This practice note provides practical guidance to employers on legal issues related to workplace violence and strategies for preventing and responding to workplace violence.

Specifically, this practice note covers the following workplace violence issues:

- A Definition of Workplace Violence
- Categories of Workplace Violence
- Private Employers' Duties under the Occupational Safety and Health Act regarding Safe Workplaces
- Other Laws That Affect Measures Employers Take to Prevent and Address Workplace Violence
- Key Tips for Preventing Workplace Violence
- Preparing for and Responding to Workplace Violence

For more information on drafting workplace violence policies, see Workplace Violence Policies: Key Drafting Tips and Workplace Violence Policy. Also see Bullying in the Workplace: Best Practices.

A DEFINITION OF WORKPLACE VIOLENCE

The type of workplace violence most people immediately think of—active shooter homicides—is devastating to an employer, its employees and their families, its clients, and even to an industry. In 2016, there were 500 workplace homicides in the United States. See U.S. Department of Labor Bureau of Labor Statistics: There were 500 workplace homicides in the United States in 2016. Of these homicides 394 were workplace shootings. Id. This number was up from 2015, when there were 354 workplace shootings. See U.S. Department of Labor Bureau of Labor Statistics: Injuries, Illnesses, and Fatalities. Active shooter incidents are becoming more common and deserve significant attention from every employer, but it is also important to understand that the concept of workplace violence encompasses much more than homicides.

Private employers adopt their own definitions of workplace violence. If the employer does not already use a particular definition, or it wants to reconsider that definition, there are several examples of conduct rules and workplace violence policies available on the internet that it can use as a starting point.

The Occupational Safety and Health Administration (OSHA) defines workplace violence as “any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the worksite.”
See Occupational Safety and Health Administration: Workplace Violence. Importantly, this definition includes verbal threats and intimidation—not just physical violence and threats of physical violence.

The National Institute for Occupational Safety and Health defines workplace violence as “violent acts (including physical assaults and threats of assaults) directed toward persons at work or on duty.” See The National Institute for Occupational Safety and Health (NIOSH): Violence Occupational Hazards in Hospitals. This is a much narrower definition.

State regulators also vary in their definitions. For example, Maryland Occupation Safety and Health (Maryland’s state OSHA entity) employs a much broader definition. It defines workplace violence as “a wide range of acts that include all violent behaviors and threats of violence, as well as any conduct that can result in injury, property damage, induce a sense of fear or otherwise impede the normal course of work.” (Definition derived from Maryland Occupational Safety & Health Training and Education Seminar, 9/20/17, led by George Penyak in Laurel, Maryland.)

Before adopting a definition of workplace violence, think carefully about what behavior the employer is willing to consistently police—from the top down. If the employer is not willing to enforce the definition as applied to its Senior Vice Presidents or the Chief Executive Officer, the employer should not adopt it. Disparate treatment under the policy will destroy its efficacy and could lead to lawsuits.

Types of violence that you may want to include within the scope of a workplace violence policy include:

- Homicide
- Brandishing or using a weapon
- Physical assault
- Damaging, destroying, or sabotaging property
- Intimidating others
- Scaring others
- Harassing, stalking, or giving undue unwanted attention to another
- Shaking fists, kicking, punching a wall, screaming at others
- Verbal abuse including offensive, profane, and vulgar language
- Threats, whether made in person or through letters, texts, phone, or email

Adopting a broad (but not too broad) definition for workplace violence is important because a consistently enforced policy can help nip bigger problems in the bud. For example, actively addressing threatening language may stave off a future physical attack, and a broad zero-tolerance policy can provide a viable mechanism for discussing and stopping intimidating, abusive verbal behavior in the workplace. This effort can be central to retaining talent. Because current employment laws within the United States do not address workplace bullying, unlike the laws of many other countries, an employer’s workplace violence policy or conduct rules may provide the only clear pathway by which an employer or an employee can approach and proactively address verbally abusive, intimidating, or manipulative behaviors.

For more information on preventing workplace violence, see Key Tips for Preventing Workplace Violence, below.
CATEGORIES OF WORKPLACE VIOLENCE
There are four categories of workplace violence that are typically recognized:

1. Intimate partner violence
2. Employee harms employee
3. Client or customer harms employee
4. Stranger harms employee

Special attention is placed here on intimate partner violence and employee on employee violence, as these are two types of violence that exhibit recognizable warning signs within the workplace.

Intimate Partner Violence
Intimate partner violence encompasses any violence by an intimate partner (husband, wife, former boyfriend, etc.) that makes its way into the workplace. The Center for Disease Control reports that one in every four women and one in every ten men will experience domestic violence in their lifetime. That violence does not stay within the confines of the home. When a battered woman leaves her husband, for example, the husband may not know her new address, but he knows where she works. A 1998 study by the Family Violence Prevention Fund determined that 74% of employed battered women are harassed at work. See Family Violence Prevention Fund: The Facts and the Workplace and Domestic Violence. The U.S. Bureau of Labor Statistics reports that in 2016, 40% of women employees killed in the workplace were killed by a domestic partner or relative—as compared to only 2% of men. U.S. Department of Labor Bureau of Labor Statistics: There were 500 workplace homicides in the United States in 2016.

An employer can make all the difference for someone facing domestic violence. Be attentive and aware. Here are some signs that suggest an employee may be experiencing abuse:

- Repeated physical injuries (often attributed to clumsiness, falls, accidents)
- Isolation (not talking to coworkers, eating alone)
- Emotional distress (crying at work)
- Ongoing despondence or depression
- Distraction
- Quality of work is inconsistent
- Many personal phone calls (employee may be visibly shaken afterwards)
- Absenteeism (arriving late, leaving early, doctor appointments, court appearances)

If you see these types of signs, or for any other reason suspect an employee is suffering abuse, reach out to him or her. Often victims of domestic violence want someone to notice. Instead, people often decide the situation is none of their business, or that it is best not to get involved. If the suspected abuse is affecting the employee’s work, that is a perfect reason to open a dialogue. If the person denies the abuse, let him or her know that the employer is available to help.
Determine who the local service providers are for domestic violence so that the employer is ready to provide a resource when this type of conversation arises.

If the employee embraces an offer to help, below are some steps that can help keep the employee safe at work:

- Temporary changes in the employee’s work schedule or location
- Creative use of applicable leave policies
- Screening the employee’s calls for them, or changing their work number
- Changing the employee’s work email address
- Providing security escorts to and from a car (walking them to the subway, etc.)

