

Development of Lessons Learned Programs

Management Rationale for Developing a Lessons Learned Program

ACEC Risk Management Committee

Questions frequently asked by management of a professional services firm concerning the cost and potential benefits (or risks) of a Lessons Learned program, include:

Q: What is a “Lessons Learned” program?

A: A documented process for capturing, evaluating, and sharing within the organization insights gained from liability claims, disputes, or challenges encountered during the course of a project. By converting into a training program or organizational resource the knowledge of “best practices” learned or developed through experience, the organization can practice continuous improvement, and provide valuable training to new or less experienced members of the organization.

Q: Why should my organization have a Lessons Learned program?

A: The quality management principles embodied in ISO 9001 encourage professional service firms to practice continuous improvement. By evaluating the outcomes of situations and decision-making processes encountered in the course of the organization’s work, and then making improvements in policies, procedures, or the allocation of resources, the organization can reduce the potential for adverse outcomes and improve potential for favorable outcomes. The organization may also benefit from:

- risk management premium credits on liability insurance policies
- reduction in loss and legal expense due to claims or disputes
- reduction in risk for professional discipline, disqualification, or other adverse outcomes
- increased profitability
- improvement in quality of professional services, project outcomes, and client satisfaction
- avoidance of brand or reputational risk

Q: What investment in time and resources is required to design and implement a program?

A: The investment will vary depending on:

- The size of the organization
- The objectives and procedures established for the program
- The staff required to perform the tasks required by the program
- The commitment to creation of an organizational resource for “lessons learned” and best practices, and the training offered by the organization

Q: Will our organization increase its risk of liability or litigation by compiling and using “Lessons Learned” information?

A: A properly designed and documented program should not increase the risk of liability or litigation. However, consult with your attorney if you have concerns about material in the “Lessons Learned” exercise that you may wish to have considered privileged or that may be proprietary. Privilege varies by state and a local, practicing attorney should provide guidance. Insurers have not detected a measurable increase in claims or losses for firms that have implemented Lessons Learned programs. However, increased awareness among professional staff of circumstances that could lead to adverse outcomes may lead to increased reporting and requests for pre-claims assistance.

Suggested Outline for Development of Lessons Learned Programs

1. Designate a manager—preferably someone with a technical or operations background—with required authority, discretion, and resources to lead the effort in consultation with:
 - 1.1. upper management of the organization
 - 1.2. corporate legal counsel or outside counsel
 - 1.3. organization’s insurance advisor or broker
 - 1.4. organization’s risk manager or independent risk management consultant
2. Develop a mission statement for the Lessons Learned project to include:
 - 2.1. Statement of purpose and benefits
 - 2.2. Educational and risk management objectives based on submitted project information
 - 2.3. Documented policy and procedure for the project
 - 2.4. Criteria for selection of projects or issues for inclusion in Lessons Learned Project
 - 2.5. Restriction on collection or use of projects that are the subject of claims or disputes, or that are reasonably likely to become the subject of a claim or dispute
 - 2.6. Definition of attorney/client privilege and intention to protect same
 - 2.7. Procedures for protection/redaction of confidential or sensitive data (*possibly to include a two-tier level of access privileges*)
 - 2.8. Non-disclosure and confidentiality requirements, including an explicit statement as to who will and will not have access to the information in the project
 - 2.9. Definition of information to be collected for project
 - 2.10. Establishment of a system for identifying, collecting, storing, updating and retrieving this information
3. Compile a list of significant risks or body of knowledge identified for study and development of Lessons Learned programs. (*Thorough categorization of information is essential to creating value in this project as an organizational resource. A detailed risk breakdown structure or other taxonomy can be expanded or customized to best serve the needs of the organization and its end users.*)
 - 3.1. Business or financial risks
 - 3.2. Standard of care
 - 3.3. Legal liability

