

# Marine

## News

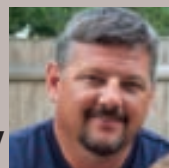
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## Training & Education

*High-tech solutions, Legislative mandates drive development*

**Hammond**  
Evaluating  
Physical  
Competency



**BOM**  
Moose's  
Rescue Fire  
Boat



## Don't Get Burned By a Poorly Implemented Training Program



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All vessel owners and operators will agree that employee training and education is of prime importance when it comes to running a safe operation. A considerable amount of time, effort, expense and other resources are usually allotted to such programs. Although some programs are implemented with very little fanfare, other programs are often rolled out with a great amount of attention and the highest of expectations. Unfortunately, many of these programs, after the initial enthusiasm has worn off, are often shifted to the back burner and rarely used.

Although the expense used to formulate and implement the plan is a significant loss once the program is unofficially abandoned, a more significant cost comes with the increased liability of having a plan in place that is not followed.

Although there are many areas that a company can train its employees in, there are numerous areas of training that are particularly relevant to vessel owners and operators. There are the mandatory training programs that are required by the Coast Guard. These programs include training and education required to obtain and maintain marine licenses, drug testing programs and other vessel maintenance and inspection issues.

In addition to these mandatory programs that everyone participates in, there are other optional areas where education and training can make a big difference to the company. These areas include accident reporting, preventing accidents, how to handle oil or chemical spills and advanced fire fighting. In addition to these safety related topics, training can also be undertaken in the non-marine related areas of sexual harassment, customer service, employee relations, communication and various other areas. Although some of these training programs are more suited to employees that operate in environments with more employees, they can still be very helpful to vessel based crews.

There are numerous benefits to the proper implementa-

tion of these plans, including improved risk management and liability reduction, reduced employee turnover, increased capacity to adopt new technologies, increased job satisfaction and an enhancement of the company's reputation within its market and community.

Although there are enormous benefits associated with training your employees, there are also potential risks if the training is not administered properly. There are two distinct types of liability in regards to training programs.

The first type of liability arises when an injured person or entity alleges that the company's lack of training caused the alleged incident. In this scenario, the plaintiff will argue that the cause of his/her injury was due to the actions of a co-worker who received insufficient company training. This argument puts the company on the defensive and in a position where it must argue that there was no need to train an employee regarding this particular situation or that the employee, in light of his/her work experience, should have known of the hazards involved.

The second type of liability arises in situations where the company has a plan in place to train employees to avoid certain hazards. But, because the training program is no longer actively pursued, it was not an integral part of the employee training process. A simple example is liability arising from a lifting case. Many companies have implemented a lifting safety or back injury prevention program that provides education and training to employees on proper lifting techniques and guidelines. However, if this program has not remained an integral part of the training process and an employee does not receive the training that has been prepared for the company, it provides an enterprising plaintiff an additional avenue to cast liability upon the company. Essentially, the employee who may have hurt himself because of utilizing improper lifting techniques, although the item to be lifted was well within the scope of his job description, would argue that he hurt his back because he was not trained in using proper lifting techniques. The company will argue that it did not have a duty to teach this employee how to lift the object. In response, the plaintiff will argue that the company undertook the duty to train him on proper lifting techniques when it implemented the program and failure to utilize the program is the true cause of the alleged injury. Although it is not a sure thing for the plaintiff, the exist-

tence of a program covering this area makes it difficult for the company to know that common sense should have ruled the day.

A simple case, although non-maritime related, explains this negligence principle. In Louisiana, the Supreme Court issued a case called *Harris v. Pizza Hut*. In *Harris*, the plaintiff was shot while dining at a Pizza Hut restaurant located on Claiborne Avenue in New Orleans. Although Pizza Hut was not responsible for the actions of the shooter, as this was an intentional tort, the Court held that Pizza Hut was responsible for providing for the plaintiff's safety because it had undertaken the duty to protect the plaintiff from this type of harm when it hired an armed security guard. Thus, because a negligent security guard did not prevent the shooting from occurring, Pizza Hut was found liable. Essentially, Pizza Hut was found liable only because it had gone the extra mile to provide security that would not normally have been required.

Another marine related, but often overlooked training issue, occurs when a training program requires a company or its employees to adhere to standards that are over and above those promulgated by the Coast Guard or MMS. The Responsible Carrier Program developed by the American Waterways Operators provides such an example. The Coast Guard regulations regarding the operation of vessels and the transportation of minerals are less stringent than those as adopted by the Responsible Carrier Program. Most vessel operators that transport minerals, and their byproducts, subscribe to the Responsible Carrier Program in an effort to obtain additional clients and

lessen the costs of its insurance coverage. However, once the company adopts the responsible Carrier Program, it will be held to a higher standard. Thus, if a company signs up for the Responsible Carrier Program, but does nothing to educate and train its employees on these more stringent guidelines, a claimant could prove a liability case against the company even if it was complying with the accepted industry standards at the time of the incident. It is very difficult to argue that the industry standard is acceptable when the company makes the decision to comply with a higher standard. In a liability setting, the company will be better off having done nothing if it does not adhere to the higher standard that it voluntarily signed up for.

Another example is when management provides an opportunity for employees to anonymously report risks but does not act to resolve the risks, the company is again creating a liability for itself.

Failure to properly implement training and education plans can also expose the company to additional unintended liability that is not closely related to the reason for implementing the plan. For example, the failure to provide an adequately trained crew to a vessel could allow a claimant to avoid a limitation of liability action filed by a vessel owner. Under maritime law, a vessel owner may be entitled to limit its liability to the value of the vessel and its freight pending at the end of the voyage in the event of an incident. However, providing an inadequate crew to the vessel constitutes "privity of knowledge" on behalf of management and will avoid any attempt to limit liability. Additionally, many insurance

policies void coverage for an incident if the incident occurs because an inadequately trained crew was provided for the voyage.

For vessel owners, undertaking training and education plans but not following such plans can create liability. Once selected, these training plans should be implemented and engrained into the company's culture and remain at the forefront of the employee education and training mission. Properly trained crews will save you money in the long run.



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