

# SUPERVISOR

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## Answers about Administrative Monetary Penalties

Due to the time and money involved in the prosecution of OHS violations, some jurisdictions now allow OHS regulatory agencies to impose administrative monetary penalties (AMPs) for certain types of offences. AMPs let the government fine violators quickly and promptly respond to violations. The OHS laws in five jurisdictions currently authorize AMPs, but others are considering permitting such penalties. Federal, New Brunswick, Newfoundland/Labrador, Northwest Territories, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan do not currently permit AMPs.

### Q. What's the Difference Between an AMP and a Ticket?

A. Some jurisdictions, such as Alberta, let government officials, such as OHS inspectors or enforcement officers, issue on-the-spot tickets similar to traffic tickets for minor, straightforward OHS offences, such as a worker not wearing a hardhat at a construction site. The fines that can be imposed via ticket are usually much smaller than those that can be imposed as an AMP or pursuant to a prosecution for a safety violation.

### Q. To Which Violations Do AMPs Apply?

A. In general, AMPs can be imposed only for designated OHS violations, although some jurisdictions, such as Nova Scotia, permit them for any violations.

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## 5 Steps to Support Worker's Family After a Workplace Tragedy

Safety professionals work hard at preventing workplace tragedies from happening. But serious injuries and fatalities can still occur despite your best efforts. If the worst does happen, the way your company responds can make a difference to the family of the injured or deceased worker.

*Threads of Life* is an organization whose mission is to help families heal through a community of support and to promote the elimination of life-altering workplace injuries, illnesses and deaths. They released [a report](#), based on a survey of members who've experienced work-related injury or death in their families,

that provides some clear steps an employer can follow to connect with and support the family after a tragedy.

The report recommends that employers take these five steps:

**Step #1: Go see the family.** It's highly recommended that a senior manager, CEO, HR professional or other senior representative of the company go to see the family. If the employer has the duty to inform the family, in person, of a workplace death or serious injury, send a small team, including a senior manager, a staff person or workplace friend who knows the family, and a mental health professional, counsellor or member of the clergy.

CONTINUED ON PAGE 12



# Picture This!

## What's Wrong with this Buffer Zone?

As the weather starts to get warmer, more road construction projects will be popping up. In addition to the "usual" safety hazards such work can pose, workers are also at risk of being struck by passing motorists. That's why it's important to have adequate safety measures in place to protect them while they're working by or on roads and highways.

This picture from [elcosh](#) shows workers repainting arrows on what seems to be a fairly busy street. They're wearing high-visibility vests and have set up cones around their work area. But the buffer zone they've created doesn't provide adequate space between them and traffic. These workers were fortunate that they didn't get hurt. But other workers have paid with their lives for inadequate traffic control measures.

## SEVEN STATISTICS: DEADLY DRIVING

Distracted driving is a safety concern for employers whose workers drive on the job because you don't want your employees injured or killed in car accidents caused by distracted drivers. In addition, employers can be held liable for distracted driving accidents caused by their employees. Check out these seven deadly driving statistics.

1. At any given daylight moment across America, approximately **660,000 drivers** are using cell phones or manipulating electronic devices while driving, a number that has held steady since 2010 ([NOPUS](#)), and every day in the U.S., more than **eight people** are killed in crashes reported to involve a distracted driver. (<http://www.cnn.com/2016/09/02/health/gallery/distracted-driving-statistics>)
2. Distracted Driving is now the number one risk on Canadian roads contributing to **8 in 10** collisions. (<https://rates.ca/distracted-driving-infographic>)
3. When you text while driving, the time that you spend with your eyes off the road increases by about **400%**. So, it's no surprise that texting and driving is **six times** more likely to get you in an accident than drunk driving. That's right, it is safer for someone to get wasted and get behind the wheel than to text and do it. ([Distracted Driver Accidents.com](#))
4. Reading a text message while driving distracts a driver for a minimum of **five seconds** each time. Five seconds is the average time your eyes are off the road while texting. When traveling at 55mph, that's enough time to cover the length of a football field blindfolded. This means that the chances of an accident occurring while

reading a text is extremely high. ([2009, VTTI](#))