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- 3.4. Risk of injury or death
- 3.5. Risk to reputation or public image of company
- 3.6. Opportunities for optimization of design or process
- 3.7. Transmission of institutional knowledge of the organization to less experienced staff
4. Establish a procedure for collection of project information and solicitation of feedback from selected third parties (clients, consultants, suppliers, business partners, public officials, members of the project delivery team, peer reviewers, professional advisors) . *(Consult with legal counsel before soliciting any information from parties outside the organization. How this information is collected and the instruction given to those who perform this task is critical to controlling legal exposure.)*
5. Incorporate Lessons Learned protocol for risk identification and data collection in project management procedures, project logs, audits, claims evaluations, corrective and preventive action plans, pre-claims assistance files), project evaluations and post-construction reviews.
6. For selected projects, conduct a post-closing review among members of the project team to evaluate performance, identify strengths and weaknesses, and identify experience gained that could be used on future projects. *(Consider methods such as causal analysis to uncover root issues rather than mere symptoms.)*
7. Incorporate post-closing review process into the project management plan (with interim reviews provided for long-term projects to facilitate continuous improvement) .
8. Designated leadership team and legal counsel evaluate selected project or issue for development of a Lessons Learned program. *(This team should also determine the methods of analysis or depth of review used for the selected project or issue.)*
9. Confirm with legal counsel whether the organization or project team are protected by legal privilege for peer review or critical self-evaluation privilege.
10. When appropriate, anonymize sensitive or privileged information and identifying characteristics of project, participants, or events to preserve attorney/client privilege and work product privilege.
11. Develop format for educational program and collateral materials produced as part of Lessons Learned program. *(While not the primary objective, and depending on the jurisdiction, the program may qualify for CEUs/PDHs if properly structured and documented.)*
12. Identify target audience for the program (organizational board of directors, senior management, discipline leaders or project management staff, ESH staff, organizational trainers, client and consultant partners, and/or the general public). *(Consultation with upper management and legal counsel is advisable before including clients, consultant partners, or the general public in the program due to potential risks to ongoing business relationships, brand, or reputation of organization. In addition, establishing privilege may include a limitation as to the audience. Again, involve counsel in the discussion of target audience.)*
13. Produce draft program incorporating data collected, analysis, and recommendations
14. Conduct internal review and confirmation with project team or relevant management staff or consultants to ensure that the information provided is accurate and complete.
15. Have materials reviewed by corporate counsel, insurance advisor, and/ or third party consultants where appropriate.

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16. Provide for maintenance, publication (including any restrictions on publication or disclosure), and periodic review and updates of Lessons Learned program in organizational information management system.
 17. Implement Lessons Learned process improvements or recommendations for change in legal, professional practice, or safety practice by reference to responsible team members and management personnel.
 18. Where appropriate, have Lessons Learned presentation conducted by project or management personnel and in-house or outside counsel involved in the project or issue on which the program is based.
 19. Encourage discussion of Lessons Learned program among staff, solicit feedback (with guarantee of anonymity if necessary) to encourage additional learning and refinement of best practices in response to program.
 20. Update Lessons Learned program to incorporate results obtained through presentation. *(Periodic management review of the program is recommended to determine whether planned changes are necessary to improve processes or outcomes.)*
 21. Where appropriate to facilitate enterprise risk management and inform underwriting process for insurance or additional training, report results of Lessons Learned to organization's insurers and independent ESH consultants or legal advisors. *(Reporting can be accomplished in conjunction with annual professional liability renewal process involving the organization's insurance broker or carrier as appropriate.)*
 22. Refer recommended changes regarding contracts, policies and procedures, Go/No Go checklists, and project programming and estimating procedures to organizational legal counsel and top management staff.
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Examples of Lessons Learned Vignettes

Scenario: Lawyer appeared on at least two occasions at regular project meetings.

Lesson: Attorney/client privilege is limited to legal advice.

Scenario: Architect's computer servers were overwritten and all electronic project documents were lost and could not be recovered.

Lesson: It is difficult to defend in the absence of project records. Develop and reassess your document management process and retention policies.

Scenario: Civil Engineer discussed the project underlying the litigation among a crowd that included representatives of the Owner.

Lesson: If your firm is involved in litigation, do not discuss the project or the case with anyone other than your firm's attorney.

Scenario: Geotechnical Engineer included in its standard terms and conditions a limitation of liability clause which limited Geotechnical Engineer's liability to the amount of its fees in a jurisdiction that strictly enforces limitation of liability clauses.

Lesson: Downstream limitations of liability should be consistent with your LOL or avoided.

Scenario: Architect and Developer negotiated a limited construction phase scope to accommodate Developer's limited budget.

Lesson: Ensure that your contract and construction phase duties adequately reflect the division of responsibilities among the parties.

Scenario: Submittals were atypical and not proper because they were oral, via email, and via text message.

Lesson: The standard of care contemplates a thorough and thoughtful review of submittals that may take days or weeks, depending on complexity and the project schedule.

Scenario: Traffic Engineer subconsultant to Prime Consulting provided services for Municipality with multiple changes of staff.

Lesson: Communication among team members and following documentation protocol within firm is essential, especially when faced with changes in circumstances and decision-makers.

Scenario: Traffic Engineer subconsultant to Prime Consultant used boilerplate scope of services and didn't provide provision for additional services.

Lesson: Clearly and precisely define your scope of services and include provision for additional services to minimize risk of non-payment or "scope creep."

References:

1. "Implementation of Lessons Learned Programs," © 2007 Construction Industry Institute at 18.
2. ISO 10006:2003 (Second Edition 2003-06-15) *Quality management systems—Guidelines for quality management in projects*
3. ISO 9004:2009 *Managing for the sustained success of an organization – A quality management approach*
4. ISO 9001:2015 *Quality management systems—Requirements*

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