

Employee Threat Assessment:

Planning Proactively To

Prevent Workplace Violence



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Employee Threat Assessment: Planning Proactively to Prevent Workplace Violence

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INTRODUCTION

It is important for employers to adopt comprehensive workplace violence-prevention policies that establish procedures to ensure employees' safety and wellbeing, including how to prevent violence, manage a violent event, support victims of violence, and control the presence of guns and other weapons in the workplace.

The Alexandria, Va.-based ASIS International Foundation Inc., an organization for security professionals, defines workplace violence as physical violence toward a person, as well as threats of violence, whether direct or indirect.

This behavior includes all forms of physical violence—regardless of how harmful or severe—and all stated threats of violence, whether direct (“I’m going to kill you!”), indirect (“I’m going to make sure you get what you deserve!”), or conditional (“If he fires me, I will kill him!”).

According to statistics from the Occupational Safety & Health Administration, nearly 2 million American workers report having been victims of workplace violence each year, and data from the Bureau of Labor Statistics Census of Fatal Occupational Injuries show that of the over 4,500 fatal workplace injuries that occurred in the United States in 2010 (the most recent year for which complete statistics are available), more than 500 were workplace homicides.

Reported workplace violence costs U.S. businesses approximately \$36 billion per year.

The Importance of Warning Signs

Beyond acts of violence and stated threats, the definition of workplace violence also includes behavior that has generated a concern for safety due to its nature and severity, such as conduct that might act as “warning signs” or precursors of possible violence.

This behavior includes:

- stalking;
- erratic and bizarre behavior caused, for instance, by mental illness or substance abuse;
- overt physical intimidation and aggression; and
- suicidal statements from an employee who appears despondent.

Including this kind of conduct in an employer's definition of workplace violence is important because the behavior is disruptive in and of itself, whether or not it progresses to actual violence, and identifying the behavior offers a chance at intervention before violence occurs.

Nearly 2 million American workers report having been victims of workplace violence each year.

Monitoring warning behavior also serves as a way for an organization to be put “on notice” and should trigger important legal obligations for the organization to act, according to ASIS.

“The most important part of [a violence prevention] plan is to be proactive and not reactive to violence that has already occurred in the workplace,” said Jeffrey Slotnick, chairman of the ASIS International Physical Security Council.

TYPES OF WORKPLACE VIOLENCE

Workplace violence is not limited to an employee with a gun and a vendetta against another employee. Generally speaking, there are four kinds of situations that qualify as workplace violence, according to attorney Mark Lies, a partner in the Chicago office of Seyfarth Shaw LLP:

- **Type I:** Incidents in which no relationship exists between the perpetrator, the victim or target, and the organization. These incidents generally consist of serious crimes, such as robberies and acts of terrorism. Type I incidents account for the majority of workplace homicides. Businesses that most commonly face Type I incidents include convenience stores, other retail establishments, and taxi services.

- **Type II:** Incidents in which a legitimate business relationship existed or currently exists between the perpetrator and the organization. Perpetrators include customers, clients, patients, students, inmates, and other recipients of services from an organization. Health care providers, prisons, and schools most commonly face Type II incidents.

- **Type III:** Incidents in which the perpetrator previously had or currently has some form of employment relationship with the organization. Perpetrators include employees, former employees, independent contractors, and temporary agency workers. All industries and organizations can face Type III incidents.

- **Type IV:** Incidents in which the perpetrator is a current or former intimate partner of an employee. Perpetrators can include current or former spouses, current or former domestic partners, family members, and those who currently are or have been involved in a dating relationship with an employee. All industries and organizations can face Type IV incidents.

“As the pace and emotional pressures of everyday life impact employees at home and in the workplace, a distressing and tragic trend is occurring—employees are unable to control their emotions at work and violence erupts toward co-employees, customers, or third parties,” Lies said.

This trend is expected to increase in times of economic uncertainty, particularly as employees face the prospect of layoffs and corporate reorganizations in many industries, Lies added.

Real Life Incidents

The following are real-life examples of workplace violence:

- On Nov. 14, 2008, Jing Hua Wu, a computer engineer for a Silicon Valley firm, fatally shot three of his former bosses. Laid off the previous week, the employee returned to the office asking for a meeting with company officials, including the chief executive officer, the vice president of operations, and the director of HR.

“A distressing and tragic trend is occurring.”

■ On Feb. 15, 2010, Amy Bishop, a biology professor at the University of Alabama at Huntsville, shot and killed three faculty members and wounded several more. The shooting occurred immediately after her tenure application was denied by the university.

