

EMPLOYERS TAKE NOTICE! 4 QUESTIONS TO CONSIDER AFTER OSHA CITES SECURITY COMPANY FOR ACTIVE SHOOTER INCIDENT

Insights
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The unfortunate uptick in active shooter events has led federal workplace safety officials to focus their sights on employers and whether they should be held responsible for the results of tragic events on their premises. Most recently, OSHA used the General Duty Clause to cite a security company for a fatal shooting at a shopping mall, saying the legal obligation requiring employers to maintain a workplace free of certain recognized hazards could include active shooter events. What can you learn from OSHA's response to this tragic event, and what steps can you take to create a more secure workplace?

Mall Confrontation Turns Deadly and Leads to Violation

In October 2021, a patron at the Boise Towne Square Mall in Idaho fatally shot a security officer. The officer was employed by Professional Security Consultants, Inc., a security company providing officers for locations throughout the United States. On the day of the shooting, the employee confronted a patron in the mall openly carrying a firearm. The patron initially turned and started to walk away, then turned back around and started firing his weapon. The security officer was struck three times and ultimately died from his wounds. Notably, the shooter was known to the security officers as a regular offender of the mall's prohibition on firearms.

Following the shootings, the U.S. Occupational Safety and Health Administration (OSHA) cited Professional Security Consultants for a "serious" violation of the "General Duty Clause" of the Occupational Safety and Health Act (OSH

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Act). According to OSHA, the company violated the clause because it “repeatedly exposed its employees at the Boise Towne Square Mall to workplace violence hazards and failed to follow its own procedures for interacting with armed individuals to enforce the mall’s code of conduct.” The security company is currently contesting the agency’s citation.

Active shooting incidents in workplaces such as malls, bars, schools, and retail stores are making the headlines, so now seems like a good time for employers to delve into what the General Duty Clause means, what OSHA’s use of it might mean for future workplace safety enforcement, and how employers can prepare. (Employers in the healthcare industry are most likely already familiar with OSHA using the General Duty Clause to issue citations after incidents of workplace violence, with a 2019 citation related to [a fatal stabbing of a home-care health service provider](#) a prime example of its use.)

What is the General Duty Clause?

There are currently no specific OSHA standards for workplace violence, although a standard appears to be in the works for the healthcare industry. However, OSHA currently issues citations related to workplace violence under the OSHA Act General Duty Clause, Section 5(a)(1).

Under the General Duty Clause, employers are required to provide their employees with a place of employment that is “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” The courts have interpreted the clause to mean that an employer has a legal obligation to provide a workplace free of conditions or activities that either the employer or industry recognizes as hazardous and that cause, or are likely to cause, death or serious physical harm to employees when there is a feasible method to abate the hazard.

OSHA has also developed “[Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence](#)” guidance for conducting workplace violence inspections and issuing citations. While this guidance is aimed at compliance officers and is not binding law, it is useful to employers in assessing what actions OSHA will consider as “due diligence” and what might constitute notice of a “recognized hazard.” For instance, OSHA’s guidance notes that an employer who previously experienced acts of

workplace violence — or becomes aware of threats, intimidation, or other indicators showing that the potential for violence in the workplace exists — would be on notice of the risk of workplace violence and should implement a prevention program combined with engineering controls, administrative controls, and training.

Based on OSHA's guidance, employers should expect the agency to cite employers in all industries for incidents of workplace violence, including active shooter events, where it is "reasonably foreseeable" that employees may be subjected to violence while performing their job.

It's Time to Take Action: 4 Questions to Consider

As the number of workplace violence incidents become more common, employers are at an increased risk of being cited under OSHA's General Duty Clause for failing to take appropriate precautions. In light of this unfortunate reality, you should start reviewing your safety policies, procedures, and employee training programs to confirm they effectively reduce employees' exposure to workplace violence. Specifically, you should consider the following four questions:

1. Should your company have a policy prohibiting weapons at work?
2. Does your company have a zero-tolerance policy for workplace violence?
3. What security measures are in place in your work locations (such as locked doors, security cameras, etc.)?
4. Have you provided any training on workplace violence or active shooter events? You can read more about active shooter training in our detailed Insight [here](#).

While it is not possible to prevent all acts of violence, employers should take actions to ensure their employees are properly trained and prepared to respond to such situations.

Conclusion

We will continue to monitor developments in this area and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact the

authors of this Insight, your Fisher Phillips attorney, or any member of our [Workplace Safety Practice Group](#).