

FIGHTING FOR SAFETY

How to Stop Workplace Violence in Its Tracks

By Michele R. Punturi and Susan DeCaro

Acts of violence can happen anywhere, including in the workplace. Therefore, it is imperative that employers, insurance carriers, and third party administrators working individually and together continue to develop and implement effective workplace violence prevention programs.

The Occupational Safety & Health Administration (OSHA) defines workplace violence as “any act or threat of physical violence, harassment, intimidation, or other disruptive behavior including from verbal and written threats, stalking, threatening bodily language, and physical assaults directed toward a person at work or on duty.” While federal law does not provide a duty for employers to prevent workplace violence against employees, the OSHA Act mandates that employers have a duty to provide a safe working environment, specifically requiring employers to provide a workplace free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to its employees.

Workplace violence has tripled over the last decade. According to OSHA, two million employees are victims of workplace violence each year. Employers can take steps to minimize the impact and effect of workplace violence, including instituting a zero-tolerance policy, providing guidance and training for supervisors and employees, effectively securing the work environment, and implementing a workplace violence prevention program.

The sources of workplace violence are both internal and external. The National Institute for Occupational Safety and Health (NIOSH) has divided workplace violence into four categories:

1. **Criminal intent**—The perpetrator has no legitimate relationship to the business or its employee(s).
2. **Customer/client**—The perpetrator has a legitimate relationship with the business (e.g. customer, client, patient, student, inmate) and becomes violent while being served.
3. **Worker-on-worker**—The perpetrator is an employee or past employee of the business who attacks or threatens other employees or past employees in the workplace.
4. **Personal relationship**—The perpetrator is not an employee or former employee of the affected workplace but has a personal relationship with the intended victim.

Due to the rise in workplace violence, it is important that employers take proactive approaches to control these risks and the associated exposures. When promoting workplace violence prevention, it is vital to not only consider the direct consequences of workplace violence (tragic loss of life or serious injuries, physical and psychological impact felt by the victim, family, friends and co-workers, and potential lawsuits), but also the indirect consequences (interrupted operations, loss of productivity, rehiring and retraining of employees, loss of morale employee turnover, negative publicity and the impact of social media).

While the topic of workplace violence is serious, discussing this topic at work is still rather difficult and complicated. Employers want to avoid scaring workers and creating anxiety or animosity, but at the same time they need to educate and train employees and supervisors to



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prevent violence. The goal of stopping workplace violence must be viewed by employees as a shared and caring process where each person has a responsibility to make work a safe place to be. As well-known world humanitarian Dalai Lama said, "To remain indifferent to the challenges we face is indefensible. If the goal is noble, whether or not it is realized within our lifetime is largely irrelevant. What we must do therefore is to strive and persevere and never give up."

Using the Dalai Lama's words as inspiration, employers should focus on what can be done, and should be done, to address these very difficult issues. Important questions to consider are:

- Has your company assembled a team of key personnel to develop, review,

and implement policies to deal with violence?

- What is the company plan for maintaining security?
- What is the strategy for driving team member care value and maintaining a safe and secure environment?
- Has your company adequately considered the applicability of workers compensation on workplace violence claims?

Employers should conduct internal security risk assessments annually and should also consider retaining an outside security expert, depending upon the industry or business. To reduce the risk and to maintain a safe workplace environment, employers should improve physical security of the workplace

through the use of strategically placed cameras, controlled exits and entries, ample lighting, silent alarms, security guards, trained supervisors and employees, and a properly instituted workplace violence policy that identifies a course of action to be taken before law enforcement personnel arrive at the work site. A post-trauma plan should also be incorporated into the workplace violence prevention program so that all employees feel safe and have access to effective counseling and other grief assistance programs.

DEFENDING WORKPLACE VIOLENCE CLAIMS

The role of the workers compensation system in workplace violence varies from state to state. Determining whether an

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Each incident of workplace violence can be different and quite fact-specific. In the aftermath of any such workplace violence, ensuring that all are safe is the first priority, but next should be making sure a full, detailed investigation is done. Here are the steps to take.

- Identify the "who, what, why, and where" facts of the incident and witnesses.
- Complete incident reports and employee witness statements.
- Identify and interview every employee working at the time to determine whether recorded statements are necessary.
- Identify the nature and mechanism of injury as well as the time and place of the incident.
- Identify all activity leading up to the incident and any related past incidents, and determine the impact.
- Preserve all available surveillance footage at the property for at least two hours before the incident and until the scene is released, and consider archiving any surveillance.
- Ascertain the motives of the perpetrator (employment-related, personal to the employee, neutral to the employee and employment).
- Obtain documentation showing the operability of surveillance systems and obtain reports for any cameras or devices not functioning at the time.
- Secure all schedules for the day of the incident and any documents regarding inspections and vendors on-site.
- Secure all security crime-related reports for the property for several years prior to the date of incident.
- Secure a copy of all policies and procedures in effect at the property that could, in any way, be related.
- Photograph and video the scene to ensure documentation of how the area appeared.
- Speak with neighboring businesses regarding their understanding of the crime and locate any additional surveillance footage.
- Obtain a history of all police calls and incidents for the property and surrounding area for the last three years before the incident.
- Consider retaining a security expert and speaking with your in-house or outside counsel.



incident arises out of the course and scope of employment is fact specific and is the exclusive remedy precluding an employee from filing other actions against the employer. However, there are exceptions to the exclusivity rule, including if the injury is intentionally self-inflicted, arises out of personal animosity, or occurs as a result of the violation of a law. In all cases of workers compensation violence, prompt, diligent, and thorough investigation is critical, including establishing an effective and informed investigative team.

Generally, injuries that arise out of and during the course and scope of employment are compensable. In most states, it is the injured worker's burden to prove that she has suffered a compensable work injury, i.e., an injury occurring in the course and scope of employment and arising out of the employment. The fact that an injury occurs in the workplace does not automatically result in an award of workers compensation benefits. Like many areas of the law, when an injury occurs at work, its compensability depends on the specific facts of each case.

A prompt, diligent, and thorough investigation is critical to determine whether an injury is compensable and to quickly develop defenses to the potential claim. A key element in an investigation is assessing the motivation of the individuals involved and whether the motivation is employment-related, personal to the employee, or neutral to the employee and her employment.

These investigations should also accurately determine whether the employee was at a place she might reasonably be expected to be while performing job duties and whether she was performing those duties or furthering the interests of the employer's business when the incident occurred.

All employers have a duty to provide a safe working environment for employees. Integrating safety in a culture of respect and trust creates a positive work environment. By incorporating an effective workplace violence prevention program, employers are taking a

proactive approach to avert these instances from occurring at work. By also training employees—through proper orientation programs, training drills, and continuing education for employees and management—on how to respond and handle these situations if they occur, workplace violence can be mitigated. ■

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