5. It takes an average of just **three seconds** after a driver's mind is taken off the road for any road accident to occur. This is the bare minimum amount of time it takes, and it is surprisingly small. Three seconds is the time it takes to turn your ignition when starting your car. ([Distracted Driver Accidents.com](#))
6. The chances of a crash because of any reason is increased by **23 times** when you are texting. Even if the crash is another driver's fault, you will probably have been able to avoid it if you had been looking at the road instead of the phone. ([Distracted Driver Accidents.com](#))
7. Driver distraction is a factor in about **4 million** motor vehicle crashes in North America each year. ([http://www.gov.pe.ca/photos/original/WI\\_ConKitDriver.pdf](http://www.gov.pe.ca/photos/original/WI_ConKitDriver.pdf))



### SAFE SUPERVISOR

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## Ontario Ministry of Labour: Approaching Deadline: April 1, 2017

All workers who use fall protection on a construction project must complete an [approved working at heights training program](#). This includes workers who met the fall protection training requirements of the [Construction Projects Regulation](#) prior to April 1, 2015.

### Employers

As of April 1, 2015, employers must ensure that certain workers complete a working at heights training program that has been approved by the Chief Prevention Officer (CPO) and delivered by a CPO approved training provider before they can work at heights.

The training requirement is for workers on construction projects who use any of the following methods of fall protection: travel restraint systems, fall restricting systems, fall arrest systems, safety nets and work belts or safety belts.

There is a two-year transition period for workers who, prior to April 1, 2015, met the fall protection training requirements set out in subsection 26.2(1) of the [Construction Projects Regulation](#). These workers will have until April 1, 2017 to complete an approved working at heights training program.

This training requirement is in the [Occupational Health and Safety Awareness and Training Regulation](#), and is in addition to training requirements under the Construction Regulation.

### Homeowners

Depending on the circumstances, homeowners [may be considered constructors](#) and subject to obligations under Occupational Health and Safety Act if they hire multiple contractors to work at the same time.

It is in a homeowner's best interest to make sure workers at their home are safe. This can be as simple as asking contractors if their workers have been trained, and how they plan to keep workers safe on site, before signing a contract.

In the case of projects where workers will be at heights, such as [repairing a roof](#), homeowners should ask contractors if their workers have been trained to do the work safely. 🍁



## Employer Fined \$70K for Failure to Comply with Workplace Violence, Harassment Requirements

An Ontario employer has been fined \$70,000 (\$87,500 with the surcharge applied) after being convicted of failing to comply with seven Occupational Health and Safety Act (OHSA) orders issued to bring the company into compliance with workplace violence and harassment requirements. Under the OHSA, employers are required to assess the risk of workplace violence, develop policies on workplace violence and harassment, develop, maintain and implement a program to deal with workplace violence and harassment, and train their employees on these policies and programs. It appears that the employer in this case failed to meet the requirements and then failed to comply with the resulting Ministry of Labour (MOL) order.

An MOL inspector attended at the workplace after a workplace injury and issued 10 orders—seven of which, as noted, related to workplace violence and harassment. It is not clear how much time the employer was initially given to comply. However, the inspector followed up with phone calls after the orders became overdue. Approximately five months after the orders were issued, the inspector returned to the workplace to verify compliance and determined that the employer had not complied with the orders relating to workplace violence and harassment. The employer was later prosecuted for the failing to comply. The employer did not attend at the trial, so it was convicted and fined in its absence.

This is the first publicly-reported case in which an Ontario employer has been prosecuted and convicted for failing to comply with orders specifically related to workplace violence and harassment programs. The case is also notable because it is not clear that there were any incidents or complaints of actual violence or harassment before the orders were issued. 🍁



