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Violence in the Workplace: Causes, Legal Issues, and Possible Solutions

Very few employers give any thought to the possibility that violence or aggression in its various forms might occur in the workplace, be it large or small. And yet, it is a matter that should receive preventive thought, as the following examples illustrate:

- A worker is fired from a company. In retaliation, he makes threatening phone calls to the president of the firm. Later, he makes allegations of improprieties to governmental agencies. A federal investigation results, and staff have to be laid off.
- A policeman points his laser-sighted pistol at other officers while they are in the station. In doing so, he ‘paints’ a circle with the red dot on their chest.
- An employee of a company threatens to shoot a coworker with whom he does not get along. They have had verbal confrontations in the past, and tension between them has been escalating more recently.
- An employee is given a screening test for psychological stability as part of a pre-employment evaluation. After passing it and being hired, he later kills four people in his home town, and is then killed in a shoot-out with police.

Violence, be it real or threatened, comes in many forms, as the examples cited above illustrate. One way of perceiving violence is along three different dichotomies: verbal-physical, indirect-direct, and passive-aggressive.

An example of passive behavior might be the disgruntled employee who was fired and made allegations against the firm. Direct violence obviously did not occur, but a tremendous amount of damage was done from little more than words spoken.

The second officer is an example of a more direct aggression. Though he denied that the act of pointing the gun was a threat, and said that he was just joking around with an unloaded pistol, departmental policy required that officers’ firearms always be loaded. Therefore, his comment was not taken as accurate.

The third citation is an example of verbal threats which have an ominous tone. The worker said he had “nothing to lose,” given that he had lost virtually everything else. The last case is obviously one of direct physical violence that culminated in death.

A toll is exacted on business regardless of the form of violence. At its worst, if an employee is killed, there can be a devastating impact on a company, both in terms of legal liability and the social climate of fear that is created for other workers. In its lesser forms, violence exacts a price because of reduced productivity, increased turnover of staff, or again, legal liability. Sexual harassment lawsuits which are an example of this latter point, have proliferated in recent years.

Admittedly, one does need to keep the problem in perspective. Many business owners feel that “this will never happen to me.” Since the risk of any form of violence occurring at some particular firm is relatively small, trying to protect oneself from such a remote occurrence can be perceived as a waste of money and energy. The flip side is that if/when a lawsuit is filed, the financial bill for defending against it, much less settling the judgment, may wreak financial havoc. Spending a fraction of that money in prevention could produce long-run savings.

A Few Statistics

Violence in the workplace is said to be the fastest growing form of homicide in the U.S. Lesser forms of violence are widespread in the workforce. According to one survey in 1993, 2.2 million workers are physically attacked, 6.3 million are threatened, and 16.1 million are harassed every year.

Some Factors Contributing to Potential Violence

What makes a worker turn deadly or threaten violence? One of the factors involves the perceived contract between employee and employer. Between 1987-1992 roughly 10 million workers were laid off. In some well-publicized cases, while “average” employees were being fired in droves, CEO’s were given a six- or seven figure bonuses because Wall Street liked the increased profitability that resulted from such downsizing. Employee discontent may result from pay cuts or freezes, changes in management, and use of part-time employees. Other factors may include doing more work for the same pay, polarization between labor and management, top-down policies, and ‘temporary’ workers doing the jobs of regular employees but not getting equal benefits or pay. Such situations results in the employee feeling like a disposable commodity.

In a situation where employees are not given an opportunity to air their feelings, the potential for violence is increased. It has been found that most employees who do kill employers or co-workers have been fired or feel mistreated. This is not to say that the manager or co-worker who is threatened or killed deserves to be attacked. But employers should recognize that it is within their power, as well as jurisdiction, to create a positive work environment.

A second set of factors comes from the settings in which fatalities have occurred. Many of the high risk occupations include time sensitive, high pressure positions in which there has been an effort to improve performance through principles of scientific management. Jobs that fall under this heading include stockbrokers, restaurant and fast food workers, post office employees, and airline ticket agents. Some conditions that exist in such jobs include high pressure to increase efficiency and productivity, and working not at a pace set by people but rather set by machines, which never slack off.

A third perception on risk factors comes from trying to create a profile of a dangerous individual. The typical person in such a profile is male, white, and about 35-50 years old. Alcohol and/or

drug abuse increases the risk of violence by a factor of 12-16 times. Major psychiatric problems also exacerbate risk by a factor of three or four fold. People who are paranoid in particular may be at high risk. Those who are overly invested in their jobs and have little else to fall back on, along with limited social support systems are at increased risk for violence. Neurological problems, such as history of brain injury from incidents such as car accidents can greatly increase risk of violence. Individuals with explosive tempers are also at higher risk.

Legal Concerns

Employers have a number of legal liabilities these days relative to the threat of violence. They include:

- Duty to provide a safe workplace. Under both common law and the Occupational Safety and Health Act (OSHA), employers are required to provide a reasonably safe workplace.
- Worker's Compensation. Liability may exist if a worker is injured or killed by another employee.
- Unions. Failure to address concerns for physical safety could cause employees to seek union protection.
- Negligence. Some states require employers to use reasonable care in selecting and retaining employees. Failure to do so can result in a tort. Basically, employers are generally liable if they hire someone they know, or should have known, is unfit or is a potential risk to others, and that employee injures a third party.

An additional issue is the Americans with Disabilities Act (ADA). It protects workers who have mental and physical disabilities from discrimination. Most allegations of discrimination are made under the terms of physical disability, though psychiatric claims can and are made against employers.

