

Addressing workplace violence during the holiday season



Ryan Neumeyer | Thursday, December 5, 2019

While the holiday season is supposed to bring joy and happiness, for many adults it also brings an enormous amount of stress. Lack of sleep and increased pressure at work and at home often causes tensions to run high and tempers to run short, which unfortunately can lead to increased confrontation and even workplace violence. Having proper workplace violence policies in place and ensuring that your employees are aware of places they can go to get help are crucial this time of year.

Recently, Department of Homeland Security Secretary Kevin McAleenan told ABC's "This Week" that mass shootings "absolutely are a homeland security threat." McAleenan went on to explain that since becoming acting secretary in April 2019 his office has been monitoring the growing number of mass shootings and has set up a new office to focus on violence and domestic terrorism prevention, including racially-motivated violent extremism.

McAleenan's comments serve as a stark reminder of the importance of protecting your business from workplace violence and doing everything you can to ensure the safety of your employees not only during this holiday season but also throughout the year.

Make sure that you review emergency procedures with employees. If you do not have emergency procedures in place, make it your New Year's resolution to create them.

Below are some additional tips and practical advice for preventing and responding to workplace violence. These and other tips were discussed during McDonald Hopkins' May 2019 Business Hour on "[Confronting](#)

addressing workplace violence during the holiday s

[violence in the workplace](#)” which can be viewed by clicking on the link.

DEFINING WORKPLACE VIOLENCE

When preparing policies and procedures on preventing workplace violence, it is important to recognize that the term extends far beyond just gun violence. Workplace violence includes any physical assault, threatening behavior, or verbal abuse occurring in the work setting. This includes:

- Beatings
- Stabbings
- Suicides
- Shootings
- Rapes
- Near-suicides
- Psychological traumas
- Intimidation
- Harassment
- Being followed, sworn or shouted at
- Threats or obscene phone calls

A work setting may be any location, either permanent or temporary, where an employee performs any work-related duty. For example, for construction employers this includes wherever your construction site is and for healthcare employers, it could be wherever your patients are.

It is also important when analyzing your workplace to consider the sources of workplace violence. The perpetrator of workplace violence isn't always an employee. Workplace violence can be perpetrated by strangers, customers, clients, or someone with personal relations with an employee, such as a spouse or significant other.

WHAT IS CONSIDERED “THREATENING BEHAVIOR”?

Because what is considered threatening behavior can vary from person to person, an employment policy should include an objective element in the definition of threatening behavior. For example, “Threatening behavior is considered any inappropriate behavior, verbal or nonverbal communication or expression that would lead to a reasonable belief that an act has occurred or may occur which may lead to physical or psychological harm.”

POTENTIAL LIABILITY RELATED TO WORKPLACE VIOLENCE

- **Workers' compensation** – If someone is hurt during an act of workplace violence within the scope and course of employment, they could file a workers' compensation claim.
- **Intentional torts** – If there is some form of conduct occurring over and over again in the workplace that you do not act on and an employee feels that an act of workplace violence is substantially certain to occur, they could file an intentional tort.
- **Negligent claims from third-party victims** – This occurs when a third party is in the same area when workplace violence occurs and they are injured. That third party victim could bring an action against you in relation to that injury.
- **Negligent hiring claims** – If you hire an individual and don't perform a proper background check, and

addressing workplace violence during the holiday s

then that person hurts an individual intentionally, the injured party can file a claim based on negligent hiring and the assumption that the violence could have possibly been prevented by doing a reasonable background check. Background checks are important and can help identify if someone has a criminal background that includes violence or if they are susceptible to violence in general.

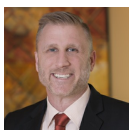
- **Misrepresentation claims** – Providing employment references for former employees with known violent tendencies can put employers between a rock and a hard place. By providing a reference that isn't glowing, employers run the risk of getting hit with a defamation claim. But by not being truthful about a former employee with a history of physical violence at the workplace or sexual harassment, there could be a claim of misrepresentation should that employee go on to engage in similar activity at their new place of employment.

STRATEGIES FOR ADDRESSING WORKPLACE VIOLENCE

Below are several elements addressing workplace violence that should be in your employee handbook or workplace violence prevention program:

1. Demonstrate organizational concern for employees' and customers' emotional and physical health and safety.
2. Ensure management commitment and employee involvement.
3. No weapons policy
4. Zero tolerance policy – A good zero tolerance policy doesn't chill the discussion on workplace violence. A policy that terminates every employee for every instance of workplace violence can actually backfire, causing employees to be less likely to come forward. Instead, zero tolerance policies should indicate that there are open lines of communication and every complaint is going to be taken seriously and addressed.
5. Encourage employees to report violent incidents promptly.
6. Ensure that employees who report or experience workplace violence will not experience retaliation of any kind.
7. Conduct worksite analysis to determine existing or potential hazards for workplace violence.
8. Encourage employees to suggest ways to reduce or eliminate risks.
9. Develop and maintain a comprehensive plan for maintaining security in the workplace, including establishing a liaison with law enforcement and others.
10. Training and education – Train and educate your employees on how to deal with these situations, should they occur. Make sure they know how to recognize dangerous behavior and who to report it to.
11. Recordkeeping and evaluation of program – Don't just put a workplace violence program or policy in place and consider the job done. Continuously evaluate the programs success and revisit your policies to ensure they cover the right information. Record, track, monitor, and analyze workplace violence incidents.
12. Remind employees of benefit programs providing counseling and stress reduction programs to reduce holiday and/or workplace stress and encourage employees to seek assistance for themselves or colleagues when needed.
13. Provide a comprehensive program of medical care and psychological counseling and debriefing for employees experiencing or witnessing assaults and other violent incidents.

For questions regarding employer responsibility, evaluating risk and preparedness, and planning and preventing workplace violence, please contact the attorney listed below.



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Team member bio