**The Legal Impact of Intimate Partner Violence**

Intimate partner violence in the workplace has resulted in an untold number of lawsuits against employers. For example, when an Old Navy employee was shot and killed at work by her boyfriend in Chicago, Old Navy was sued on a premises liability theory for not providing sufficient security measures. See [Family of Woman Shot at Loop Old Navy Sues Store](https://example.com). The complaint also included allegations that the store manager knew the boyfriend had threatened the employee and did nothing about it. Id.

In another suit, Gantt v. Security, USA, Inc., 356 F.3d 547 (4th Cir. 2004), a woman security guard sued her employer for intentional infliction of emotional distress, among other claims. A jury awarded the employee $2.25 million after one day of deliberation. The facts of that case strongly suggested that the employer knew about the danger the employee was facing and not only did nothing to protect her, but actually placed her at risk. She was abducted from work by her ex-boyfriend and raped.

Employers must be aware of intimate partner violence in the workplace and do what they can to protect employees. For more information on preventing workplace violence, see Key Tips for Preventing Workplace Violence, below.

**Employee on Employee Violence**

According to the United States Secret Service, perpetrators of violence often choose a target in advance and make threats, not to the target, but to third parties. This phenomenon is central to prevention efforts. Employees must be trained to understand that when they hear threats, which most often will not be directed at them, they need to report the threats to a designated person. Employers cannot ignore these types of communications, as they may be the best chance to save a life.

The following are behaviors to look for in employees that often serve as warning signs for future violent behavior:

- Attendance problems
- Decreased productivity
- Inconsistent work patterns
- Inappropriate reactions
- Overreaching and criticism
- Mood swings
Train employees to be conscious of the fact that people tend to ignore warning signs because they do not want to get involved or they think it is none of their business. Create an environment in which employees know to whom they should report their concerns and feel free to do so. Establishing this sort of culture requires complete buy-in from top management. This means that members of top management should be present at trainings and should stress to all employees that reporting threats of violent behavior is encouraged and expected and will not result in any sort of retaliation by the employer.

**Taking Reasonable Care to Avoid Legal Liability for Employee on Employee Violence**

If the employer conveys warnings to the appropriate people in a timely manner, the employer may avoid both liability and harm to its employees. In DuPont v. Aavid Thermal Technologies, Inc., 147 N.H. 706 (2002), the employer did not exercise reasonable care and suffered grave consequences.

In *DuPont*, one employee, Hilliard, shot and killed another employee, DuPont, then shot himself. The employer ignored the warning signs. One coworker knew Hilliard was addicted to pain medication, was violent and aggressive, and had threatened DuPont. A second employee knew Hilliard was abusing pain medication, was coming to work to confront DuPont, and that Hilliard was armed. Neither of these employees reported this information to anyone. When Hilliard appeared at work on his day off, two supervisors watched him accuse DuPont of having an affair with Hilliard’s girlfriend. Instead of calling security, the supervisors asked the two men to step outside. At that point, one of the coworkers finally informed a supervisor about the loaded handgun Hilliard was carrying. With that knowledge, the supervisors asked DuPont to return to work, but when Hilliard asked for a few more minutes outside with DuPont, the supervisors allowed it. During those few more minutes, Hilliard shot DuPont and then himself.

The court determined that the employer had a duty to protect DuPont because of the conduct of its supervisors. Relying on the Restatement Second of Torts, the court reasoned that an employer has a duty to protect an employee who, while acting within the scope of employment, comes into a position of imminent danger of serious harm and this is known to the employer or a person who has duties of management. The employer failed to exercise reasonable care to avert the threatened harm.

Rather than turning a blind eye to threatening behavior and claiming ignorance if and when an incident occurs, the better course of action is to proactively encourage reporting, create a plan to protect employees, and promptly address safety concerns.

**Client or Customer Harms Employee or Stranger Harms Employee**

Workplace attacks on employees by customers, clients, or strangers are relatively common in certain industries. For this reason, these industries are closely monitored by OSHA. Taxi drivers, healthcare workers, and late-night
retail store employees are among those at high risk. If you represent employers in these industries, be aware of the increased likelihood of an OSHA inspection and, more importantly, of the heightened need to protect these employees.

Identifying the perpetrator ahead of time is nearly impossible for these two types of workplace violence, but there are universal safety measures that employers can take. OSHA has published detailed suggestions for keeping safe taxi drivers, healthcare workers (see also OSHA Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers), young workers in restaurants, and workers in late night retail establishments. Any employer in these industries should consult OSHA’s website for guidance on workplace safety. For more information on OSHA and workplace violence, see Private Employers’ Duties under the Occupational Safety and Health Act regarding Safe Workplaces.

PRIVATE EMPLOYERS’ DUTIES UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT REGARDING SAFE WORKPLACES

The General Duty Clause and OSHA’s Guidelines on Workplace Violence

The General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act of 1970, requires employers to provide their employees with a place of employment that is “free from recognized hazards that are causing or are likely to cause death or serious harm.” 29 U.S.C. § 654. Courts have interpreted this clause to mean that an employer has a legal obligation to provide a workplace free from conditions or activities that either the employer or the industry recognizes as hazardous and that cause, or are likely to cause, death or serious physical harm to employees when there is a feasible method to abate the hazard.

Workplace violence is a recognized hazard in the American workplace. OSHA issued an Instruction effective January 10, 2017, that provides policy guidance and procedures to be followed by its inspectors when conducting inspections or issuing citations related to occupational exposure to workplace violence. U.S. Department of Labor, OSHA, Directive No. CPL 02-01-058, Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence.

OSHA has also provided workplace violence guidelines (see OSHA Workplace Violence), which we discuss in more detail in Key Tips for Preventing Workplace Violence and Preparing for and Responding to Workplace Violence, below. OSHA identifies certain high-risk industries where workplace violence is reasonably foreseeable and as a matter of course focuses its inspections on these industries. These industries include healthcare and social service settings, late-night retail establishments, restaurants with young workers, and taxi driving. As stated above, OSHA has published detailed guidelines on workplace violence prevention for taxi drivers, healthcare workers (see also OSHA Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers), young workers in restaurants, and workers in late night retail establishments. However, OSHA will conduct investigations in any industry and issue citations to private employers when it receives a complaint and the employer has violated the General Duty Clause. U.S. Department of Labor, OSHA, Directive No. CPL 02-01-058, Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence, at 10. For OSHA workplace violence training materials, see OHSA Training and Reference Materials Library—Workplace Violence.