■ On March 8, 2010, Robert Mustard stormed an office tower in Dallas, shooting and wounding a father and fatally shooting the man's son before turning the gun on himself. The victims knew Mustard, who was allegedly a disgruntled client of the financial firm where the incident took place.

■ On Aug. 3, 2010, Omar Thornton, a warehouse driver at Hartford Beer Distributorship in Hartford, Conn., shot and killed eight people and wounded several more at his workplace before turning the gun on himself. Thornton had come in for a disciplinary hearing with a union representative that day, and either before or after the meeting he began shooting indiscriminately.

■ On Sept. 1, 2010, James Lee stormed the Discovery Channel's Silver Spring, Md., headquarters and took employees hostage. Lee had homemade explosive devices strapped to his person. After hours of negotiation with local law enforcement, Lee was shot and killed by a sniper. News outlets described Lee as an "environmental activist" who believe the Discovery Channel's programming was encouraging population growth and industrial development.

■ On Sept. 10, 2010, Yvonne Hiller opened fire on co-workers at the Kraft Foods plant in Philadelphia. On the day of the incident, Hiller had become agitated and was using profanity, so the company took away her employee ID and suspended her from work. Hiller retrieved a fire arm from her vehicle and returned to the plant, fatally shooting two Kraft Foods employees.

■ On Oct. 6, 2011, Shareef Allman, a truck driver for the Cupertino, Calif.-based Lehigh Southwest Cement Permanente Plant, opened fire during a company safety meeting, killing three people and injuring seven others.

A truck driver opened fire during a company safety meeting, killing three people and injuring seven others.

LEGAL LANDSCAPE FOR PREVENTING WORKPLACE VIOLENCE

Under federal and state law, every employer has a legal duty to prevent violence and the underlying behavior that may generate it.

Ironically, as employers struggle to avoid these potential legal liabilities through creation and enforcement of employment policies, they are met with a host of federal and state laws that may protect certain employee conduct, Lies said.

“Since an employer has no objective ‘litmus test’ for predicting which employee may become violent under particular triggering circumstances, there is no fool-proof way to effectively eliminate the hazard,” Lies added.

Federal Laws

The best-known duty to prevent violence in the workplace, Title VII of the Civil Rights Act of 1964 requires an employer to protect its employees against all forms of workplace harassment (sexual, racial, color, religious, national origin) that may create a hostile or offensive workplace environment, Lies said.

Employee violence is frequently triggered by such harassing behavior, which causes the victim to react to the harasser—and sometimes to innocent co-workers or bystanders—with reflexive anger in the form of verbal outbursts or even physical violence, Lies said.

The same anti-harassment rules apply under the Age Discrimination in Employment Act.

Under the federal Occupational Safety and Health Act, an employer is required to protect employees against “recognized” workplace safety and health hazards likely to cause serious injury or death, Lies said. OSHA has identified workplace violence as such a hazard, particularly in the health care, retail, and taxicab industries.

The agency has issued citations with monetary penalties alleging that employers have failed to develop appropriate workplace violence policies and has issued guidance to help employers develop violence-prevention programs.

State Laws

Most states have developed common-law liability doctrines under which an employer may be held liable for the violent acts of an employee.

According to Lies, liability may be found if the employer:

- negligently hires employees by failing to investigate their work history to determine if there was prior violent conduct,

Every employer has a legal duty to prevent violence and the underlying behavior that may generate it.

- negligently supervises employees by failing to warn or discipline them if they engage in threatening conduct,
- negligently trains employees by failing to provide instruction on prohibited conduct and its consequences, or
- negligently retains employees by failing to dismiss those who engage in acts or threats of violence.

Employers must use caution in developing and implementing antiviolen- ce programs, however, to avoid violating antidiscrimination and other protective legis- lation, Lies warned.

Employee Right to Privacy

Under the Americans with Disabilities Act, an employer is limited in its ability to legally screen and reject a potential employee on the suspicion that the indi- vidual may become violent because of a mental or emotional impairment, Lies said.

After an employment relationship exists, an employer may have to accommodate a disruptive employee with a mental or emotional disability until the employee engages in conduct that renders him or her “unqualified” to continue to perform the job or that poses a “direct threat” to the safety or health of the employee himself or of other employees, Lies said.

Many state right-to-privacy laws severely restrict an employer’s ability to obtain information about an employee’s mental or emotional status and relevant activi- ties outside the workplace that might be essential in determining whether an em- ployee poses such a risk, Lies said.

An employee arrested during a protest, for example, could be exercising lawful First Amendment dissent. An employer, however, could see that altercation as an indication that the employee has a tendency to engage in threatening, violent, or aggressive behavior.

