

SOUTH DAKOTA CHAMBER OF COMMERCE & INDUSTRY

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"The Voice of South Dakota Business"

WHAT'S INSIDE

What you will find in this series.

This newsletter is the first of a series that will focus on various disasters that can threaten the future of any business. This issue examines what happens when a fire hits your business. You will learn of information gathered from real situations by those who have "graduated" from the school of hard knocks. You will learn from experts in areas such as legal and insurance. Ultimately, we will be developing a network, or community, of those who have endured each experience and are willing to share the lessons they learned. The State Chamber will be asking all members if they have survived any of these maladies. Those who have will be asked to be a resource for you, if you should fall victim to a similar plight.

**MAY ISSUE
Embezzlement**

**JUNE ISSUE
Fatalities**

BUSINESS CONTINUATION SERIES: ***FIRE!***

"Fires are real messy." This perfectly understated assessment was offered by Dick Hainje, Division Chief of the Sioux Falls Fire Department. The information in this article was gathered from an interview with Mr. Hainje (who also serves in the SD Senate as Assistant Majority Leader) and one of our manufacturing members who suffered a serious fire about a year ago.

There is nothing more tranquil than relaxing around a campfire, sitting cloaked in darkness and mesmerized by the flames. But, there is nothing at all tranquil about watching your business billowing black acrid smoke from flames that are destroying everything in their path and the fire department soaking, ripping or chopping anything the flames have missed.

There are things you can do during and after a fire that will help your recovery and help keep you in business.

In this issue you will find:

- WHILE YOU'RE STILL BURNING -
Working with the fire department
- WHAT ARE THEY DOING -
What the fire department needs to do and why
- WHEN CAN I GET IN THERE -
What is done right after the fire is out
- HOW BAD IS IT - LOOKING FOR WHAT IS DAMAGED
It's worse than you think
- CLEANING UP THIS MESS -
Your staff, specialty crews
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Tents, warehouses, anyplace
- THE INSURANCE EXPERIENCE -
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**Working with the fire department -
 While you are still burning.**

You are a key resource for the fire department and they want to see you, or another person who knows about the building, as soon as possible.

LOOK FOR THE "INCIDENT COMMANDER," or person in charge. Some departments have them in white helmets (or a color different than other firefighters) or have distinctive vehicles (such as green flashing lights). You can also ask any firefighter that isn't urgently distracted with the business at hand.

DON'T GO TOWARD THE BUILDING, move toward the fire trucks.

ALWAYS IDENTIFY YOURSELF as someone connected to the business. This may take place a block away if there is a perimeter. Any police officer working a perimeter will help you get to the command person immediately.

TELL THEM ABOUT THE BUILDING, the floor plan, access to electrical and mechanical systems, and location of skylights. Other items of interest include vehicles, power and gas shut-offs, combustible chemicals or supplies, and the nature of what is in the building. Our member who had the fire manufactured items from metal but had a huge quantity of shipping cardboard in the plant that fueled the fire.

They will want to know if you have openings in the roof for ventilation. It is easier to replace roof hatches and skylights than fix holes punched in the roof. **ANYTHING** you can tell them about the building itself - location of doors, how the place is divided up, where hallways go - will help them.

Data Sheets. Most departments keep data sheets on all commercial buildings. Call them and ask to update those sheets if you have major changes in your building or its uses.

Where is Everybody? If you have an evacuation plan, tell the fire commander where people have been instructed to meet so they can determine as fast as possible if anyone is inside. Don't have an evacuation plan? Your local fire department can help you organize one.

Lock Boxes. Many fire departments have a lock box program that allows them to get keys to the building during a fire. They are similar to the ones realtors use (they don't dangle in plain sight). You can put all the keys to the building into the box and they can get to them with one key. This saves time, not to mention being easier on doors.

NOTE - YOU ARE NOT GOING INTO THE BUILDING. Firefighters are trained to deal with heat and smoke that could overwhelm you.



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Fire...cont. from page 2

What are they doing!

What the fire department needs to do and why.

Fires can take a very long time to extinguish and the process is almost as brutal as the fire itself.

Holes in Roofs. Firefighters will need a hole in the roof. This minimizes smoke so they can see and keeps the fire from spreading sideways after heating the ceiling.

