

ACBO Institute II

➤ Risk Management Primer

April 4, 2024

Presented by:
Ann-Marie Gabel, Vice Chancellor of Business Services for South Orange County CCD

Agenda – Learning Objectives

- What is Risk and Importance of Risk Management
 - How to Mitigate Risk
- Claims
 - Types and Coverage
 - What to do when you receive a Claim
 - Lawsuit Basics
- Workers' Compensation
- Safety Prevention Plans



What is Risk and Importance of Risk Management

What is Risk?

**A risk is the uncertainty of
having a loss**

Why is Risk Management Important?

District trailer equipment causes fatal car accident

Student Dies After Altercation with Employee

Coach Allows Hazing

Custodian Quadriplegic

Faculty – Traumatic Brain Injury

District Sued for Discriminatory Practices

Why is Risk Management Important?

NATION Southern California [Add Topic +](#)

California family receives \$27 million settlement over death of teen assaulted by fellow students

 **Vanessa Arredondo**
USA TODAY

Published 11:33 p.m. ET Sept. 13, 2023 | Updated 8:48 a.m. ET Sept. 14, 2023

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NBC NEWS California district pays \$100K to settle suit over support for student's gender transition [SHARE & SAVE](#) [f](#) [X](#) [✉](#) [...](#) [🔖](#) [☰](#)

OUT NEWS


California district pays \$100K to settle suit over support for student's gender transition

The student's mother alleged school staffers "secretly convinced" her child that the minor was bisexual and transgender.

[f](#) [X](#) [✉](#) [🔗](#) [🔖](#) [SAVE](#) [Create your free profile or log in to save this article](#)

Aug. 31, 2023, 11:13 AM PDT
By Julianne McShane

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2 California school districts reach combined \$4.8 million settlement with sex abuse survivors

By [SEAN EMERY](#) | semery@scng.com | Orange County Register
PUBLISHED: January 18, 2024 at 4:48 a.m. | UPDATED: January 18, 2024 at 4:50 a.m.

Why is Safety Important?