EEOC guidelines do note that the ADA does not protect a disability *if it presents an immediate threat of substantial harm to others*. For example, a verbal threat by an agitated employee would not fit that definition in all probability. Pulling a gun or knife on another employee would most likely be counted under such phrasing. That is, engaging in violent behavior is not excused just because an employee is paranoid or schizophrenic.

As to the issue of a worker being potentially threatening or violent, EEOC guidelines state that a "direct threat" must be shown through employment of a person. Such a direct threat means that there is "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation." Whether or not a person poses a direct threat must be determined on an individual basis.

When is it permissible for an employer to refuse to hire an individual based on a history of threats or violence? Other employees feeling threatened is considered insufficient justification. Instead, there must be a specific behavior that can be objectively characterized as creating a likelihood of substantial harm. That is, actual threats or physical fights at work may be sufficient cause not to hire a person.

OSHA offers some general guidelines how to prevent violence at work. They specify four separate components:

1. Management commitment and employee involvement. There needs to be some allocation of resources and money to pay for a program, implement and maintain it. Employee involvement means insuring that workers understand security measures, participate in meetings investigating incidents, and suggest remedial steps.
2. Work site analysis. Employers need to evaluate their workplace for vulnerability and take necessary precautionary actions.
3. Hazard prevention and control. This might include administrative practices, adequate staffing, physical devices such as security systems, and requiring employees to report threats and assaults.
4. Training. It should be provided at least annually and perhaps more frequently. Topics may be numerous, such as standard responses to certain scenarios, as well as relating to multi-cultural diversity - which is known to be a factor in increasing the likelihood of violence at work.

Some Possible Solutions

Some believe that pre-employment screening is an answer to reducing the risk of the violent employee. While it does offer some value, and is proactive, there are down sides to its use. One is that of a time frame. An employee may be hired, and then work for 5, 10, or 20 years before being laid off for what may be perceived as unfair reasons. The result could be a violent act of retribution against the employer. But what is the likelihood that any evaluation could predict such behavior so many years into the future - with accuracy? The test may screen out people who are dangerous at the time of the evaluation. However, it could not recognize all those who become so at a later date. And unfortunately, the newly hired employee is typically not the dangerous individual. Rather, it is the one who has been employed for some time.

A variation of pre-employment testing is through screening questions, which could include:

- Have you ever been disciplined or discharged for fighting, assaults, or related behavior?
- Have you ever been discharged or disciplined for violating safety rules?
- Inquiries about gaps in a person's employment history
- Verifying performance with past employers; asking question as to why the person left the company

Such questions must be applied to all individuals in order to avoid accusations of discrimination. Though such a method may not be foolproof, it might indicate "diligent effort," and thereby reduce legal liability if a person did slip through the screening system.

A second approach to dealing with violence is by instituting "zero-tolerance" policies. Any episode of threatening or violent behavior may be grounds for being dismissed immediately. Such a policy might be likened to airport security these days; even joking about having a gun while going through the metal detector is grounds for being detained, if not arrested. One down side to this knee-jerk approach is that a loyal employee of many years may be fired on the spot

for what is an innocent comment or act. This could lead to feelings of resentment and the potential for violent behavior. Consequently, such a policy should be instituted with intelligence. Extenuating circumstances should be taken into consideration. 'The punishment should fit the crime' in ways which are less severe than outright termination.

Another potential pitfall of a zero-tolerance policy can be found when it is applied to issues such as alcohol abuse or allegations of illicit drug abuse. In one recent lawsuit, charges were brought against an employer who fired an employee over perceived substance abuse on the grounds of the Americans with Disabilities Act. Though a person who uses illegal drugs is excluded from the definition of a qualified individual with a disability under the ADA, coverage is extended if the employee is erroneously regarded as being such a user.

The obvious benefits of a zero-tolerance policy is that when problematic behavior occurs, a company can 'nip it in the bud.' Such a policy also involves very explicit, and presumably written, guidelines of what is not acceptable behavior, and this is presumably distributed to all employees. This offers some protection from legal liability and demonstrates that a program to prevent violence in the workplace exists.

A third approach is to institute thorough documentation of behavior. Accurate performance appraisals should be maintained. Complaints against individuals should be promptly investigated and results put into writing. Outside experts, such as psychologists should be brought in when the risk of violence rises for training, as well as for conducting 'fitness for duty' evaluations to assess the risk of the particular individual in question. Emergency procedures should be in place, with employees trained to defuse confrontations. The Post Office, which has received a great deal of bad press in recent years about violence in their workplace, devoted over 100,000 hours investigating incidents and threats in 1993, double what it spent in 1992. Coupled with some other changes, such as training managers in how to recognize and handle dangerous situations, the number of reported assaults at post office facilities was roughly cut in half between 1990 and 1994. Larger companies can reduce the potential for violence by using physical forms of security (e.g. locked doors, limited access to some places, security guards, or alarms).

Fourth, dealing with employees in a more humanistic manner is beneficial. Companies that have EAP plans have fewer episodes of potential or actual violence. Training managers to handle potentially dangerous situations with employees, to be on the lookout for declines in performance, personality changes or substance abuse is advantageous. Employees who are laid off should be treated with care and concern.

Ultimately, there is no way to eliminate all risk of violence in the workplace. However, through steps such as those outlined above, the potential can be minimized. In the process, legal liability will also be reduced. By taking concrete steps to limit such risk, companies can create a work environment in which employees have 1) better morale, 2) less absenteeism, 3) less likelihood of injury on the job, and 4) better communication with management. In a word, both the worker and the company will become more productive. What employer would not gladly make such a trade-off?