Generally speaking, private employers violate the OSHA General Duty Clause if they “fail to reduce or eliminate serious recognized hazards.” U.S. Department of Labor, OSHA, Directive No. CPL 02-01-058, Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence, at 3. This general concept has been broken down into the following four criteria:
(1) The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed.

(2) The hazard was recognized.

(3) The hazard was causing or was likely to cause death or serious physical harm.

(4) There was a feasible and useful method to correct the hazard.

U.S. Department of Labor, OSHA, Directive No. CPL 02-01-058, Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence, at 8. OSHA will also routinely investigate a workplace if one or more employees dies or is hospitalized following a workplace event. U.S. Department of Labor, OSHA, Directive No. CPL 02-01-058, Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence, at 14.

**OSHA Reporting**

If an employee dies at the workplace, the employer must notify the nearest OSHA office within eight hours. All work-related inpatient hospitalizations, amputations, and losses of an eye must be reported within 24 hours. The toll-free OSHA number is 1-800-321-OSHA (6742). When making a report, the caller should know the business name, the names of the employees affected, the location and time of the incident, be able to provide a brief description of the incident, and provide the name and phone number of a contact person for OSHA to call. It makes sense to designate someone within the HR department or in management to make this initial phone call to OSHA.

For more information on OSH Act reporting, see OSH Act Requirements, Inspections, Citations, and Defenses and OSH Act Recordkeeping and Reporting Requirements Checklist. For information on state occupational safety and health acts, see OSH Act Compliance, Employee Health, and Workplace Security State Practice Notes Chart.

**OSHA Inspections**

If OSHA conducts an inspection, the Compliance Safety and Health Officers (CSHOs) who conduct the investigation will review:

- Any written plan the employer has to protect its employees from workplace violence
- Any injury or illness records from the previous five years related to workplace violence and the frequency and severity of associated incidents
- Information on any training that workers have received and any trainings scheduled for the future
- Other records that reveal workplace violence (workers’ compensation records, insurance records, police reports, security reports, first-aid logs, accident or near-miss logs, hazard assessments for workplace violence, and safety and health meeting minutes) –and–
- In certain circumstances, an employee’s medical records

U.S. Department of Labor, OSHA, Directive No. CPL 02-01-058, Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence, at 16–17. The more training the employer has done and the more thoughtful policies there are in place to avoid or at a minimum diminish the effects of workplace violence, the less likely the employer will receive an OSHA citation.
If an inspection of a private workplace is necessary, it is best to have these records organized ahead of time. Records should be maintained for at least five years of any trainings conducted about workplace safety, policy reports, accident logs, etc.

Keep in mind that if an inspection is conducted, employees and supervisors who were exposed to the violence or its aftermath will be interviewed and asked about their experience as well as any training they have received. Thus, if a serious incident occurs at your workplace that you think may trigger an OSHA inspection, it would be wise to discuss the inspection with the employees and management before it begins.

If OSHA determines that a General Duty Clause violation exists, it will issue a citation. The process, from the inspection to issuance of citation is designed to take six months. U.S. Department of Labor, OSHA, Directive No. CPL 02-01-058, Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence, at 23. Citations are only issued with National Office approval. Id. A single “serious” violation shall carry a penalty of $7,000 per violation, and a violation deemed “not serious” may carry a penalty of $7,000 per violation. 29 U.S.C. § 666(b) and (c). Willful or repeat citations may result in penalties of between $5,000 and $70,000 per violation. 29 U.S.C. § 666(a).

For more information on OSHA inspections, see OSH Act Requirements, Inspections, Citations, and Defenses and OSHA Inspections Checklist (Employer Preparation and Response). For information on state occupational safety and health acts, see OSH Act Compliance, Employee Health, and Workplace Security State Practice Notes Chart.

OTHER LAWS THAT AFFECT MEASURES EMPLOYERS TAKE TO PREVENT AND ADDRESS WORKPLACE VIOLENCE

Right to Possess Firearms

Private employers have the option to ban the carrying of firearms inside the employer’s workplace. Note, however, that several states have enacted laws that prohibit an employer from restricting lawfully possessed guns by the employee that are locked in a personal vehicle in a company parking lot and hidden from view. If an employer permits employees to store firearms in their personal vehicle on company property, the employer should remind those employees to carefully study the applicable state law regarding how a firearm must be stored during transportation. In many states, the firearm must be in a locked box and the ammunition must be stored separately. Often the firearm cannot be within reach of the driver. An employer should make it clear that it is the employee’s responsibility to learn and apply these state-specific rules. For more information, see Guns-at-Work State Law Survey.

Some workplace violence policies consider carrying a weapon in the workplace an act of violence in and of itself, while others permit employees to do so. This is a judgment call the employer will have to make. Certain individuals working for an employer may have licenses to carry a concealed weapon, but it is up to the employer to determine whether having a firearm in the workplace is permissible or not. Whatever decision the employer adopts, it should be consistently applied. The employer should not allow one employee to carry a firearm and punish another for doing so.

Americans with Disabilities Act (ADA)

What is the effect of the ADA on the ability to discipline or terminate employees under a workplace violence policy? If the individual who violated the policy is covered by the protections of the ADA, one question that may arise is whether the behavior he is being disciplined for is caused by that disability. For example, if the person is blind and is being disciplined for threatening to kill a coworker, the behavior is most likely not caused by the
disability. That person should receive whatever discipline any other employee would receive. On the other hand, if the employee has Tourette’s Syndrome and yells out threatening words to coworkers and customers, the question becomes whether the conduct rule at issue—not verbally threatening coworkers or customers—is job-related and consistent with business necessity and whether other employees are held to the same standard.

The various subtleties of how courts have interpreted the ADA are beyond the scope of this note, but generally speaking, the Equal Employment Opportunity Commission (EEOC) has maintained that “certain conduct standards that exist in all workplaces and cover all types of jobs will always meet” the “job-related and consistent with business necessity” standard “such as prohibitions on violence, threats of violence, stealing, or destruction of property.” EEOC Guidance: The Americans With Disabilities Act: Applying Performance And Conduct Standards To Employees With Disabilities. There is also relatively consistent agreement among courts that employers can enforce workplace conduct rules without violating the ADA. See, e.g., Raytheon Co. v. Hernandez, 540 U.S. 44, 54, n.6 (2003) (rejecting the argument that because employee’s workplace misconduct is related to his disability, the employer’s refusal to rehire him violated the ADA); Krasner v. City of New York, 2014 U.S. App. LEXIS 16600, at *4 (2d Cir. 2014) (unpublished) (employer could enforce its conduct rules even if the employee’s “insubordination, use of profane language, and threats to co-workers of serious physical harm” were the result of his Asperger’s disease).

