



Workplace Violence Prevention

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Workplace Violence by the Numbers

Fatalities: Approx 500 US workers per year are workplace homicide victims

- 15% were perpetrated by co-workers or other work associates

It is consistently in the top 4 causes of workplace deaths overall

It is the NUMBER ONE cause of workplace death for women

Of those workplace homicide victims:

- 82 percent were male
- 48 percent were white
- 69 percent were aged 25-54
- 31 percent worked in a retail establishment, 23 percent were performing protective service activities

Nonfatal Incidents: Approx. 17,000 private sector workers experienced trauma, requiring days away from work (or worse)

Of those victims:

- 70 percent were female
- 67 percent were aged 25 to 54
- 70 percent worked in healthcare and social assistance industries
- 21 percent required 31 or more days away from work to recover

Workplace Violence Survey

About half (48%) of surveyed HR professionals said their organization had at some point experienced workplace violence (SHRM 2019)

Survey included incidences of harassment & intimidation, as well as physical assaults and homicides

A majority of those surveyed by Univ. of Chicago reported feeling safer in organizations that provide programs to prevent workplace violence (82%) ... but less than half (45%) said their company had a program to prevent workplace violence.

49% said their organization did not train workers on how to respond to an act of workplace violence

Nearly 1/3 of workers said they are unsure or don't know what to do if they witness or are involved in workplace violence

Defining Workplace Violence

Workplace Violence: Defined as:

- NIOSH: "violent acts (including physical assaults and threats of assaults) directed toward persons at work or on duty"
- OSHA: "any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the worksite"
 - It ranges from threats and verbal abuse to physical assaults and homicide, and can cause psychological harm as well
 - Risk for fatal violence greater for workers in sales, protective services, and transportation; nonfatal violence risk is greatest in healthcare and social services

Types of Workplace Violence

Type 1: Violence committed during a crime – e.g., worker is assaulted during a robbery of the business (stranger-to-stranger)

Type 2: Violence committed by customers/visitors to the worksite (common in health care/social services)

Type 3: Violence committed by a co-worker against another co-worker (employee-to-employee)

Type 4: Violence committed by persons with whom employees have relationships outside of the workplace – domestic violence spillover (may involve violation of protective order or restraining order)

- ✓ 24% of workplace violence situations relate to personal relationships (individual gains access to workplace to target an employee or customer who is a current or former intimate partner)
- ✓ In 2005 study, 44% of employed adults personally experienced domestic violence's effect in their workplaces, and 21% identified themselves as victims of intimate partner violence

➤ **US Dept of Labor reports that more than 70% of US workplaces do NOT have a formal program addressing workplace violence**

Defining Workplace Bullying

Workplace Bullying: Defined as “Offensive behavior that is systemic, repeated, and involves mistreatment of another at work.” (NOTE: Bullying by a group of co-workers is “mobbing”)

- Public criticism
- Cyberstalking, hostile e-mails or voicemails
- Insults or offensive remarks
- Intimidation
- Giving targeted workers the “silent treatment” and shunning
- Teasing, practical jokes,
- Finger pointing or invasion of space
- Spreading malicious rumors
- Shouting, yelling, angry outbursts

Bullying: More Subtle Forms ...

Removing tasks imperative to job responsibilities

Giving unmanageable workloads & impossible deadlines

Arbitrarily changing tasks

Purposely withholding pertinent information

Purposely leaving employees out of email correspondence or meeting invites

- Career Builder Study found peers were bullies (46%), as well as managers (45%) and higher-ups in organization (25%)
- Bullying is driven by the perpetrator's need to control the targeted individual
- It can be health-harming for the target and prevents work from being done.

Legal Considerations

Bullying: There is no federal law that specifically applies to workplace bullying, but some state laws may apply

- Bullying may be illegal when it is based on (or references) race, color, religion, national origin, age, disability, sexual orientation, or gender

Harassment: Legal theory arises out of anti-discrimination provisions in Title VII of the Civil Rights Act

- While "harassment" is not specifically mentioned, SCOTUS has interpreted a hostile work environment as violating Title VII, when harassment is so pervasive and severe that it actually alters terms/conditions of employment, creating an abusive working environment
- Harassment can be peer-to-peer, it does not need to involve a superior/subordinate relationship
- Sexual harassment is actionable if it is unwanted, unwelcomed and repeated
- Management can be held liable if it was aware of the hostile work environment and failed to take appropriate corrective action

Common Law Liability

While state laws may vary, employers may have liability for workplace violence under the following theories:

