

SPECIAL REPORT

WORKPLACE VIOLENCE

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Business owners must be aware of the threat of workplace violence and its possible ramifications and do what is possible to both limit that exposure as well as to include coverage for these areas in the commercial insurance program of the organization.

The purpose of this Special Report is to identify some of the general issues associated with workplace violence, discuss some methods of protecting your organization from it, and to provide you with some information regarding the insurance coverage available to address these exposures. This Special Report is not intended to serve as specific legal advice. Legal consultation should be sought prior to development and/or implementation of risk management techniques.

Workplace violence, which may be committed by former employees, clients, customers or others, is a very serious health and safety issue in today's society. Consider these disturbing statistics:

- In 2006, there were 516 work-related homicides in the US.¹ Of the 516 workplace homicides that year, 417 were from a shooting and 38 were from a stabbing, according to the report.
- Workplace homicide is the fourth-leading cause of fatal occupational injury in the United States.²
- Assaults and violent acts are the 10th leading cause of nonfatal occupational injury in 2006, representing about 1.1% of all workplace injuries.³
- According to the Bureau of Justice Statistics, an estimated 1.7 million workers are injured each year during workplace assaults; in addition, violent workplace incidents account for 18% of all violent crime in the United States.⁴

- Half of large employers in the US (those with 1,000 or more employees) had an incident of workplace violence within the 12 months prior to completing a new survey on workplace violence prevention.⁵
- Over 70 percent of United States workplaces report no formal program or policy that addresses workplace violence.⁶
- Pinkerton, the nation's largest security service company, ranked workplace violence as the most significant security threat to American business in its 2003 Survey of Fortune 1000 Companies.⁷

Workplace violence is a serious issue for many businesses not only because of the danger of injury and risk to human life, but also because the significant financial costs associated with these incidents can threaten a company's future.

The financial ramifications which may arise from incidents of workplace violence can be devastating. For instance, employees who are injured or traumatized may need medical or psychiatric services, in addition to time off for rest and rehabilitation.

The threat of workplace violence creates a need for additional security, including guard services and implementation of other security systems which limit access to the workplace. Operations or productions may be disrupted or shut down, which may result in significant financial loss. Morale and productivity may decline. Public relations efforts must be made and the media must be appropriately dealt with, both involving time and money. Investigations and inquiries can also be extremely costly from both a financial perspective and from the standpoint of time and effort, as can litigation which may arise.

Opportunities for litigation appear to be expanding, and businesses can face potential legal liability under several theories, including negligent hiring, negligent retention, or negligent supervision, in addition to fines or penalties for violating OSHA.

Michigan law, similar to that of many states, recognizes the torts of negligent hiring, supervision, and retention of an unsafe employee.⁸

Negligent hiring is a legal theory under which an employer can be held liable for injuries caused by an employee where the employer hired the

employee and gives that person an opportunity to be violent, even though the employer knew or should have known of the employee's propensities toward violence.⁹

Negligent retention is generally found when, during the course of employment, the employer becomes aware or should have become aware of the employee's violent propensities and fails to take reasonable measures to prevent injury to others.¹⁰

Negligent supervision is a theory under which the employer is liable for acts of the employee because the employer failed "to exercise ordinary care in supervising the employment relationship, so as to prevent the foreseeable misconduct of an employee from causing harm to other employees or third persons."¹¹

Risk Management Techniques

A. What are a Company's Obligations?

The federal Occupational Safety and Health Act of 1970 (OSHA)¹² and the Michigan Occupational Safety and Health Act of 1970 (MIOSHA)¹³ are the applicable statutes that regulate occupational health and safety in Michigan. While the torts of negligent hiring and retention generally focus on the employer's responsibility to protect the public from a violent employee, the Michigan and federal safety and health acts concern the employer's duty to protect employees. The Occupational Safety and Health Administration does not currently have a specific standard for workplace violence.¹⁴

However, OSHA has stated that, under the Occupational Safety and Health Act of 1970, the extent of an employer's obligation to address workplace violence is governed by the "general duty" clause, which provides:

"Each employer shall furnish to each of his employees a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

Therefore, OSHA encourages employers to develop workplace violence prevention programs. OSHA has issued *Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers* (2004; available online at <http://osha.gov/Publications/OSHA3148/osha3148.html>)

The following are some issues which your business may wish to address when developing a risk management program designed to reduce the likelihood and/or severity of occurrences.

