

Workplace Violence: Not as Unpredictable as Once Thought

Warning signs, best practices to minimize risk

by Kathryn M. Vanden Berk

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”¹

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.²

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.³ 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.⁴

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.⁵

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-

Continued on page 34

Resources for Implementing Preventative Best Practices

A variety of resources are available to help Alliance for Children and Families and United Neighborhood Centers of America members implement the best practices outlined in this column:

- **DocuShare.** Search a web-based library of policies, procedures, and manuals related to preventing workplace violence, including pre-employment practices, harassment policies, whistleblower documents, and termination and discipline procedures: alliance1.org/severson/docushare.
- **Online Discussion Groups.** Receive answers to questions pertaining to a wide variety of aspects of organizational operations through the Alliance's human resources and senior leadership online discussion groups: alliance1.org/networking/profession-specific.

- **FEI Behavioral Health.** Discover the benefits of an employee assistance program by contacting Alliance sister company FEI Behavioral Health: feinet.com.
- **External Resources.** Learn more about pre-planning early interventions and emergency responses by visiting the U.S. Department of Labor's Occupational Safety and Health Administration: osha.gov/SLTC/workplaceviolence. The National Institute for the Prevention of Workplace Violence also has resources: workplaceviolence911.com. Additionally, the Brady Center to Prevent Gun Violence publishes a 90-page report about weapons issues and employers' rights: bradycenter.org/xshare/pdf/reports/gunsnbusiness.pdf.

provided references. If a reference refuses to give more than basic information about the person, ask the applicant for another. It's his or her duty to provide viable references; you should not have to wonder why their reference is not talking.

- **Employee Assistance Program (EAP).** Consider the value of providing an EAP as a preventive measure. An EAP can help intervene when matters appear dicey and help diffuse hostile situations. In worst case scenarios, an EAP can provide crisis assistance and grief counseling.
- **Zero Tolerance of Harassment.** Refer to my column in Issue 4 – 2009 of the *Alliance for Children & Families Magazine* for policies and procedures that can deter behaviors that might lead to workplace violence. Require employees to report any threatening, harassing, or bullying conduct at the earliest time possible, and protect whistleblowers from retaliation.
- **Respectful Terminations and Discipline.** Because humiliation is a factor that runs through many workplace violence scenarios, be sure that employee discipline and terminations are carried out in a

respectful manner. The maxim “praise in public and punish in private” is worth remembering.

- **Pre-Plan Early Interventions.** Train and inform supervisors and key employees about the warning signs, how to assess threats, reporting procedures, and phone numbers of external resources such as private security resources and law enforcement. As a final precaution, be sure to establish escape routes and communicate them to all employees.
- **Pre-Plan Emergency Response.** Identify a crisis management team, establish communication channels, determine who will manage public relations, and assign responsibilities in the event of a crisis.
- **Use Technology.** Visitor and employee identification badges, tags, or cards are low-tech ways of identifying those who have permission to be at the workplace. If you have particularly vulnerable sites, it may be important to have them accessible only with electronic passcodes or passkeys.
- **Ban Weapons.** Most employee behavior codes ban the introduction of weapons into the workplace. If your state permits the carrying

of concealed weapons, or allows employees to keep weapons in their cars, be sure you understand your rights to set limits. ■

ENDNOTES:

1. See the Occupational Safety and Health Act, Section 5(a)(1).
2. See *Dekalb Collision Center, Inc., v. Foster*, 562 S.E.2d 740 (Ga. App.), cert. denied, 2002 Ga. LEXIS 823 (Ga. 2002), in which the state workers' compensation statute barred a negligence suit against the employer of an employee killed when he tried to stop a workplace fight because his death arose out of and in the course of employment.
3. See *Blailock v. O'Bannon*, 795 So.2d 533 (Miss. 2001), in which a retail clerk assaulted by her manager was allowed to sue her employer for damages. The state workers' compensation statute applied only to injuries from negligence or gross negligence and did not cover injuries caused by the willful or intentional acts of another employee acting on the employer's behalf.
4. See *Panpat v. Owens-Brockway Glass Container, Inc.*, 49 P. 3d 773 (Ore. 2002), on remand, 71 P. 3d 553 (Ore. App. 2003), in which the estate of an employee killed by her co-worker after she ended their romance was allowed to sue her employer for negligence because the motivation for the assault was unique to the romantic relationship and not a workplace event.
5. For example, in *Clark v. Pangan*, 998 P.2d 268 (Utah 2000), the court said a three-part test should apply to determine whether an alleged assault and battery of one employee by another was committed within the scope of employment. The conduct must (1) be of the general kind the employee is employed to perform, (2) occur within the hours of work and ordinary spatial boundaries of the employment, and (3) be motivated, at least in part, by the purpose of serving the employer's interest.



Kathryn Vanden Berk practiced law for nine years before serving as the president of two residential treatment centers for children. Now practicing in Chicago, she focuses

on nonprofit start-ups, corporate and tax law, and employment issues. She serves as adjunct faculty at several Chicago universities, and is a member of the Advisory Board of the Axelson Center for Nonprofit Management at North Park University. She authored a handbook on starting nonprofits that is available from the Nonprofit Financial Center, Chicago, and a chapter in the Illinois attorney's handbook Not-for-Profit Corporations, 2004 Ed., Illinois Institute of Continuing Legal Education. In 2004 she authored Retooling Employment Standards for the Future, a publication of the First Nonprofit Educational Foundation, Chicago. She can be reached at 312-442-9076 or at info@beavandenberk.com.