Health and Safety

Morale

Costs

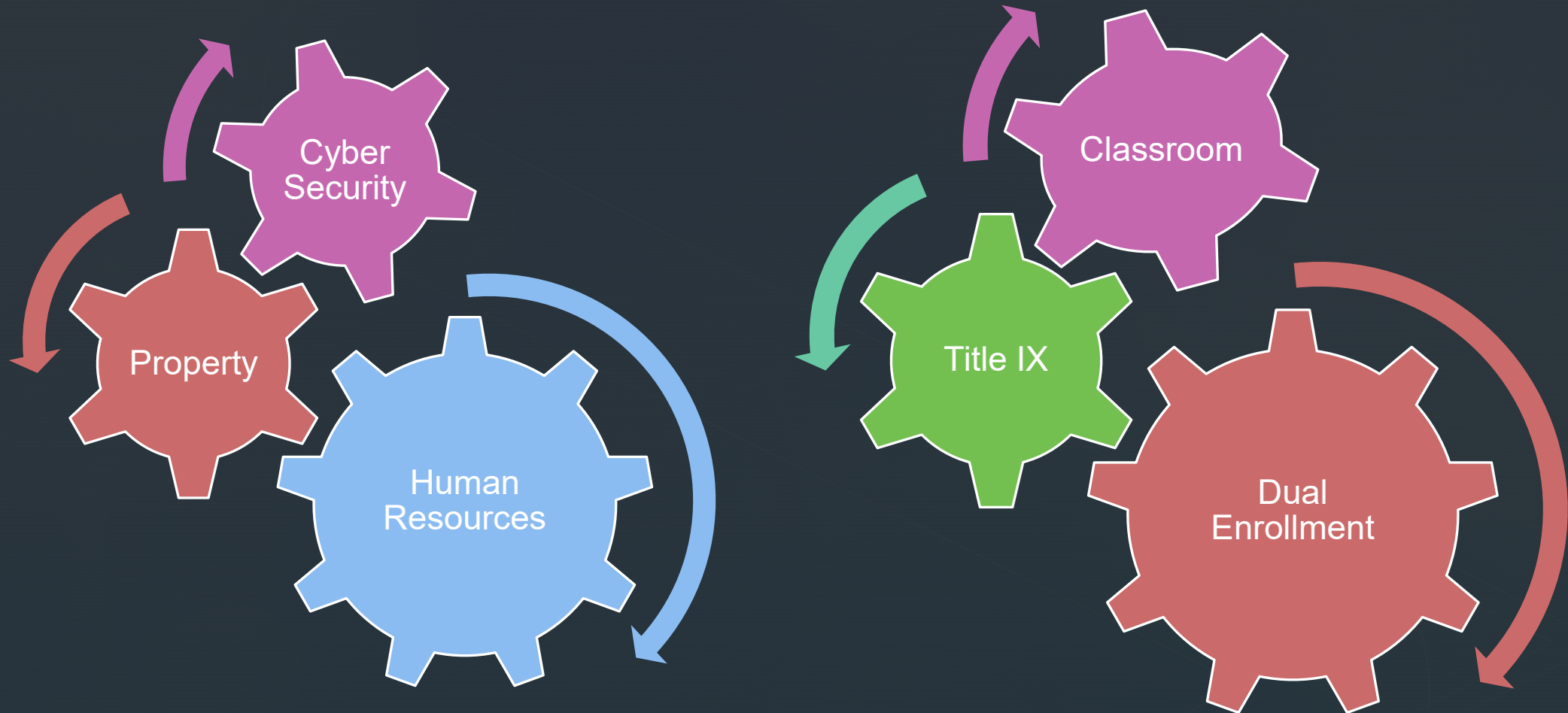
Performance &
Productivity

Student Safety

Absenteeism

Employee Accountability

Where is Risk?



How to Mitigate Risk?

- Risk Transfer through Contracts
 - Indemnification Language
 - Sole or Mutual?
 - Insurance Requirements
 - Certificates of Insurance
 - Venue
- Safety Programs

How to Mitigate Risk – Sole Indemnity

HOLD HARMLESS AND INDEMNIFICATION. To the fullest extent permitted by law, **the Contractor shall defend** (with counsel of District's choosing), indemnify, and hold harmless the District, its Board of Trustees, officers, agents, employees, representatives, and volunteers (collectively "Indemnified Parties") from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, in law or equity, property damage, personal injury, damages or injuries/illnesses (including COVID-19) of any kind, including wrongful death, in any manner **arising out of, pertaining to, or incident to any alleged acts, equipment failure and/or malfunction, faulty installation, errors or omissions, negligence, recklessness or willful misconduct of Contractor**, its officials, officers, agents, employees, representatives, subcontractor, or volunteers, in connection with the performance or non-performance of Contractor installed/provided equipment/materials and the Contractor's Services of this Agreement or obligations hereunder, including without limitation the payment of all consequential damages, expert witness fees, attorney's fees, and other related costs and expenses. In the event any article sold and delivered hereunder is covered by any patent, copyright, or application thereof, Contractor shall defend, indemnify, and hold harmless South Orange County Community College District, its Board of Trustees, officers, agents, employees, representatives, and volunteers from any and all losses, costs or expenses resulting from claims, suits or judgments rendered for violation of rights under such patents, copyright, or application. Contractor shall reimburse the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers for all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity provided herein. This hold harmless and indemnification includes, but is not limited to, compensatory damages, regulatory fines, penalties, and extra-contractual liability. In no event shall the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers be liable for any loss of Contractor's business, revenues or profits, or special, consequential, incidental, indirect or punitive damages of any nature, even if the District its Board of Trustees, officers, agents, employees, representatives, and/or volunteers have been advised in advance of the possibility of such damages.

A. Contractor's obligation to indemnify the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers **shall not be restricted to insurance proceeds**, if any, received by the District, its Board of Trustees, officers, agents, employees, representatives, and/or volunteers.

B. The Parties understand and agree that this shall be the sole indemnity, as defined by California Civil Code § 2772, governing this Agreement. Any other indemnity that may be attached to this Agreement as an Exhibit shall be void and unenforceable between the Parties.

C. Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release Contractor from its obligations to indemnify as to any claims or causes of action asserted so long as the event(s) upon which such claim or cause of action is predicated shall have occurred prior to the effective date of termination or completion.

How to Mitigate Risk – Mutual Indemnity

HOLD HARMLESS AND INDEMNIFICATION. **Each Party** to this agreement shall defend, indemnify, hold harmless the other Party and its officers, officials, board members, directors, agents employees, volunteers and owners from and against any and all demands, claims, causes of action, proceedings, awards, fines, judgements, penalties, injury or damages to persons or property, losses and liabilities, costs and expenses, including reasonable attorney's fees (collectively "Claims"), but only in proportion to and to the extent such damages are **caused by the indemnifying party's negligence or willful misconduct** in connection with all terms and conditions under this Agreement. The provision of this paragraph shall survive the expiration or termination of this Agreement.

A. Parties shall give each other prompt written notice of any claim, suit, or demand arising from the obligations of this Agreement. Each party agrees, at the other's request to reasonably assist, cooperate with and/or participate with the other or its attorneys in any such action versus a third party.

B. The Parties understand and agree that the above shall be the sole indemnity provision governing this agreement. Any other indemnity that is attached to this agreement shall be void and unenforceable between the parties.

