

Workplace Violence: Risk Minimization Strategies for the Modern Workplace

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On Wednesday, October 25, 2023, a mass shooting occurred in Lewiston, Maine, killing at least 18 people, and injuring dozens more.¹ The horrific shootings occurred at a bowling alley and a restaurant/bar. In addition to serving the public, the foregoing venues serve as workplaces for many employees. According to the Bureau of Justice Statistics (BJS) Indicators of Workplace Violence Report published in July 2022, nearly 18,000 workers were victims of workplace homicide from 1992 to 2019. The physical, mental, and financial cost of workplace violence can be overwhelming.² The Bureau of Labor Statistics reports that 10.3% of workplace fatalities in 2021 were a result of intentional injuries by a person.³

The Occupational Safety and Health Act's (OSHA) General Duty Clause provides that employers must provide a work environment "free from recognized hazards that are causing or are likely to cause death or serious physical harm." OSHA defines workplace violence as "any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site."⁴

Whether there is escalating tension or conflict between co-workers, an organized attack from a former employee, or a termination that triggers violence, employers should be prepared to anticipate and address potential threats of workplace violence. OSHA puts the onus on employers to identify and prevent or minimize risk factors for workplace violence, and OSHA may conduct enforcement activity when workplace violence is identified as a hazard.⁵

The law may also impose additional duties on businesses that extend beyond workers to guests, customers, and vendors on the premises that are grounded in contract and common law. Set forth below is a checklist of considerations to assess workplace violence risks in a proactive manner.⁶

1. Develop a workplace violence prevention policy.

According to OSHA, "[o]ne of the best protections employers can offer their workers is to establish a zero-tolerance policy toward workplace violence."⁷ Under such a policy, any act or threat of physical violence intimidation or harassment may result in immediate termination of an offending employee following an investigation or removal of a third party from the premises. A zero-tolerance policy may be sufficiently broad to cover workers, vendors, clients, visitors, contractors, and anyone else who may come in contact with company personnel. Note that OSHA provides specific guidance for certain contexts, such as in healthcare and late-night retail establishments.⁸ In addition to a zero-tolerance policy, employers might consider prohibiting weapons in the workplace to the extent permitted by law.

2. Identify contractual and other duties to employees, guests, contractors, and others on the workplace premises.

Employer As Owner. Under state common law, property owners are subject to varying degrees of premises liability. "Premises liability" is the responsibility that a property owner has to another person who suffers a personal injury on their commercial, private, or public property. A property owner who both owns and occupies a space can be held liable for injuries that occur on the property when the owner was negligent (i.e. fell below the standard of care) in

maintaining the property. The standard of care depends on the relationship between the property owner and the injured person. The owner generally owes the highest duty of care to invitees (like customers), followed by licensees (like social visitors to a home), and then trespassers (those without permission to enter). To minimize the risk of premises liability claims, property owners of a workplace that welcomes invitees has a duty to identify and correct or warn invitees of all dangers that they know or reasonably should know about. Accessible communication systems and exits, security systems, and postings about emergency protocols, etc. can help an employer to mitigate the risk of liability to invitees. Premises liability claims are typically not available to employees of the property owner, because workers' compensation statutes bar them.

Employer As Lessee. To the extent that the workplace premises are leased, employers should be familiar with their contractual duties as tenants and the landlords' duties as they relate to injury to persons and properties on the leased premises. For example, under the terms of a commercial lease, the Lessor may be responsible for safety and security elements in the defined common areas of a high-rise building whereas the Lessee may be responsible for the safety and security elements on the workplace premises, i.e., office reception desk or stairwells between leased floors.

Role of Insurance. Commercial liability insurance may also play a role in an employer's strategy to minimize the risks of workplace violence. General commercial liability policies may not contemplate or cover workplace violence. Policies may contain exclusions that could leave employers without coverage after a workplace violence incident. Employers may want to discuss coverage options with their insurance broker or carrier should their existing policy provide inadequate coverage for their needs. Some insurers now offer workplace violence insurance, which specifically covers expenses for treatment and rehabilitation of victims, victims' salaries, mental health specialists, crisis response consultants, and other types of costs where applicable. Insurers may also offer resources to employers with strategies to prevent and respond to workplace violence.