## FOCUS ON: WORK ZONE SAFETY

### Tips for Safe Driving in Work Zones

**W**ork zones are dangerous, and too often deadly, work areas. Following these 10 tips could save a life.

1. In any work zone along any road, major or minor, expect the unexpected. Normal speed limits may be reduced, traffic lanes may be changed, and people and vehicles may be working on or near the road.
2. Obey warning signs – they are posted in advance of road construction projects to give you time to follow their instructions to merge, slow down or stop.
3. Stay alert and minimize distractions. Dedicate your full attention to the roadway and resist the temptation to get on your cell phone or engage in other distracting behaviors while driving through a work zone.
4. Stay calm. Work zones aren't there to personally inconvenience you. They're necessary to improve the roads for everyone.
5. You may see flashing arrow panels or "lane closed ahead" signs. Merge as soon as possible. Don't zoom right up to the lane closure, then try to barge in - if everyone cooperates, traffic moves more efficiently. Motorists can help maintain traffic flow and posted speeds by moving to the appropriate lane at first notice of an approaching work zone.
6. Slow down when the signs say to. Speeding is one of the leading causes of work zone related crashes so slow down and take your time.
7. The most common crash in a highway work zone is the rear-end collision, so remember to leave at least two seconds of braking distance between you and the car in front of you. The amount of space required to provide two seconds of stopping time will increase the faster you're driving!
8. Keep a safe distance between your vehicle and traffic barriers, trucks, construction equipment and workers. Just like you, highway workers want to return home safely after each day's work.
9. Just because you don't see the workers immediately after you see the warning signs doesn't mean they're not out there. Some work zones - like line painting, road patching and mowing are mobile, moving down the road as the work is finished. Observe the posted signs until you see the one that states you've left the work zone.
10. Highway agencies use many different and varying ways to inform motorists about the location and duration of major work zones. Often, the agencies will suggest a detour to help you avoid the work zone entirely. Plan ahead, and try an alternate route.



Source: U.S. Department of Transportation, Federal Highway Administration. 🍁

## NEWS YOU CAN USE

### Victoria to Add Cancer to Coverage for Firefighters

The Province of British Columbia intends to move ahead with an amendment to the Firefighters Occupational Disease Regulation under the Workers Compensation Act to add presumptions for breast cancer, prostate cancer and multiple myeloma as occupational diseases for firefighters.

A presumption means if a professional or volunteer firefighter develops one of the listed cancers after a certain period of employment, it is presumed that the cancer arose from their employment. The firefighter is then eligible for workers' compensation benefits without having to provide evidence that the cancer is work-related.

The Province first recognized certain cancers as occupational diseases for firefighters in 2005. Cancer presumptions for firefighters are already recognized for:

- |              |                          |
|--------------|--------------------------|
| 🍁 Brain      | 🍁 Testicular             |
| 🍁 Bladder    | 🍁 Lung                   |
| 🍁 Colorectal | 🍁 Esophageal             |
| 🍁 Kidney     | 🍁 Non-Hodgkin's Lymphoma |
| 🍁 Ureter     | 🍁 Leukemia 🍁             |









### Driver's Conviction & Sentence for Killing Flagger Upheld on Appeal

A driver who struck and killed an 18-year-old flagger on her first day on the job was convicted of dangerous driving causing death. He'd been travelling at a speed of 90-100 kph and passed two semis despite signs prohibiting passing in the construction zone and requiring a reduction of speed to 60 kph while passing construction workers. The court sentenced him to two years minus a day in jail and a three-year ban on driving once he was released. The driver appealed. But the appeals court upheld his conviction and sentence. The trial court had reasonably found that his driving was a marked departure from the standard of care of a reasonable person as he was in a construction zone, didn't observe the signs that required him to slow down and not pass vehicles, didn't slow down and was inattentive for a prolonged period of time. Lastly at sentencing, the trial judge considered the relevant factors and principles, and the sentence imposed wasn't unfit [*R. v. Dunford*, [2017] S.J. No. 7, Jan. 9, 2017].



### Company & Its President Fined \$7,500 for Harming Bank Swallows

While on patrol, an Environment and Climate Change Canada enforcement officer saw hundreds of Bank Swallows flying over a construction site in Leamington, ON. Upon inspection of the site, the officer found that numerous Bank Swallow eggs, nests and nest shelters had been destroyed.

The company performing construction on the site and its president pleaded guilty to violating the *Migratory Birds Convention Act, 1994*. The court ordered them to pay fines totaling \$7,500 to the Environmental Damages Fund [*Piroli Construction and Robert Piroli*, Federal Govt. News Release, Feb. 24, 2017].

### Company Fined \$125,000 for Pulp and Paper Effluent Violations

An investigation by Environment and Climate Change Canada found that a company had deposited acutely lethal effluent from its water treatment system in water frequented by fish and failed to file the required report on such deposits. It pleaded guilty to two violations of the *Pulp and Paper Effluent Regulations* under the *Fisheries Act*. The court fined it \$125,000, \$112,500 of which will go to the Environmental Damages Fund [*Fibrex S.E.N.C.*, Govt. News Release, Feb. 17, 2017].