Water, Water Everywhere! While the firefighters will try to keep water in the area of the flames, they can't keep it from running all over the place. Water damage is a major unavoidable side effect of a fire.

Tearing up the place. The firefighters will punch holes in sheetrock to make sure the fire is not smoldering behind the walls. If the fire is behind the wall or in the ceiling, it cannot be extinguished until it is exposed. Fires have smoldered for hours or days inside deep insulation. Ceilings may have to be ripped down to make sure there are no "hot spots" that could start the whole mess over again.

Sprinklers are left on until the fire is completely out. The good news is that sprinkler systems only put water on places that are hot enough to trip the heads, so not every sprinkler in the place will be running.

When can I get in there?

What is done right after the fire is out?

You may not get into the building for quite awhile. Fires create an enormous amount of sulfur dioxide, carbon products, and chemical compounds, along with steam and, of course, extreme temperatures. This all takes a while to dissipate. Plus, the initial fire investigation needs to be done before you start cleaning up everything. The fire at our member's business took 4 hours to extinguish and another 8 hours to clear up enough for them to enter.

How bad is it?

Worse than you think - Looking for what is damaged.

The fire experienced by "Member Mfg" (to use a mythical name) destroyed 40% of production capacity, but the entire plant was damaged by either water, steam or smoke. The staff could finally enter the building 12 hours after the fire started. Eight of those hours were spent waiting for smoke to clear out after the fire itself was extinguished. Here are some of the types of damages faced after the fire:

Rust. Water mixed with fire produces steam which carries many of the chemicals produced in the fire, making it acidic. This acidic steam put a layer of rust on every piece of machinery and products that had exposed metal. Member Mfg said they had three days to remove that rust or it would form a permanent bond to the steel.

Ruined Paint. All of the paint on the plant's walls was discolored by smoke. There was some damage to the finish on completed products from smoke as well.

Ruined Packaging. Any finished product that was waiting to be shipped but was still in the plant had to be unpacked, wiped off, and repackaged before it could be shipped.

Water Logged. Water had soaked a large portion of the plant. In many cases records and books will be soaked, as well as damaged by smoke. Walls and ceilings were torn up as firefighters looked for hot spots.

Smell. It took 8 weeks for the building to quit smelling like smoke.

Cleaning up this mess - Your staff, specialty crews.

Literally everything in your business will need to be wiped off, painted, dry cleaned, freeze dried, vacuumed or treated in some manner.

Using your own staff. Member Mfg had employees voluntarily reporting while the fire was still burning and found those employees wanted, even needed, to be involved in the cleanup process. They

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Fire...cont. from page 3

know the equipment and how it needs to be cleaned and maintained or repaired. Member Mfg had salary continuation for their staff as part of their fire coverage so employees were told they did not need to work on the clean up. Many felt it was important to them and provided an incredibly valuable service.

Fire Clean Up Specialists. Member Mfg's insurance company had a crew of fire clean up specialists ready almost immediately to begin cleaning up the mess. While they did many things that were helpful, Member Mfg passed along several warnings.

Be clear who is paying the specialists.
 It turned out that the insurance company had hired them on behalf of Member Mfg. Member Mfg was expected to pay them as independent contractors with the fee taken out of the final settlement.

If you hire specialists, make sure they are doing things correctly. Member Mfg found the specialists had no clue how to clean production equipment. They focused immediately on general clean up. The President of Member Mfg said real problems started about half way through the process.

There were several times that Member Mfg found the specialists opting for the fastest clean up, rather than the most thorough. One example was an attempt to paint smoke damaged ceiling tiles when an independent adjuster (discussed further in the final section) pointed out that the smoke smell would not be contained by the paint and the tiles needed to be replaced.

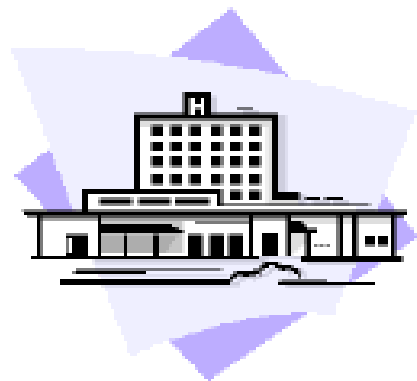
**The Phoenix Experience - Rising From the Ashes
 Operating on Plan "B" - Tents, Warehouses, Anyplace**

Finding Space. Member Mfg set up tents outside their charred plant to do some repackaging and other light work. This, of course, meant hiring guards for the nights.