Lies noted that New York laws prevent employers from taking adverse job ac- tions against employees for engaging in lawful off-duty conduct such as using lawful products (e.g., cigarettes) or participating in legal off-premises recre- ational activities of which the employer might not approve.

Gun Laws

A number of states have passed or are considering laws broadening the right of gun owners to carry firearms, said attorney Michael Abcarian, a partner at Fisher & Phillips LLP in Dallas, and some of these laws affect workplaces. Texas, for example, passed a law allowing employees to lock their firearms in their cars in employer parking lots.

Although employers still have the right to ban firearms from the workplace, the greater the presence of firearms on company premises, the statistically greater the probability something bad will happen, according to Abcarian.

An employer is limited in its ability to legally screen and reject a potential employee.

Other states that allow employees to bring guns to work premises include Alaska, Arizona, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, North Dakota, Oklahoma, and Utah.

A NATIONAL STANDARD FOR EMPLOYERS

ASIS and the Society for Human Resource Management developed a national standard for workplace violence prevention and intervention, which provides an overview of policies, processes, and protocols organizations can adopt to help identify and prevent threatening behavior and violence affecting the workplace, as well as to better address and resolve threats and violence that have actually occurred.

The standard is also meant to serve as a tool and resource that organizations of any size can use to evaluate, develop, and implement policies, structures, and practices related to workplace violence.

The standard was developed using over 100 contributors and reflects a consensus among professionals from disparate disciplines—including security, human resources, mental health, law enforcement, and law—on practices viewed as effective, recommended, and essential.

First and foremost, organizations planning to implement a workplace violence prevention and intervention program should conduct a needs assessment designed to evaluate the presence of any specific risks of violence affecting the workplace and the organization’s readiness to respond to threats and violent acts.

Factors that should be evaluated include: possible “loss events” resulting from violence; their impact on employee welfare and the organization itself; and the organization’s policies, practices, and structures as they relate to its current ability to prevent violence and properly intervene when threats and violent incidents occur.

Zero Tolerance

A workplace violence prevention and intervention program should include a zero tolerance, “no threats, no violence” policy that is clearly communicated to employees at the time of hire and during the course of employment, said attorney Jason Branciforte, a shareholder with Littler Mendelson in Washington.

The national standard calls for a company policy that states the employer’s commitment to providing a safe workplace and sets forth a code of conduct that prohibits all violence, threats, and behavior that reasonably could be interpreted as an intent to cause physical harm, either on-site or off-site during work-related activities.

Specifically, the policy should:

- clearly define unacceptable behavior;
- regulate or prohibit weapons on-site and during work-related activities to the extent permitted by applicable laws;

A workplace violence prevention and intervention program should include a zero tolerance, “no threats, no violence” policy.

- require the prompt reporting of suspected violations of the policy and of any circumstances that raise a concern for safety from violence;
- provide multiple avenues for employees to report suspicious or violent behavior, including human resources, security personnel, and members of the organization's threat management team;
- assure employees that reports made under the policy will be treated with the highest degree of discretion and will promptly be investigated by the employer;
- include a commitment to nonretaliation toward employees who make a good faith report under the policy;
- impose discipline for policy violations up to and including termination; and
- require or encourage employees to inform clearly identified personnel of any protective or restraining order they have obtained that lists the workplace as a protected area.

Interdisciplinary Threat Management Team

The standard recommends that a workplace violence prevention program create an interdisciplinary team trained to respond to violent incidents or reports of troubling behavior.

Creating and training a threat management team helps ensure that a general incident management process, including lines of authority and communication, is established before a threat or violent incident occurs and that personnel know how to respond to reports made under the workplace violence prevention policy. Typically, a threat management team will include human resources, security, and legal personnel.

The designation of a threat management team should be accompanied by the identification of qualified external resources the team can call upon as needed to assist with incident management, particularly in areas where the organization lacks inhouse expertise.

For example, organizations faced with threatening or concerning behavior commonly will engage a violence risk assessment expert who can provide advice to assist the organization in fashioning an appropriate response to the behavior and, when necessary, conduct a formal violence risk assessment.

