



Employers Must Squarely Address The Mass Shooting Phenomenon

Insights

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On April 20, 1999, a seed was planted in every workplace in this nation, one which has remained rather dormant for most of us until recently. That day, 13 people left their homes and entered Columbine High School – the aftermath is now at the doorsteps of every employer and cannot be ignored.

At our doors are the children – educated since that day within buildings where locked doors, surveillance cameras, safety protocols, and mass shooting preparedness have been the norm. Places where the concept of employees walking through classrooms and hallways with concealed carry guns is becoming more common and is seen as acceptable and necessary. These Millennials are, or will soon become, our employees. They have expectations of what safe means, and with good reason.

The reality is that mass shootings are practically an everyday event in this country. Although definitions of mass shooting vary, the Congressional Research Service recognizes “mass shooting” to mean a single incident where four or more people are shot and killed.

Regardless of the definition, the number of people wounded and shot in these types of incidents is staggering. For example, [Mass Shooting Tracker](#), a crowd-sourced database of U.S. mass shootings that defines the term as “a single outburst of violence in which four or more people are shot,” reports 166 mass shootings in 2016 as of June 6, with 222 killed and 570 wounded.

What We Know

According to [a 2013 report](#) released by the F.B.I., the majority of the mass shooting incidents studied ended in approximately five minutes or less and before the police arrived. This insight supports why the issue of allowing concealed carry guns in the workplace is becoming one of the hottest topics for employers.

Employees As First Responders?

Employers must grapple with the reality that the workforce may be the “first responders” in active shooting incidents. Having these conversations and meaningfully addressing these safety dynamics are not easy, from both a legal and a human perspective. While this work will be unsettling to many, inaction is unacceptable, as is overreaction. Crafting a solution will not be the same for everyone and

should not be approached in cookie-cutter fashion.

Legal Considerations

Various areas of law converge when working to identify and develop an appropriate Workplace Critical Incident Protocol (WCIP). Litigation from mass shooting incidents is as pervasive as the shootings themselves. With this in mind, best practice demands employers make sure to have these types of conversations with the inclusion of an attorney.

Your conversations and the documents generated from them could very well be discoverable and used against you at a later time. Protecting these discussions within the attorney client privilege supports more candid conversations about risk factors in your setting, ensures the best options are identified, examined and developed, and most importantly, is not discoverable in litigation.

It will be key to examine your workplace culture, physical locations, operational systems, areas of ingress and egress (physical and electronic), security systems, human resource protocols, and how and where your employees are working. Equally important is understanding 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. And, for those employers required by OSHA to maintain an Emergency Action Plan, consistency and uniformity with your WCIP plan must also be addressed.

Your Next Steps

We strongly recommend customizing a Workplace Critical Incident Protocol that best supports your work locations in handling the three stages of an active shooter incident: before, during, and after. To begin, identify a Core Team, comprised of representatives from Human Resources, Operations, Facilities, IT and your attorney. The Core Team should immediately gather all documents relevant to understanding the day-to-day workplace, communication systems, and access points at which point your WCIP can begin to be developed.

Must Haves In Your WCIP

The WCIP should be customized to reflect a tempered and deliberate structure with consistent and uniform processes. Ultimately, your WCIP needs to have certain key elements.

You should make sure there is a system for how to notify people inside and outside your building when it is under siege and expectations on contacting law enforcement.

Consider appropriate training for employees so they know how to impulsively respond using their best judgment if there is an active shooter. Currently, this type of training focuses on teaching three strategies: *Flight, Hide, or, if confronted, Fight!* Luckily, the educational sector has plenty of resources available on what this training can look and feel like – google “ALICE active shooter

resources available on what this training can look and feel like – google “ACTIVE SHOOTER training,” use the “video” tab, and view some of the videos for various colleges, universities, or K-12 schools, and you’ll have a better idea for the type of resources available. Remember that many Millennials will expect this training to be presented in this type of format.

Your WCIP must ultimately produce a roster of your people and accurate layouts of your facility so law enforcement is best equipped to handle the incident upon arrival. Finally, your WCIP must provide steps for how to continue operations if your workplace is closed for days or weeks as a crime scene, and should identify what counseling resources you will immediately make available to your workers within the hours following the shooting.

Remember, you may not be able to stop a shooting or the inevitable lawsuits that follow, but you can be assured that you will be judged (by the news, in social media, and in court) by whether you took steps to prepare and how human you were in responding in the aftermath.

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Service Focus

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