- **Premises liability:** duty of employer to keep individuals on the premises safe from injury, including criminal and violent acts of others, implementing security measures at worksites based on assessment of potential violence
 - **Respondent Superior:** the vicarious liability of employer for the acts of its employees (agents) acting within the course and scope of their employment (often fact-specific, hinging on whether employer's actions or failure to act contributed to violent act)
 - **Negligence in hiring or retention:** when employer knew or should have known of the potential for violence. Conducting background checks upon hire, immediate response to reports or threats of violence can mitigate liability
 - **Discrimination and harassment claims:** arising when violence is motivated by victim's protected characteristic (race, gender, religion, ethnicity, disability etc.)
- ✓ Consider insurance needs – consult with general liability and worker's comp insurers to ensure adequate coverage in the event of workplace violence or active shooter events, to supplement existing coverage.
- ✓ Managers should check to see if they are personally covered under company policies ...

Hostile Work Environment & Harassment

Hostile environment harassment is repeated behavior that causes an employee to feel uncomfortable, disrespected or threatened, to the point where it affects the person's ability to do his or her job

It can take place between supervisor/subordinate, or between co-workers of same rank, by persons of different OR same sexes

- Employers may be liable for harassment by third parties – contractors, temps, vendors, customers, visitors – if they do not take actions to stop it

It can affect workers who are not the direct targets of the behavior, by making them uncomfortable enough to affect their job

Managers must be aware of digital harassment as growing issue – stay alert to how new technologies can be abused, consider blocking social websites or closely monitoring use of company-owned equipment to reduce problems and limit liability

Sexual Harassment

Bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards (or refraining from adverse employment action) in exchange for sexual favors (*quid pro quo* discrimination)

Harassers can be a supervisor (direct or indirect), a co-worker, a client or customer

Hostile work environment: when harassment is so frequent or severe that it creates an offensive work environment or could result in an adverse employment decision (demotion of victim, firing, or constructive discharge) – harassment is NOT flirting!

- Hostile work environments may arise from an individual or be systemic (class action)

➤ Women are 9 times more likely than men to quit their jobs, 5 times more likely to transfer, and 3 times more likely to lose jobs because of harassment – resulting in serious economic consequences and threats to the victim's job status

Impact of “Me Too”: Workplace Harassment

In the first year after #MeToo movement began:

Charges with the EEOC increased 12%

Reasonable cause findings from the charges increased 24%

50% increase in suits filed by the EEOC

In 2018 – EEOC recovered nearly \$70 million for victims of sexual harassment

Case Study: Maryland's "#ME TOO" Law

MD enacted legislation barring employers from sheltering sexual harassers in the workplace (effective 10/1/18)

Disclosing Sexual Harassment in the Workplace Act of 2018: bans employment contracts requiring sexual harassment claims to be resolved through private arbitration (although there is no specific penalty against employers for violating the new law)

Law requires large employers (50+ employees) to report information about sexual harassment settlements to the Maryland Commission on Civil Rights, which can release the info publicly, and form also asks whether any personnel action was taken against an employee who was the subject of the settlement

Law also prohibits employers from taking adverse action against worker because of refusal to enter into an agreement containing an invalid waiver of rights or remedies for claims of sexual harassment or retaliation (employer may have to pay worker's attorney fees and costs if try to enforce invalid arbitration provision)

Unwanted Behaviors May = Harassment

Leering & wolf whistles

Indecent exposure

Sexual innuendo

Comments about co-worker's body

Tales of sexual exploitation or pornography

"Accidental" brushing against sexual body parts or sexual sneak attacks (grabbing)

Lewd and threatening letters, emails, voicemails, social media posts

Inappropriate invitations (e.g., hot tub)

Pressure for dates or stalking

Unwelcome touching and hugging

Sexist and insulting graffiti, jokes, cartoons

Hostile put-downs of women or sabotaging work

Exaggerated mocking "courtesy"

Public humiliation

Insisting that worker wear revealing clothes or giving inappropriate gifts of lingerie

Hooting, sucking, lip smacking and animal noises

Sexual Violence in the Workplace

Sexual violence crosses all socioeconomic lines, but various oppressions such as racism, sexism, classism, ableism, and ageism can create barriers that may be exploited by people who commit sexual violence

- 80% of the victims of workplace sexual violence are women – weapons are used to harm or threaten victims in 20% of workplace violence and stalking cases
- The US DOD estimates that only about 13.5% of survivors report a workplace sexual assault

Between 2005 and 2009, rape/sexual assault accounted for 2.3% of all nonfatal violence in the workplace

One study of employed women found that 38% had experienced sexual harassment in the workplace

81% of women and **35%** of men who have been sexually assaulted report significant short- or long-term impacts such as Post-Traumatic Stress Disorder (PTSD)

About 50% of women lost or were forced to leave their job in the year following a sexual assault

Rape is the most under-reported crime: 63% of sexual assaults are not reported to the police, but the prevalence of false reporting is low (between 2 % and 10%, according to major studies)

Workplace Violence: Employee-to-Employee

Causes?