Member Mfg had just completed construction on some new buildings and had available warehouse space close to the building. By moving into available space, Member Mfg was actually back in production the day after the fire. They repacked orders as fast as possible and were able to ship finished goods with a two-day delay. Full production resumed within 6 weeks!!

Communications. The phone company was superb in helping get Member Mfg back into contact with customers as soon as possible the day after the fire. The President of Member Mfg praised the crews from all of the utility companies.

Contact Customers Immediately. All customers were called and informed of any delays the fire might cause in their orders. It is noteworthy that some customers had already heard of the fire before being called by the sales staff, even though the calls were being made the very next day. The rumor mill is very fast.



**The Insurance Experience - Adjusters - Theirs vs. Yours?
 Some advice.**

It is important to note before reading the following section that Member Mfg settled with their insurance company about a year after the fire and has stayed with the same insurer. The President of the plant has high regard for the company and believes things ended fairly.

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LEGAL REVIEW

WHEN DISASTER STRIKES: LEGAL ISSUES

By: Dave Gerdes¹

May, Adam, Gerdes & Thompson, Pierre, SD

The purpose of this article is to touch briefly upon the legal issues presented by a disaster of a magnitude sufficient to shut down a business for a significant period of time. The article is a part of the State Chamber's business-to-business series.

Of necessity, an article such as this can only touch the high points. Each industry and each business has a slightly different set of problems. And of course, individual differences between like businesses will exist based upon a variety of factors, including allocation of resources, competitive pressures and perceived risks. In each case, managers must spend the necessary time to analyze their company's needs. Trade journals and trade association publications usually have articles from time to time on the subject which can be of assistance.

Part of every manager's planning should involve the Internet. The wide range of information available through the worldwide web is staggering. Both in the planning stages before and the recovery stages after a disaster the Internet is a valuable tool to collect information and find help. In preparing for this article, in just a few minutes, I was able to find companies claiming expertise in disaster recovery planning, as well as executing a disaster recovery plan.²

I have identified four general subject areas. I do not claim to have identified all issues or provided all answers. However, my purpose is to stimulate thinking and provide a broad framework for each individual business to develop a disaster recovery plan and, if necessary, implement it.

PLANNING

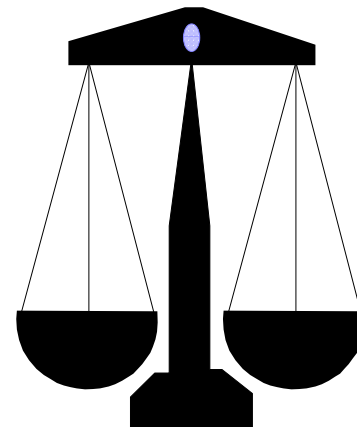
All businesses should have a disaster recovery plan. Duplicate on-site and off-site computer and written records should be kept. The precise nature of these records depends on the nature of the business. However, most companies would want to keep a customer list, financial records and accounts receivable off premises. Valuable documents, such as proprietary manufacturing processes, should be duplicated off site. Most companies with computerized record keeping have a protocol under which records are backed up and kept off premises on a daily basis. The subject of life safety issues is for another article. However, you should have a life safety plan which is frequently reviewed.

For any business closed during a period of recovery, it will be important to identify those critical business activities and resources needed to maintain market share. Planning should be for a worst-case scenario. This planning should include identifying and locating alternative facilities, equipment and supplies. It should also identify qualified contractors to perform these services. In many cases, it may be possible to make arrangements to use the facilities of another firm in the same line of work during all or part of an interruption period.

An emergency response plan should be created and employees should have a working knowledge of how to implement it. Things such as back-up sources of power and communications systems will be important to some

¹Dave Gerdes practices law with the Pierre law firm of May, Adam, Gerdes & Thompson. He is a member of the State Chamber's Board of Directors. He is a former President of the State Bar of South Dakota and practices in the areas of litigation, products liability, business and regulatory law. He lobbies during the legislative session for business and professional clients.

²One such vendor offered recovery planning software, consulting and a book. I did not look in detail at the software, but if you are interested, the web site is www.drbsbytamp.com.



INSURANCE ADVICE

What Will You Do?