### Trench Collapse Results in \$30,000 Fine for Company Owner

An underground utility crew was installing a water pipeline when a worker entered a portion of the straight cut trench that was about 3.9 metres deep. The trench wall caved in onto the worker. The worker, who was extracted by the crew and transported to the hospital, sustained permanent life-altering injuries. The owner of the excavation company pleaded guilty to violating Sec. 2(2) (a) of the *OHS Act* and was fined \$30,000 [*Vincent Bishop*, Govt. News Release, Jan. 10, 2017].



### Sandblasting Activities Cover Cars and Result in \$25,000 Fine

The MOE got a complaint that sandblasting activities were being carried out at a steel fabrication facility and had covered employee vehicles in the staff parking area of a company located next to the facility. Ministry staff went to the facility and the adjacent company, and collected samples and took photographs. A review determined that the sandblasting material sampled at both locations likely came from the same source. The facility pleaded guilty to discharging sandblasting material into the natural environment causing an adverse effect in violation of the *Environmental Protection Act* and was fined \$25,000 [*Bolger Steel Fabrication Ltd.*, Govt. News Release, Feb. 21, 2017].

### Constructor Fined \$20,000 for Collapse of Construction Project

A property owner hired a constructor to build a large storage barn. The partially-built, wood-framed barn collapsed due to wind load. At the time, the four walls and the barn's roof had been erected on top of the structure's concrete foundation. But none of the walls had been braced to prevent their movement or collapse, and the anchor bolts connecting the walls to the foundation hadn't been secured. In addition, the constructor failed to file a Notice of Project relating to the construction of the storage barn and failed to notify the MOL in writing within two days of the structural failure of the storage barn. And the constructor failed to furnish all necessary assistance to facilitate an investigation by an MOL inspector. As a result, the court fined the constructor \$20,000 [*Tom Ivezić*, Govt. News Release, Feb. 13, 2017].

## Model Cell Phone Use Policy

How to Use This Tool: Adapt this model to fit your company's policies and any applicable cell phone use regulations.

- 1. Purpose:** The purpose of this policy limiting the use of cell phones and other devices while at work is to protect you. Inappropriate use of communication devices at work can cause injuries because it's distracting and may interfere with the proper and safe use of equipment. Devices and headphones or wireless ear pieces may also get tangled in machinery or interfere with the proper and safe use of personal protective equipment.
  - 2. Devices Covered:** The devices covered by this Policy include cell phones, pagers, two-way radios and other wireless devices, whether owned by the Company or the individual worker (collectively referred to as "Devices").
  - 3. Persons Covered:** This Policy applies to workers, contractors, consultants, temporary workers and other workers at the Company, including all personnel affiliated with third parties working at Company facilities.
  - 4. Activities Covered:** The rules set out in this Policy apply to all work-related activities, including but not limited to driving to and from work and to conduct job-related activities, whether such vehicles are owned by the Company or the worker. The Policy applies to all conversations, whether personal or business-related.
  - 5. Prohibited Uses:**
    - a. General.* While in the workplace during work hours, workers are expected to focus on work and may not inappropriately use any Device in the workplace for any inappropriate purposes, including but not limited to:
      - i. Engaging in personal conversations;
      - ii. Playing games;
      - iii. Surfing the internet;
      - iv. Checking e-mail; and
      - v. Sending or receiving text messages.
    - b. Driving.* While operating a vehicle, workers may not answer a communication device unless and until they pull over in a safe spot (or let a passenger answer the call). If it's urgent, workers may accept or return the call, if they remain parked off the roadway. They may not resume driving until their conversation is over. Workers may not make outgoing calls while driving. If workers need to place a call, they must first pull over in a safe spot.
  - 6. Permitted Uses:** Workers may use Devices while they're not working in the following designated areas [*insert designated areas such as the company's break room, lunch room and offices*]. Use of hands-free devices while driving is not permissible.
  - 7. Violations:** Workers who violate this policy will be subject to disciplinary measures up to and including dismissal, depending on the circumstances.
- I have read and will abide by the terms of this Policy regarding the use of communication devices at work.
- Name (printed):  
\_\_\_\_\_
- Signature:  
\_\_\_\_\_
- Today's date:  
\_\_\_\_\_
- Witness:  
\_\_\_\_\_
- Today's date:  
\_\_\_\_\_

## Dangerous Drivers: The Nine Most Dangerous Things Drivers Do

**W**e all know distracted driving is dangerous, but what about other dangerous activities drivers do? An article from [Car and Driver](#) has nine answers to this question.

