

THE LAW ADVISOR

WORKPLACE VIOLENCE: EMPLOYER OBLIGATIONS

by Michael B. Berger, Esq.



Workplace violence is defined by OSHA as “violence or threat of violence against workers.” Workplace violence can take place “at or outside the workplace and can range from threats and verbal assaults to physical assaults and homicide...” According to OSHA, about two million Americans are victims of workplace violence each year—a staggering figure.

Violence in the workplace can have a traumatic impact on the victim (physically, mentally, and emotionally). A business can also suffer severe financial consequences due to potential liability to the victim, lost business (consumers generally do not want to shop in unsafe environments), increased insurance costs, etc. In this month’s Law Advisor column, I will focus on the steps an employer should take to prevent workplace violence as well as what an employer should do after learning about an incident of workplace violence.

PREVENTING WORKPLACE VIOLENCE

Although it is impossible to completely eliminate the possibility of workplace violence, there are a number of steps an employer can take to reduce the risk. The first thing an employer can and should do is to be very careful in the hiring process to ensure that a potential hire does not have a violent background and will fit in with the culture of the business, the other employees, and the customers of the company. In-depth interviews should be conducted, a background check obtained, and references checked before hiring a new employee.

Employers should establish a “zero-tolerance” policy against workplace violence and make sure that all employees know and understand the policy and that workplace violence (or bullying) will not be tolerated.

Employers should also take steps to secure the job site as workplace violence issues often involve non-employees, such as customers,

family members of employees, vendors, or strangers. How to secure the workplace will depend on the nature of the business (e.g., office vs. retail), its location, and other factors. However, an employer should certainly give consideration to installing alarms, door locks, video recording surveillance cameras, proper lighting, and identification badges.

Businesses (such as retail operations) that tend to maintain a large amount of cash on hand need to be extra careful to prevent potential violence related to robbery attempts. Drop safes, frequent cash deposits, emergency alarm buttons, and video cameras are some of the precautions a retailer can take to minimize its risk of being robbed.

FOR INCIDENTS OF LESS SEVERITY SUCH AS VERBAL ASSAULTS, AN EMPLOYER SHOULD HAVE A SPECIFIC WRITTEN PROCEDURE IN PLACE THAT: (1) ADVISES THE VICTIM HOW AND TO WHOM TO REPORT THE INCIDENT; (2) PROVIDES FOR A THOROUGH INVESTIGATION; AND (3) OUTLINES POTENTIAL CONSEQUENCES AS TO EMPLOYEES WHO COMMIT WORKPLACE VIOLENCE.

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Employees also should play a role in preventing workplace violence by recognizing potentially volatile situations and diffusing them, promptly reporting incidents to supervisors and simply by being nice and professional.

WHAT SHOULD AN EMPLOYER DO WHEN THERE IS AN INCIDENT OF WORKPLACE VIOLENCE

The first and immediate priority is to ensure the safety and health of the victim. If the injuries are not severe, then first aid should be administered as needed. If the injuries are more severe or potentially more severe, then the employer should call paramedics for medical assistance. It is better to be safe than sorry.

If the business thinks a crime has or may have been committed, the police should be called and the incident reported. If appropriate under the circumstances, the police should be called, even if the victim does not wish

to press charges. Remember the business has an obligation to protect all of its employees (not just the victim) and has a legal duty to provide a safe work environment.

If the perpetrator of a violent incident is not immediately apprehended by the police, the employer should hire a security or off-duty police officer to protect the work place. The employer should also consider getting a restraining order or "no-contact" order if there is a fear that the perpetrator may return "to the scene of the crime." Although, a restraining or "no-contact" order will not prevent someone determined from returning to the job site, it will subject the person to immediate arrest for doing so.

For incidents of less severity such as verbal assaults, an employer should have a specific written procedure in place that: (1) advises the victim how and to whom to report the incident; (2) provides for a thorough investigation; and (3) outlines potential

consequences as to employees who commit workplace violence.

CALL YOUR INSURANCE AGENT AND YOUR LAWYER

If someone is injured as a result of workplace violence, you should also contact your insurance agent and attorney and advise them as to what occurred. Your insurance agent can let you know if there is insurance coverage for any potential claims and notify the insurer if appropriate. Your attorney can counsel you on any steps that you should take (depending of course on what transpired) to minimize your company's potential liability to the victim.

RECOMMENDATIONS AND CONCLUSION

Preventing workplace violence is simply good business. The cost of workplace violence to both the victim and the employer can be severe on many levels. As outlined in this article, businesses must take reasonable steps to provide a safe work environment and should have procedures in place to prevent and deal with incidents of workplace violence.

If your business needs assistance in developing a workplace violence policy, then you should consult with your legal counsel.

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