



# Workplace Violence Occurring At Alarming Rate: Time For Employers To Be Proactive

Insights

6.19.17

It's a news headline we've seen too often, including several times in recent weeks: another disgruntled employee or former employee has entered the workplace and killed or injured coworkers. What can you do to minimize the chances that your workplace will suffer such a tragedy?

## Employers Should Avoid "Wait-And-See" Approach

Often the employee assailant previously exhibited warning signs of violence, including aggressive complaints about management, threats made to coworkers, or involvement in an ugly domestic, marital, or child custody dispute at home. But it is common for the employer to have failed to take any measures ahead of time to prevent the event.

The pattern of employers failing to take proactive measures prior to these incidents is nothing new. For years, many employers have ignored warning signs about disgruntled or "problem" employees. This is often borne in fear they will be held legally responsible if their attempted preventive measure fails and the employee later acts violently; another concern is that they could be held legally liable for regarding an employee as disabled.

However, the recent rise in the number of violent events involving disgruntled employees shows that employers can no longer use a "wait-and-see" approach. You must balance taking action that some may view as invasive versus ensuring the safety of those in your workplace.

While you cannot accurately predict everyone who may present a risk of workplace violence, perhaps you can anticipate and head off some incidents. Consider adopting some of the following measures to protect employees from irate coworkers and others.

### 1. Review And Adjust Policies On Bullying And Unprofessional Behavior

Many active shooters are current employees who have developed a grudge against a supervisor or coworker. Some, like a recent shooter, may have previously lodged oral or written complaints against management.

Analyze any such complaints you receive carefully, looking for any signs of anger or aggression. 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.

Have a process in place to monitor the behavior of terminated employees from the time they are told the news until they leave the worksite. Did they make threats? Do they have a history of bullying or unprofessional behavior? How will you respond if they do?

## **2. Pay Attention If An Employee Is Served With Legal Process**

If a sheriff arrives to serve legal process on an employee, watch for red flags. If the employee becomes irate, consider trying to talk individually and calm the employee. Alert your security team if the employee makes threats. Hopefully a manager can avoid escalation, but you may have to ask security to escort the employee to an isolated area where they can meet with management.

You may want to ask the employee if they desire counseling, although this may be an inflammatory move – you will be the best judge of that. Offer administrative leave if a cooling-off period is appropriate. If the employee is especially antagonistic or you have heard reports of possible violent behavior, you may have to involve outside security or law enforcement from the outset.

If the employee storms off prior to an opportunity to meet with them, ensure that any onsite security is aware of the situation and provides them with a photo of the employee. If you receive any threats, call the police in advance. Don't wait for the irate employee to return. If necessary, you should consider retaining a private armed security service. Unfortunately, your local law enforcement department is often limited in how it can respond to threats and bad behavior. The prudent course may be to retain security for a certain period of time until things have cooled down.

## **3. Request Information From Employees Who Seek Protective Orders**

Given the recent rise of violent events involving employees engaged in a domestic dispute at home, you should consider encouraging employees to tell you when they are involved in a dispute where violence may be a risk. This is especially the case when the employee has requested a restraining order. This is an evolving area of human resources and business management; you must balance being viewed as employer who attempts to invade employees' private home life versus later dealing with an active shooter situation.

If an employee has requested a protective order, ask for a photograph of the recipient of the legal process. Provide the photo to any onsite security, reception employees, and management. If the individual arrives at your workplace for any reason, have the designated company representative approach the individual in a calm manner, isolate the individual in a designated area, and request that security respond to the situation.

In any of these situations, you should obtain guidance from law enforcement and security professionals who can tailor their advice to your specific workplace. In order to have such advice available, you should establish relationships with professional security advisors now.

## **4. Educate And Train Your Employees**

Experts tell us that there are two types of workplace violence training: preparing for what could happen, and responding once something bad has already happened. Most employers have done neither.

While there are no guaranteed signs that an employee is going to engage in violent acts, there are signs of unacceptable behavior that you can train your workforce to identify and address. Any training program should require every worker to at least view the Department of Homeland Security's "*Run, Hide, Fight*" video about surviving an active shooter situation. You should also evaluate your individual workplace for exposure and devise specific solutions as you would for any potential safety hazard.

We recommend you develop specific training based on your work setting, location, security layout, as well as general situational awareness. Consider professional instruction by an active shooter expert who can provide on-site, simulation-based training.

## **5. Revise Your Emergency Action Plan ("EAP")**

If you have more than 10 employees, you must develop a written Emergency Action Plan (EAP) when another Occupational Safety and Health Administration (OSHA) standard triggers the requirement to have an EAP. 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.

At a minimum, the EAP must include the following elements: the means of reporting fires and other emergencies; evacuation procedures and emergency escape route assignments; procedures for employees who remain to operate critical plant operations before they evacuate; accounting for all employees after an emergency evacuation has been completed; rescue and medical duties for employees performing them; and names or job titles of persons who can be contacted.

Now is the time to ensure your EAP is broad enough to cover management of an active shooter situation or respond to an active shooter. Do employees know what to do if such an emergency arose? Who calls the police? Where do the employees go? Do you have an onsite security presence? How do they respond? Have you rehearsed your response to such a situation? Given the recent rise of active shooter events, we anticipate that OSHA may begin to cite employers who fail to include responses to workplace violence incidents in their EAP.

## **Conclusion**

Workplace shootings continue to occur at an alarming rate and yet many employers have not addressed this concern in their safety training programs. No perfect plan is currently available, but you should begin taking proactive steps to avoid these situations and minimize the risk to your workplace.

If you have any questions about these developments or how they may affect your business, please contact any member of our [Workplace Safety and Catastrophe Management Practice Group](#) or your

regular Fisher Phillips attorney.

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

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