3. Conduct a risk assessment of the workplace.

In addition to understanding their contractual and other duties, businesses should conduct a risk assessment of the physical premises of the workplace to identify points of vulnerability and create a multi-disciplinary emergency response team that includes personnel from Human Resources, Facilities/Maintenance, and Information Technology, among other areas. Unlocked or unsecured points of entry and exit, unsecured and unmonitored stairwells, lack of security guards, violent crime statistics, and other risks should be identified.

4. Implement proper controls and protocols.

Employers should consider partnering with a security company to identify and implement appropriate environmental or engineering controls, administrative controls, and employee training to reduce the risk of workplace violence. Examples of administrative controls include screening persons entering the workplace, escorting patients or customers within the workplace, and closing establishments during money drop-offs and pick-ups. Environmental or engineering controls may include improvements to security infrastructure, the use of locked drop safes, increased visibility and lighting, and assessing the number of entrances and exits to the building. Text message and network alert systems may serve as an important communication device to notify workers of an active shooter or other emergent situation on the premises as well as developments related thereto.

In addition to the foregoing, employers should consider implementing protocols for reporting, investigating, and addressing workplace violence incidents including, but not limited to, procedures to address an active shooter situation, i.e., an emergency response plan.

5. Train your employees and their supervisors.

Employees are an important part of a company's workplace violence prevention plan. Employees should review any

workplace violence and weapons policies as well as the procedures and protocols for reporting threats, harassment, and intimidation in the workplace. Employees should also be trained on situational awareness and to detect warning signs of potential conflict or violence in the workplace.⁹ Conflict resolution training may help to minimize interpersonal conflict in the workplace. Supervisors should be trained to effectively manage employees, address performance/conduct issues, and report workplace conflicts to Human Resources or their managers firmly, professionally, consistently, and in accordance with company policies and procedures. Further, employees should be properly trained on emergency protocols, which may include procedures to follow in the event of an active shooter situation.

While workplace violence incidents are hard to predict, there are steps businesses can take to minimize the risks of workplace violence given their contractual and other legal duties. Given the potential liability for failure to exercise the proper standard of care, proper planning may help minimize the risk of workplace violence.

¹ What we know so far about the mass shooting in Maine, <https://apnews.com/article/maine-shooting-what-we-know-40e373f7f2f0e0fb012ad4b26f4b78cd>.

² Indicators of Workplace Violence, 2019 (NCJ 250748; NIOSH 2022-124)

³ <https://www.bls.gov/news.release/cfoi.nr0.htm>

⁴ Workplace Violence - Overview | Occupational Safety and Health Administration ([osha.gov](https://www.osha.gov))

⁵ See Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence, Occupational Safety and Health Administration, <https://www.osha.gov/enforcement/directives/cpl-02-01-058> (Jan. 10, 2017).

⁶ <https://www.alicetraining.com/alice-institute-training/10-ways-to-prevent-workplace-violence/>

⁷ Workplace Violence, *supra*, note 4.

⁸ Workplace Violence, *supra*, note 4.

⁹ DOL Workplace Violence Program, <https://www.dol.gov/agencies/oasam/centers-offices/human-resources-center/policies/workplace-violence-program>.

Your Key Contacts



Jennifer Sun Park
Shareholder, Pittsburgh
D +1 412 297 4749
jennifer.park@dentons.com



Samantha L. Cook
Associate, Pittsburgh
D +1 412 297 4766
samantha.cook@dentons.com



Kate Erdel
Partner, Indianapolis
D +1 317 968 5339
kate.erdel@dentons.com



Julie Vanneman
Shareholder, Pittsburgh
D +1 412 297 4715
julie.vanneman@dentons.com