Contractual Insurance Limits



SOUTH ORANGE COUNTY COMMUNITY COLLEGE DISTRICT INSURANCE REQUIREMENTS FOR CONTRACTS

INSURANCE LIMITS BY CONTRACT VALUE AND AGREEMENT TYPE																
Contract Value	Workers' Compensation and Employer's Liability (All Agreements)	Commercial General Liability (CGL) Per Occurrence Limit (All Agreements)	CGL General Aggregate Limit (All Agreements)	Products and Completed Operations Under CGL (All Agreements)	Excess Liability/Umbrella Over CGL Per Occurrence Limit (Only for CUPCAA Agreements)	Excess Liability/Umbrella Over CGL Aggregate Limit (Only for CUPCAA Agreements)	Automobile Liability - Combined Single Limit (All Agreements)	Contractor's Pollution Liability Per Occurrence Limit (Only for CUPCAA Agreements)	Contractor's Pollution Liability Aggregate Limit (Only for CUPCAA Agreements)	Professional Liability or Errors & Omissions Limit (Only for Prof Svcs Agreements)	Professional Liability or Errors & Omissions Aggregate Limit (Only for Prof Svcs Agreements)	Technology Professional Liability (aka Errors & Omissions) Per Occurrence Limit (Only for IT Prof Svcs Agreements)	Technology Professional Liability (aka Errors & Omissions) Aggregate Limit (Only for IT Prof Svcs Agreements)	Cyber Liability (1 st and 3 rd Party) Per Occurrence Limit (Only if Accessing PII and/or Network Systems)	Cyber Liability (1 st and 3 rd Party) Aggregate Limit (Only if Accessing PII and/or Network Systems)	Builder's Risk (Only for CUPCAA Agreements)
\$1 to \$200,000	Statutory/One Million Dollars (\$1,000,000)	One Million Dollars (\$1,000,000)	Two Million Dollars (\$2,000,000)	One Million Dollars (\$1,000,000)	N/A	N/A	One Million Dollars (\$1,000,000)	N/A	N/A	One Million Dollars (\$1,000,000)	Two Million Dollars (\$2,000,000)	One Million Dollars (\$1,000,000)	Two Million Dollars (\$2,000,000)	One Million Dollars (\$1,000,000)	Two Million Dollars (\$2,000,000)	On a case-by-case basis
\$200,001 to \$5,000,000	Statutory (WC)/One Million Dollars (\$1,000,000) (EL)	Two Million Dollars (\$2,000,000)	Two Million Dollars (\$2,000,000)	Two Million Dollars (\$2,000,000)	Two Million Dollars (\$2,000,000)	Two Million Dollars (\$2,000,000)	One Million Dollars (\$1,000,000)	One Million Dollars (\$1,000,000)	Two Million Dollars (\$2,000,000)	Two Million Dollars (\$2,000,000)	Two Million Dollars (\$2,000,000)	Two Million Dollars (\$2,000,000)	Two Million Dollars (\$2,000,000)	Two Million Dollars (\$2,000,000)	Two Million Dollars (\$2,000,000)	100% of Replacement Value
\$5,000,001 to \$10,000,000	Statutory/One Million Dollars (\$1,000,000)	Two Million Dollars (\$2,000,000)	Four Million Dollars (\$4,000,000)	Two Million Dollars (\$2,000,000)	Two Million Dollars (\$2,000,000)	Two Million Dollars (\$2,000,000)	One Million Dollars (\$1,000,000)	Two Million Dollars (\$2,000,000)	Four Million Dollars (\$4,000,000)	Two Million Dollars (\$2,000,000)	Four Million Dollars (\$4,000,000)	Two Million Dollars (\$2,000,000)	Four Million Dollars (\$4,000,000)	Two Million Dollars (\$2,000,000)	Four Million Dollars (\$4,000,000)	100% of Replacement Value
\$10,000,001 and Over	Statutory/One Million Dollars (\$1,000,000)	Two Million Dollars (\$2,000,000)	Four Million Dollars (\$4,000,000)	Two Million Dollars (\$2,000,000)	Ten Million Dollars (\$10,000,000)	Ten Million Dollars (\$10,000,000)	One Million Dollars (\$1,000,000)	Two Million Dollars (\$2,000,000)	Five Million Dollars (\$5,000,000)	Two Million Dollars (\$2,000,000)	Five Million Dollars (\$5,000,000)	Two Million Dollars (\$2,000,000)	Five Million Dollars (\$5,000,000)	Two Million Dollars (\$2,000,000)	Five Million Dollars (\$5,000,000)	100% of Replacement Value

Workers' Compensation and Employer's Liability. Pursuant to Labor Code §3700, the Contractor and its subcontractors shall each purchase and maintain Workers' Compensation insurance.

Commercial General Liability, Products and Completed Operations, and Excess Liability/Umbrella Liability Insurance. Contractor and its subcontractors shall provide and maintain Commercial General Liability Insurance (broad form coverage) an Excess Liability/Umbrella Policy, and Products and Completed Operations insuring against claims for bodily injury, property damage, personal injury and advertising injury fire legal liability (not less than the replacement value of the portion of the premises occupied), personal injury, blanket contractual, Premises Operations, and Products and Completed Operations (for a minimum of ten (10) years following Final Completion of the Project). Any endorsements limiting coverage, including, but not limited to Subsidence Exclusion or Products and Completed Operations shall be stricken.

