

## Workplace Violence and OSHA: An Overview

Several attendees of Reinhart Boerner Van Deuren's recent seminar, [What you don't know can cost you money . . . 2016 OSHA Trends Present Peril for Unprepared Employers](#), asked questions pertaining to OSHA's workplace violence requirements and initiatives. The questions were timely, as workplace violence affects millions of workers in the United States each year and could include "any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. It ranges from threats and verbal abuse to physical assaults and even homicide."<sup>[1]</sup> Indeed, headlines trumpet news of coworker shootings with alarming frequency. For example:

- May 2016: *Fired employee kills co-worker, self at Houston-area company.*<sup>[2]</sup>
- March 2016: *Former Employee Accused of Shooting a Co-Worker.*<sup>[3]</sup>
- March 2016: *Officials: Baltimore City public works employee killed by co-worker.*<sup>[4]</sup>
- August 2015: *Two Virginia TV station employees shot dead on the air; gunman dead.*<sup>[5]</sup>
- April 2015: *Employee shoots co-worker at Kia plant.*<sup>[6]</sup>

Homicide is currently the fourth-leading cause of fatal occupational injuries in this country. According to the Bureau of Labor Statistics, of the 4,679 fatal workplace injuries that occurred in the United States in 2014, 403 were workplace homicides.<sup>[7]</sup> And, each year nearly two million U.S. workers report that they are victims of workplace violence, with untold numbers of employees choosing not to report incidents.<sup>[8]</sup>

OSHA is adamant that "[w]orkers have a right to a safe workplace."<sup>[9]</sup> And, OSHA's General Duty Clause requires employers to provide a safe and healthful workplace for all workers covered by the Occupational Safety and Health Act; therefore, employers who do not take reasonable steps to prevent or abate a recognized violence hazard in the workplace can be cited.<sup>[10]</sup> However, an employer will be held to have violated the General Duty Clause only when the employer knew or should have known of the potential for violence. Arguably, this means that there must be a clear and present danger and not just a remote possibility of danger.

### POSTED:

May 17, 2016

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The question, then, is how employers should guard their employees from workplace violence in today's environment. As a starting point, it is important to understand that "workplace violence" encompasses many different scenarios and can occur in virtually any setting. Nevertheless, various factors may increase the risk of violence for some workers at certain worksites, including exchanging money with the public and working with volatile, unstable people.<sup>[11]</sup> Other risk factors that may contribute to the potential for workplace violence include: working alone or in isolated areas; providing services and care; working where alcohol is served; and, time of day and location of work, such as working late at night or in areas with high crime rates.<sup>[12]</sup>

Planning, preparation, and institution of appropriate precautions, however, may be effective ways to decrease the potential for workplace violence. To that end, OSHA has invested a significant amount of effort in helping employers recognize risk factors and identify precautions. "By assessing their worksites, employers can identify methods for reducing the likelihood of incidents occurring. OSHA believes that a well-written and implemented workplace violence prevention program, combined with engineering controls, administrative controls and training can reduce the incidence of workplace violence . . ."<sup>[13]</sup> Employers can:

- Educate employees regarding unacceptable conduct, what to do if they witness or are subjected to workplace violence, and how to protect themselves.
- Where appropriate, install video surveillance, extra lighting, and alarm systems; and, minimize outsiders' access through identification badges, electronic keys, and guards.
- Limit the amount of cash kept on hand.
- Equip field staff with cellular phones and hand-held alarms or noise devices, and require them to prepare a daily work plan and keep a contact person informed of their location throughout the day.
- Properly maintain employer-provided vehicles.
- Instruct employees not to enter any location where they feel unsafe.
- Introduce a "buddy system" or provide an escort service or police assistance in potentially dangerous situations or at night.
- Develop policies and procedures covering visits by home health care providers.<sup>[14]</sup>

It is critical that all employees know their employer's workplace violence policy, understand that all claims of workplace violence will be promptly investigated and remedied, and take steps to protect themselves from becoming victims of workplace violence. Unfortunately, there is no guarantee that all incidents can be averted. If workplace violence does still occur, employers should:

- Encourage employees to report and log all such incidents and threats.
- Provide prompt medical evaluation and treatment after an incident.
- Promptly report violent incidents to the local police.
- Inform victims of their legal right to prosecute perpetrators.
- Discuss the circumstances of an incident with staff, and encourage employees to share information about ways to avoid similar situations in the future.
- Offer stress debriefing sessions and posttraumatic counseling services to help workers recover from a violent incident.
- Investigate all violent incidents and threats, monitor trends in violent incidents by type or circumstance, and institute corrective actions.
- Discuss changes in the program during regular employee meetings.[\[15\]](#)

Finally, in order to best avert a General Duty Clause citation, which may be most likely to arise when an employee engages in violence or threatens violence against a co-employee or where a nonemployee makes threats of violence against an employee (e.g., a disgruntled former spouse threatening violence), employers should consider taking appropriate and timely disciplinary action against employees who threaten or engage in violent behavior in the work place. Moreover, if appropriate, employers also should consider: arranging for counseling of such employees; and, suspending such employees if and until a medical provider states that they do not constitute a risk. With respect to nonemployees, employers should consider seeking a restraining order and should ensure that receptionists are aware of potential threats and have been given photographs to assist them with identifying threats.

Of course, the applicability or necessity of the measures discussed above may vary depending on the risk that is present, the type of workplace involved, and other factors. As a first step, however, engaging in a risk analysis and putting into place safety and security processes and procedures should provide a measure of

comfort to both employers and employees.

If you have any questions about OSHA, workplace violence, or a related topic, please do not hesitate to contact one of the authors.

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[1] OSHA, *Safety and Health Topics, workplace violence*, <https://www.osha.gov/SLTC/workplaceviolence/index.html> (last visited May 11, 2016).

[2] Associated Press, Milwaukee Journal Sentinel (May 4, 2016), <http://www.jsonline.com/news/usandworld/national/fired-employee-kills-co-worker-self-at-houston-area-company-mjsurnpublicidaporg6ccc1b1bf9194e35ae551-378125231.html>.

[3] Jessi Turnure, Arkansasmatters.com (Mar. 16, 2016), <http://www.arkansasmatters.com/news/local-news/disgruntled-employee-shoots-former-co-worker>.

[4] Jessica Anderson and Colin Campbell, Balt. Sun (Mar. 4, 2016), <https://www.baltimoresun.com/2016/03/04/officials-baltimore-city-public-works-employee-killed-by-co-worker/>.

[5] WTHR Channel 13, WTHR.com (Aug. 26, 2015), <https://www.usatoday.com/story/news/nation/2015/08/26/alison-parker-adam-ward-wdbj7-virginia-tv-journalists-dead/32396463/>.

[6] Rodney Harris, CBS46.com (Apr 21, 2015), <http://www.cbs46.com/story/28860937/1-shot-at-kia-plant-in-troup-county#ixzz47t9TdlcF>.

[7] OSHA, *Safety and Health Topics, workplace violence, supra* note 1.

[8] *Id.*

[9] *Id.*

[10] OSHA *Factsheet: Workplace Violence*, OSHA (2002), [https://www.osha.gov/OshDoc/data\\_General\\_Facts/factsheet-workplace-violence.pdf](https://www.osha.gov/OshDoc/data_General_Facts/factsheet-workplace-violence.pdf).

[11] OSHA, *Safety and Health Topics, workplace violence, supra* note 1.

[12] *Id.*

[13] *Id.*

[14] OSHA Factsheet: *Workplace Violence*, OSHA (2002), *supra* note 10.

[15] *Id.*

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