



The Scouts' Motto Applies To Businesses: Be Prepared

HURRICANE KATRINA HAMMERED NEW ORLEANS on Aug. 29, 2005. The Twin Towers collapsed on Sept. 11, 2001. Power outages afflict cities across the United States as we write these words. Are executives and their companies now any better prepared to handle emergencies, whatever their nature? Here are seven steps for executives to follow and a legal primer to keep in mind.

First, check the company's insurance, but don't rely on the insurance. Re-evaluate both coverage and amount, expanding the first and upping the second. Get a coverage lawyer to help with policy review, to spot and plug coverage loopholes.

But, don't rely on payment of insurance proceeds for the survival of the business. Disasters show yet again that cash is king. Insurance companies will assert their legal rights not to pay. Litigation on the meaning of "business interruption" won't help meet payroll or pay the landlord.

Second, get all employees to tell the company where they will go in an emergency or evacuation. Require them to name names, supply addresses and provide details. Don't hesitate to promise discrete,

HOW TO HANDLE EMERGENCIES

- IF A DISASTER CAUSES A BUSINESS TO CLOSE, MANAGEMENT MUST DECIDE HOW LONG TO PAY EMPLOYEES AND COVER THEIR BENEFITS.
- INJURIES SUSTAINED DURING A DISASTER MAY QUALIFY EMPLOYEES FOR LEAVE UNDER THE FMLA.
- DISASTERS DON'T SUSPEND OSHA AND COBRA STANDARDS. DURING THESE EMERGENCIES, COMPANIES REMAIN RESPONSIBLE FOR PROVIDING A SAFE AND HEALTHFUL WORKPLACE.
- EMPLOYERS CANNOT FIRE OR DISCRIMINATE AGAINST EMPLOYEES WHO LEAVE THEIR WORKPLACES TO OBEY A GENERAL PUBLIC EVACUATION ORDER ISSUED DURING AN EMERGENCY.

limited use of the information; that will reassure those employees who want their private lives to stay private. Remember: not every employee does picket fences and the 2.5 children, and not all employees will be comfortable disclosing who they'll bunk with in an emergency.

Third, think communication systems. Cell phones will be out of commission in a natural disaster, because the towers are on the ground, sparking electricity. One communication device that keeps working are BlackBerrys or similar devices, the features of which include configuration for user-to-user communication. BlackBerrys kept running while people trying to place telephone calls — on land lines

and cell phones — faced significant problems because of the Sept. 11 terrorist attacks on America, noted Frank Beacham in an Oct. 17, 2001, article on www.tvtechnology.com. The reason: They use data-only technology and thus don't need to share bandwidth with voice traffic.

Fourth, the executive team travels as a team. Whatever the nature of the disaster — terrorist attack, hurricane, F-5 tornado, industrial catastrophe — the core management team must stick together just like a ball of sushi rice. When they evacuate, they must evacuate to the same place.

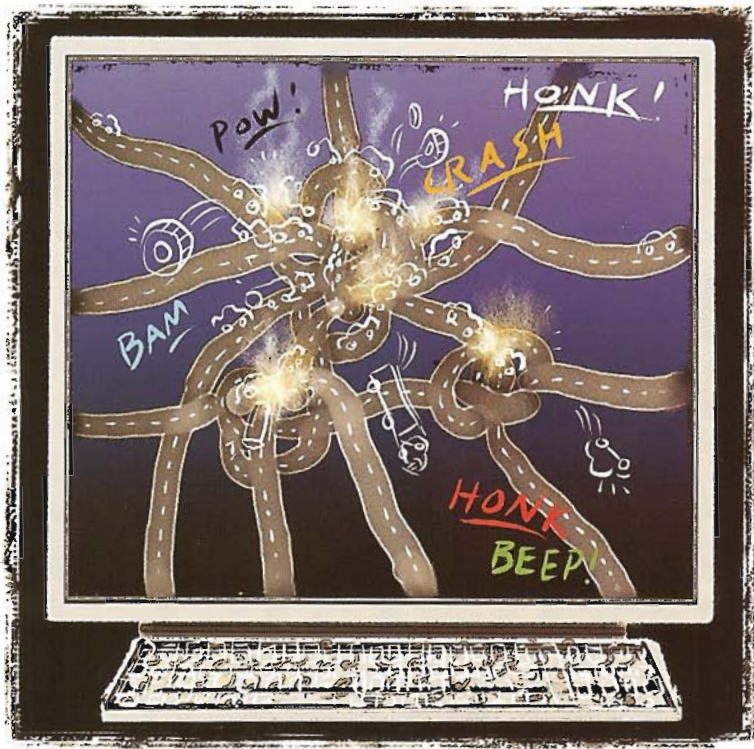
Employees will look for leadership, which the core group provides by staying together, not disbanding. Decisions will need to be made, and those are best facilitated through face-to-face contact — not remote e-mail.