The question gets a bit trickier if the employee has not threatened violence but has violated the workplace violence policy in another manner, such as by swearing at someone in the workplace. Generally speaking, if the employee’s behavior interferes with the ability of the person or others to perform an important aspect of their job, discipline of some sort, or an accommodation that helps keep the situation from reoccurring, may be in order.

**ADA Direct Threat Defense**

The “direct threat” defense is an affirmative defense available to employers in certain ADA cases. The defense applies when the employee’s disability poses “a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.” 42 U.S.C. § 12111(3). Four factors determine whether the risk is significant: “(1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that potential harm will occur; and (4) the imminence of potential harm.” Emerson v. N. States Power Co., 256 F.3d 506, 514 (7th Cir. 2001); 29 C.F.R. § 1630.2(r). The direct threat defense is typically based on “medical or other objective evidence.” Bragdon v. Abbott, 524 U.S. 624, 649 (1998). Sometimes medical evidence is not necessary. For example, in Jarvis v. Potter, 500 F.3d 1113, 1124–25 (10th Cir. 2007), the employer was able to establish that the employee posed a direct threat in the workplace because of his Post-Traumatic Stress Disorder (PTSD) where the employee had struck coworkers on several occasions, had told the employer that his PTSD was getting worse and had stated that he had the ability to kill someone. Under those circumstances, the employer was not required to seek further medical advice or conduct a fitness-for-duty examination.

It is may often be simpler for an employer to terminate an employee for violating a workplace violence policy than to rely on a direct threat defense theory under the ADA. To assert a successful direct threat defense, the employer typically must conduct an individualized assessment of the employee’s ability to safely perform the essential functions of the job, and that assessment will typically be based on a reasonable medical judgment that relies on the most current medical knowledge and/or the best available objective evidence. See e.g., Echazabal v. Chevron USA, 336 F.3d 1023, 1028–32 (9th Cir. 2003) (employer had not presented sufficient evidence to prove direct threat because its doctors lacked special training in liver disease, had not adequately considered the specific chemical exposures to determine dangerous levels, had not adequately assessed the risks in the employee’s particular job, and had not considered the plaintiff’s actual work history). Rather than engaging in a medical examination and relying on the experts necessary to establish a direct threat, it may be simpler to adopt a zero-
tolerance workplace violence policy and consistently enforce it. See the section below entitled “Adopt a Written Zero-Tolerance Workplace Violence Policy and Enforce It.”

For more information on the direct threat defense and the ADA in general, see Americans with Disabilities Act: Employer Requirements and Reasonable Accommodations.

**Negligent Hiring, Retention, and Supervision**

Negligent hiring is based on an employer’s breach of common law or statutory duty to protect employees and customers from injuries caused by an employee whom the employer knows or should know poses a risk of harm to others. See Restatement (Third) of Agency § 7.05. The relevant time period is typically what the employer knew before the employee is hired, and the issue of liability primarily focuses on the adequacy of the employer’s preemployment investigation into the employee’s background. Garcia v. Duffy, 492 So.2d 435, 438–39 (Fla. Dist. Ct. App. 1986). An employer that neglects to check an applicant’s references or to contact an applicant’s former employer opens themselves up to liability if these simply checks would have revealed that the applicant has a propensity for violence. Often, negligent hiring cases involve customers or other third parties who are injured, rather than employees, as worker’s compensation exclusivity often bars claims by employees.

Negligent retention and supervision occur when, during the course of employment, the employer becomes aware of should have become aware of an employee’s unfitness or dangerous conduct, and the employer fails to take further action such as investigating, discharge, or reassignment. Garcia v. Duffy, 492 So.2d 435, 438–39 (Fla. Dist. Ct. App. 1986). For example, if one employee hurts another employee after the employer became aware of the risk that this may happen, the employer may face liability for negligent supervision. McDonald’s Corp. v. Ogborn, 309 S.W.3d 274, 291 (Ky. Ct. of Appeals 2009). To help avoid liability for negligent retention and supervision, and employer should adopt and maintain a workplace violence policy that clearly tells employees that workplace violence is prohibited, strictly and uniformly enforce this policy, establish clear procedures for employees to report threats or violent acts to the employer, and investigate any complaints of workplace violence and impose discipline up to termination when appropriate.

State law drives the standards for negligent hiring, retention, and supervision claims. Accordingly, it will be necessary to consult your own state’s law on these issues. For information on state negligent hiring laws, see the References and Background Checks column of Screening and Hiring State Practice Notes Chart.

**Delorenzo v. HP Enter. Servs.: Lessons on Whether Negligent Hiring, Retention, and Supervision Claims Will Survive Motions to Dismiss**


In the District of Columbia, to prevail on claims for negligent hiring, negligent retention, or negligent supervision, “it is incumbent upon a party to show that an employer knew or should have known its employee behaved in a dangerous or otherwise incompetent manner, and that the employer, armed with that actual or constructive knowledge, failed to adequately supervise the employee.” Giles v. Shell Oil Corp., 487 A.2d 610, 613 (D.D.C. 1985). This standard is applied equally to conduct within the workplace and to intentional conduct outside the scope of employment—such as criminal conduct engaged in by the employee. Delorenzo, 207 F. Supp. 3d at 48.

*Delorenzo* involved nine consolidated cases arising from the September 16, 2013 Washington Navy Yard shooting. Seven of these cases sought damages for the deaths of individuals murdered by Aaron Alexis and two
sought damages for injuries suffered during the shooting. 207 F. Supp. 3d at 35. Alexis was a civilian contractor working as a computer technician at the Navy Yard for The Experts, Inc., a subcontractor for HP Enterprise Services, LLC that had contracted with the United States Navy to provide information technology services. Two of the defendants in this suit were The Experts, Inc. (The Experts) and HP Enterprise Services, LLC (collectively, the Employers).

The plaintiffs filed claims for negligent hiring against the Employers. 207 F. Supp. 3d at 53. “An employer cannot be liable for negligent hiring if the employer conducts a reasonable investigation into the person’s background or if such an investigation would not have revealed any reason not to hire that person.” Search v. Uber Techs., Inc., 128 F. Supp. 3d 222, 230 (D.D.C. 2015). Stated another way, “to state a claim for negligent hiring, a plaintiff must allege specific facts from which an inference can be drawn that the employer did not conduct a reasonable background investigation, and that such an investigation would have uncovered a reason not to hire the alleged tortfeasor.” Id.

