

Helping and Managing a Company's Haitian Workforce

As a result of the complete destruction of telephone service in the devastated areas, telephone communication with employees who were working in Haiti is virtually impossible. However, Haiti's Internet connectivity remains robust even after the earthquake, but only because its telecommunications infrastructure is not dependent on the country's lone undersea fiber optic cable link, which was knocked out during the quake. Moreover, the country's leading telecommunications provider continues to fortify its communications infrastructure.

Consequently, a company with an operating Web site might consider creating space on that Web site for employee communications. If a

Web site does not have password-protected communications already, consider adding that capability. For example, employees could use their name and employee identification or Social Security number (if permitted by state

LAST IN A TWO PART SERIES

This article continues "Helping Haiti: Tips for Companies Offering Aid," which appeared Feb. 19.

law) to access and communicate private information. Where possible, an employer's Web site should set out, at least in an area of the Web site to which access is restricted to employees, the company's current and anticipated operating plans - for example, expected hours of operation, facilities being reopened, temporary alternative work locations, and company units that will resume operations. A company should consider candidly assessing on its Web site the possibility of furloughs, layoffs, payment arrangements, benefits, or even the closing of the business.



TANJA L. DARROW is a shareholder at Littler Mendelson. Her labor and employment law practice includes discrimination and harassment, ADA, fair employment practices and wage and hour issues.

One anticipated effect of a disaster is the delayed processing of employees' wage payments. Employers' wage payment obligations vary from state to state. Companies experiencing significant difficulty meeting payroll obligations as a result of unforeseen disaster, including the inability of service providers to process payrolls, have no guarantee that they will receive leniency in the enforcement of wage payment laws.

To the extent an employer has a workforce in Haiti that is unionized, employers are advised to review their collective bargaining agreements, some of which address this issue directly, or consider approaching the union to address the delayed wage payment issue before unilaterally delaying any payments.



JIM E. HART is a shareholder at Littler Mendelson. He specializes in employment and labor litigation, class action litigation and workplace training.

We also suggest that employers promptly notify their employees of any wage payment processing problems and advise them of when they can expect payment, particularly where employees are on direct deposit and might otherwise write checks against anticipated deposits.

Employers should be aware that in the event of a natural disaster, such as an earthquake, many employees will need time off. After a disaster, employers can effectively help ease what may otherwise be crippling emotions by providing additional time off to employees.

Since employees may be using medical benefits (including counseling), information on the status of benefits, who to contact regarding

claims, and how benefits are to be maintained in the unique circumstances of the disaster, should be communicated via the company's Web site. Consider providing general notice regarding benefits through posting "legal notices" with newspapers of general circulation in the disaster area (many newspapers will publish electronically before they resume "hard copy" distribution) and in areas where employees may have relocated, including areas where government sponsored shelters are being maintained.

Many employers have employee assistance programs (EAP), which are typically capable of providing individual or group counseling and support. These programs can be very effective when employees in a workplace have experienced a traumatic event. When an entire region has suffered a disaster, employers should consider offering the services of outside grief counselors, if necessary or requested by employees, to help employees cope with emotional issues.

Employers with the necessary resources that do not yet have an EAP in place may wish to consider implementing one as soon as possible. Employers may also inquire of their insurance companies of the availability of EAP services, as many medical insurance policies cover counseling and other services similar to those provided by an EAP.

In a disaster, the widespread closure of facilities and the wholesale displacement of employees, many of whom may have been injured, create unprecedented benefits issues. The recent tragedy will require employers to make coverage decisions such as whether they will maintain benefits for employees - especially where the employee, or the business, may at least temporarily not be working or operating. Should an employer decide to continue coverage, the employer should contact its benefits vendors to determine how coverage is to be maintained during this period.

Assuming that a business closes indefinitely because of a disaster, a key issue to employees will be the status of the company's benefit plans and whether employees are eligible to continue to participate in the plans. Most insurance policies require a minimum number of active employees for a policy to continue in effect. Also, health and life policies typically provide for conversion rights when policies terminate for other than non-payment of premiums, and where no replacement coverage is obtained.

Time sensitive elections and employee responses that may not have been extended by the government, such as the allowable 60 days for employees to elect COBRA coverage, may be extended by a plan administrator/employer. However, such extension cannot be done unilaterally and requires the agreement of any affected vendor and the adoption of a uniform extension "standard" with respect to employees in like circumstances.

Going forward, companies renewing insurance policies of all kinds should confirm the availability of benefits for natural disasters.

Employers who have lost employees as a result of the earthquake in Haiti should promptly review the possibly applicable policies for coverage, including life insurance, accidental death and dismemberment, and/or Haitian workers' compensation benefits. Appropriate information and forms should be communicated as promptly as possible to the next of kin.