Automobile Liability Insurance. Contractor and its subcontractors shall purchase and maintain an Automobile Liability Insurance Policy. The Automobile Liability Insurance Policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by Contractor's Pollution Liability Insurance. If required by the Contract Documents, the Contractor, and its subcontractors, as applicable, shall purchase and maintain Contractor's Pollution Liability Insurance applicable to the Work. Coverage under the Contractor's Pollution Liability Policy shall include the following: (i) bodily injury, sickness, disease, mental anguish or shock sustained by any person, or death; (ii) property damage, including physical injury to or destruction of tangible property, including the resulting loss of use thereof, clean-up costs and the loss of use of tangible property that has not been physically damaged or destroyed, and diminution in value; (iii) defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for damages; (iv) blanket and scheduled non-owned disposal site and transportation coverage; (v) completed operations liability coverage shall be maintained following the date of Final Completion or the date of any earlier termination of the Contract for an additional ten (10) years thereafter; (vi) contractual liability; (vii) insured pollutants shall include fungus, mold, bacteria and viruses; and (viii) gradual and sudden and accidental pollution. The Contractor's Pollution Liability Insurance Policy will not contain separate restrictions, limitations, or exclusions for: (i) damage to property that cannot be used or is less useful because of the operations of the insured (i.e., impaired property exclusions); (ii) Work performed by subcontractors; (iii) damage or destruction of District owned property or the Work and (iv) lead, asbestos or silica related losses.

Contractor's Professional Liability. Contractor and its subcontractors shall provide and maintain Contractor's Professional Liability Insurance with limits not less than [[Insert Contractor's Professional Liability Per Occurrence or Claim Limit]] per occurrence or claim with a 10-year Extended Reporting Period.

Technology Professional Liability aka Errors and Omissions. Consultant and its subconsultants shall each procure and maintain throughout the term of this Agreement, Technology Professional Liability insurance to cover against liability claims/lawsuits related to the technology professional's Services as stated herein. If coverage is written on a claims made and reported form, such coverage shall contain an Extended Reporting Period (aka tail coverage) for a minimum of two (2) years following the termination date of this Agreement.

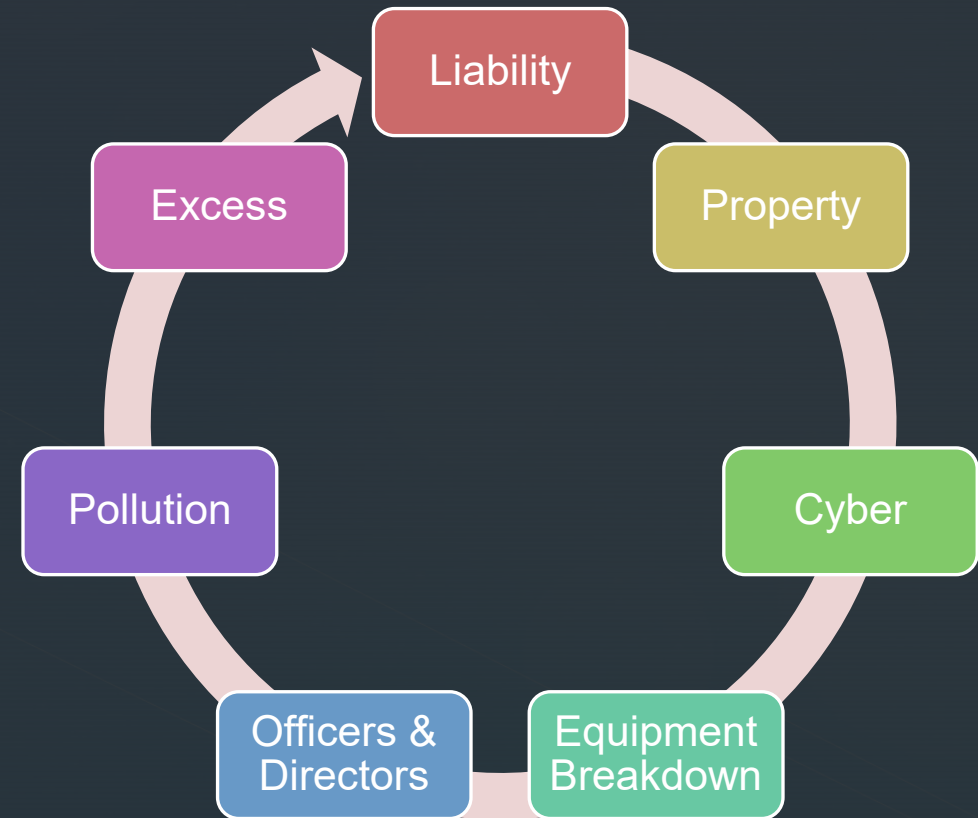
Cyber Liability (1st and 3rd Party Coverage). Consultant and its subconsultants shall each procure and maintain through the term of this Agreement, Cyber Liability insurance. Such coverage shall protect against causes of loss including but not limited to invasion of privacy violations, breach of data, disruption of networks, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, introduction or intrusion of a virus, malware, notification, credit monitoring, breach response costs, regulatory fines and penalties, extortion and network security, and also infringement of intellectual property.