1. **Driving under the influence:** Drunk driving causes accidents. Most traffic-related deaths are caused by drunk drivers. It's a well-known fact that alcohol impairs your ability to drive, and more importantly, to react. So, follow common-sense guidelines like taking a taxi or using a designated driver if you're planning a booze-fueled night on the town. Doing so can avoid tragic consequences. As laws governing the use of marijuana become relaxed in some places, it, too, has the potential to become a bigger part of the traffic-accident statistical mix. You may think you're good at driving high, but chances are that you aren't.
2. **Driving tired:** Drowsy driving is every bit as dangerous as drunk driving. When your body needs sleep, it's going to get it, one way or another. People who insist on driving when they should stop for a rest will have slower reaction times and are likely to fall asleep at the wheel. Drivers who are sleepy or asleep tend to crash on high-speed roads, and they usually don't do anything to avoid the crash in the moments before impact. So, if you feel yourself nodding off, pull off the road and grab a few Z's someplace safe. You might get home later than planned, but that's a small trade-off for your safety and that of the drivers sharing the road with you.
3. **Speeding:** Speeding is the second leading cause of traffic fatalities after drunk driving. According to a 2005 study by the Insurance Institute for Highway Safety, "The relationship between vehicle speed and crash severity is unequivocal and based on the laws of physics." The faster you are traveling when you crash, the more likely it is you'll be pulverized. The IIHS study also points out that the likelihood of a crash increases when a driver goes above or below the average speed on a given roadway, although this has less to do with absolute speed and more to do with discrepancies between the speeds of those on the road. When everyone travels at the same general speed, things are more predictable, and the road is safer as a result.
4. **Distracted Driving:** You know the drill. Shave and/or put your makeup on at home, and turn off the cell phone while you're driving. National Highway Traffic Safety Administration (NHTSA) estimates that there are 660,000 distracted drivers on the road most of the time.
5. **Driving too fast for the weather conditions:** When the weather gets bad, slowing down is the best way to avoid an accident, even for highly trained drivers. This goes back to that physics thing. Unfortunately, not everyone gets that. All-wheel drive isn't an excuse for driving fast in inclement weather. When the road surface is slippery, a 3500- to 5000-pound vehicle will probably lose traction if you need to slow down in a serious hurry. According to the Federal Highway Administration, 24 percent of all vehicle crashes are weather-related. That's a good reason to slow down and leave a little space between your car and the one in front.
6. **Drafting/hypermiling tractor trailers:** Yes, following closely behind a tractor trailer can increase your fuel economy. That doesn't mean you should do it. Drafting works for NASCAR drivers, so it makes sense that a 4000-pound car can "hide" in the low-pressure zone behind a 13-foot-tall, 80,000-pound big rig. Back in 2007, the TV show *MythBusters* even proved that it worked. But they also pointed out that following closer than 150 feet behind a truck is really dangerous. Even that distance gives a driver less than two seconds to react if the trucker suddenly slams on the brakes. Other things to consider are that truck drivers can't see what's directly behind them, and the relationship between trailer heights and car hood heights is a recipe for decapitation.
7. **Reckless driving:** Reckless driving is a good way to cause a crash. This includes swerving, weaving in and out of traffic, passing on the right, accelerating and braking suddenly, and yes, driving slowly in the left lane on the freeway, among other things. This goes back to predictability. If your movements in traffic are drastically different than those of other drivers, you're more likely to cause an accident.
8. **Not wearing a seatbelt:** According to NHTSA, seatbelts saved more than 75,000 lives between 2004 and 2008. Airbags certainly make cars safer, but they're designed to work in conjunction with seatbelts, which help prevent passenger ejection during high-speed crashes and rollovers. Really, putting on a seatbelt is such an easy thing to do, it's almost incomprehensible that everyone doesn't wear them. Also, consider that many accidents occur at low speeds near home, so even if you're "just running down the street" on a quick errand, you need to buckle up. It matters.
9. **Failure to yield the right of way:** One of the leading causes of accidents, hands down, is failure to yield the right of way. The Insurance Institute for Highway Safety says that it's the top cause of accidents among drivers aged 70 and older, particularly on freeway merge ramps. In *Uncommon Carriers*, his book about long-haul truckers, John McPhee points out that space cadets in the merge lane are a constant source of teeth-grinding anxiety for the people driving 80,000-pound big rigs. Another facet of failure to yield that's more prevalent in cities is running stop signs and red lights. Drivers coming from other directions expect the intersection to be clear when the light on their end turns green. Once again, predictability is good. 🍁