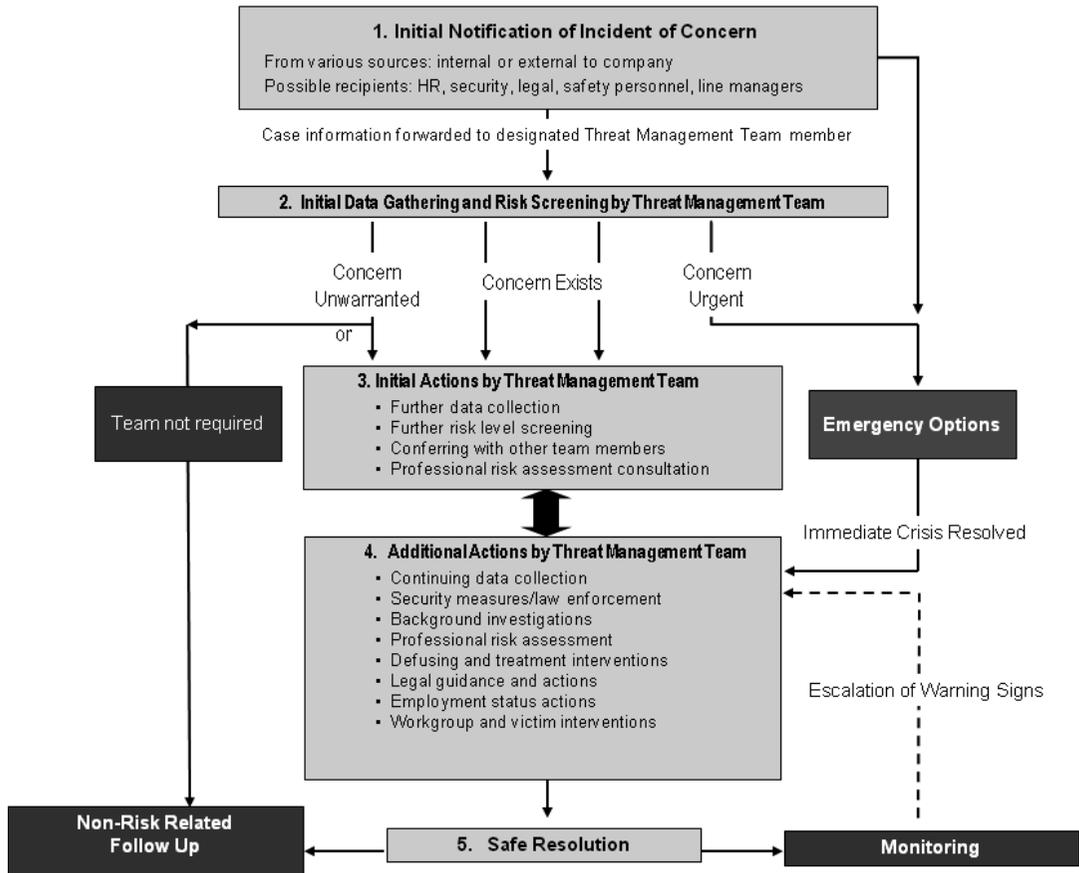
Training

A workplace violence prevention and intervention program should also include initial and periodic training for the threat management team.

First, team members should receive the most detailed and comprehensive training regarding the behavioral or psychological aspects of workplace violence, violence risk screening, investigatory and intervention techniques, incident resolution, and multidisciplinary case management strategies. Commonly, this train-

A threat management team will include human resources, security, and legal personnel.

ing will be conducted or assisted by outside specialists with proven expertise in workplace violence prevention and intervention.



Source: Adapted from Stephen G. White, Ph. D., and Work Trauma Services, Inc. (2010)

Overview of the Incident Management Process in Non-Emergency Situations

Source: ASIS/SHRM

Second, training for supervisors should emphasize information that will enable them to better detect behaviors of concern and to properly escalate a report made under the workplace violence prevention policy.

Finally, training for rank-and-file employees should acquaint them with the organization’s workplace violence and intervention program, the company’s commitment to providing a safe workplace, and their own obligations to observe the workplace violence prevention and related policies and to report problematic behavior to management.

“Employees-at-large in particular should be clearly informed of reporting venues or procedures,” ASIS said. Training can further include a discussion of internal and external resources available to employees to help them address troubling or stressful personal circumstances and to manage their own behavior.

Post-Incident Management

The benefits of adopting a proactive and reasoned approach to workplace violence are many, ASIS said, particularly since disturbing, threatening, and violent behavior affects more than just the person or persons directly threatened or harmed.

The following elements should be considered when establishing a post-incident recovery plan for acts of workplace violence:

- containing the crisis, including efforts to gather facts regarding the incident as quickly and completely as possible;
- securing and containing affected physical areas to preserve information and the integrity of an ensuing investigation;
- quarantining witnesses; and
- anticipating and addressing other steps needed to preserve safety.