Builder's Risk Insurance. The Contractor shall purchase and maintain a Builders' Risk Insurance policy, on an "all-risk" with extended coverage, including perils or causes of loss customarily covered under an all-risk policy providing coverage for the Project and the Work, including personal property items stored off the Site or in transit pending incorporation into the Work. Extended coverage shall include vandalism, malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, collapse, flood, wind, lightning, smoke, riot, debris removal (including demolition), and reasonable compensation for Architect's services and expenses required as a result of an insured. Limits shall be adjusted with every executed change order, contingent to project requirements. Such builder's all risk insurance shall include the District as an additional insured.

How to Mitigate Risk?

Coverages Needed:

- Self-Insured
 - Excess Coverage Providers
- Joint Powers Authority (JPA)
 - Member Retained Limits
 - Excess Coverage





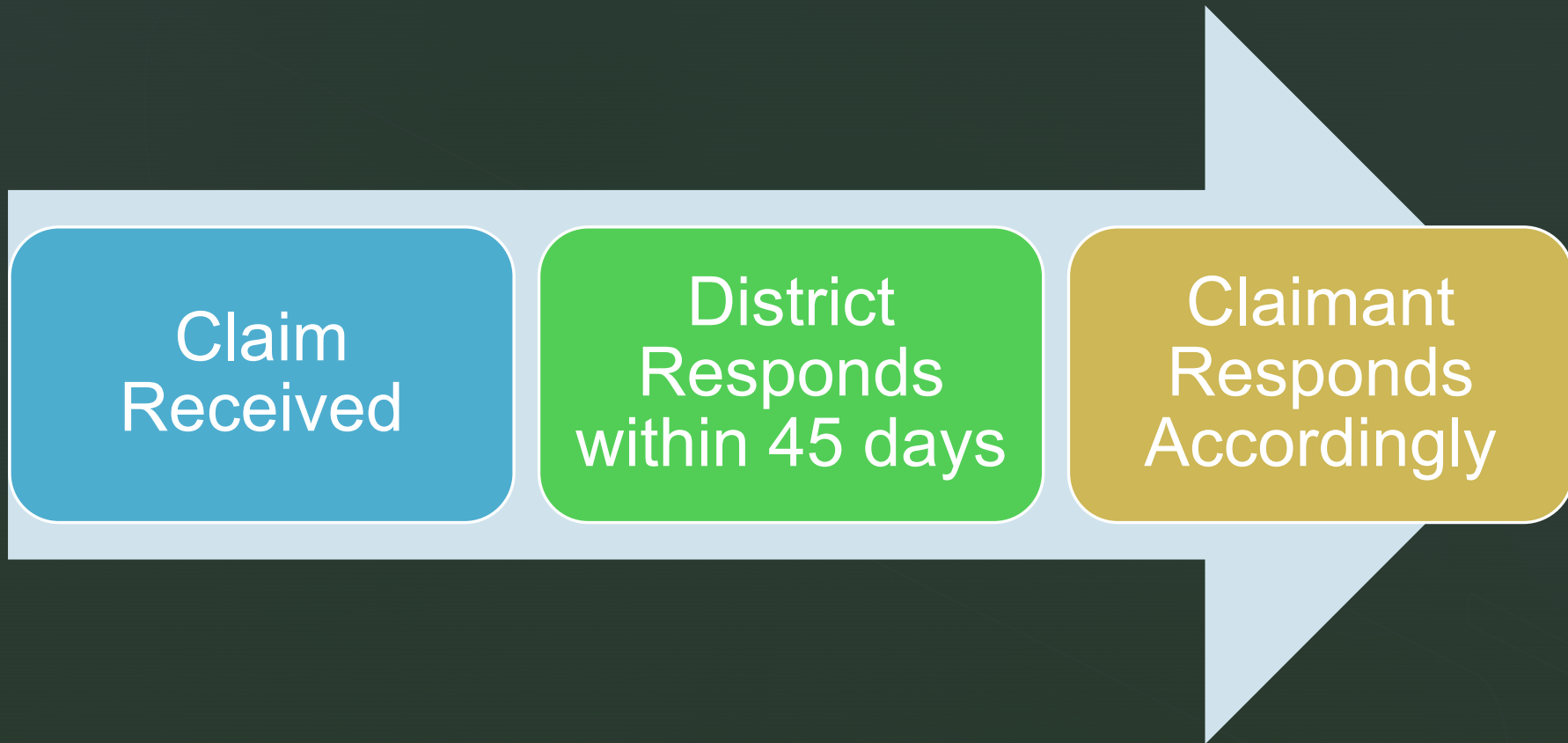
Claims



Claims Process



Timelines for Claims



Timelines for Claims

Within **6 months** of an incident for:

- Personal injury/Bodily Injury
- Damage to personal property
- Wrongful Death

Within **1 year** of incident of an incident for:

- Breach of Contract
- Damages to Real Property
- Claims against minors

Purpose of Claims Timeline

Two basic purposes

- 1) They give the district an opportunity to settle before suit is brought; and
- 2) They permit the district to make an early investigation of the facts.