In Delorenzo, the plaintiffs alleged that the defendants should have known about Alexis’ histories of arrest for violent behavior. However, Alexis was never convicted of a crime, and thus a standard background check would not have revealed his arrests. The defendants gave Alexis a drug test, a motor vehicle driving record check, and a criminal convictions check. 207 F. Supp. 3d at 54. None of these would have picked up his prior arrests. A bald assertion that the defendants should have known about the arrests was held insufficient to state a claim, and the court dismissed the negligent hiring claims. 207 F. Supp. 3d at 56. The court also noted that “information concerning a prospective employee’s record of arrests without convictions, is irrelevant to his suitability or qualification for employment.” 207 F. Supp. 3d at 55.

To state a claim for negligent retention and supervision, a plaintiff must allege sufficient facts to advance a plausible inference that the defendants “knew or should have known” that the employee “behaved in a dangerous or otherwise incompetent manner” prior to the workplace violence incident and that “armed with that actual or constructive knowledge failed to adequately supervise” the employee. Giles, 487 A.2d at 613. These claims survived a motion to dismiss in Delorenzo because the plaintiffs had alleged a series of incidents of which the defendants were aware which, when taken together, could support an inference that the defendants were on actual or constructive notice that Alexis behaved in a dangerous or otherwise incompetent manner and that he might harm others or create an unreasonable risk of bodily harm to others. 207 F. Supp. 3d at 59.

For example, in the days leading up to the shooting, the project coordinator for The Experts had to calm Alexis down and persuade him to physically move away from a man seated across the aisle from him at the Norfolk Airport, she then reported the call to the company’s Contract Team; a travel coordinator for The Experts contacted the desk clerk at the hotel where Mr. Alexis was staying and expressed her concern that he could harm someone; the hotel’s desk clerk then contacted the Naval Station Newport Police to request that a police officer be stationed close to the hotel in case he tried to hurt anyone; and, the following day, the Naval Station Newport Police contacted the Naval Station Police Sergeant to send him a copy of the police report on Alexis and to say, “FYI on this. Just thought to pass it on to you in the event this person escalates.” 207 F. Supp. 3d at 37, 59. Alexis had also previously complained to The Experts that he was being followed and that he heard people talking about him through the walls of his hotel room. 207 F. Supp. 3d at 37. He also claimed that these same people were using an “ultrasonic device that was physically pinning him to the bed” and keeping him awake. 207 F. Supp. 3d at 37. The court determined that all of these allegations “barely push Plaintiffs’ claims of negligent retention and supervision over the plausibility threshold of Twombly.” 207 F. Supp. 3d at 59.
Valles v. Gen-X Echo B, Inc.: Dismissal of a Negligent Hiring and Retention Case

In another interesting case from the United States District Court for the District of Colorado, Valles v. Gen-X Echo B, Inc., 2013 U.S. Dist. LEXIS 155630 (D. Colo. Oct. 8, 2013), a female employee sued her employer after she was raped by her supervisor at work. The supervisor had a history of domestic violence. The employer had not run a criminal background check before hiring the manager. The court held that the employer had no duty to conduct a criminal background check of a store manager simply because he was in charge of young female employees. Valles, 2013 U.S. Dist. LEXIS 155630, at *17–20. The court determined that only if the employer had a “reason to believe that a job applicant, [because of] some attribute of character or prior conduct, would constitute an undue risk of harm” must the employer conduct a background check. Valles, 2013 U.S. Dist. LEXIS 155630, at *20. The court dismissed plaintiff’s claim for negligent hiring.

The court also dismissed her claim for negligent retention because although the store manager was arrested and criminally charged with domestic violence after he worked for the defendant, the plaintiff had failed to alleged facts supporting the assertion that the defendant’s failure to terminate his employment was the proximate cause of the harm plaintiff allegedly suffered. Also, the plaintiff failed to allege that the employer knew the manager had been arrested or had knowledge of any unreasonable risk of harm caused by the manager to plaintiff or any other third party.

Avoiding Negligent Hiring, Retention, and Supervision Liability

Generally speaking, to support a claim for negligent hiring, supervision, or retention, the plaintiff will need to plead and ultimately prove facts supporting the conclusion that the defendant employer actually knew or should have been known of the danger posed by the job applicant or employee and either did not conduct a background check or did not adequately protect its employees from the risk posed by that job applicant or employee. This is a relatively high hurdle. However, if an employer becomes aware of a danger posed by a job applicant, employee, supervisor, or independent contractor, it should bring this to the attention of the legal department and management immediately so that they can quickly address the issue. Doing nothing in the face of such knowledge could lead to significant liability for an employer.

For more guidance on negligent hiring, retention, and supervision, see Negligent Hiring, Retention, and Supervision Claims: Best Practices for Prevention and Defense.

For information on conducting background checks, which can help avoid negligent hiring claims, see Criminal Background Checks: Key Analyses and Considerations, Consumer Reports and Credit History Checks under the Fair Credit Reporting Act, and Fair Credit Reporting Act (FCRA) and State Mini-FCRAs: Step-by-Step Guidance for Compliance. For state-specific guidance on background checks, see the References and Background Checks column of Screening and Hiring State Practice Notes Chart. See also Ban the Box State and Local Law Survey.

Giving References for Employees with Violent Propensities

Consider the following issues when advising employers on providing references for employees with violent tendencies.

Defamation

When an employee who the employer knows or believes has violent tendencies leaves the company, the employer must be very careful if asked to provide a reference for that individual. Check state law for details on this issue, but generally speaking, an employer must be sure of the veracity of any information shared about a former employee. If any statements are exaggerated or unsupported, the employer risks being sued by the former employee for defamation if the employer’s statements cost the employee a new job.

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On the other hand, if the employer knows a former employee has violent tendencies—or believes he or she may—and says nothing when contacted by a potential future employer, the former employer exposes itself to a lawsuit premised on failure to warn (or negligent referral or misrepresentation) if the new employer hires the individual and that individual acts violently. This happened in Jerner v. Allstate Insurance Co., 650 So. 2d 997 (Fla. Dist. Ct. App. 1995), when Allstate had reason to believe that its employee (Calden) had violent propensities but said nothing to Fireman’s Fund when asked for a reference. Allstate provided a neutral reference, despite knowing that Calden had behaved strangely, made death threats to coworkers, and brought a gun to work. When Fireman’s Fund terminated Calden, he returned to the workplace and shot five supervisors, killing three of them. The families of the supervisors sued Allstate for failing to give Fireman’s Fund accurate information about Calden’s behavior.