**Q. What's the Standard for Imposing an AMP?**

**A.** To prevail in a prosecution for a safety offence, the government must prove beyond a reasonable doubt that you violated OHS law and must do so in court. But to impose an AMP, a designated government official must meet a lesser burden. For example, under Yukon's OHS law, if a safety officer simply believes on "reasonable grounds" that a person has committed a designated offence, then the officer may levy an AMP.

**Q. How Are AMPS Imposed?**

**A.** If a designated government official has met the appropriate standard and opts to impose an AMP, he must give the company or individual written notice that an AMP is being imposed.

**Q. Who May Be Issued an AMP?**

**A.** In general, an AMP may be imposed on any legal "person" that commits a designated violation. That means, both individuals and organizations, such as corporations, employers, contractors, suppliers, site owners, professional engineers, supervisors and workers can be forced to pay an AMP.

**Q. How Much Can an AMP Cost?**

**A.** The maximum amount of an AMP is generally limited under OHS law and is usually much less than the top fines imposed for standard safety prosecutions—but can still be substantial. The penalty can be a one-time fixed amount or an amount for each day the violation continues. There may be different limits too, depending on factors, such as whether the violation was a first or second offence.

**Q. Can You Be Issued an AMP and Prosecuted for the Same Violation?**

**A.** Jurisdictions that permit AMPs specifically bar prosecution for the same offence if the person or company has paid an administrative penalty for that violation.

**Q. Can You Challenge an AMP?**

**A.** Most jurisdictions provide some process to challenge or appeal the violation or the amount of the penalty. In fact, the written notice of the AMP must typically explain the appeals process.

**Q. Is Due Diligence a Defence to an AMP?**

**A.** It depends. In BC, the OHS law specifies that an AMP must not be imposed on an employer if the employer can establish due diligence. But the other four jurisdictions don't specifically

address whether a violator can argue due diligence as a defence. But, even if due diligence isn't a defence to an AMP, your efforts to comply with the law and prevent the underlying violation may be relevant in terms of the amount of the penalty imposed. So, the fact that you tried to comply with the law may weigh in favor of a lesser penalty.

AMPs are very common for violations of environmental law and are becoming more common for safety violations. Thus, the threat of an AMP is just one more reason why your company should ensure it exercises due diligence and takes the necessary steps to prevent safety violations and incidents in the first place. 🍁

## 5 STEPS TO SUPPORT WORKER'S FAMILY AFTER A WORKPLACE TRAGEDY CONTINUED FROM COVER

**Step #2: Keep the family informed.** Have an internal discussion ahead of time, with legal consultation, about what company representatives may and may not say. Ideally, companies should develop a response plan and policy on communication before it's ever required, and make both available to anyone who may be asked to communicate with the family in the event of an incident.

**Step #3: Provide support.** There are forms of support, both immediate and longer-term, which are meaningful to and appreciated by a family in the wake of a serious workplace injury or death, such as staying with the individual until another family member can arrive, driving relatives to the hospital and making phone calls to clergy. Make no assumptions about what will be helpful and ask what the family needs. But only offer what you know you can fulfill and, if you make an offer of assistance, be sure to follow through with it.

**Step #4: Honour the worker.** Families understand that work must go on, but they value companies' efforts to honour the worker. In the case of a fatality, attending the funeral—and allowing co-workers to attend—is an obvious first step.

**Step #5: Stay in touch.** Families said they were touched when company representatives visited or phoned regularly, sent a card and continued to remember the injured or deceased employee months and years after the tragedy.

*Bottom line:* Families appreciated when an employer maintained "open lines of communication" with them. 🍁

**Moving?**

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