Jeff Pray, CPCU

Culbert Davis Co., Insurors, Sioux Falls, SD

It may be like any other Sunday afternoon that finds you cleaning the garage, mowing the lawn or better yet, finishing a round of golf. It may be a friend, an employee or the Fire Chief calling to tell you that your business is burning to the ground! What will you do?

Sure, you'll race to the scene of the fire to watch along with everyone else, including fellow employees, neighbors and possibly a reporter or two. If you've never experienced such a catastrophe in your life, the site of it will hit you hard! It is an emotional experience and those emotions will challenge your ability to make good decisions. What will you do?

As the fire burns and the fire-fighters pour on the water, what isn't burned is soaked. Can anything possibly survive? Will the fire reach a storeroom of paints and flammables that could re-ignite or intensify the fire? Will neighboring businesses be threatened by your fire? Finally, you'll hope that nobody was in the building. What will you do?

What you do next will depend largely on what you had already done before the fire ignited. The decisions you made at your last insurance renewal will come home to roost. Did you really insure your building at its true reconstruction cost? Did you include the replacement value of everything within the building, including the large increase in inventory you've been experiencing, and the items that don't show up on your balance sheet because they were long ago depreciated out – like your tools and your employees' tools? Even if you did insure all of your computers and software, you'll hope and pray that your people ran a back up on Friday and took it home with them. Finally, did you insure the lifeblood of your business, its future income?

There is one thing that the best insurance policy with all the bells and whistles can't do for you. It can not tell you what to do after the smoke clears. Preparing a formal, or informal, Disaster Plan can help you make crucial decisions during and immediately after a fire (or tornado, flood, etc...). A sound disaster plan will be supported and should be financed by your insurance plan. A Disaster Plan should help you make good decisions in spite of the emotions and stress you will be experiencing.



Most insurance companies offer assistance or written material to help you draft and execute an effective Disaster Plan. Some of the common elements may include:

Salvage Operations

- Contact vendors for repair of equipment.
- Begin clean-up.
- Oversee temporary repairs.
- Remove all combustible debris.
- Photograph damaged property.
- Protect undamaged property.
- Communicate with employees.
- Arrange security.

Restoration Operations

- Inventory and value the damage.
- Call pre-designated alternate sites.
- Secure space, equipment and supplies.
- Communicate with customers, employees.
- Initiate planned communications.
- Determine all available insurance.
- Restore the computer systems.
- Rebuild, repair, relocate?

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Youth Business Adventure Corner

Meet YBA Campus Chairs Wingen and Gross

Pat Wingen is owner and president of AaLadin Industries Inc., Steel Eagle Inc. and Rugged Gear, LLC, all in Elk Point. He has been involved with Youth Business Adventure since 1989 when he first volunteered as a Company Advisor. He has served as YBA Chairman for the South Dakota Chamber of Commerce & Industry since 1992 and has been YBA Advisory Board Chair since its inception in 1996. Dedicated to the growth and development of the YBA program, Pat believes "The future of South Dakota business lies with our young people. The continuation of this program lies with our current business leaders. This combination of youth and experience will ensure that South Dakota remains 'the place' to do business."

When the YBA program grew to two campuses, Pat chaired the west river session at Black Hills State University for three years. Now that the east river session is held in his hometown of Vermillion, he is chairing that session for the second year.

Pat's proudest accomplishment with YBA was the development of a second campus so we could serve more of our young people. His next goal is centered on the "YBA endowment fund," which will ensure the future of the YBA program. Pat is the first to acknowledge that these programs could never happen without the support and help of many of the South Dakota Chamber members. Although names are too numerous to mention, he thanks each and every one of them.

As a life-long resident of South Dakota, Pat was born (Deadwood) and raised (Hoven) in South Dakota. He has never resided outside of this state. Academically, Pat earned a Bachelor of Science degree from SDSU and an MBA from USD. He obtained his elementary and secondary education in Hoven, South Dakota.

Between Pat and his wife Theresa, they have 7 children (Bona, Nathan, JoMarie, Mindy, Mary, Chris, and Lindsey) and 3 grandchildren (Michael, Peyton, and Tory). So far, four of his children have attended YBA, and Chris will be attending YBA this year at the BHSU campus.

