STRATEGIES FOR IDENTIFYING, PREVENTING AND RESPONDING TO SERIOUS WORKPLACE THREATS

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I.	**What is the extent of the workplace violence problem in the United States?**

Each year over the past two decades, nearly two million American workers have been the victims of some form of workplace violence. It is an issue of growing concern among employers and organizations, who have a legal duty to insure the safety of their employees, customers and others, and a responsibility to protect the financial well-being of their organization.

So what is "workplace violence?" According to the U.S. Occupational Safety and Health Administration (OSHA), it is any incident in which a person is abused, threatened or assaulted in circumstances relating to their work. Workplace violence is not limited to physical acts or verbal threats against employees, but also includes such actions against clients, customers and visitors to a worksite.

> *Despite the fear and public scrutiny they evoke, mass shootings are statistically rare events. Mass shootings accounted for less than two-tenths of 1 percent of homicides in the United States between 2000 and 2016. Even school shootings, the most tragic of such events, are infrequent. People are more likely to intentionally kill themselves with a gun than to be killed by a gun in a mass shooting or other type of homicide.[1]*

Despite the statistical rarity of mass shootings, workplace violence - - in its various forms - - is a growing and persistent problem in the United States. According to a study by the Federal Bureau of Investigation (FBI), there were 160 workplace-based active shooter incidents between 2000 and 2013, reflecting a steady rise from a single incident in the year 2000, to 26 incidents in 2010 and 21 such events in 2012.[2] Over the same time period, the number of mass shootings in the United States have also steadily increased, as have the number of events involving more than 10 fatalities. It is clear from the available data that one reason for this unfortunate rise in violent

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[1] *Mass Violence in America, Causes, Impacts and Solutions*, Natl. Council for Behavioral Health (Aug. 2019).

[2] Blair, J.P. & Schweit, K.W., *A study of active shooter incidents 2000-2013,* Federal Bureau of Investigation (2014).

incidents is that the United States has more guns per capita than any other economically developed country, and does so by a significant margin.[3]

Of the 4,679 fatal workplace injuries that occurred in the United States in 2014, nearly 10% (403) were homicides.[4] This figure only includes employees, but it is apparent from media reports and other sources that others have been killed, maimed or injured during workplace violence events.

An incident of workplace violence can have far-reaching impacts ranging from psychological symptoms among workers to physical disability and death. These events usually also involve some form or property damage, business interruption, and reputational damage that may extend for years. There is also the inevitable consequence of rising legal, security and insurance costs. According to the National Institute for Occupational Safety and Health, the economic cost to businesses in the United States resulting from workplace violence exceeds $120 billion dollars annually.[5]

II.   Which industries are most at risk?

Based on data from the U.S. Bureau of Labor Statistics and the FBI, certain industries are particularly vulnerable to workplace violence. These include retail establishments and restaurants, due to their long hours, public access and constant personal interactions. Late night retailers, particularly those in urban areas, such as liquor stores, convenience markets, and gas stations are at highest risk.

Retail workers represent 9% of the workforce in the United States, but account for 13% of workplace violence incidents and 27% of workplace homicides.[6] According to insurance industry experts from Marsh & McLennan, restaurant workers have similar rates of exposure. One reason for this is believed to be that retail and restaurant workplaces "often have fixed management hierarchies that can foster behavior that instigates employee aggression. Peer harassment and a dictatorial, abusive, or bullying superior are contributing factors."[7]

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[3] Fisher, M. & Keller, J. *What explains U.S. mass shootings? International comparisons suggest and answer*, New York Times (November 7, 2017).

[4] U.S. Department of Labor, Bureau of Labor Statistics, *Census of Fatal Occupational Injuries 1997-2009*; http://www.bls.gov/home.htm

[5] U.S. Centers for Disease Control and Prevention, National Institute of Occupational Safety and Health (n.d.); http://www.cdc.gov/niosh/topics/violence/

[6] *See* Footnote 4, *supra.*

[7] *Anatomy of Workplace Violence*, Industry Insights, Marsh & McLennan Companies (April 2016).