Job-related stress or high frustrations
 Revenge for firing or failure to gain promotion
 Fear of losing a job
 Rejection by a co-worker due to thwarted romantic interest
 Family or money problems

Traits to watch for ...

History of violence (check references – zero tolerance)
 Fascination with weapons, showing them off at work
 Use of alcohol or other drugs
 Family and work problems, including violence in home relationships
 Clenching fists or jaw, violent gestures or statements
 Being unable to self-regulate emotions – “short fuse”
 Physical, mental or emotional problems (and what about medication side-effects???)

ADA & Workplace Violence

The ADA applies to employers, union, agencies with 15+ employees

- Some states and municipalities may have lower thresholds for analogous local laws

Federal employers and contractors are covered by the Rehabilitation Act, which has parallel protections

ADA covers qualified applicants and employees who can perform essential job functions (with or without reasonable accommodation)

Covers:

- Persons with a physical or mental impairment that substantially limits a major life activity
- Persons with a record of such disability
- Persons regarded as having a disability (even if not actually disabled by ADA definitions)
- Persons associated with disabled individuals (e.g., a spouse with a disability – EEOC has guidance on “Caregiver Discrimination”)

Direct Threat to Safety: Factors

Bragdon v. Abbott (S. Ct. 1998) – A “good faith belief” that a risk is significant is not enough to meet the standard. The determination of “significant risk” must be based on medical or other objective or scientific belief.

In determining whether an individual would pose a direct threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The imminence of the potential harm

ADA, Direct Threat & Mental Illness

OSHA can enforce against an employer under the GDC in workplace violence situations where the hazard was foreseeable to employer and there was feasible method of risk mitigation

ADA covers mental health issues as well as physical disabilities that substantially limit one or more major life activities (42 USC 12102(1)(A))

EEOC says: history of psychiatric disability or history of violence/threats are not a sufficient basis to conclude an individual poses a direct threat

Employer must assess likelihood and imminence of future violence

- Prior treatment that did not affect behavior or lack of subsequent treatment
- Temporal proximity to incidents of violence or threats
- Prior suicide attempts do NOT mean individual poses imminent risk of harm
- Employer must seek reasonable medical judgments based on the best factual evidence to assess risk

OSHA GDC & Workplace Violence

OSH Act states that employers have a general duty to provide a workplace “free from recognized hazards that are causing or likely to cause death or serious harm to employees” (Section 5(a)(1) – the “General Duty Clause”)

- OSHA penalties are now a maximum of \$132,598 per affected worker
- OSHA also can issue citations under Part 1904 for adverse action against a worker who reports an injury or illness – and can also give rise to a Section 11(c) whistleblower claim

OSHA’s Regulatory Agenda includes action on a rulemaking for *Prevention of Workplace Violence in Health Care and Social Assistance*

➤ *OSHA Directive CPL 20-01-052 (2011) notes that it does not “require an OSHA response to every complaint or fatality of workplace violence or require that citations or notices be issued for every incident inspected or reported”*

OSHA & NIOSH Guidance

In 2011, OSHA issued CPL 02-01-052, Enforcement Procedures for Investigating or Inspecting Workplace Violence, stating: "Workplace violence is recognized as an occupational hazard in some industries and environments which can be avoided or minimized if employers take appropriate precautions."

- High risk workplace factors include: working alone, at night, or in isolated or high crime areas, working with volatile or unstable people, handling money or valuables, providing services or care, or working where alcohol is served

CPL instructs OSHA inspectors to cite the GDC if there is evidence employer recognized the existence of a potential workplace violence hazard affecting his employees, and if there is a feasible means of preventing or minimizing such hazards

OSHA has guidelines on prevention of workplace violence for:

- Healthcare and Social Service Workers (2004)
- Late-Night Retail Establishments (2009)

NIOSH has publications on workplace violence risk factors and prevention strategies, and on research needs in this area

Congressional Action: Workplace Violence

Legislation has been introduced in Congress in previous session to force OSHA to issue standard on expedited basis

HR 1195 -- Workplace Violence Prevention Act (limited to HC & SS)

PASSED House 4/16/21 (254-166 with 38 GOP voting in favor and bi-partisan cosponsors) and referred to Senate (NO companion bill ... yet)

Legislation seeks an enforceable federal standard to prevent violence against nurses, physicians, social workers, emergency responders and other caregivers

Legislation would offer protections to public-sector workers in state plan states, but would not protect them in federal OSHA states

- Will COVID-19 related workplace violence incidents (retail, restaurants, delivery) be the basis for expanding scope of federal standard (if enacted)?