Pat's hobbies include being a certified "car nut," a "NASCAR junkie," and working in the yard. Collecting classic cars, cruising in his cars or on his Harley, and traveling with Theresa occupy most of his "spare time." Both Theresa and Pat are looking forward to a "fairly early retirement" when they can actually have some "spare time."

David Gross is currently Senior Vice President at Security Bank in Sioux Falls, where his primary responsibilities entail supervision of the lending function and branch management. He is the former owner and president of Lewis and Clark Title Company in Yankton and was the manager of CorTrust Bank in Vermillion. He has taught at Yankton College and Freeman Junior College, National American College, and was the Director of the Business Department at Mount Marty College. Academically, Dave has earned a BA, MBA, and JD from USD.

David has been involved with YBA since 1996, as a Company Advisor the first three years and as Campus Chair at BHSU last June and again this summer. Presently, he is serving on the YBA Advisory Board as well as the Curriculum Committee. About YBA David says, "It is by far the best program for high school kids to introduce them to our free enterprise system. The positive interaction between students, advisors, and teachers during the week is simply incredible! The kids have a great opportunity to focus on the meaningful experiences provided at YBA. At the end of the week, you know they have developed a special appreciation for the nuances of the business world and our economic system."

Sandy, his wife of 31 years, has been a teacher and coach on the junior high, high school, and college levels. She currently is a licensed abstractor, working for First Dakota Title Company in Sioux Falls. They have two grown children. Andy, 25, is a graduate of the University of St. Thomas and is the national recruiter for Life Touch Studios. Sadie, 23, is a graduate of the University of Memphis and is an accountant for Memphis Water Light & Gas. David and Sandy are the current US Open Mixed Doubles Racquetball Champions, and they also enjoy running and bicycling.

Insurance...cont. from page 6

A disaster plan doesn't have to be complex to be effective, but it can't be a copycat of somebody else's plan. Your business is unlike any other and your plan will have to reflect that. Input from your people is crucial in developing an effective plan and it will take time and effort. Your Disaster Plan should never be considered complete, because it needs to change with your business. Just like your insurance policy, you hope you never need it, but both should provide you peace of mind. What will you do?

Jeff Pray's insurance experience began in 1982 with Crum & Forster as a Marketing Representative with territories in Minnesota, North and South Dakota. In 1985 Jeff joined Warner & Company in Fargo to develop their Producers Services Center and later became a Commercial Lines Agent and Vice President. In December of 1997 he accepted a position at Culbert Davis Company in Sioux Falls as a Commercial Lines Agent.

Jeff advises a variety of business owners on property and casualty issues with a specialty in the healthcare industry, where he insures and advises hospitals, clinics and individual physicians and surgeons. In addition, he regularly advises a variety of businesses on alternative risk financing vehicles, such as Captive Insurance.

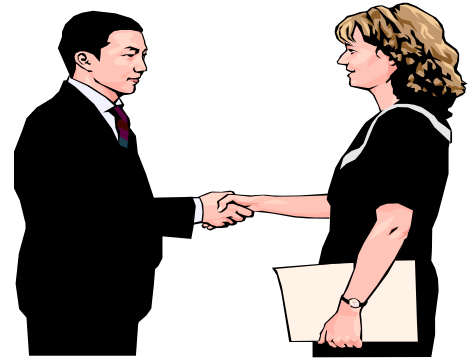
Fire...cont. from page 4

The process of getting to that settlement did have its complications, which prompts the following advice:

Hire an Independent Adjuster. *“They will find you,” Mr. President said with a smile. Hire one of them. The adjuster sent by your insurance company has an immediate conflict - they cannot reasonably negotiate with themselves to meet your needs and hold costs down for the company.*

“It was really the type of specialized negotiation that calls for expertise you just don’t have,” was the final assessment of Member Mfg’s President. The independent adjuster can help direct clean up and will suggest the most appropriate remedies for your losses.

This makes sense only if your coverage is adequate for the losses. If the damage is going to exceed your coverage, the insurance company will most likely write a check for the amount of the policy right away.



Your Turn.

If you have suffered a similar experience, the Chamber is asking you to consider helping in two ways.

Refine the Information. The Business Continuation series will be published after more is learned about each situation covered in the series. If you have additional insight to share, please call the staff at 800-742-8112 or send a note on the enclosed flyer or an email to sdchamber@dtgnet.com.