Other industries considered prone to workplace violence, based on available government data, are health care, real estate and hospitality, and education. There were more than 19,000 incidents of workplace violence against healthcare and social service workers in 2012. Of those, nearly 6,000 occurred in hospitals, 9,000 in nursing or residential care settings, and 1,800 in ambulatory care centers.[8] Employees in shopping centers, hotels, and casinos also face a higher risk of all types of workplace violence. Finally, educational facilities accounted for one-third of all active shooter incidents in the United States between 2000 and 2012.[9] While active shooter or mass violence incidents receive the greatest media attention, college and high school campuses also seen a significant rise in the rate of non-fatal violence.[10]

III.   Who commits workplace violence?

Most incidents of violence in the workplace are *not* committed by disgruntled ex-employees, but rather by non-employees. In fact, nearly half of all workplace violence incidents are committed by strangers, with robberies leading the way. Persons in high risk jobs such as taxi drivers, convenience store employees, and fast food workers are among the group most likely to be victimized. Another statistically significant category of workplace violence events involves domestic partners. Intimate partners, whether married or not, occasionally take personal rejection badly. Regrettably, almost every region of the country has experienced tragic events in which rejection or betrayal has served as a trigger for violent action against a current or former domestic partner.

In the United States, however, we have also seen a number of violent events perpetrated by current or former employees who feel slighted, unfairly treated, or disrespected. While it is difficult to predict future behavior, a multi-disciplinary threat assessment approach is one strategy commonly used to attempt to determine whether a person poses a risk of serious harm to the organization, co-workers or other individuals. Using this approach, the threat assessment team considers risk factors, with an emphasis on behaviors and statements that indicate that the employee is on a pathway to violence.

The most common factor identified in employees who have been the perpetrators of workplace violence is the perception of injustice; the belief that he or she has been treated unfairly and that no one cares. This sense of injustice is often associated with a feeling of

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[8] U.S. Department of Labor, Bureau of Labor Statistics (2012), *Episodes of violence or other injuries in health care and social assistance environments*.

[9] *See* Footnote 2, *supra*.

[10] *Campus Threat Assessment Case Studies*, U.S. Department of Justice (2012) (750,000 students ages 12 to 18 experienced some form of non-fatal violence on school campuses in 2012).

hopelessness and despair, grandiosity, revenge, or fanatical beliefs, and an adverse response to authority. Unemployment, lack of social support, emotional disconnection, suicidal and homicidal ideation, and mental illness, can all play a role in motivating violence. Environmental factors also play a part, including the presence of identifiable victims, lack of family or community support, access to weapons, a high-conflict situation, and a past culture of violence. Situational factors or triggers may lead a person, who is otherwise predisposed, to act in a violent manner. These may include acute and chronic stressors, with mental health issues topping the list. Other identified stressors include financial strain, problems in interpersonal relationships, abuse of drugs or alcohol, the burden of care-giving responsibilities, conflicts with family members, and sexual stress or frustration.[11]

Among the indicators or "red flags" which experts have identified as causes for concern and possible indicators of an employee's increased likelihood to commit workplace violence are the following:

- Overt or implied threat against supervisors or co-workers.
- Sudden, persistent complaining about unfair treatment in the workplace.
- Blaming others for problems.
- Change in behavior or decline in work performance.
- Increase in absenteeism.
- Deterioration of personal hygiene.
- Refusal to accept criticism about work performance.
- Inability to manage feelings, such as swearing or slamming doors.[12]

IV. How can employers best prevent workplace violence?

There are a number of steps that employers and organizations can take to reduce the risk of workplace violence. In fact, employers have a legal duty to provide a safe and healthy work environment, and to reduce or eliminate recognized workplace violence hazards that cause, or are likely to cause, death or serious physical harm to employees.[13] Some states, including New York, have gone beyond OSHA's general duty requirement and expressly require employers to "provide reasonable and adequate protection to the lives, safety and health of its employees […]."[14]

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[11] *See* Footnote 1, *supra.*

[12] *See* Footnote 5, *supra*; citing recent OSHA and National Institute of Mental Health reports.

