

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

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# Roadmap

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- Identification
- Causes
- Prevention
- Workplace Protection Laws
- Employer Immunity
- OSHA Implications
- The Loaded Debate
- What now?
- Questions/Comments?



# 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**

# What is Workplace Violence?

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- Broad Definition
- Examples:
  - Physical Assault
  - Threatening Behavior
  - Harassment
  - Verbal Abuse
  - Disruptive Behavior

# 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
- *Suspicious* Web Traffic
- Numerous Complaints
- Employee Becomes Less Social or Withdrawn – coupled with other Performance Problems like Increased Absences. Extreme changes.

# Preventing Workplace Violence

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- Know the causes and signs.
- Assess your workplace.
- Are you a high risk business?
  - Exchange of Money
  - Single or Multiple Employee work site
  - Sale of Alcohol
  - Poorly lit or well-lit
  - Location



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

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- Identify Hazards
  - Bullet Resistant Glass or Enclosures
  - Security Guards
  - Panic Buttons
  - Video Surveillance
  - Request Police Surveillance
  - Height Charts
  - Lighting
  - Secured Exits
  - Talk to your Insurance Carrier

# Pre-Employment Screening

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- Interview
- Background Checks
  - History of Violence
  - Prior Claims of Harassment
  - Warning: EEOC's Recent Guidelines
- Reference Checks

# 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.

# Preventative Tips

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- Screening/Searches?
  - Employees
  - Customers
  
- Training
  - Outline your comprehensive plan.
  - Emphasize employee safety.
  - Discuss conflict resolution.
  - Establish record keeping procedures.

# Preventative Tips

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- Safety Kit
  - Flashlight and extra batteries
  - Fire extinguisher
  - First-Aid
  - Whistle
  - Local maps
  - Cell phone with charger (solar batteries) and
  - Radio with batteries
- Test and Improve

# What the Occupational Safety and Health Act Requires

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- ***Written and oral emergency action plans.*** An emergency action plan must be in writing, kept in the workplace, and available to employees for review. However, an employer with 10 or fewer employees may communicate the plan orally to employees. 29 C.F.R. § 1910.38(b).
- Review of emergency action plan. An employer must review the emergency action plan with each employee covered by the plan:
  - When the plan is developed or the employee is assigned initially to a job;
  - When the employee's responsibilities under the plan change; and
  - When the plan is changed.29 C.F.R. § 1910.38(f).

# Comprehensive Plan

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- Building Evacuation – Where is your safe place?
- Consideration for those with Special Needs
- Emergency Response
- Employee Assistance Program
- Communications Response
  - To the Employees
  - To the Company
  - To the Media
- Returning to Work

# General “Workplace Protection” Law

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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?**

