

Workplace Violence: How to Evaluate the Risks and Reduce the Potential Hazards

By Joanne Braddock Lambert, John A. Snyder and Amy G. Fudenberg

October 18, 2018

Every year, nearly two million American workers report having been victims of workplace violence. Sadly, the actual number of cases is likely much higher — many cases go unreported.

According to the Department of Justice, on a daily basis, employers and employees nationwide deal with workplace assault, domestic violence, verbal abuse, stalking, harassment, and more, as well as the incidents of homicide that make the news.

The potential for workplace violence is a realistic concern for all employers, no matter the industry, location, or employer size. Employers in the real estate industry, however, because they span a wide range of work environments, face unique workplace violence challenges. For example, although workplace violence can strike anywhere, property management employees are especially vulnerable, according to the federal Occupational Safety and Health Administration (OSHA). These employees tend to work alone or in small groups, in community or residential settings where they have extensive contact with the public. Moreover, they tend to work during late night and early morning hours.

With strategic planning, risk analysis, and other means, property management employers can help prevent violent incidents and be confident they are prepared if and when such events occur.

Employer Responsibilities

Understanding the basic legal framework of employers' responsibilities is an important initial step toward preparing for and preventing workplace violence.

OSHA defines workplace violence as any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the worksite. Although OSHA has no standard on workplace violence prevention, Section 5(a)(1) of the Occupational Safety and Health Act of 1970 (OSH Act), known as the General Duty Clause, requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm. That requirement includes protecting employees from workplace violence.

Employers may receive a General Duty Clause citation if they fail to reduce or eliminate recognized workplace violence hazards that cause or are likely to cause death or serious physical harm to employees when there is a feasible method to abate such hazard.

In addition to OSH Act violations, employers are at risk for other legal claims, such as negligent hiring, negligent retention, workers' compensation, breach of the duty to warn, and violations of the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964.

Issues for Employers

The following examples help illustrate the variety of workplace violence issues property management employers face:

- *Do apartment building owners or managers have a duty to conduct a criminal history background check on tenants?* At least one court has held the answer is "no." In that case, after a tenant's guest fatally shot an individual outside the apartment complex, the decedent's family sued the apartment owner and the management company. The court ruled that because there was no duty to perform background checks on tenants, let alone on tenants' guests, and because no one had ever submitted a complaint about the assailant, the owner and the manager did not possess actual or constructive knowledge of the assailant's potentially violent tendencies. Thus, the court said, his attack was not foreseeable and the owner and manager could not be held liable on that

Meet the Authors



[Joanne Braddock Lambert](#)

Office Managing Principal
Orlando 407-246-8447
Email



[John A. Snyder](#)

Principal
New York Metro
New York City 212-545-4054
Email



[Amy G. Fudenberg](#)

Associate
Orlando 407-246-8422
Email

ground.

- *Is the property management company responsible where a customer of two trading firms killed nine and injured 12 at the firms' offices?* In that case, the management company of the center that housed the two firms had a contract with a security services company. The contract required the security company to inform the property manager of severe weather, fire alarms, emergency response, and more. In addition, the security guards were required to look out for hazardous conditions and investigate suspicious persons and vehicles. Under the agreement, the property manager retained the exclusive right to control who had access to the building, and it sometimes notified the security company of individuals who should be denied access. Survivors of the office shooting brought a suit for negligence, arguing they were third-party beneficiaries of the contract between the security services company and the property management company. The court ruled against the plaintiffs. The court explained that the contracting parties' intent to benefit a third party must be shown on the face of the contract in order for a duty to arise. In other words, the survivors could not merely be incidental beneficiaries. Accordingly, the plaintiffs were not able to recover.
- *Does "respondeat superior" apply?* Given that many property management companies work closely with other employers, *respondeat superior* is particularly important. Under *respondeat superior*, if an employee commits a wrongful act while acting within the scope of employment in his employer's business, the employer can be liable, even if the employer has expressly forbidden the act. In one case, the plaintiff worked as a facility coordinator for a residential community. One of the defendants built and sold homes; another was the property manager and operated the community. The plaintiff brought claims for infliction of emotional distress, battery, sexual assault, and other claims, based on alleged wrongful acts by an employee of the management defendant. Pursuant to *respondeat superior*, the court held the plaintiff had successfully stated at least some claims, because the alleged assailant was employed by the management entity, which, in turn, was hired by the other defendant.

These represent just a few examples of workplace violence issues that plague real estate management employers. While no one expects to be a victim of workplace violence, the risks and liabilities are real.

