examination.** Work with the attorneys to anticipate potential lines of questioning during cross-examination. Be prepared to defend your opinions and methodologies under scrutiny.

- Professional demeanor.** Familiarize yourself with courtroom procedures and etiquette. Maintain a professional demeanor and be respectful and responsive during questioning.

- Educational approach.** Recognize that part of your role is to educate the jury. Use understandable language, avoid jargon when possible, and be prepared to explain complex concepts in a way that is accessible to a layperson.

- Independence and integrity.** Uphold your independence and integrity as an expert witness. Avoid advocacy and ensure that your opinions are based solely on your expertise and the facts of the case.

- Continued professional development.** Stay abreast of developments in your field. Being aware of the latest research, industry standards and legal precedents enhances your credibility as an expert witness.

Conclusion

SMEs play a pivotal role in workplace SIF investigations. Their technical expertise, ability to conduct root-cause analyses, knowledge of regulatory compliance, and potential role as expert witnesses make them indispensable assets for attorneys handling such cases. A collaborative approach that leverages the strengths of both legal professionals and SMEs ensures a thorough and effective investigation, contributing to a just resolution in legal proceedings related to workplace incidents. **PSJ**

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