



Violence in the Workplace – Mitigating Risk and Proactively Responding to Threats

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Workplace violence is an important safety issue for both public and private sector employers. According to the Bureau of Labor Statistics Census of Fatal Occupational Injuries (CFOI), in 2020, there were 20,050 nonfatal and 651 fatal occupational injuries caused by the intentional injury by another person in the United States. In 2019 68% of victims who experienced trauma from workplace violence were female, 70% worked in healthcare and social assistance industries, and 21% required 31 or more days away from work to recover.¹

OSHA defines workplace violence as any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at a work site. It can range from threats and verbal abuse to physical assaults and homicide. Workplace violence can involve employees, clients, customers, and members of the public. Mass shootings represent a particularly horrifying type of workplace violence. In the first twenty-two weeks of 2022, there have been at least 246 mass shootings in the United States. Many of these mass shootings occur at the workplace.² However, mass shootings represent a small number of workplace violence incidents. Most incidents employers have to deal with are lesser cases of assaults, domestic violence, stalking, threats, harassment (including sexual harassment), and physical and emotional abuse. These incidents are not talked about on the nightly news, and unfortunately, many are never reported.

Workplace violence is an unfortunate reality for which all employers must prepare. Although some industries, such as law enforcement and health care, experience a greater risk of workplace violence, no workplace is immune. To mitigate the risks of workplace violence, all employers, including special districts, should prepare for the possibility of violence, proactively respond to threats and incidents of violence, and conscientiously mitigate harm that results from an incident.

Preparedness is key to mitigating the risks of workplace violence. A clear zero-tolerance workplace violence policy is one of the best protections against workplace violence. A zero-tolerance policy will show that the employer takes threats and incidents of violence seriously. It will also encourage employees to report threats and incidents of violence. Any workplace violence policy should clearly define what acts are considered violent and what consequences will follow if the policy is broken. The policy should also make it clear to whom complaints, threats, and concerns should be reported.

Education and training are additional aspects of being prepared for workplace violence. A policy is not useful if employees and managers are not trained to implement it. Employees should be trained to know what conduct is not acceptable at the workplace, what to do if they witness or are subjected to workplace violence, as well as how to protect themselves.

When there is an incident or threat of violence, it is vital that an employer respond quickly, following the policies and procedures that they have in place at the time. It is crucial to document the incident or threat and any remedial measures that are taken in response. Documentation is essential not only to mount a strong legal defense against future litigation but also, if there is a persistent threat of violence, to protect employees through a workplace violence restraining order.

Under California law, courts can make orders to protect an employee from violence or threats of violence at the workplace. With this order, the employer requests from the court a restraining order on behalf of the employee who needs protection. The court order can last up to 3 years, protect multiple employees or workplaces, and even protect the employee's family or household members. Employees cannot ask for workplace violence protective orders. If they want to protect themselves, they must ask for a different type of protective order on their own, such as a domestic violence or civil harassment restraining order.

Although a workplace restraining order is a great tool to prevent workplace violence, securing one can be difficult because the California Code of Civil Procedure sets a high bar. To get a workplace restraining order, the employer must show that an employee has "suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace."³ A "credible threat of violence" is a "knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose."⁴ This is one reason documentation is important. An

employer needs to be able to demonstrate, with evidence, that a credible threat exists to secure a workplace restraining order.

After an incident of workplace violence, the well-being and health of the employees should be an organization's primary focus. Workplace violence can cause emotional and psychological distress to victims, intended victims, colleagues, and bystanders. Creating an environment where employees can communicate will help a workplace recover. After an incident of workplace violence occurs, an open-door policy where employees can speak with management or human resources about the incident is a good idea. Creating opportunities for employees to discuss the incident with each other is also an option, although some employees may not want to participate.

Another difficult aspect of dealing with the aftermath of a workplace violence incident is the inevitable question, "what more could we have done?" Often, this question is at the center of a plaintiff's negligence lawsuit. If the employer has prepared for and responded to incidents and threats of workplace violence, they are more likely to prevail in a lawsuit following an incident of violence. Of course, the retention of competent legal counsel is essential to evaluate any legal claims.

- ¹ *The National Institute for Occupational Safety and Health (NIOSH): Occupation Violence – Fast Facts* <https://www.cdc.gov/niosh/topics/violence/fastfacts.html> (last visited June 17, 2022).
- ² *Saeed Ahmed, 22 weeks into the year, America has already seen at least 246 mass shootings, NPR, June 5, 2022, https://www.npr.org/2022/05/15/1099008586/mass-shootings-us-2022-tally-number*
- ³ *Code Civ. Proc.*, § 527.8, subd. (a).
- ⁴ *Code Civ. Proc.*, § 527.8, subd. (b)(2).

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