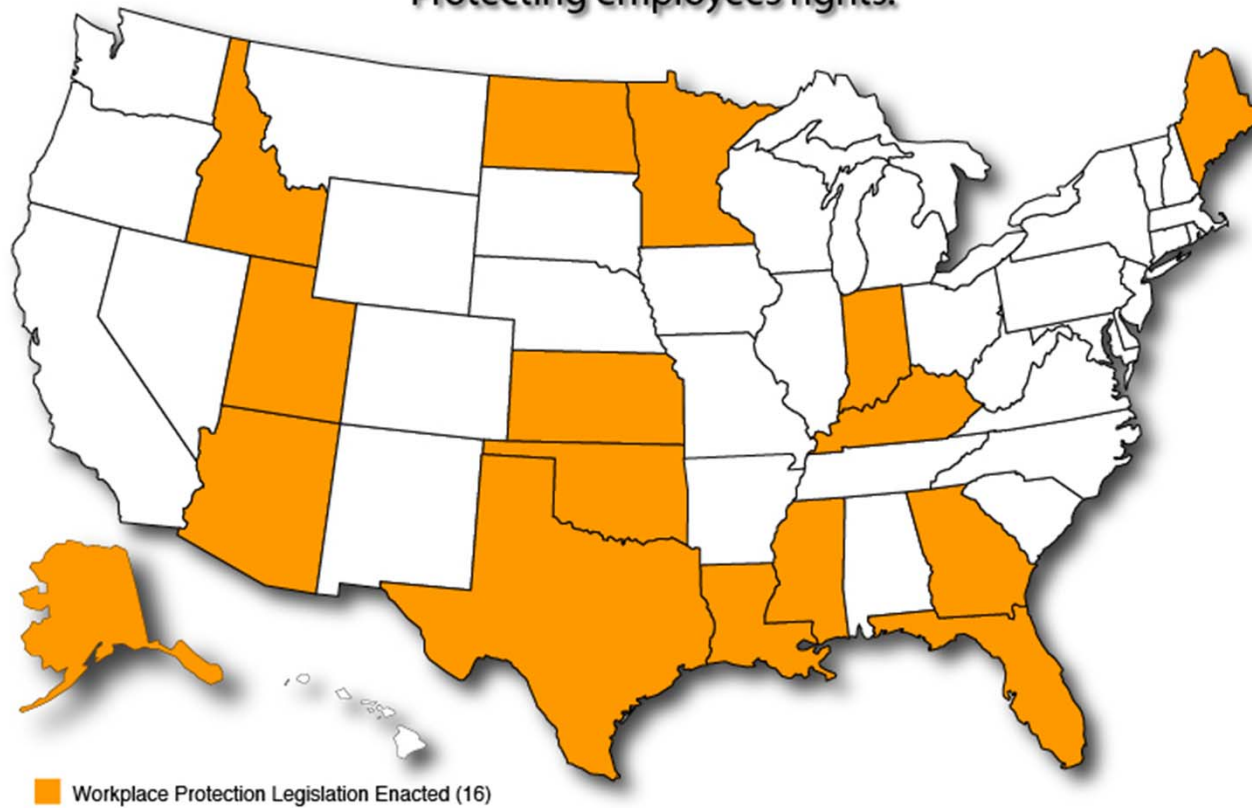
Typically, workplace protection laws seek to prohibit employers from enacting a rule or policy that prohibits an employee with the proper permit from storing a firearm in a locked vehicle in the employer’s parking lot.



# States with Workplace Protection Laws

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Workplace Protection  
Protecting employees rights.



# Quick Reference to State Laws

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

# Gun Laws and Employer Immunity

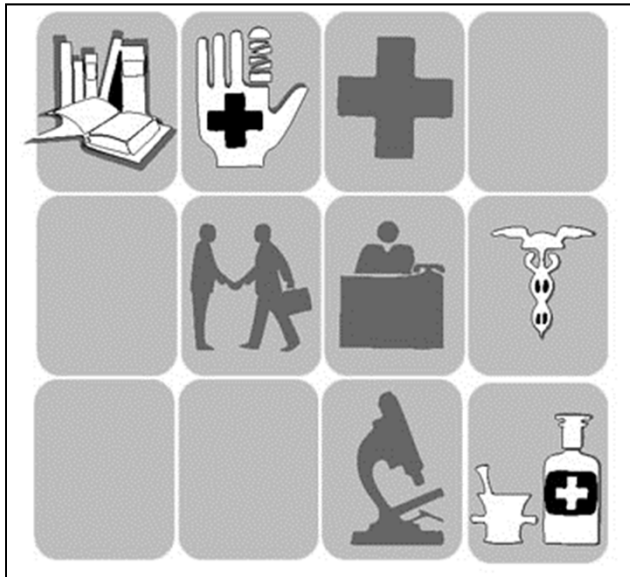
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- Many state laws provide employer immunity for negligence liability, i.e., an employer **will not** be held liable for injuries or damages arising from firearms stored on its property.
- Utah, Minnesota, Kentucky, Kansas, and Arizona **do not** grant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



# 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).

# The Loaded Debate

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- Which side are you on?





**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.**

# Post-Incident

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- Emergency Response Team Goes Into Action.
- Get Medical Help.
- Call Police.
- Call Management.
- Secure the Premises.
- Media Policy
- Counseling/EAP
- Evaluate what took place and determine if anything could be done differently.

# Evaluating Exposure – Immunity?

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- Liability May Depend on the Identity of the Victims and the Identity of the Actor
- Employee as a Victim – potential worker's compensation claim.
- Third-Party as a Victim - Employee was not "acting within the line and scope of his employment."
- Employer/Business is not the "insurer of every act."



# EEOC Concerns

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

# 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.



# 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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