

# Workplace Violence: Identification, Prevention, and If the Worst Happens, Evaluation Exposure

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# Roadmap

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- Defining
- Causes
- Identifying Warning Signs
- Preventive Measures
- Workplace Protection Laws
- Employer Immunity
- The Loaded Debate
- OSHA Implications



# What is Workplace Violence?

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**Broadly defined, can encompass many behaviors along a broad spectrum:**

- General Disruptive Behavior
- Verbal Abuse
- Threatening Behavior
- Harassment
- Physical Assault

# Causes of Workplace Violence

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- Non-Work Related – Domestic Violence
- Disgruntled Employee
- Unsatisfied Customer
- The Unknown Attacker

# Warning Signs

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- Difficult to Predict
- Stalking or “Hanging Around”
- Threatening Notes or Comments (postings on social media)
- *Suspicious Web Traffic*
- Complaints by co-workers
- Employee Becomes Less Social or Withdrawn – coupled with other Performance Problems like Increased Absences. Extreme changes.
- Suspected or confirmed substance abuse

# Preventing Workplace Violence

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- Know the causes and signs.
- Assess your workplace.
- Are you a high risk business?
  - Cash businesses
  - Sale of Alcohol
  - Poorly lit
  - Located in high crime areas

# Preventative Tips

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- **Worksite Analysis**
  - Landlord, Police, Fire.
  - Review Safety Record.
  - Review Workers' Compensation Records.
- Promote Respect in the Workplace.
- Identify your Threat Assessment and Emergency Response Teams.
- **Policies** and Procedures
  - Forbid violence and establish procedures for reporting.
  - Encourage prompt reporting.
  - Establish a safe meeting place.
  - No retaliation.

# I'm a High Risk Business. What should I do?

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- Identify Hazards, Implement Proactive Protective Measures
  - Security Guards
  - Video Surveillance
  - Bullet Resistant Glass or Enclosures
  - Panic Buttons
  - Request Police Surveillance
  - Increased and Better Lighting
  - Secured Exits
  - Talk to your Insurance Carrier about other options



# Evaluating Exposure – Immunity?

Liability May Depend on the Identity of the Victims and the Identity of the Actor

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- Preemption where employees are the victims: Potential worker's compensation claim.
- Third-parties are victims: May shield liability when employee was not "acting within the line and scope of his employment."
- Employer/Businesses are not generally expected to be the "insurer of every act."

**INDUSTRY STANDARDS PLAY A LARGE ROLE IN THIS ANALYSIS,  
AS DO THE CATEGORIES OF EMPLOYEES YOU ARE HIRING.**

# Preventative Tips

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- Create Comprehensive Workplace Violence Policy
- **Training**
  - Outline your comprehensive plan.
  - Emphasize employee safety.
  - Discuss conflict resolution.
  - Establish record keeping procedures.

## Preventative Tips (continued)

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- **Emergency Preparedness Training**
  - CPR Trained Volunteers
  - Designated Emergency Safety Marshalls
  - Meeting Places
  - Emergency Code Words
  - Updated Emergency Contact Sheets
- **Tools**
  - First-Aid Kit
  - Defibrillators
  - Safety Whistles
- **Test and Improve**
  - Building Evacuation
  - Consideration for those with Special Needs

# Comprehensive Plan

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- Before Incident [Preventative Measures]
- Emergency Response During Incident
- Post-Incident Response

# Emergency Response During Incident

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- Emergency Response Team Goes Into Action.
- Get Medical Help.
- Call Police.
- Call Management.
- Secure the Premises.

# Emergency Response Post-Incident

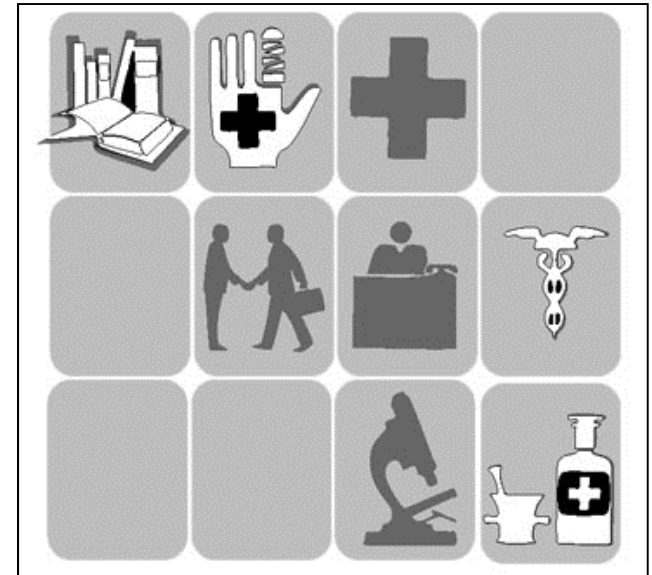
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- **Post-Emergency Communications Response**
  - To the Employees
  - To the Company
  - To the Media
- Return-to-Work Policy
- Counseling/EAP
- Evaluate what took place and determine if anything could be done differently.

# Occupational Safety and Health Act

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- “Each employer shall furnish . . . employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” 29 U.S.C. § 654(a) (2006).
- Federal courts in Florida and Oklahoma have held that OSHA **does not** preempt state “Workplace Protection” laws. See *Ramsey Winch, Inc. v. Henry*, 555 F.3d 1199 (10th Cir. 2009); *Fla. Retail Fed’n., Inc. v. Attorney Gen. of Fla.*, 576 F. Supp. 2d 1281 (N.D. Fla. 2008).