B. Review Security In Your Office Area/Workplace

Perhaps one of the most basic and obvious first steps is to review basic security in your actual work space. Is access limited to employees only? Can non-employees enter the workplace unnoticed? Improved security could include receptionist screening, coded doors/entranceways, additional security guards, cameras, employee badges, escorts for visitors, metal detectors, emergency lock down procedures, etc.

C. Screening Employees

Following personal interviewing and prior to making an offer of employment, employment history, criminal history and references of every prospective employee should be diligently checked. Prospective employees should sign a release permitting the employer to perform this investigation, and employers should seek specific legal consultation to be certain that the investigations comply with all other applicable state laws in addition to the Fair Credit Reporting Act.

Drug tests and personality tests testing may be appropriate. With regard to this type of testing, specific legal consultation should be sought to ensure that practices do not violate the Americans with Disabilities Act or other laws.

It is generally recommended that companies steer clear of psychiatric tests as a screening device because of the strong possibility that such testing may be in violation of the ADA.

D. Develop and Communicate a Zero Tolerance Policy

All companies should develop and communicate to its staff a “zero tolerance policy” stating that no threats or acts of violence will be tolerated, that all threats are taken seriously and may be grounds for termination, and directing employees how to report threats or acts of violence.

E. Train Staff How to Recognize and Respond

Your staff must be trained to recognize potentially violent behavior and to identify potential problems. Companies should encourage employees to speak openly with management about workplace difficulties, without having to fear that they will be retaliated against. An open door policy may help create an environment which is less prone to violent behavior.

It may be wise to consider implementing an Employee Assistance Program designed to assist employees to cope with and overcome problems such as stress, emotional problems, drug or alcohol addiction, etc.

F. Crisis Planning

Every business must be prepared to effectively respond to an incident of workplace violence. Therefore, many experts recommend that, in addition to training employees how to specifically respond to separate incidents of workplace violence, the company should establish a crisis plan and team which can put it into action. The crisis team should be specially trained as to appropriate methods of handling an emergency of this nature, evacuation procedures, etc.

Insurance Coverage is Available

The risks presented by incidents of workplace violence are typically not covered by standard property, liability or workers compensation policies. However, a number of different insurance companies offer products to address the exposure of workplace violence coverage. Coverage features vary by insurance carrier.

For instance, Chubb Insurance Group offers a package designed to help a business offset the crippling costs which may arise from incidents of

workplace violence. Some highlights of Chubb's policy¹⁵ include coverage for expenses following a covered incident:

- Security consultants to respond to a crisis
- Public relations efforts
- Security guard services
- Loss of business income due to an incident
- Death benefits to a victim's heirs
- Medical, dental, cosmetic or psychiatric services for victims
- Rest and rehabilitation services for victims
- Salaries of employee victims
- Salaries of temporary victims
- Rewards to informants

Conclusion

Most companies cannot afford to be without a company policy that addresses incidents of workplace violence. Because workplace violence seems to have become “commonplace”⁹ and has been recognized by some experts as a bona fide occupational, health and safety hazard,¹⁰ OSHA recommends that most businesses implement prevention programs. Insurance protection is also recommended as a means of protecting the business from a financial standpoint so that it can survive.

The development of appropriate risk management techniques depends on the specific needs of your organization and should be addressed through consultation with legal counsel.

¹ US Department of Labor, Bureau of Labor Statistics, 2006 Census of Fatal Occupational Injuries

² US Department of Labor, Occupational Safety and Health Administration, <http://www.osha.gov/SLTC/workplaceviolence/index.html>

³ Liberty Mutual Annual Workplace Safety Index, 2006

⁴ Bureau of Justice Statistics 2001

⁵ Bureau of Labor Statistics, *The Survey of Workplace Violence Prevention*, October, 2006.

⁶ *The Survey of Workplace Violence Prevention*, Bureau of Labor Statistics, October 2006

⁷ Pinkerton Security, Inc., 2003 Survey of Fortune 1000 Companies (2003)

⁸ See *Bradley v Stevens*, 329 Mich 556 (1951).

⁹ Watson, Jerome R.; "Safety Issues: Workplace Violence;" Employment Law in Michigan, ICLE, 2007 Supplement.

¹⁰ Watson, Jerome R.; "Safety Issues: Workplace Violence;" Employment Law in Michigan, ICLE, 2007 Supplement.

¹¹ Watson, Jerome R.; "Safety Issues: Workplace Violence;" Employment Law in Michigan, ICLE, 2007 Supplement.

¹² 29 USC 651 et seq.

¹³ MCL 408.1001 et seq.

¹⁴ <http://www.osha.gov/SLTC/workplaceviolence/standards.html>

¹⁵ The coverage afforded is subject to the terms and conditions of the policy.

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