Required Elements for Claims

The essential contents of a claim include:

- The names and addresses of the claimant and the person to whom notices are to be sent;
- A statement of the date, place, and other circumstances of the occurrence;
- A description of the indebtedness, obligation, injury, damage, or loss incurred;
- The name of the public employee who caused the injury, if known; and
- The amount claimed, if less than \$10,000, on the date the claim is presented or, if more than \$10,000, no dollar amount is to be included, but the claim must state whether the claim is to be limited civil case.

Responding to Claims



Rejection of a Claim: District Board must act within 45 days after receipt, Government Code 912.4

Insufficient Claim: Must act within 20 days of receipt of the claim, Government Code 910.8

Untimely Claim Notice: Must act within 45 days of receipt of the claim, Government Code 911.3

Rejected Claims

If claim rejected:

- Written notice must be given to the claimant
- Notice must contain a warning advising the claimant of the **six-month** statute of limitations on filing suit.
 - If the notice does not contain the warning language, claimant will have **two years** from the date of accrual of the loss to file suit.

Late Claims

Late claims must be allowed under the following circumstances:

- Mistake, inadvertence, surprise, or excusable neglect (and there has been a no prejudice to the entity)
- During the entire presentation period:
 - Claimant was a minor
 - Claimant was mentally or physically incapacitated
 - Claimant died



Lawsuit Basics



Gathering Data

Documents

- Personnel File
- W/C File
- Mailbox
- EEOC/DFEH complaints
- Internal Complaints and Investigations

Key Players

- Who are they?
- Are they still employed?
- Are they disgruntled?

Defense Attorney Actions

- Defense counsel reviews the lawsuit to decide how to respond
- Did they exhaust the pre-lawsuit requirements?
 - Government claim
 - DFEH/EEOC right to sue letter
 - Complaint to the Labor Board
- Are they making claims they can't make against you?

Defense Attorney Actions

- File a “demurrer” and/or “motion to strike” part of the lawsuit
 - Asking the judge to throw out some of the claims or requests because they can’t make those claims at all against you
 - Did not exhaust pre-lawsuit requirements
 - Made a claim for punitive damages against the entity
 - Not timely
 - Other legal reasons
 - Should only be done if positive it will remove certain claims
 - Otherwise, we may educate them on what they are missing

What is Discovery?

Verbal and written
information gathering by both
sides to evaluate the case
and prepare for trial

Types of Discovery

- Interrogatories
- Requests for documents
- Subpoenas
- Depositions

Trial or Settlement?





Workers' Compensation



What is Workers' Compensation (WC)?

WC provides medical expenses, lost wages, and rehabilitation costs to employees who are injured or become ill “in the course and scope” of their job.

WC also pays death benefits to families of employees who are killed on the job.

Management's Responsibility

Supervisor's must comply with regulatory reporting requirements by notifying Risk Management timely.

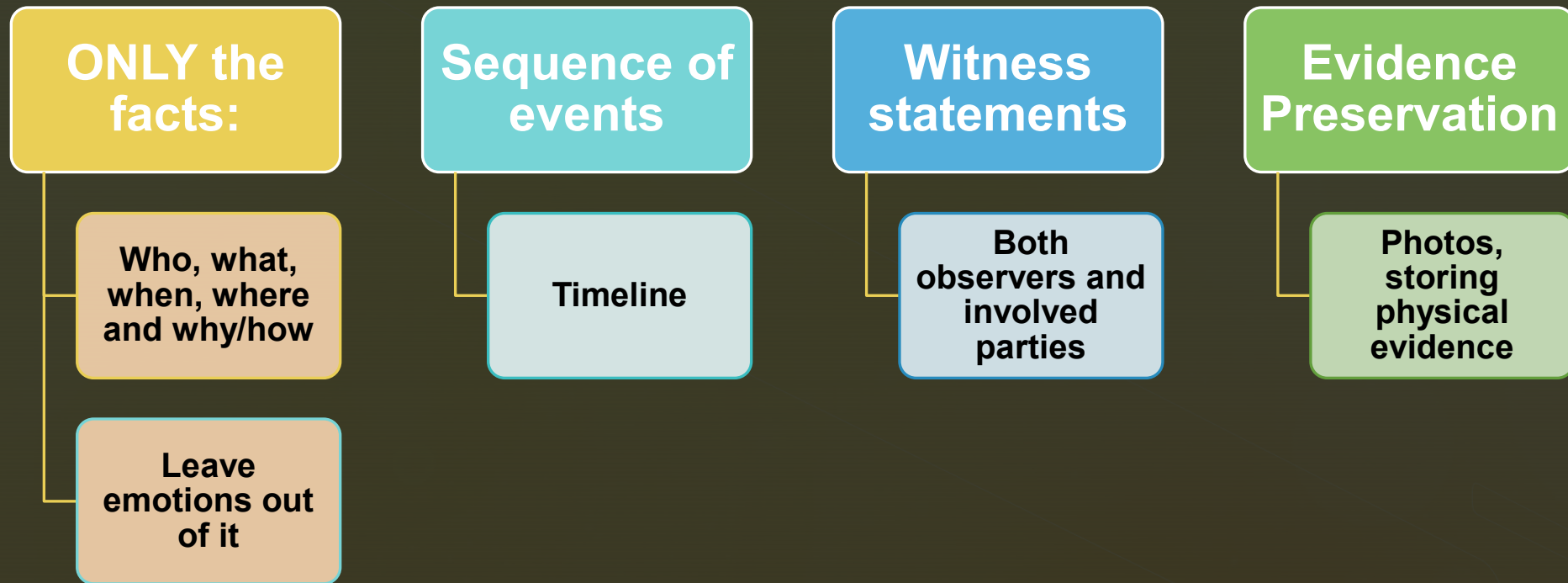
Risk Management reports serious injuries to Cal OSHA