Avoiding Lawsuits Based on Job Referrals

To help avoid a defamation claim or a negligent misrepresentation or referral lawsuit brought by a former employee, adopt and maintain an employment reference policy. See Job Reference Policy. One person should handle all requests for references and that person should be knowledgeable about state defamation law. Generally speaking, any statement made about a former employee must be true and should be supported by written documentation. Personal opinions and subjective statements have no place in professional references. Some states have statutes that immunize employers for liability based on disclosing information about job performance. For example, Florida immunizes from liability employers who disclose information about former or current employees to a prospective employer at the prospective employer’s request. Florida Stat. § 768.095. Additionally, some states provide a qualified privilege for an employer’s statements if they are made with a good-faith belief in the statement’s truth, serve a legitimate business interest, and are published only to those individuals who need to know of the risk. See Landers v. AMTRAK, 345 F.3d 669, 673 (8th Cir. 2003) (employer has a qualified privilege to make a defamatory statement on a proper occasion, with a proper motive, and based on reasonable or probable cause).

For additional guidance on providing job references that help avoid these claims, see Job References: Avoiding Pitfalls.

Workers’ Compensation Laws

Most injuries that occur at work fall within the exclusive province of workers’ compensation. For this reason, employers will use the workers’ compensation laws as a defense to liability for workplace violence incidents. This exclusivity defense is often successful. However, if the employer had reason to know that the violence may occur, the defense is likely to fail.

For example, in Gantt v. Security, USA, Inc., 356 F.3d 547 (4th Cir. 2004), a female security guard sued her employer for intentional infliction of emotional distress, among other claims. The employer argued that Maryland’s workers compensation statute provided the only remedy for Gantt’s injuries. The Fourth Circuit rejected that contention, determining that the facts of the case could support the conclusion that the employer deliberately intended to injure the employee.

In Gantt, plaintiff secured a protective order against her former boyfriend that prohibited him from calling her at work and stated that she should not be stationed at outside posts where she would be vulnerable to attack. She brought a copy of the protective order to her supervisor. Despite the clear mandates of the protective order, the supervisor repeatedly put calls through to Gantt from the ex-boyfriend. This same supervisor also stationed Gantt at an outside post, from which her ex-boyfriend abducted and raped her.
The court determined that at least a portion of this factual scenario fell within a “deliberate intent to injure” exception to workers compensation exclusivity. Accordingly, Gantt was permitted to pursue a claim for damages against her employer. A jury awarded her $2.25 million after one day of deliberation.

For more information on workers’ compensation, see Workers’ Compensation for Private Employers. For 50-state and District of Columbia workers’ compensation coverage, see Workers’ Compensation State Practice Notes Chart.

**Medical Leave Considerations for Workplace Violence Victims**

Victims of workplace violence will need time to recover. In some instances, they may need significant therapy and physical treatment. Employers should be understanding of the need to heal and provide adequate time off. A failure to do so could result in claims against the employer under the federal Family Medical Leave Act (FMLA) and applicable local leave laws.

If the workplace injuries qualify as a “serious health condition” under the FMLA, the employee is entitled to take up to 12 weeks of unpaid leave in a single year. 29 U.S.C. § 2612(a)(1)(D). A serious health condition is an illness, impairment, or a physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical facility; or continuing treatment by a healthcare provider. 29 U.S.C. § 2611(1). Additionally, certain local laws provide employees the option to use paid sick leave to recover from incidents of violence. For example, Montgomery County, Maryland allows employees who work in that county to accrue paid sick leave and use that leave to recover from mental or physical injuries. The Montgomery County Earned Sick and Safe Leave Law, Montgomery County Code Chapter 27 Human Rights and Civil Liberties §§ 27-7 and 27-8. If an employee requested paid time off to recover from a workplace violence incident, the employer should typically permit such leave, to the extent the employee has accrued paid sick days.

For more information on the FMLA, see the Attendance, Leaves, and Disabilities – FMLA Leave Administration Practice Notes Page. For information on state leave laws, including state family and medical leave laws, see Attendance, Leaves, and Disabilities State Practice Notes Chart. For more information on state and local paid sick leave, see Paid Sick Leave State and Local Law Survey (Private Employers).

**KEY TIPS FOR PREVENTING WORKPLACE VIOLENCE**

Below are nuts and bolts suggestions for putting a zero-tolerance workplace violence plan in place to help prevent workplace violence. Zero-tolerance does not mean that the employer must terminate every person who runs afoul of the workplace violence policy, but it does mean that the employer must document and investigate every instance of workplace violence.

**Create a Threat Assessment Team**

No single person should be tasked with developing a definition of workplace violence, evaluating a workplace, and making all of the decisions necessary to keep employees safe. Instead, whenever possible, an employer should create a team to work on these issues. That team should ideally include:

- Managers
- Human Resources
- Legal
- IT
- Employees
The threat assessment team should participate in an initial evaluation of the workplace for safety concerns (discussed in “Conduct a Worksite Analysis,” below), meet periodically to update any evacuation plan and ensure that contact lists are current, and, when time and circumstances permit, meet to discuss the best steps to take in response to individual instances of workplace violence. It is also a good idea for the team to locate counselors now who are trained to provide aftercare for all employees who want it. It is best to be ready, rather than searching for counselors in the aftermath of a tragic or frightening workplace event.

Conduct a Worksite Analysis
It is a good idea to proactively develop a good relationship with local police and fire departments. Some departments will come to a workplace and conduct a free safety analysis. Employers should invite local police and fire personnel to their company picnics, make them feel like part of the team, and cultivate real ties to these first responders. If the employer has multiple buildings, the police and fire department personnel should know the name and location for each building. During the 2013 Navy Yard shooting in Washington, D.C., discussed above in the section entitled “Negligent Hiring, Retention, and Supervision,” precious time was lost while first responders tried to locate Building 197.

State and Federal OSHA may also be willing to come analyze the safety of the employer’s workplace. Reach out to them and ask. Employers can also hire private security companies to conduct an analysis.

A physical analysis of a worksite will typically involve a review of a host of issues, including, among others:

- Who can access which parts of the building and how (security cards, codes, scans, etc.)
- Whether portions of the building can be locked down
- Whether there is adequate lighting
- Whether individuals are protected when they work alone
- The need for alarms and panic buttons
- Ideal hiding places in the event of an active shooter
- Alternative exits

The employer should create an evacuation plan, with rendezvous points, and designated people to ensure everyone has arrived. When practicing for an active shooter scenario, employers should instruct employees to silence their cell phones.

The threat assessment team should maintain a current contact list with phone numbers and names for each employee—such as a spouse or a good friend who the employer can call if something happens to an employee.