Offer Advice. The Chamber will be maintaining a list of members who have been through a fire and would be willing to talk to others and share the lessons learned. If you are willing to take such a call, please fill out the enclosed flyer or send an email to sdchamber@dtgnet.com. Eventually the names of the experienced community will be in a secure posting on our web page. Everyone who has been through one of these crises has told the staff “we wish we had known someone to call.” You just might be that person.

Legal...cont. from page 5

businesses. If communications are important to the operation of a particular business, alternative sources of communications should be identified. The off premises cache should include a client list, a list of important telephone numbers and addresses, bank account numbers, contractors, suppliers, realtors, financial institutions, insurance agents, lawyers and claims representatives.

A communications strategy to prevent loss of clients or customers is essential. Clients and customers must know how to contact the company at its new location.

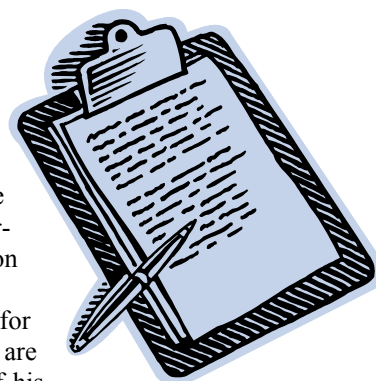
One of the most important aspects of disaster planning involves a predisaster review of insurance coverages and policy limits on a regular, periodic basis. Select an agent knowledgeable with business coverages. Ask your colleagues about their agents, and check out your trade association. Property insurance policies typically exclude coverage for flood damage. If the business is located in a flood zone, consideration should be given to purchasing a flood insurance policy from the National Flood Insurance Program. You should also consider purchasing "ordinance coverages" to help pay for the extra cost of tearing down a structure and rebuilding it, because the federal government requires buildings in flood zones that do not conform to flood plain building codes be torn down where damage exceeds 50 percent of the market value.

If your property policy contains a co-insurance clause, the insured value of the property must be sufficient to be in compliance with the co-insurance clause. If the property is not sufficiently insured, you can lose a significant amount of your insurance coverage. The loss of coverage because property is undervalued is one of the biggest reasons insurance coverages should be routinely reviewed.

Business interruption insurance compensates for income lost if your business must vacate the premises because of disaster related damage. Business interruption insurance covers the profits you would have earned based upon your financial records had the disaster not occurred. The policy covers operating expenses that continue even though business activities have temporarily been halted. It is essential that the policy limits selected are sufficient to cover the company for more than a few days.

Extra expense insurance reimburses the company for a reasonable sum of money spent, over and above normal operating expenses, to avoid shutting down the business during a restoration period. Extra expense insurance will usually only be paid if the extra expenses are required to decrease the business interruption costs. In some instances, extra expense insurance alone may provide sufficient coverage, without the purchase of business interruption insurance.

Insurance policies are very complex. Usually, several options exist, depending on cost, for coverages. It is important that coverages consistent with the business plan of the company are selected. For example, I recently had a case involving a fellow who leased a portion of his warehouse to others for storage of recreational vehicles, boats and the like. To reduce the cost of his insurance, he purchased garagekeepers insurance which only covered the non-owned contents of the warehouse if he was at fault. The warehouse was totally destroyed by fire. Because of the vague nature of the lease which his customers signed they contended he had agreed to insure their contents. He ended up with a fistful of lawsuits and bankruptcy. He learned only too late of the importance of tailoring his coverages to his business. He either needed to charge more money for the storage so he could have proper insurance coverages, or get professional advice in structuring his lease so as not to create a potential obligation to cover non-owned contents of the warehouse.



EMPLOYEES

What are your obligations to employees when your business suffers a significant hiatus? I remember a story a few years ago about a large textile mill in Massachusetts that burned to the ground. It made the national news because the owner valued his employees so much that he paid them their wage while the plant was rebuilt in order to retain their services. Instances like that make a great story, but most employers could not afford to do what that employer did.

While there are a significant number of variables, the basic rule is that if no job exists, you are not required to pay wages. If you are covered by the Federal Wage and Hour Act³, with a few exceptions, you are not obligated to pay wages during a hiatus where no job exists for an employee. There are two major exceptions to the foregoing rule. The Family Medical Leave Act provides covered employees with up to 12 weeks of unpaid, job protected leave per year and requires that group health benefits be maintained during that leave. The Act restores that employee's job at the conclusion of the leave. If the leave concludes during a hiatus, it may be that the employer is required to provide employment, if all or part of the people with the same job classification are working, such as in the instance where a partial work force is employed during the hiatus. The objective is to treat all employees equally, so if some who are a part of the same job category are working, the person coming off family leave is probably entitled to a job. If those people in that category are not working, there is no requirement that the employer provide a job for the person coming off family leave.