Employers should be aware that many states have specific statutes governing the distribution of final paychecks and death benefits, which may apply in those circumstances where a deceased employee has more than one beneficiary.

Employers who suffer losses of any type should notify their applicable insurance carriers as soon as possible. Not only will this expedite the processing of claims and receipt of necessary benefits, but many insurance policies have strict time limits for reporting losses. Companies should also check their policies to see if they have "business interruption" coverage or benefits.

Few can dispute that given our experiences with traumatic changes and events of the past

few years, employers are becoming much more prepared for emergency situations. The Department of Homeland Security identified and endorsed a "national preparedness standard," known as NFPA 1600 and prepared by the American National Standards Institute. The NFPA is now the "national preparedness standard" for private businesses and offers a comprehensive process for establishing emergency preparedness plans. The 2010 edition of the NFPA 1600 can be found at www.nfpa.org/assets/files/PDF/NFPA16002010.pdf. While this article focuses on standards to be applied in Haiti, the principles described in the plan can be generally applied whether in or outside the United States.

After a disaster, employers can effectively help ease what may otherwise be crippling emotions by providing additional time off to employees.

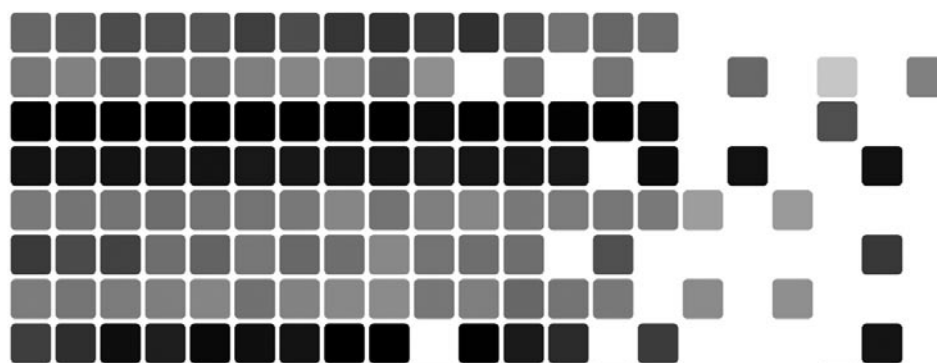
Many businesses have utilized the NFPA 1600, a voluntary standard, as a benchmark against which preparedness is measured. Employers should remain mindful that guidelines and recommendations can quickly evolve into legal requirements. According to NFPA 1600, an employer's disaster preparedness plan should include the following:

Publish evacuation procedures to all employees and routinely conduct evacuation drills (as well as fire drills); maintain accurate emergency contact information to reach employees and next of kin; establish and publicize mechanisms (e.g., Web site, telephone chain, recorded announcement) through which the employer may apprise its employees of any pertinent developments; reassess the means and manner in which critical information is stored, both physically and electronically to prevent irreparable physical damage from crippling the company's operations; and review existing property, casualty, business interruption, life, and other insurance policies, and modify such coverage where necessary or prudent.

Additionally, employers have a general duty to provide employees with a safe workplace, and we strongly encourage employers to conduct a workplace safety audit on these and other issues. We suggest a five-step audit, for which a company may want to retain an appropriate expert, on the following: Emergency responsive procedures; evacuation procedures; identification of all natural disaster possibilities and reasonable control measures; evaluation of health and safety training programs; and review of written safety programs.

West LegalEdcenter and the Daily Journal present:

LITIGATING PATENT DISPUTES: THE ADVANCED LEGAL FORUM



MARCH 15, 2010

THE FAIRMONT SAN JOSE
170 SOUTH MARKET ST.

SPEAKERS:

JUDGE JEREMY FOGEL
US District Court,
Northern District of California

CHIP LUTTON
Chief IP Counsel, Apple

EMILY WARD
Assoc. Gen Counsel, Patents,
EBay

YEN MALLUM
VP of Worldwide IP, Cisco

KEY TOPICS COVERED INCLUDE:

- Effective teaming of corporate counsel and litigators
- Managing costs of patent litigation
- Analysis of patent damages issues
- Ethics of patent litigation
- Recent trends in patent litigation; the Supreme Court and Federal Circuit decisions

CHAired BY:

KATHERINE LUTTON, Fish & Richardson P.C.
JEFF JOYNER, Greenberg Traurig, L.L.P.

REGISTER TODAY!

westlegaledcenter.com

1.800.308.1700

SPONSORS:



WEST.

Daily Journal
CORPORATION