Next Steps? Look to Canada ...

National Standard of Canada for Psychological Health & Safety in the Workplace – Launched in 2013

First of its kind in the world -- a set of voluntary guidelines, tools and resources intended to guide organizations in promoting mental health and preventing psychological harm at work

Provides a comprehensive framework to help organizations of all types guide their current and future efforts, and assist with: Productivity, Financial Performance, Risk Management, Organizational Recruitment & Employee Retention

Impetus -- About 30 per cent of short- and long-term disability claims in Canada are attributed to mental health problems and illnesses

Elements include “Mental Health First Aid”:

- Assess the risk of suicide and/or harm
- Listen non-judgmentally
- Give reassurance
- Encourage professional support
- Encourage other supports

For more information: <http://www.mentalhealthcommission.ca/English/focus-areas/workplace>

Preventing Harassment

Communicate policies

- Give every employee a written copy of your policies on harassment (in a language they understand)
- Update policies to cover new technologies and laws

Training for managers and workers

- Consider formal, ongoing training sessions
- Empower workers to speak up if they feel disrespected
- Document all training efforts, including signed attendance sheets and receipts for policies

Create safe and respectful work environment

- Set an example by following company policies – walk the walk!
- Encourage employees to report if they witness or are victims of inappropriate behavior and make sure there is a safe reporting channel

Pay attention to workers’ well-being

- Watch for warning signs that an employee is experiencing harassment (withdrawal or avoidance of co-workers, increased absences, ongoing stress-related ailments, decreased self-esteem)

Handling Worker Terminations

- Keep termination meetings brief, schedule them for the end of the day to minimize confrontation and embarrassment
- Work with building security and local law enforcement in risky terminations
- Review what can and cannot be lawfully done to restrict employees from possessing weapons on workplace property
- Counsel those in the meeting on de-escalation techniques, and use of calm and nonconfrontational approaches
- Avoid physical contact with the affected employee
- Offer outplacement services, resume help or letters of reference (where appropriate) and avoid disparate treatment!

What Else Can Employers Do?

If removing worker due to safety concerns (and relying upon job description for essential functions):

- Seek out expert medical providers who can evaluate the ability of worker to perform essential functions safely
- Allow doctor to do complete in-person exam of the worker, do not let them base medical opinion on “direct threat” solely on employer docs or cherry picked information
- If incidents are the basis of the concern requiring removal, focus on what actually happened, rather than a speculative risk
- Provide reasonable accommodation where possible ... but safety first!
- Consider what changes in job location, hours or tasks might be made to enable the worker with mental illness to safely remain in the workforce

Best Practices for Employers

- Evaluate your workplace programs, in light of applicable federal and state laws
- Create a workplace policy on domestic and sexual violence, stalking, and dating violence
- Provide information to employees concerning leave and accommodations for victims of violence
- Post information in the workplace (or intranet, or company newsletters) about domestic violence, sexual violence, stalking and dating violence and include a list of community resources available to victims
- Include information about resources for victims in pay checks, employee manuals, staff training, safety and health committee meetings
- Implement comprehensive training on domestic & sexual violence and on sound responses to workplace violence/active shooter situations
- Consider a multi-disciplinary team to address issues of workplace violence: HR, safety and security personnel, EAP programs, legal, union reps, managers, and key employees
- Ensure that each employee & supervisor receives proper education about workplace/sexual violence prevention and company procedures
- Have a zero tolerance policy for pornography, sexual or gender objectification, and harassment
- Respond swiftly and effectively to reports of violence or threats of violence
- Make workplace safety and violence prevention a top priority!

End Goal: The “Civil Workplace”

- Use respectful, supporting language in all interactions, no matter the subject under discussion
- Be courteous and polite (please/thank you, requests instead of demands) and keep a calm tone of voice
- Be attentive to others, say hello, practice active caring, and listen to each other
- Be inclusive, part of the same team even when in different positions or performing different tasks
- Question a colleague’s position politely and refer to the next level of management if it cannot be resolved for further review
- Give colleagues direct, non-personal feedback rather than personal criticism
- Respond, rather than react (if emotional – breathe!)
- Approach conflict with maturity and desire for resolution, rather than looking for a fight or opportunity to target a co-worker
- Maintain a positive and civil attitude even on bad days, and respect co-workers’ decision-making abilities
- Be tolerant of differences and hold constructive dialogues
- Take responsibility for your mistakes

Questions???



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