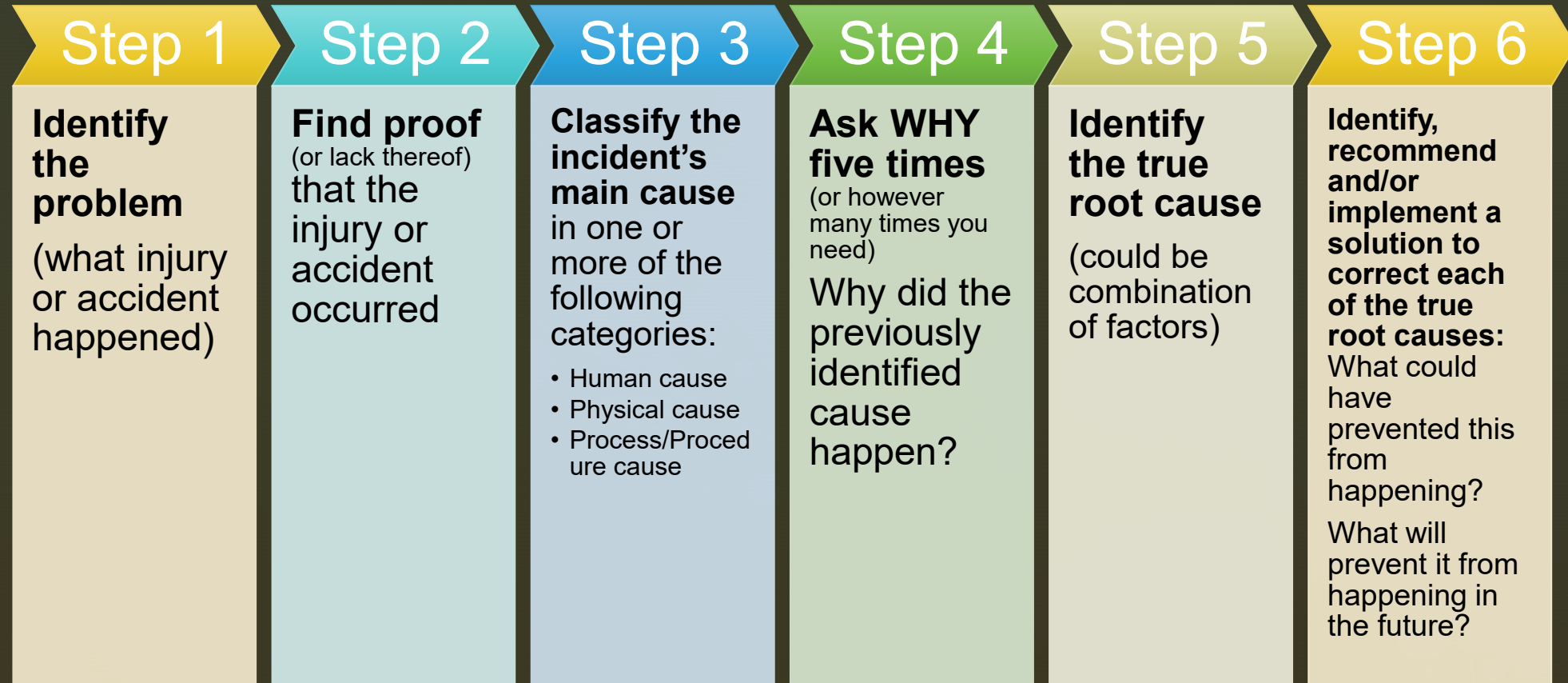
Timelines

- Managers must provide claim packet to the injured employee **within 24 hours of notice of injury**
- Typically require claim form from manager and employee within 72 hours
- Must notify Cal-OSHA within **8 hours of “serious injury”**