³Generally, to be covered by the Federal Wage and Hour Act, an employer must be in interstate commerce (more than 50 employees) or be a public agency. The Denver office of the Wage and Hour Administration can be reached at (720)264-3250. South Dakota has two field offices: Sioux Falls, David King (605)330-4241, and Rapid City, Jody Geske (605)348-5504.

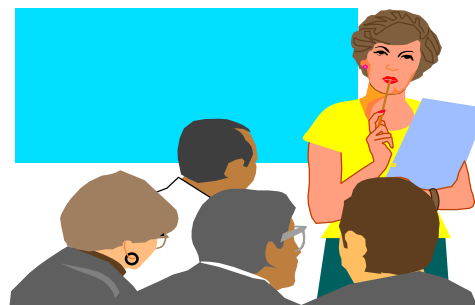
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Legal ... cont. from page 9

The second possible involvement comes under the Fair Labor Standards Act. Where no jobs are open, the employer has no obligation to employ hourly workers. However, salaried exempt workers might be entitled to pay if work is available to salaried exempt workers. If no work is available, then no pay is required.

Other legal issues involve employee handbooks, employment contracts or union contracts. These sources must be reviewed to determine whether an obligation to provide work for employees covered by these documents exists. Needless to say, this review should be accomplished as part of the disaster planning process. If a question exists, the documents should be renegotiated. As South Dakota employers know, this state is an employment-at-will state. However, that doctrine is modified by the practices of the specific employer involved. If the employer creates an exception to the employment-at-will doctrine, the courts will enforce it.

It is important during a disaster hiatus for the employer to make his or her intentions clear to the employees. Quick, concise and understandable communication is necessary to prevent misunderstandings with employees, as well as to ensure employee relations for the future. Having said that, any communications with employees should be reviewed by counsel to make sure that no unintended promises are made. An effort to save the sensibilities of the employees should not be permitted to create a misunderstanding concerning the future employment status of employees or a lawsuit from employees who thought you promised them continued employment.



CUSTOMERS

There are few businesses that can exist without their customers.⁴ All too often, the customer is forgotten in the exigencies of a catastrophic loss. This again is a good reason to have a plan. As mentioned above, the company managers should have sat down and thought about how to communicate with the customers in the event of a disaster before the disaster hits. The records necessary to accomplish this should be preserved off site. The plan and script should be current and ready to go.

The legal issues which can develop for customers usually revolve around contracts to supply goods or services at a specific time. All contracts when they are written should contain a force majeure clause excusing performance on the part of the company at times of a disaster not of the company's making. If such a policy has not been followed and a disaster occurs, a review of all outstanding contracts should be conducted immediately. Arrangements will need to be made to satisfy or otherwise deal with the contractual obligations during the hiatus caused by the disaster.

DEALING WITH INSURERS⁵

As stated above, your policies should have been reviewed for adequacy in advance of the disaster. Once the disaster occurs, it is important to make the best of those insurance coverages which exist. Under virtually all property insurance contracts, the insured has certain duties. These include immediately notifying the insurance company of the loss and providing a description of how, when and where the damage took place. Later, if the insurance company requests it, you must compile an inventory of damaged and undamaged property. Many times, an adjuster will help you with this task. At some point in time you will be required to provide a sworn proof of loss. This is a document under oath which states that the claim is accurate and represents your loss in the catastrophe.

Additional duties expected of the insured are to notify police if a law may have been broken in the course of the loss, protect the insured property from further damage and keep track of costs for emergency and temporary repairs needed to protect the property, separate damaged from undamaged property where feasible and to cooperate with the insurance company. All policies contain a cooperation clause which condition coverage upon the cooperation of the insured. A part of the cooperation clause permits the insurer to examine the insured under oath on any questions touching settlement of the loss under the policy. This does not occur very often, but it is something the insurer is entitled to request.