Types of Cases

Workplace violence cases typically can be divided into four major categories based on the individual's relationship to the workplace:

1. Where the individual has an employment relationship with the workplace;
2. Where the individual is the recipient or the object of a service provided by the workplace or the victim;
3. Where the individual has no direct relationship with the workplace, but typically has a relationship with an employee; and
4. Where the individual has no legitimate relationship to the workplace and enters the workplace to commit a robbery or another criminal act.

Employers should identify and address all four categories when developing a program to prevent workplace violence.

Risk Factors

In the real estate industry, identifying risks is essential and considering the nature of the relevant property is particularly important.

Terminations, demotions, layoffs, disciplinary actions, and unresolved or unsatisfied resolution of employee complaints and grievances have been considered contributing factors to incidents of workplace violence. Additional factors that employers should consider in assessing whether their employees are at risk include:

- Working with the public or volatile, unstable people
- Conflicts with coworkers
- Domestic or personal life issues that spill over into the workplace
- Disgruntled former or current employees
- Working alone or in isolated areas
- Handling or guarding money and valuables or providing services or care
- Working where alcohol is served
- Working late night or early morning hours
- Working in areas with high crime rates
- The availability of firearms and weapons

Employers also should consider any prior violent events at their worksite and review the effectiveness of the existing system for reporting, handling, and preventing incidents of violence.

Action Plan

After the risk factors have been identified, the next step is to develop a plan of action to prevent violence from occurring in the first place and to address an incident if one occurs. The plan will depend on the risk factors in the particular workplace. However, the following methods can help employers to materially reduce workplace violence:

- *Develop a Violence Prevention Program.* A written Workplace Violence Prevention Program should include a statement regarding potential violence in the workplace and the assignment of oversight and prevention responsibilities. It also should include an anti-violence statement that covers all workers, clients, visitors, tenants, and anyone else who may come into contact with company personnel. It should provide specific information on the consequences of non-compliance. In the property management industry, a broad policy is sufficient.
- *Develop a Security Plan.* Creating a security plan is essential for employers in property management. The plan should be tailored to the individual needs of the workplace; however, it may include: (1) requiring all visitors to sign in and provide identification; (2) installing security cameras in common or high-risk areas; (3) installing bright, effective lighting; (4) regularly maintaining alarm systems; and (5) providing reliable means of communication to employees who may need to summon assistance. For example, especially for individuals who work alone, ensure there is a way to reach others in the case of an emergency.
- *Create a Response and Crisis Management Team.* Employers should develop procedures and responsibilities to be taken in the event of workplace violence, including creating a response and crisis management team. Individuals should be assigned to serve on one of these teams and be instructed on the proper procedures for responding to an emergency stemming from workplace violence and on assisting individuals who have been physically injured or emotionally traumatized.
- *Conduct a Workplace Violence Hazard Analysis.* The workplace violence hazard assessment should consider the likelihood of workplace violence after evaluating the risk factors and whether certain physical changes can reduce employee vulnerability to violent incidents. An assessment also should identify jobs or locations with the greatest risk, as well as any processes and procedures that put employees at risk.
- *Implement Appropriate Administrative Controls.* Employers should implement such appropriate administrative controls as establishing liaisons with local police and state prosecutors; requiring employees to report all assaults or threats to a supervisor or manager; advising employees of company procedures for requesting police assistance or filing charges when assaulted and helping them with these if necessary; and screening people before allowing entry into a worksite.
- *Effective Training.* Train employees on the risk of workplace violence and how to recognize the potential for workplace violence at the earliest stages, as well as steps they can take to avoid or mitigate potential violent encounters. Employers also should provide training to employees on how to protect themselves or get assistance if violence appears imminent. Additionally, training should include how to report and document incidents of violence. In the property management industry, it is sufficient to combine this training with sexual harassment prevention training, but ensure that the training is both mandatory and provided annually. While the specific format and content of the training should be tailored to the needs and circumstances of the workplace, generally providing employees with the essential points is adequate.
- *Promptly Respond to All Complaints.* Employers should have a responsive process to handle complaints of violence or the potential for violence.
- *Annual Assessments.* Employers should have a recordkeeping system designed to accurately capture any violent incidents. Moreover, the system should be reviewed annually for areas of potential improvement.

The dangers associated with workplace violence are all too real. Employers should evaluate conditions at their worksites and take steps to prevent workplace violence.

Please contact Jackson Lewis with any questions.

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