# OSHA's Enforcement Guidance

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- High Risk Industries
  - Healthcare and Social Service Settings
    - Hospitals
    - Pharmacies
    - Long-term care facilities, etc.
  - Late-night Retail
    - 24 hour operations
    - Liquor stores

**OSHA Instruction:** Enforcement Procedures for Investigation or Inspecting Workplace Violence Incidents

[http://www.osha.gov/OshDoc/Directive\\_pdf/CPL\\_02-01-052.pdf](http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-01-052.pdf)



# OSHA's Identified Workplace Violence

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- **Criminal Intent**
  - Current or former employees come to commit a crime
- **Customer/client/patients**
  - Violence directed by customers, clients to employees
- **Co-workers**
- **Personal**
  - Violence committed to employee by someone who has a personal relationship with the employee

# OSHA's Burden of Proof for a General Duty Violation

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- **Known risk factor**
  - High crime area
  - Threats in the past
- **Recognized by ER or industry**
  - OSHA guidance
  - NIOSH
  - Industry guidance
- **Feasible abatement**

## EEOC Concerns: ADA/AAA

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- Disciplining an employee with psychiatric and other disabilities
- Direct Threat
- Accommodations
- “Regarded As” Having a Disability

# EEOC Concerns: Pre-Employment Screening

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- **What is allowed/not allowed?**
  - Interview
  - Background Checks
    - History of Violence
    - Warning: EEOC's Recent Guidelines
      - Must be tied to the job
  - Prior Claims of Harassment
  - Reference Checks

# Recent Increase In General “Workplace Protection” Laws

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- **What is the NRA-ILA?**
  - The National Rifle Association Institute for Legislative Action
- **Where did the NRA first push for legislation?**
  - Oklahoma
- **What is the scope of proposed legislation now?**
  - Typically, workplace protection laws seek to prohibit employers from enacting a rule or policy that prohibits an employee with the proper permit from storing a firearm in **a locked vehicle in the employer’s parking lot.**

# States with Workplace Protection Laws

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## Quick Reference to State Laws

<b>Alaska</b>	Alaska Stat. §18.65.800	<b>Louisiana</b>	La. Rev. Stat. Ann. § 32:292.1
<b>Arizona</b>	Ariz. Rev. Stat. Ann. 12-781	<b>Minnesota</b>	Minn. Stat. § 624.714
<b>Florida</b>	Fla. Stat. § 790.251(2)(c)	<b>Mississippi</b>	Miss. Code Ann. § 45-9-55
<b>Georgia</b>	Ga. Code. Ann. § 16-11-135, 16-11-123; 16-11-124, 16-11-127.1	<b>Maine</b>	26 M.R.S.A. § 600
<b>Idaho</b>	Idaho Code Ann. § 5-341	<b>Michigan</b>	Mich. Comp. Laws § 28.425n
<b>Indiana</b>	Ind. Code § 34-28-7-2	<b>North Dakota</b>	NDCC 62.1-02-10; 13
<b>Kansas</b>	Kan. Stat. Ann. § 75-7c10(b)(1)	<b>Oklahoma</b>	Okla. Stat. tit. 12, §§ 1289.7a, 1289.27
<b>Kentucky</b>	Ky. Rev. Stat. Ann. § 237.106, 237.110	<b>Texas</b>	Tex. L. Code § 52.061-.064
		<b>Utah</b>	Utah Code Ann. § 34-45-103
		<b>Wisconsin</b>	W.S.A. § 175.60

# Gun Laws and Employer Immunity

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- Many state laws provide employer immunity for negligence liability, i.e., an employer **will not** be held liable for injuries or damages arising from firearms stored on its property.
- Utah, Minnesota, Kentucky, Kansas, and Arizona **do not** grant employers immunity.
- No state grants immunity specifically for workers' compensation claims.



## Other Considerations

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Some insurance carriers will *not* cover an employer who permits firearms on company property – if you are in a workplace protection state, make certain that your insurance carrier will cover your place of employment.

Intentional Acts Excluded.



## A Safer Workplace?

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- A 2005 study found that employers who allow guns at the workplace were 5 to 7 times more likely to be the site of a worker homicide.
- The NRA responded with a study finding that:
  - In 2004, only 10% of workplace deaths were homicides, and
  - 75 – 82% of the workplace homicides were in connection with a robbery.



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Each year, workplace violence accounts for about 20 percent of all violent crime in the United States. On average, 500 of those incidents are fatal. When incidents are fatal, more than three-quarters of the time the victim died from gun violence. Two-thirds of the time, however, the murder occurred during the course of a robbery. The rest of the time, the victim was either a co-worker, an acquaintance, or a family member of the murderer.

**- Dr. Dana Loomis**

**Director of the School of Public Health, University of Nevada**

# The Loaded Debate

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- Which side are you on?



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- An armed employee, trained to use a handgun lawfully and effectively in self-defense, can offer a better response to a violent assault in the workplace than an unarmed victim.



# Employer Rights vs. Employee Rights

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My position remains that if an employer bans its employees from keeping their lawfully carried weapons in their own car then the employer assumes absolute and unlimited liability for the safety of that employee on his or her way to and from work. And yes that includes any stops along the way. That means that if the disarmed employee were hurt, robbed, car-jacked, robbed, or killed that the employer's liability should be as absolute and unlimited as if they were complicit in the crime.

**- Quote from the Internet**



“Wait a second, that’s a toy gun. I’m only authorized to give you monopoly money.”

# What now?

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- Know the Particulars of these Laws
- Review Workplace Violence Policies
- Consider Employee Training
- Consider Providing EAP
- Consider Appropriate Security Measures for your Workplace





# Questions and Comments

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