It is important to establish a businesslike relationship with the insurer at the outset. Usually, you will be dealing with an insurance adjuster. Depending upon the company, this insurance adjuster can be a contract adjuster or it can be a company-employed adjuster. In either event, it is important to establish ground rules with that adjuster. It is also important to never sign anything that even looks like a proof of loss until you are absolutely sure that it covers everything that you know you have lost. If the loss is extensive or complex you may want to consider employing a professional to monitor and check the insurance adjuster's work. Do not be bashful about asking for clarification of coverage issues.

Insurance policies can be intricate and difficult to understand. If your business is a large business it is likely that many of your coverages were negotiated. Smaller businesses ordinarily are limited to fairly standard coverages and policies. However, larger risks can negotiate special coverages. It is important to involve someone on the company's side who clearly understands the risks defined and the manner in which the insurer is proposing to compensate for those losses.

⁴The only exceptions I can think of are people in the witness protection program and mobsters laundering money!

⁵The Insurance Information Institute has a good web site at www.iii.org.

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In large, catastrophic losses, disputes can many times arise under business interruption coverages. Essentially, business interruption insurance covers the profits you would have earned had the disaster not occurred. This coverage is based upon your past financial performance. While I recognize that this is easier said than done, if you are having a particularly unusual year it is doubly important to make sure those records are preserved off premises. Any significant departures in your operation from past performance should be preserved.

It is important to keep detailed records of business activity and the extra expenses caused by the disaster during the interruption period. This should include expenses that continued during the time that the business is closed, such as advertising, communication with customers and preserving the status quo.

CONCLUSION

*A close friend of mine lost virtually everything down to the last paperclip from his business in the Rapid City flood. As part of the preparation for this article, I asked him to relate to me any things of significance relating to preparation for disasters which he learned from this experience. While we talked about a number of the things which I have mentioned in this article, such as storing essential records and recovery information off site, I was mildly surprised by the three things he identified as being most significant. **Treat your employees well during this period of time and they will help you more in the long run than you could have ever imagined. Secondly, during the disaster recovery process step back and let things happen; don't try to shortcut or control the process. It will just raise your stress level and you won't speed up the process. And lastly, and most importantly, remember that you have lost only physical items which can be replaced; the really important stuff is still around.***

FOCUS ON SUCCESS

With this issue, we will conclude our presentation of additional information on the 2000 biennial ABEX award winners. The winners of these prestigious awards deserve proper recognition. And the winners are...

NEW SD PRODUCT/VENTURE (Awarded to the business demonstrating exceptional performance in launching a new South Dakota product or venture.) **Daktronics, Incorporated, Brookings.** One of Daktronics' most significant development efforts of the last two years is the Vanguard family of variable message signs and control software. The Variable message sign (or VMS), which comes in over 70 standard models, is used by transportation agencies to inform highway travelers about such things as road conditions and construction, and at major airports for gate and parking information. The control software is a state-of-the-art program that allows for control of a single VMS or a complex system of more than 100 signs.

QUALITY (Awarded to the business demonstrating exceptional quality performance through the involvement of its customers and employees.) **OEM Worldwide, Watertown.** OEM Worldwide is committed to ensuring that every employee is focused on the needs of the customer. Employees are indoctrinated to the Quality Policy on their first day of employment and are trained that every employee is responsible for "Exceeding the Customers' Expectations." The focus of the quality system is continuous improvement, driving issues to root cause and true preventative action. Quality is built into the process, ensuring that both the products and services provided are world class.

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WORKPLACE ENVIRONMENT & SAFETY. (Awarded to the business demonstrating exceptional performance in maintaining or improving the safety of its physical environment or improving the quality of life at work.)
3M Company, Aberdeen. With over 500 employees, 3M Aberdeen has a continuous improvement approach to health and safety. Holding annual health fairs, addressing ergonomic issues, institution cross-functional department safety tours, and designating a trained staff member to work with safety issues have all been implemented over the past two years to improve the quality and safety of 3M employees' work environment. With incident rates and lost work days below national averages, 3M is successful in their efforts.

2000 BUSINESS OF THE YEAR

Dr. Al Kurtenbach, Chairman and CEO of Daktronics, Incorporated, Brookings accepts the 2000 Business of the Year Award from Jim Campbell, Board Chair and David Owen, President. All applications are considered by the panel of judges when selecting the Business of the year.

**South Dakota Chamber of
Commerce & Industry**

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