



Richard Marx Won't Be Right Here Waiting To Save You From Workplace Intruders:

LESSONS TO MAKE SURE YOUR WORKERS ARE PREPARED

Insights

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Before last week, late 1980s pop singer Richard Marx had not made news headlines since, well, the late 1980s. Over 20 years ago, Marx was very well known for his smooth tenor vocals and flowing mane of hair. He hit his peak when his popular song “Right Here Waiting” – the video for which has been viewed over 110 million times on YouTube – made it to number one on the Billboard Top 100 in 1989. Marx was not, however, widely viewed as someone who could teach lessons about best practices in workplace safety (although he did have a 1992 hit called “Hazard”).

That changed last week when Marx prevented an unruly passenger aboard a Korean Air flight from harming the aircraft’s attendants. When the passenger began pushing the female flight crew and pulling their hair, co-passenger Marx was the first on the scene to subdue the disruptive traveler. Remarkably, Marx controlled the attacker for a reported four hours.

Marx played the hero in saving the crew in what could have been a disastrous situation for not only the flight attendants, but also for the other passengers aboard the flight. Fortunately, there were no major reported injuries from the event.

Richard Marx: The Newest Workplace Safety Critic

Following the flight, Marx was critical of the lack of training the flight crew had apparently received to handle the disruptive situation. He claimed on social media that the crew was “completely ill-prepared and untrained,” and that “Korean Air should be sanctioned for not knowing how to handle a situation like this without passenger interference.”

Marx’s comments highlight a disturbing trend our firm is seeing at workplaces throughout the country. Although the number of workplace violence incidents, including active shooter situations and unruly intruders, continues to increase, very few employers are taking actions to ensure their employees are trained and prepared to respond to such situations. Marx is right.

Don’t assume, like the airline saved by Marx, that a disruptive or violent event won’t occur at your workplace. Doing so “don’t mean nothing.” Instead of relying upon a 1980s heartthrob to miraculously appear and stop a disgruntled intruder, consider adopting some of the following

measures to protect your business from irritated employees, irate or unstable guests, and others who may desire to commit violence at your workplace.

1. Educate And Train Your Employees

There are two types of training relating to workplace violence incidents: preparing for what could happen, and responding once something bad has already happened. As illustrated by the Korean Air situation, most employers have done neither – although they all “should’ve known better.”

Given the rise of workplace violence in recent years, now is the time to train your employees to address these issues. Do your management and HR teams know when they should be concerned about potentially dangerous employee behavior and how to address it? Unlike the Korean Air crew, are your employees trained on how to deal with unruly customers or violence directed at or involving your employees, guests, or patrons?

Any training program should require each employee to view the Department of Homeland Security’s “Run, Hide, Fight” video (featuring zero 1980s mullets) about surviving an active shooter situation. In addition, you should evaluate your individual workplace for exposure and devise specific solutions as you would for any potential safety hazard. Develop specific training based on your work setting, location, security layout, as well as general situational awareness.

Unfortunately, many active shooters or workplace intruders are either current or former employees who have developed a grudge against a supervisor or coworker. Review and adjust your policies about unprofessional behavior, bullying, threats, and workplace violence. Educate your employees to recognize unacceptable behavior, and train your supervisors to address it before it advances to actual violence. Adopt a zero-tolerance policy for violent behavior.

2. Recognize Your Responsibility

If an employer is aware of a potentially violent situation and either does nothing or fails to properly train its employees to handle the situation, the employer could be held liable for an employee injury or death. A Missouri court recently found an employer liable for the death of a worker because it was on notice of threats from the employee’s ex-boyfriend and offered to form *ad hoc* groups of employees to walk her to her car instead of using professional security. An incompetent or incomplete response to workplace violence concerns or to an active shooter may be used as evidence that you failed to meet your duty.

Further, even though the Occupational Safety and Health Administration (OSHA) does not have a standard directly addressing workplace violence, it has cited employers under the Occupational Safety and Health Act’s General Duty Clause, which generally requires employers to maintain a safe working environment. If you are aware of a hazardous situation and do nothing to rectify it, you may be cited under the General Duty Clause for failing to act.

3. Revise Your OSHA-Required Emergency Action Plan (EAP)

We continue to see an increasing number of complaints by employees alleging their employer's failure to include a response to workplace violence issues in their Emergency Action Plan (EAP). If you have more than 10 employees, you must develop a written EAP when another OSHA Standard triggers the requirement. In addition, if fire extinguishers are available in your workplace, and if anyone will be evacuating during a fire or other emergency, you must have an EAP in place.

The EAP must include at least the following elements:

- the means of reporting fires and other emergencies;
- evacuation procedures and emergency escape route assignments;
- procedures for employees who must remain to perform critical operations before they evacuate;
- accounting for all employees after an emergency evacuation has been completed;
- rescue and medical duties for designated employees (which is arguably broad enough to cover a situation like the one involving Marx and Korean Air); and
- names or job titles of persons who can be contacted.

Ensure your EAP is broad enough to cover management of and response to an active shooter situation or an irate worker or customer who intrudes your workplace (simply having someone call 911 is insufficient). Do employees know what to do if such an emergency arises? Who calls the police? Where do the employees go? Do you have an on-site security presence? How do they respond? Have you rehearsed your response to such a situation? What if no one can reach a phone? Do you have a Medical Emergency Response Team comprised of employees? What do they do?

You cannot accurately predict who and what may present a risk of workplace violence to your employees. You can, however, train and prepare your employees to respond to these situations if they occur.

Take the advice of Richard Marx – be prepared. Taking the steps above is a great start to achieving that goal, and will be the only way to ensure Marx is “satisfied” with your workplace violence prevention techniques.

If you have any questions about these suggestions, please contact the author at TVance@fisherphillips.com or 704.778.4163, your Fisher Phillips attorney, or any member of [Workplace Safety and Catastrophe Management Practice Group](#).

This Legal Alert provides an overview of a specific workplace safety situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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