

FINAL INCIDENT REPORT

Initial Report Updated Report

Incident Date: _____

Location: _____ **Job #** _____

Person Preparing Report: _____, **Title:** _____

Manuals, code, contract docs, drawings, specs, other material examined:

Tests (description, when, where, procedures followed, results, who conducted):

Investigation (who, when, where, how, results):

Updated condition of injured person(s):

Updated property damage or loss:

Witnesses interviewed and statements (description, when, where)—attach written statement if possible:

Notes/Comments/Suggestions for Corrective Action:

Date: _____
_____ (Signature)

Instructions for Final Incident Report

In many cases, especially involving serious incidents, many companies direct that an investigation be made. This might involve interviewing witnesses, doing some of your own testing, reviewing code requirements, or simply revisiting the site. You have to be extremely careful in this regard and it is highly recommended that you receive competent legal advice. This is because you will almost unavoidably be stating some of your opinions which frankly, could be good or bad as far as a future lawsuit. On the other hand, this evidence is extremely beneficial to the outcome of such a case.

Don't even waste your time doing this unless the investigation is a short time after the incident and before any demand letters from another attorney or the beginning of arbitration or a court proceeding. If done after that time, it loses its probative value and is seen merely as posturing or building up your case in prosecution or defense.

Again, this is not a required form, so use your best judgment as to whether it is to be used. Remember also that you will not be able to hold this document back as it will surely be subject to discovery by way of a request for production of documents issued by the other side's attorney. The rule in most cases is that any evidence that could reasonably lead to admissible evidence in court is subject to discovery. You cannot simply supply documents that help your case and hold back others. You may consider it to be confidential but it is not as far as the court proceeding. And, merely labeling it "confidential" will not give you the right to withhold it. On the other hand, some states will consider it confidential under the attorney-client privilege, if you are expressing opinions to your attorney after that person has been hired and a lawsuit has begun (in some states even before the lawsuit commences). This is because a client should be protected and free to express his or her impressions without fear of having their case jeopardized. You should seek competent legal advice in this regard as to your particular state.

It is the opinion of NationalLienLaw that the final incident report should primarily state the new facts determined from the investigation. There is really no reason to state your opinion of fault even at that stage since this is something a court, arbitrator, or insurance adjuster would decide. Or, simply express your opinions verbally and not in writing. In any event, stating the results of a further investigation might clearly point to someone's fault anyway so why should you make it sound like it is your personal opinion?

Example of a recommended statement:

"Interviewed Frank Vinton, one of our journeyman framers. He said that the Tuesday before the accident the forklift operator was sick and he operated the machine. The transmission felt loose and kept kicking in and out. There would be a pause and it would engage and jerk forward. The job has been shut down the day before due to muddy conditions, but the owner rep came and told us we needed to continue due to a tight job schedule.

Spoke with the manager of Acme Equipment Supply, George Benson, on February 22 in his office. He looked up the maintenance record on this forklift and it indicated it was approximately ten years old, had an hour clock of _____ and had last had an overhaul a year ago. Is rented out a couple times a week."

Example of a statement that is not recommended:

*“Interviewed Frank Vinton, one of our journeyman framers. He said that the Tuesday before the accident the forklift operator was sick and he operated the machine. The transmission felt loose and kept kicking in and out. There would be a pause and it would engage and jerk forward. The job has been shut down the day before due to muddy conditions, but the owner rep came and told us we needed to continue due to a tight job schedule. **John should have slowed the operator down and moved the trusses much slower.***

*Spoke with the manager of Acme Equipment Supply, George Benson, on February 22 in his office. He looked up the maintenance record on this forklift and it indicated it was approximately ten years old, had an hour clock of _____ and had last had an overhaul a year ago. Is rented out a couple times a week. **This company rented equipment that was too old and not maintained regularly”.***

Note that these same examples would apply, if instead of a personal injury, the trusses fell and damaged the roof construction, causing job delay and damage to the structure.