[13] Occupational Safety and Health Act, 29 U.S.C. §654.

[14] New York State Workplace Violence Prevention Act, N.Y. Labor Law, §§ 27-a(3) and 27-b.

A comprehensive workplace violence prevention program should include the following:

- Creation of a workplace violence prevention committee, commonly known as a threat assessment or threat management team.
- A zero tolerance policy, including prohibition of all forms of bullying or abusive behavior that covers employees, patrons, customers or clients, patients, contractors or visitors.
- A weapons in the workplace policy.
- Enhanced physical security, including key-card access and appropriate lighting.
- Pre-employment screening.
- Reporting mechanisms.
- Investigation of complaints.
- Training program.
- Employee Assistance Programs (EAP).
- Sound termination process.
- Out-placement assistance.
- Emergency response plan.

DISCUSSION OF PREVENTATIVE MEASURES

a. Workplace violence prevention committee

A workplace violence prevention committee (or "threat management team"), should be composed of representatives from senior management, human resources, legal, risk management, EAP, and security, and might also include outside counsel, representatives from facilities management, and a public relations/crisis management consultant. In addition, companies should identify an outside mental health clinician and/or threat assessment professional who may be available for consultation, particularly in urgent or emergency situations. Outside counsel who provide services in this area often work regularly with such mental health experts and can serve as an excellent resource connecting the expert and the employer on short notice.

A key responsibility of the threat management team is to monitor the workplace climate. This includes a periodic review of appropriate policies, an assessment of the overall work environment among employees and supervisors, the availability of a confidential and effective reporting mechanism, avenues for employees to reach out for help, the utility and impact of the company's employee assistance program, and the existence of a periodic training program. Addressing these and other issues will help to assess and address potential threats.

b. Zero tolerance policy

Conflicts among co-workers are believed to account for nearly 20% of workplace violence incidents. A key component of a workplace violence prevention program is the establishment of an organizational culture of "zero tolerance" toward violence, including any form of bullying or abusive behavior. "Zero tolerance" does not mean automatic termination; rather it means that threats or acts of violence will not be ignored by the organization, but will be promptly and thoroughly investigated, with penalties up to and including termination.

The policy should include a clear prohibition of physical violence, as well as threats of violence. It should also include behavior that generates concern for safety, such as stalking, harassment, intimidation and aggression, and suicidal statements. The anti-violence statement should also provide specific information regarding the potential consequences of non-compliance, and should encourage reporting of all violent incidents and recordkeeping of the same to assess risk and measure progress. The written policy should be included in an employee handbook, and also be reviewed during periodic employee training programs. Having such a policy is one component of a comprehensive prevention and mitigation program.

c. Hiring and dismissals

An important violence prevention strategy is to avoid hiring potentially violent employees in the first place. Companies need a well-designed hiring strategy that describes the precise skills and abilities required for the open positions, as well as the *attitude* needed for each role. A candidate's past working history and demonstrated social skills should be critical criterion regardless of the position to be filled. Background checks and professional references are important, but may not always be useful indicators of a person's actual traits and ability to work well with others. Employers should conduct probing interviews and base hiring decisions on documented information as reflected in resumes and past work samples.

In terms of terminating employees, human resource professionals are acutely aware that this can be an emotionally jarring experience for most people. When a person's livelihood is threatened, it is natural that some level of fear and hopelessness may emerge. For individuals who are psychologically vulnerable or experiencing other stressors in their life, these emotions can sometimes escalate into suicidal or homicidal thoughts. It is critically important that in terminating an employee, a supervisor needs to be respectful of the employee's dignity and assist them in coping with the disappointment or other emotions. Strong reactions from the terminated employee, such as threats or verbal abuse, should be treated courteously but with minimal engagement. If the behavior persists, appropriate precautions should be taken. These may include increased security measures, soliciting advice from outside counsel and/or mental health consultants, or promptly notifying law enforcement.

d. Training programs

Part of a comprehensive program to reduce the risk of workplace violence is to educate the workforce. According to ASIS Guidelines, while the content of a training program will vary depending on the industry and the participants, generally a useful training program should cover the following topics:

- The basic facts about workplace violence, including a general overview of the behavioral aspects and risk factors that a particular workplace could face.
- A review of the company's specific zero-tolerance policy, as well as the employee's rights and obligations under the policy.
- Reporting avenues and responsibilities.
- How to identify problem behavior and when to report it.
- Basic facts about domestic violence, and the potential impact on workplace safety.
- The response to an emergency situation, including active shooters and extreme violence.[15]

e. Protection from outside threats

As noted at the outset of this paper, the majority of workplace violence incidents emanate from outside the organization. Accordingly, employers need to assess and audit their exterior security to insure that the business and those employed by or interacting with the organization, are adequately protected from outside threats. A security assessment should insure that appropriate engineering controls (including key card or pass-code entry systems), administrative requirements (such as sign-in sheets and identification badges), surveillance equipment, alarm systems, and other measures are in place to identify, deter and counter possible threats.

Obviously, when employees are terminated, there must be an immediate recapture of keys and key cards, and deactivation of any access codes or cards.

f. Strategies for higher-risk occupations

For companies in those industries identified at higher risk for workplace violence, additional strategies must be developed to protect employees. For example, in retail environments involving workers who handle cash, it is recommended that drop safes by installed

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[15] ASIS Guidelines: *Workplace Violence Prevention and Intervention (2011)*, http://www.shram.org/HRStandards/Documents/WVPI%20STD.pdf.

to limit the amount of money on hand, and that a minimal amount of cash be kept in registers during evening hours.

For companies that have employees who work in the field (such as home health care professionals, social workers, and service people who visit private homes), specific policies and procedures should be developed to help protect such workers. Such measures might include the following:

- Providing or insuring that workers have cell phones or hand-held alarms.
- Preparing a daily work plan.
- Informing a contact person of location throughout the day.
- Keeping vehicles properly maintained to avoid breakdowns.
- Avoiding locations where there is a feeling of uneasiness or danger.
- Establishing a buddy system or providing an escort in potentially dangerous locations or situations, or during evening work.[16]

g. **Responding to an incident**

Since not every violent incident can be prevented, the Department of Labor (DOL) recommends three predetermined stages of action that should be made part of any training program for employees. The first stage involves observation and recognition of early warning signs of potential violence or trouble. For example, if an employee is discourteous, uncooperative or verbally abusive, this behavior should be reported to a supervisor or appropriate person within the company, and the supervisor should promptly meet with the offending employee to discuss the event and steps to avoid its recurrence.

The next stage of action involves escalation of the situation to the point where a co-worker becomes increasingly hostile or argumentative, refuses to abide by company policies, or becomes verbally threatening to others. In these circumstances the DOL advises workers to secure their own safety and the safety of others, to immediately report the situation to a supervisor, and to call 911 or other emergency contacts if warranted. The supervisor should initiate a conversation with the agitated person and, while remaining calm and soft-spoken, attempt help the employee to regain composure and self-control.

The final stage of action involves the highest level of escalation which might involve an individual with a weapon or who displays extreme anger or suicidal thoughts, provokes physical confrontations, or who destroys property. In these circumstances, co-workers should exit the area if they believe their safety is at risk, and call 911 to request immediate assistance and prompt medical evaluation of the affected individual.

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[16] *See* Footnote 5, *supra.*

During an active shooter incident, law enforcement experts advise workers to have in mind three response priorities: "run, hide and fight." This means the first reaction should be to run to a safe location outside the building and away from the perpetrator. If leaving the area or building is not possible, the employee should seek shelter in an enclosed room and barricade the door. As a last resort, employees should be prepared to engage the perpetrator in an effort to save lives using anything available to them as self-defense weapons.

V.   Conclusion

Workplace violence is a complex issue that can strike any business or organization, often with dire and lasting consequences. Employers should understand the general dimensions of the problem in the United States, and then examine the circumstances within their own workforce to identify current and future situations that might lead to a potential incident if not addressed. As briefly reviewed in this paper, there are actions that companies can take to prevent or reduce the risk of a violent occurrence and best meet their responsibility to protect employees, clients, patients, and others.