Fifth, a key issue for executives will be keeping the company running when the company facilities are not. Try this: Go to a company client and work out a deal; if your facilities go down, we'll make space for you in ours; if ours go down, you'll make space for us. Try to keep the legalities to a minimum — this is about helping one another, not getting sweaty palms over every comma, merger clause and agreement provision. As Benjamin Franklin said when signing the Declaration of Independence, "We must all hang together, or most assuredly we shall all hang separately."

Sixth, interview and retain a firm now to help with public relations later. I cannot stress this too much or too often: How a company handles a crisis or disaster in the short term brands the company forever in the long term. It is just not about doing the right thing, but being seen as doing the right thing.

Seventh, a company must protect records. Many companies back up their data. That's a good thing. But, all the back-ups in the world won't do a company any good if they're several years old or if they're stored in the company's office building when it burns to the ground. Make sure back-ups are updated frequently and stored in an off-site location especially constructed for data and record storage. As the librarian in law school told us, "If there's a need for something, there's a service to provide it."

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Same here: There are companies that have located sites in places in the United States that are least likely to suffer a natural disaster or otherwise, and they have specially constructed bunkers in these locations for back-up data. Find one. Use it.

THE INEVITABLE

- *The Fair Labor Standards Act (FLSA)*. If there is a disaster, and the business shuts down, management must make a decision as to how long to pay employees and cover their benefits. Employees will appreciate it if the company sticks with them. Companies should cover salaries and benefits for as long as they can do so in a financially prudent way.

A couple of points about salaried-exempt employees: They must be paid their full salaries for any work week in which they perform any amount of work — regardless of how many days or hours they actually worked. Management legally can ask these employees, who are normally exempt from overtime, to perform some non-exempt duties during clean-up and business restoration after a disaster. But, if such employees do so for long enough, companies must pay them overtime for all hours worked over 40. Don't get greedy.

- *The Family and Medical Leave Act (FMLA)*. Injuries sustained during a disaster may qualify employees for leave under the FMLA. Experience tells us that some employers may be reluctant to authorize FMLA leave when staffing needs are at their peak, such as during recovery from an emergency or natural disaster. But failing to allow employees to

take leave they're entitled to could result in FMLA claims. Remember companies must continue to pay eligible employees' health insurance during the time they're away on FMLA leave, even during times of crisis.

- *The Occupational Safety and Health Act (OSHA) and the Consolidated Omnibus Budget Reconciliation Act (COBRA)*. Disasters don't suspend OSHA and COBRA standards. During these emergencies, companies remain responsible for providing a safe and healthful workplace for employees.

Employers may violate OSHA by asking employees to perform potentially hazardous recovery, business restoration or clean-up tasks. Also, protracted exposure to heat and the sun may create safety and health risks for employees.

As far as COBRA goes, if the company is covered, it needs to send COBRA notices telling departing employees of their continued eligibility for health insurance. Be careful to provide all the required information in a timely manner to eligible employees who may be affected by terminations or layoffs as a result of a disaster. Many companies outsource this COBRA notification, and they need to address this issue in any agreements with outsourcing vendors.

- *Texas Labor Code §22.001*. It is unlawful to fire or discriminate against employees who leave their places of employment to obey a general public evacuation order issued during an emergency. The

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law contemplates that officials will make these evacuation orders pursuant to a disaster, which the code defines to include fire, flood, earthquake, storm, riot and paramilitary action — as well as, thank goodness, “volcanic activity.”

Here's a constant: Disasters are inevitable. It's just a matter of sometime, somewhere, somehow.

Here's the variable: a company's response.

And here's the best take home advice: Disasters demonstrate that there is more that unifies us than there is that divides us, which is a final point of reference for the wise executive.

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