Once an evacuation plan is designed, the employer should practice it periodically without warning to the employees.

One point to keep in mind is that many people cannot recognize the sound of gunfire. Think about creative ways to address this concern, such as inviting a police officer to describe the sound to people or play a recording.

Create a Documentation System
The threat assessment team should designate someone to maintain records related to workplace violence. These records would include:
Workplace Violence: Key Legal Issues, Prevention, and Response

- Records required by federal and state OSHA
- Incidents of verbal abuse, physical attacks, or aggressive behavior
- Details of investigations performed
- Information regarding any employee’s history of violent behavior
- Minutes from meetings of the threat assessment team
- Documentation related to the hazard analysis
- Notes from any meeting with an employee regarding workplace violence
- Documentation of any corrective action taken or warnings given
- Documentation of all trainings performed and sign-in sheets from those trainings

**Conduct Trainings**

It is imperative that all managers and employees attend trainings related to recognizing the warning signs for intimate partner violence and employee on employee violence. Only with the full support of management will employees feel safe to report their concerns. General safety training, directed at preventing clients, customers, or strangers from harming employees is also very useful. For example, if certain doors to the outside are repeatedly propped open while people smoke, that creates a vulnerability that endangers everyone. Training can highlight the dangers of that sort of conduct. Trainings can also incorporate visits from the local police or fire departments and provide a time to run evacuation drills.

As part of the training, make sure everyone knows where the closest hospital or emergency room is located, and that everyone has a phone number for every other employee and the best number for first responders. Also, everyone should understand what the employer’s phone system is capable of when the internet is down or power has been disconnected. Can someone still dial 911? How?

For OSHA workplace violence training materials, see OHSA Training and Reference Materials Library—Workplace Violence.

**Screen Applicants for Violent Behavior**

Employers must conduct screenings in accordance with federal, state, and local law, but employers can typically conduct screenings after they have conducted first interviews and made contingent offers. In each instance, employers should conduct an individualized assessment that considers the job duties the person will perform, the offense he or she committed, when that offense was committed, and any potential inaccuracies in the person’s criminal history. An employer must be consistent about how it relies upon the information gathered. While an employer must perform background checks carefully, they are still one of the best ways an employer can predict future behavior and can help avoid a negligent hiring claim.

For information on conducting background checks, which can help avoid negligent hiring claims, see Criminal Background Checks: Key Analyses and Considerations, Consumer Reports and Credit History Checks under the Fair Credit Reporting Act (FCRA) and Fair Credit Reporting Act (FCRA) and State Mini-FCRAs: Step-by-Step Guidance for Compliance. For state-specific guidance on background checks, see the References and Background Checks column of Screening and Hiring State Practice Notes Chart. See also Ban the Box State and Local Law Survey.
Create a Forum for Complaints
Workplace violence often arises when individuals do not believe they are being heard. One way to help avoid an escalation of frustration is by providing a regular forum for employees to voice complaints and concerns. This could be a monthly or quarterly meeting or an open door policy.

For information on open door policies, see Open Door Policies: Key Drafting Tips. For an annotated open door policy, see Open Door Policy.

Be Mindful of Stressors
The threat assessment team needs to remain aware of stressors on the workforce at all times. Layoffs, mergers, increased or decreased workloads, new management, a sale of the company, or even new technology can create stress that may set someone off. The employer should be aware and be ready to discuss these issues with employees. If the employer needs extra security, it should be ready to hire a security company with experience in preventing and handling workplace violence.

Adopt a Written Zero-Tolerance Workplace Violence Policy and Enforce It
The threat assessment team, in conjunction with outside counsel if necessary, should carefully consider the types of workplace violence that the employer will not tolerate. As mentioned above, the employer should adopt a description of workplace violence that it can and will consistently enforce. For example, if the employer is not going to investigate every instance of verbal abuse by a member of management, think carefully about including language such as “verbal abuse including offensive, profane, and vulgar language.”

Policy language should encourage reporting, should identify to whom reports should be made, and should make clear that no retaliation for reporting violations will be tolerated.

For more information on drafting workplace violence policies, see Workplace Violence Policies: Key Drafting Tips. For an annotated workplace violence policy, see Workplace Violence Policy.

Investigating Violations of the Workplace Violence Policy
Once a written zero-tolerance workplace violence policy is in place, the employer must enforce it. The employer must investigate complaints. It also must be consistent about discipline. See Implementing Discipline. If someone threatens violence, the employer should assemble the threat assessment team, if there is time, to discuss whether to terminate the individual or place him or her on leave. Keep in mind that the more time that passes between the threat and the employer’s response, the more questions can be raised about pretextual reasons for any decision that the employer made. The employer should be decisive but not hasty. Advise the employer to consult counsel with it is considering terminating an employee.

When investigating violations of a workplace violence policy, the employer should not to make public statements that could be construed as defamatory, or that place an employee in a false light. Also, the employer should consider the applicable state privacy laws. See Employee Privacy State Practice Notes Chart. If you are reviewing an employee’s work email as part of an investigation, be sure that the employer has a policy in place that clearly informs the employee that he or she has no expectation of privacy in any email sent or received using the employer’s email address, electronic equipment, or server. See Communications Systems, E-mail, Networks, and Internet Policy. This will help avoid an intrusion upon seclusion claim.

For more information on conducting investigations, see Workplace Investigations: Step-by-Step Guidance.
OSHA's Guidance on Preventing Workplace Violence

OSHA provides guidance to employers on how to avoid workplace violence. See OSHA Workplace Violence. The first suggestion is to adopt a zero-tolerance workplace violence policy (discussed above). Employers should have a written policy and distribute it to all employees. But simply handing it out is not enough. Employers should conduct trainings so that employees understand what types of behavior violate the workplace violence policy, they know what to do if something happens in the workplace, they know where to go, and they know who to contact. Employees should also understand that the employer will investigate any violence or threats of violence, and, if appropriate, the investigation may result in discipline, including termination.

OSHA also suggests that employers secure the physical workplace. This may mean the installation of video cameras, adding alarms on doors, adding extra lighting, installing key card systems, or posting guards at doors. Businesses with cash on hand should have the cash picked up before the evening hours and have minimal cash on hand at night. If the business has employees deployed in the field, those individuals should have a cell phone on them at all times and be able to contact the home office. Employers should require these employees to check in each day and provide a schedule of where they will be that day. All employer-owned vehicles should be well maintained. OSHA suggests that employees be trained not to take risks—if they feel uncomfortable walking to their car at night, there should be an escort available to take them to the car. This is especially true for home healthcare providers who may have to go into homes or neighborhoods that seem unsafe. An employer should develop a buddy system or other reporting procedure for these individuals, and employers should not discipline them for refusing to put themselves in harm's way.

