

ABA SECTION OF LABOR AND EMPLOYMENT LAW
Keep It Safe: Dealing With Violence In The Workplace
Checklist: What Can You Do To Prevent Workplace Violence And Reduce
Employer Liability?
Domestic Violence Checklist: Practical Considerations In This Developing Area Of
The Law
Checklist: Plan For The Crisis (That You Hope Won't Come)
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CHECKLIST:

What Can You Do To Prevent Workplace Violence And Reduce Employer Liability?

When it comes to violence in the workplace, employers should have two goals in mind: (1) protecting their employees – the first and foremost reason to implement the policies below; and (2) reducing their liability for workplace violence – if an incident does occur, the employer wants to be able to prove that they took reasonable steps to reduce the likelihood of the violence occurring.

With these goals in mind, employers should consider implementing the following policies or practices:

- Hire Carefully
 - Conduct a thorough reference and background check. A thorough pre-employment investigation may help workplace productivity, as well as help establish a valid defense to a claim of negligent hiring.
 - CAUTION: An employer must be sure to conduct a lawful background check that does not infringe on the applicant's right to privacy. Have the applicant sign a waiver that authorizes previous employers to disclose all information in the applicant's personnel file. Additional disclosures/releases are required if you have a third party vendor performing the check. Check requirements under federal and applicable state law.

- CAUTION: Do not violate discrimination laws -- beware of blanket "no hire" rules. Refer to EEOC Guidelines on consideration of arrest records, and conviction records.
- CAUTION: Know the applicable state laws on background checks.
- CAUTION: Watch for gaps in employment -- good reasons or no reasons?
- Warn the Employee Who is Threatened
 - Tell the employee of the nature of the danger, but do not provide any private or medical information about the employee making the threat.
 - Ask security to advise on a personal safety plan.
- Utilize Employee Assistance Programs and Mental Health Professionals
 - Get their help to assess the threat of a potentially dangerous employee.
 - Don't ignore the "troubled employee" -- refer them to EAP or other resources
 - Benefit: If the employee still commits a violent act, the employer can argue that they took reasonable steps.
- Use the Legal System:
 - Inform an employee that he/she had a specific threat of violence and that they have legal options, including but not limited to, obtaining a restraining order on the individual that threatened them.

- Some states have statutes that authorize employers to seek a restraining order on behalf of the employee.
- Advantage of restraining orders -- police can act if orders are violated, even if no violent act.
- Educate victims on right to prosecute.
- Provide Physical Security
 - Reduce workplace violence by former employees or non-employees, i.e. domestic violence incidents, by preventing unauthorized entry into facilities.
 - Consider access, lighting, security guards, surveillance, etc.
 - Assess the risk -- do an "audit."
 - Do you have a plan which includes notice and evacuation?
 - Technology or humans? It depends...
 - Consider your business operations in developing a plan.
- Train Your Managers and Employees!
 - Get expert help on designing the training.
 - Consider the nature of your workplace.
 - Train managers on the "warning signs" and who they call/contact.
 - Have a plan for "after hours" incidents.
- Implement a “Zero Tolerance” Policy Against Workplace Violence
 - Just say no to: harassment, threats of violence, intimidation.

- No weapon possession on company premises. (But what about deer season?)
- Encourage (or mandate) employees to report all incidents or threats.
- Contact local police about incidents.
- Investigate incidents or threats (even anonymous ones).

Resource: Robert L. Levin, *Workplace Violence: Navigating Through the Minefield of Legal Liability*, 11 Lab. Law. 171 (1995).

Resource: U.S. Department of Labor Occupational Safety and Health Administration, *Workplace Violence OSHA Fact Sheet* (2002).

DOMESTIC VIOLENCE CHECKLIST:

Practical Considerations In This Developing Area Of The Law

- Put in place a policy or procedure to address these issues.
- Don't create a policy/procedure and ignore it -- this can increase risk of exposure.
- Do not ignore problems or warning signs -- a performance issue may be the result of domestic violence.
- Don't ignore co-worker situations!
- Inform your employees about outside resources -- be supportive!
 - D.A.'s Office
 - Domestic Violence Shelters
 - Police/Security
 - Community Resources
 - National Domestic Violence Hotline **1-800-799-SAFE (7233)**
- Involve your security personnel early and often -- rely on their expertise.
- Utilize Employee Assistance Programs for training and counseling.
- Consider safety classes, or at least individual safety plans for affected employees.
- Consider adequacy of security: access issues, surveillance, etc.
- Keep in mind privacy issues of employee(s) when deciding whether to share information and who receives the information -- who really needs to know?.
- Be alert to Family and Medical Leave Act overlap -- leave may relate to domestic violence issues.
- Consider impact of OSHA general duty clause.
- Consider third party claims (patrons, visitors, customers) and workers' compensation.

- Consider separating documentation about abuse/violence from employee/victim's main personnel file.
- Consider who receives, reviews and keeps track of restraining orders and orders of protection -- may need to rely on those if person comes on premises or violates terms/conditions of orders.
- Do you do business in states with victim assistance laws? Familiarize yourself with them.
- Laws may prohibit discipline/firing for absences related to domestic violence.
- If the employee/victim becomes disabled because of domestic violence, the Americans with Disabilities Act may require accommodations.
- Before terminating the victim/employee consider retaliation exposure.
- Consider relocation/reassignment /transfer of victim.

Resource: *Employer Liability for Domestic Violence in the Workplace: Are Employers Walking a Tightrope Without a Safety Net*, 31 Tex. Tech L. Rev. 139 (2000).

CHECKLIST:

Plan For The Crisis (That You Hope Won't Come)

CRISIS PLAN: 4 COMPONENTS

Recognize -- When should you worry? Know the signs!

Report -- Who is notified? How? Who decides to call law enforcement?

Safety -- For all employees in and outside of area directly impacted.

Counseling -- Post-Incident -- Identify resources and have them available "on call."

RESPONSE TEAM -- CREATE IN ADVANCE:

Human Resources

Security / Police

Attorney

Mental Health Professionals

Management Representative (With Budgetary Authority)