

Minimizing the cost of violence in the workplace

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As the images of the brutal fatalities at Virginia Tech, NASA, the University of Washington at Seattle and CNN illustrate, workplace violence is a very real threat to business owners and employees.

The horrific nature of these crimes seems surreal and beyond the borders of our community, but history proves otherwise.

Statistics show that workplace violence is becoming all too common. It is estimated that there are nearly 2 million nonfatal workplace violence incidents annually — incidents such as assaults, robberies, thefts, hostage situations, rapes and sexual attacks. These incidents represent a real danger, both physically and economically, to employers and employees.

Under federal and state laws, employers are responsible for protecting their employees from foreseeable risk and injury. When employers fail to adhere to the standards imposed by the applicable laws, they often are subjected to monetary penalties or damages.

While it is difficult to quantify the economic impact of workplace violence, it is conceivable to conclude from the verdicts and settlements that employers pay out millions of dollars.

In the wake of these recent tragedies, employers trying to determine what can be done to ensure employees are safe from internal and external attacks.

First and foremost, employers should implement policies prohibiting violence and weapons in the workplace. These policies should be written broadly, prohibiting any behavior that is threatening, intimidating, violent or inappropriate.

Employers also should encourage their employees to report all violent behavior or threats by colleagues or clients, irrespective of where the behavior and/or threat happened. Employers also are advised to teach their employees about internal procedures for reporting violations and how to access law enforcement, security and emergency services if they perceive a threat.

Employers also can pre-empt threatening or violent behavior by maintaining adequate lighting, alarms, cameras and, if possible, a controlled entry system.

While it is not easy to predict violence, there are workplace behaviors that everyone must pay attention to. When such behaviors are observed, they should be reported immediately to management so that they can be investigated and confronted. Some of the more common warning signs include:

- Attack behavior (threats/intimidation/bullying)
- History of violence
- Poor impulse control
- Lack of personal support systems
- Sense of injustice — desire to get even
- Substance abuse
- Obsession with another person
- Mental illness
- Preoccupation with violence/weapons

It should be noted that there is no general profile of “the violent employee.” The presence of one or more of these factors does not mean that an employee will become violent. However, these factors, alone and in combination, usually have been present among employees who have committed workplace violence.

Threats to the workplace are not limited to internal threats from employees or clients. Many incidents of workplace violence are precipitated by domestic violence. In an effort to minimize this risk and to protect the victims, Colorado has a law that requires employers with 50 or more employees to permit eligible employees up to three days of leave in any 12-month period to protect themselves from particular acts of violence.

Employees may take this leave to seek a civil protection order to prevent domestic violence, obtain medical care or mental health counseling for themselves or children, take measures to secure their home from an attack from the perpetrator, seek new housing to escape the perpetrator or obtain legal assistance to address issues arising from domestic violence.

Employers also face liability for the injuries inflicted by an employee on a coworker or third party under the theory of negligent hiring or retention if the employer knew or should have known, by virtue of an employee’s prior conduct or character, that an employee posed an undue risk of harm to others.

Under a theory of negligent hiring, the employer’s liability stems from a failure to exercise reasonable care, such as conducting a reasonable investigation, prior to employment. What constitutes reasonable care is dependent upon the type and nature of the job in question, as well as the foreseeability of harm to third parties if an unfit or dangerous worker is placed in such a position.

To help alleviate the risk of negligence lawsuits, employers can, and should, verify the information provided on an employee’s application and conduct reasonable background checks. It is the employer’s duty to ask questions about prior violent behavior.

Laws regarding background checks vary, so employers need to be aware of the laws in their jurisdictions.

Generally, in Colorado, inquiries regarding arrest records are improper. It has been found that automatically disqualifying an applicant based on an arrest record can have a disproportionate impact on minority applicants and, thus, might violate civil rights laws.

Colorado law provides that records of arrests not resulting in convictions are sealed unless the subject of the record requests it be opened. Therefore, employers are prohibited from requiring applicants to disclose any information contained in sealed records.

It is important to note that a job application may not be denied solely because an applicant refused to disclose information in sealed arrest and conviction records.

On the other hand, inquiries regarding convictions are permissible, as is the employer’s subsequent refusal to hire an applicant based on the conviction records if the nature of the crime has a direct relationship to the job duties of the position the applicant is pursuing.

Employers can reduce the cost associated with workplace violence by providing training to management staff and employees and creating emergency preparedness plans to respond to violent or potentially violent situations. These plans generally include: training supervisors to identify and defuse conflict, forming a threat assessment team responsible for making critical decisions quickly, and creating a crisis management plan to be implemented during and in the aftermath of traumatic events.

If an employer becomes aware that a danger of violence exists, the employer must undertake actions necessary to investigate and protect against the risk, such as conducting an investigation or increasing on-site security. Ignoring signs of danger will not only increase the risk but will increase the employer’s culpability.

Forethought and preparation are critical.

Employers, who can recognize the warning signs of potential violence, provide training to their employees, strictly enforce a workplace violence policy and maintain solid premise security can, and often do, effectively minimize the risk and costs of liability associated with workplace violence.

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