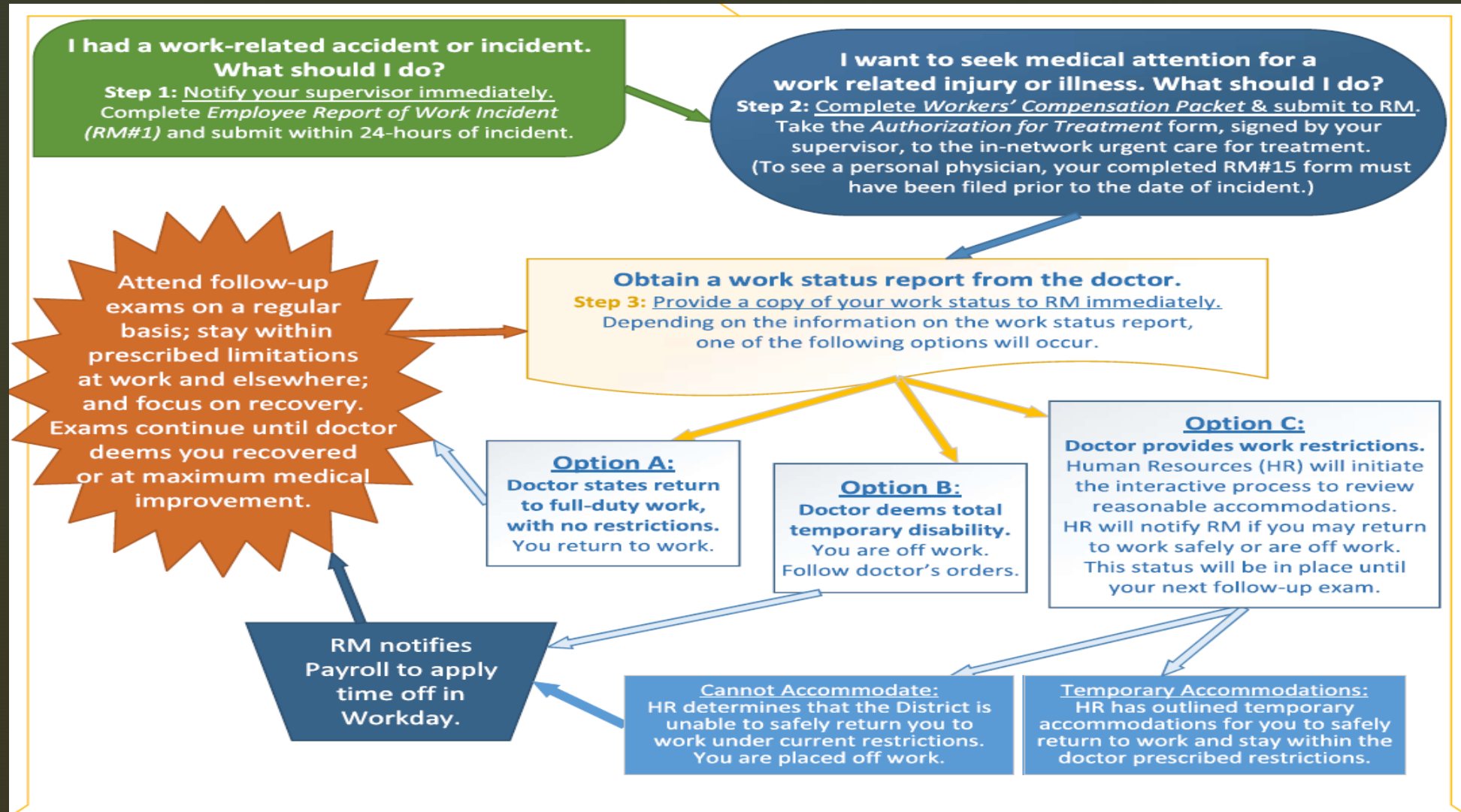
Investigations



Investigations



Employee Options





Safety Prevention Plans

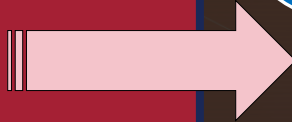
What is Management's Role in Safety?



Create a Safety Culture

Common Reasons Shortcuts Are Taken:

- Work faster
- Easier
- More comfortable
- Not fixing equipment
- Insufficient training



Attitudes

Poor attitudes usually lead to unsafe behaviors

Unsafe behaviors

Unsafe behaviors are observable and can be changed

NOTICE

**IF YOU'RE NOT
CONFRONTING UNSAFE
BEHAVIOR YOU'RE
REINFORCING IT!**

Supervisors can influence safety by treating employees well, providing training, letting them know you care, encouraging feedback and transparent communication.

Get Employees Involved

Employees can contribute in many ways:

- Participate in inspections
- Identify & report hazards
- Provide feedback to improve overall safety
- Participate in training
- Engage Risk Management

What's holding employees back?

- They don't want to cause problems, fear of retaliation
- It's not their job
- They don't know enough
- They feel inexperienced
- Embarrassed – they don't know, but feel they should know



Types of Plans Needed

Local Hazard
Mitigation Plan

Return to Work
Guidelines

Respiratory
Protection
Program

Hazard
Communication
Program

Ergonomics
Program

Ladder Safety
Program

Injury and
Illness
Prevention Plan

Workplace
Violence
Prevention
Plan*

*New

