

# Workplace Violence: Not as Unpredictable as Once Thought

## Warning signs, best practices to minimize risk

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When a Florida man opened fire at a school board meeting in December 2010, it made top headlines from coast to coast. But isolated, high-profile incidents such as this fail to alert us to the true prevalence of violence in the workplace.

The U.S. Bureau of Justice Statistics reports 1.7 million incidents of violent crime in the workplace from 1993 to 1999 and nearly 20 percent of these were aggravated attacks. The numbers demonstrate that this is a more serious problem than most realize.

### Warning Signs

There is a myth that the person who brings violence to the workplace simply “snaps” without warning. In fact, in most cases, there are warning signs. Conduct that foreshadows an episode of workplace may include:

- intimidating, bullying, belligerent, or other aggressive behavior;
- direct or veiled threats of harm;
- statements showing fascination with workplace violence;
- statements indicating desperation over personal problems;
- discussion of “fixing things” or “exit plans”;
- frequent absences coupled with a suspicion of substance abuse or domestic violence; and
- extreme change in normal behaviors, including mood swings and paranoid behavior.



### Potential for Liability

Employers face liability for acts of workplace violence under the general duty clause of the Occupational Safety and Health Act (OSHA). This provision states that an employer is to “furnish each of his [sic] employees 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 employees”<sup>1</sup>

Most states also have laws that, like OSHA, require safe workplaces.

When an employee is injured as the result of workplace violence, state workers’ compensation statutes typically provide a

remedy to employees. On the other hand, they generally shield employers from additional liability if the injury arises in the course and scope of employment.<sup>2</sup>

Yet, some courts have held that workers’ compensation statutes do not cover willful or malicious acts and have allowed victims of workplace violence to directly sue the employer for damages.<sup>3</sup> A few other courts have decided that violent acts motivated by personal animosity against the injured employee are not covered by workers’ compensation because these incidents do not arise in the course and scope of employment.<sup>4</sup>

If workers’ compensation does not limit an injured employee’s right to recover damages, you, as the employer, may be liable under common law theories of *respondeat superior* and negligence. This legal doctrine provides that the employer

is liable for employees’ actions if those acts were committed within the scope or course of employment. The determination of scope or course of employment generally depends upon the particular facts in each case.<sup>5</sup>

### Best Practices to Minimize Risk

You can take steps to prevent the likelihood of violence with these generally accepted best practices:

- **Pre-Employment Screening.** Conduct effective pre-employment screening with every employee. Run background checks and actually check employee-

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