



How Employers Should Prep For Active Shooter Situations

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Tragedy unfolded in Dallas last month at the hands of a lone sniper who ambushed and killed five police officers and wounded several others. While the nation mourns, the sad truth is that by the time this article is published, headlines from Dallas may well have been replaced by media coverage of the next similar event.

Many employers wonder whether an active shooter situation may happen at their worksite. These concerns are well-founded. Some estimates point to 253 mass shooting events that occurred in the first seven months of 2016. This represents a 53 percent increase from the same time frame just two years ago. The number varies depending on how the term “mass shooting event” is defined. Regardless of the methodology used, perception is often reality. Beyond the semantics, every public instance of gun violence should reinforce the point that in-house counsel must work with management to prepare for active shooter situations.

If a mass shooting occurred at your workplace, would your workforce know what to do? While you do not want to overreact, inaction and lack of preparation are no longer viable options.

Potential Liability

In order to protect your workforce and avoid liability under various laws, you should work with management to identify and develop an appropriate workplace critical incident protocol (WCIP). First, you must consider what laws and government agencies may be at play in the case of a workplace shooting, as well as what has been expected of employers in the past.

One government agency sure to get involved if there is an active shooter situation in your workplace is the Occupational Safety and Health Administration. OSHA has the ability to fine employers if reasonable steps to maintain a safe workplace are not taken. What the agency considers “reasonable” is subjective and will depend on the specifics of each case.

Certain industries have greater liability exposure under the Occupational Safety and Health Act, including late night retailers, liquor stores, banks, hospitals and home health care workers. These industries are expected to have a WCIP or may be required by the agency to have an emergency action plan.

If your company is required to have an emergency action plan, ensure it addresses active shooter situations. Though in the past OSHA has not expected all industries to have a WCIP or an emergency

action plan to address shootings, this may change as the perception grows that mass shootings have become commonplace. No matter the industry, employers should consider developing protocol for active shooter situations.

It is important to examine several facets of your workplace when developing your WCIP, including: workplace culture, physical locations, operational systems, areas of ingress and egress (physical and electronic), security systems, human resource protocols, and how and where employees are working.

Equally important is identifying the specific state laws that impact how to best position memorializing and implementing your WCIP. For example: How has your state handled workers' compensation claims arising from violent incidents? How have courts applied your state's intentional tort statute? What gun safety zones and restrictions on concealed carry exist in your state? It is also important to consider any available general guidance from your state's attorney general and local law enforcement on concealed carry in the workplace and active shooter preparation.

Creating a Plan

It is strongly recommended that you work with management to take these three important steps.

1. Evaluate Threats: Identify a core team, comprised of representatives from human resources, operations, facilities, yourself and IT. The core team should immediately gather all documents relevant to understanding the day-to-day workplace, communication systems and access points.

2. Develop your WCIP: When creating your WCIP, you should include:

- A system for how to notify people inside and outside your building when it is under siege and expectations on contacting law enforcement.
- A roster of your people and accurate layouts of your facility so law enforcement is best equipped to handle the incident upon arrival.
- Steps on how to continue operations if your workplace is closed for days or weeks as a crime scene.
- What counseling resources you immediately will make available to your workers within the hours following the shooting.
- A detailed description of your training program.

3. Train Employees: Consider appropriate training for employees so they know how to instinctively respond using their best judgment if there is an active shooter. During the training, employees should view the U.S. Department of Homeland Security's video "Run. Hide. Fight."

You also may want to utilize the ALICE active shooter training videos online that are designed for various educational institutions so that you have a better idea of what type of resources are available to defend against active shooters. In addition to leveraging online resources, you may want to contact your local law enforcement for their input. Typically they are more than willing to help you craft protocol and employee training programs based on your company's needs.

Keep in mind that the execution is just as important as the plan. If you fail to enhance security or conduct training as stated in your WCIP, it is likely that this will be used against you in any litigation should there be an incident.

Preventive Measures

Beyond development of a WCIP, employers should take steps to minimize the risk of an employee-involved shooting. Employers may be held liable for failing to act reasonably to prevent workplace violence when an employee is involved. This may involve one of two scenarios: either an employee is the shooter or an employee is the target of an outside shooter, often connected to domestic disputes.

In either situation employers may be liable under the Occupational Safety and Health Act for failure to adequately protect their workers from violence in the workplace. Many state laws also impose upon employers a general duty of care toward their employees to provide a safe workplace. Victims of a workplace shooting may bring claims for physical and mental harm against employers.

If an employee is the shooter, victims also may assert claims for negligent hiring or retention. In order to minimize risks, employees and managers should be trained to spot and report the warning signs. Indicators of violence or aggression include employees who are experiencing emotional difficulties, as well as expressions of contempt for fellow workers or supervisors.

Signs of paranoia also may be an indicator of increased potential for violence. More direct signs of potential workplace violence might include an obsession with violence or firearms, making threats, actual fighting with co-workers, and what has been referred to as "minor" violence. Examples of "minor" violence could include bumping into a co-worker. This also could include threatening verbal confrontations by aggressive co-workers. Moodiness, symptoms of withdrawal or other unusual behavior also could presage potential aggressive or violent behavior.

In addition, there is a trend toward prohibiting bullying in the workplace. Some argue there is a correlation between bullying and violence. Legislatures have been reluctant to enact laws mandating civility, but employers should take aggressive workplace behavior seriously. Even though the workplace bully isn't necessarily the next mass shooter, unchecked workplace bullying often leads to claims of discrimination.

Not only must employers be vigilant when it comes to minimizing the risks of employees becoming active shooters, but they also should consider encouraging employees to contact HR in the event of domestic abuse. An employee assistance program may provide resources for the employee, and

providing notice can assist the employer in following its WCIP or otherwise be on heightened alert for any signs of trouble.

Gun violence is nothing new, nor can an employer prevent every single risk of harm. That said, it is unwise for employers to disregard the fact that these situations could happen at anytime, anywhere. Prudent in-house counsel must work with management to develop policies and procedures to minimize the risk of experiencing a shooting, as well as to ensure that your employees know how to react in the event the unthinkable happens and gun violence comes to your workplace.

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