OSHA makes suggestions for employees as well. For example, employees should attend personal training sessions where they learn how to recognize and diffuse a potentially violent situation. Employers should train them to report any concerns about safety or any incidents of violence to the appropriate supervisor promptly and in writing. When possible, employees should avoid traveling alone into unknown situations and also carry as little money as possible.

Finally, as stated above, OSHA has published detailed guidelines on workplace violence prevention for taxi drivers, healthcare workers (see also OSHA Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers), young workers in restaurants, and workers in late night retail establishments. If you have clients in any of these fields, carefully consult these OSHA guidelines in addition to heeding the guidance above on preventing workplace violence.

For more information on OSHA and workplace violence, see Private Employers’ Duties under the Occupational Safety and Health Act regarding Safe Workplaces, above.

For more information on preventing workplace violence, see 5 Tips To Help Employers Stave Off Workplace Violence.

PREPARING FOR AND RESPONDING TO WORKPLACE VIOLENCE

Below are practical suggestions for preparing for and responding to workplace violence incidents.

Advance Preparation

Aside from the workplace violence preventative steps addressed above, employers should also take the following preparatory steps.
Proactively Contact Law Enforcement
Before any violent incident occurs, the head of Human Resources, or an individual in a similar position, should contact local law enforcement. Simply letting the police or fire department know exactly where the employer is located could save lives in an emergency. Some police departments or fire departments will conduct safety assessments of workplaces—evaluating door locks, lighting, parking lots, etc. These services are usually free of charge. It is also worthwhile to discuss when and how these local first responders would want to be notified of an incident at the workplace. For example, is there a special phone number the employer should call? Is the police department willing to come to the workplace when the employer is terminating high-risk employees, in case a violent incident arises, or are they too busy to be present for situations like this? It is worth asking.

Proactively Contact Grief and Post-traumatic Stress Counselors
Additionally, the head of Human Resources should locate grief and post-traumatic stress counselors ahead of time. Looking for these individuals in the aftermath of an incident is not ideal and could result in delay that is harmful to the employees.

Handling a Workplace Violence Incident
This section addresses methods for handling workplace violence incidents.

Contact Law Enforcement and Medical Personnel
If a violent incident occurs at the workplace, a designated person should contact local law enforcement and ask for medical assistance. Usually, the incident will only involve a couple of employees and the designated person can make the call. Of course, if the incident is bigger and involves a shooter or another type of employer-wide danger, it may be impossible for employees to know who is calling for help and who is too hurt to call. Accordingly, several people should be prepared with the appropriate phone number and make this call. It is okay if employees place multiple calls for help.

Use Intercoms and Code Words
During an incident involving a shooter or other roaming threat, intercoms can be helpful to tell employees where to go, or whether to stay in place. Portions of the building should be locked off if possible and appropriate. Code words could be helpful in these situations—for example, if employees understand that “Water” means leave by any route available, such an announcement could communicate to employees that it’s safe to run. On the other hand, if the location of a shooter is unknown, another code word, like “Rock,” could mean to stay still. Most employers won’t have the luxury of an intercom, so employees will need to rely on training and their own common sense to know whether to run or hide.

Establish Meeting Points to Assemble All Employees
Employees should meet at designated rendezvous points after a violent incident. These places must be established beforehand and employers should have employees practice evacuations. Once at the meeting points, someone (or several people) should have access to a full list of employees their contact information. Perhaps storing this list on cell phones makes sense, as it is difficult to imagine grabbing a folder or piece of paper during a workplace violence incident, but it seems likely that a few employees will grab their phone. One suggestion for employees during an incident—if there is a shooter or other violent actor in the building, turn the sound off on the phone as quickly as possible to avoid detection.

Once everyone is assembled, determine if anyone is missing. Contact people at the other rendezvous points, if there are any, and see if any of the missing people are there. If not, see if anyone recalls seeing that person at
work. If yes, tell law enforcement that the individual is missing and suspected to be in the building. If no one can locate the person, then contact that individual’s family (using the contact information on file) and let them know what has happened at work and that no one has yet found the employee.

If law enforcement is on the scene, they will direct much of what happens in the minutes and hours after a workplace violence incident. Employees should cooperate. Many will be asked to give statements. Of course, honesty is the best policy in giving these statements.

**Determine Whether There Is a Need for Grief and Post-traumatic Stress Counselors**

Particularly in severe workplace violence incidents, employers should bring grief and trauma counselors to the scene as soon as possible. If it is impossible to get these individuals to the location that day, then these individuals should be on site to help employees as soon as the employer reopens for work. In the meantime, the head of Human Resources should distribute phone numbers to employees for counselors if they need to speak with someone right away. If the workplace violence incident is smaller in scale (e.g., if one employee punches another in front of three witnesses), then there will likely be no need for counseling.

**Communicate to Employees about the Violent Incident**

Employers should not divulge too much detail about the violent incident and should aim to keep the information about the incident within the organization. Other employees may wonder what happened. The head of Human Resources could say something relatively generic such as, “Mike violated our workplace violence policy, and for this reason he has been terminated.”

**Interacting with the Media**

An employer should designate one or two individuals as media contacts if local television stations or newspapers decide to cover a workplace violence incident. All employees need to understand who these designated individuals are, and to the extent possible, direct all media inquiries to those individuals. Ideally, these designated individuals will have experience speaking with media and a strong understanding of defamation law.

**Investigate the Violent Incident**

The employer should investigate all workplace violence incidents and discipline employees who violate the employer’s workplace violence policy. For information on workplace investigations, see Workplace Investigations: Step-by-Step Guidance.

**OSHA’s Guidance on Responding to Workplace Violence**

OSHA offers the following guidance on what an employer should do following an incident of workplace violence:

- Provide prompt medical attention and treatment after the incident.
- Contact local law enforcement about violent incidents as quickly as possible.
- Inform victims of their right to prosecute the perpetrators.
- Following the incident, have a discussion about what happened and how to avoid a similar incident in the future.
- Encourage employees to report and log all threats and incidents of violence.
- Offer stress debriefing sessions and post-traumatic counseling services.
● Investigate all threats and incidents of workplace violence, monitor trends, and institute corrective action where possible.

See OSHA Workplace Violence. For more information on OSHA and workplace guidance, see Private Employers’ Duties under the Occupational Safety and Health Act regarding Safe Workplaces, above.
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