In the event of a violent incident, multiple parties should be notified:

- Employees need accurate and timely information during the lifecycle of an event.
- If death or serious injury occurs, management may need to notify the employee's next of kin or emergency contact.
- Federal, state, and local regulatory agencies should be promptly notified. A list of all required agency notifications should be maintained as part of the post-incident management process.
- Notification of the news media will be necessary both immediately after and in the prolonged aftermath of an event. Ongoing interaction with news media, as appropriate, will help ensure dissemination of accurate and timely information and preempt misinformation.

Disturbing, threatening, and violent behavior affects more than just the person or persons directly threatened or harmed.

BEST PRACTICES

While workplace violence is often random and unpredictable, certain factors can precipitate an incident. These include:

- personal factors such as marital problems, physical or mental impairment, and drug or alcohol abuse; and
- workplace factors such as potential layoffs or reductions in force; lack of opportunity for advancement; unequal or unfair opportunities for training, benefits, and overtime; and harassment by co-workers.

Background Checks

According to the ASIS national standard, effective employment screening techniques, including rigorous interviewing and the use of background checks, can help prevent violence. Checks of both employees and contractors must be legally conducted and include, if legal and appropriate, credit history, criminal history, and drug testing.

A number of states have passed legislation giving qualified immunity against defamation claims to employers that provide employee references in good faith to a prospective employer. Such legislation allows employers to give truthful references including information that a particular individual could potentially pose a threat of violence, Branciforte said.

Although legislation also exists protecting certain individuals from discrimination based on criminal history, employers should never be discouraged from performing thorough background checks, Branciforte said, as long as they are done properly and without bias, which would include notice to and consent from the employees and a chance for them to rebut the findings if they are inaccurate.

Some states restrict employer use of criminal history in making hiring decisions, and Branciforte advises employers to make criminal history one part of a business decision that includes other factors and to use it as justification for rejecting a candidate only in clearly defensible cases—for example, not hiring an employee convicted of embezzlement for a financial job.

Background checks can provide substantial information about a job candidate, and Branciforte warns that an employer that does an inadequate background check can face criminal liability if information that might have prevented violence existed and was not sought.

Conflict Resolution, Mediation

Employers should also develop a mediation process to resolve conflicts that develop between co-workers before they escalate, ASIS advised, and encourage a corporate culture of respect as another means to prevent conflict.

While workplace violence is often random and unpredictable, certain factors can precipitate an incident.

“Policies and practices that help establish a work culture that expects professionalism and respect among employees, and between employees and managers,” could keep tempers from escalating to violence, ASIS said.

Specifically, employers should consider implementing management and disciplinary practices that enforce behavioral standards at all levels of the organization and that encourage early intervention with all behaviors of concern. These include efforts to curb harassment of all kinds, bullying, and similar conduct.

“That culture of communication is critical, and employers have to make sure to address those issues where someone is being bullied,” according to Nancy Slotnick, chief executive officer of Tacoma, Wash.-based Setracon Inc., a business consulting and security firm. (Nancy is Jeffrey Slotnick’s wife.)

Individuals who are bullied have the potential to turn violent themselves, Slotnick warned: “There is often a breaking point in the face of that abuse.”

Ensuring Safe Termination of Employment

When an organization chooses to dismiss an employee of concern, it should engage in strategies designed to ensure a thoughtful, respectful, and safe termination, according to the ASIS standard.

These strategies can include obtaining the advice of a qualified threat assessment professional regarding such matters as how a termination meeting should be conducted and how the employee can be offered a “face-saving” outcome.

A safe termination is one that permits the employee to move forward in life with his or her dignity and self-respect intact, ASIS said.

Best practices for safe terminations include:

- conducting the employment termination consistent with the organization’s established practices, policies, and procedures in cases involving a concern for violence;
- obtaining legal advice as necessary to ensure compliance with applicable employment laws;
- implementing security measures when appropriate for the termination meeting;
- considering any ongoing security measures that should be taken following the termination, as well as efforts to preclude or monitor contacts by the former employee with the organization or its employees; and
- considering the nature and form of information that will be provided in the future in response to queries about the former employee by prospective employers.

Following a violent incident, the organization should address the likelihood of a continuing threat, including the possibility of a “copycat” incident or a pre-planned multiple attack, ASIS warns.

Individuals who are bullied have the potential to turn violent themselves.

Employers should evaluate whether security or other lapses enabled the initial violent act and identify measures to promptly mitigate or eliminate those gaps.

An effective prevention strategy must include a mechanism to revise and refine the plan as events require to best protect employees, Jeffrey Slotnick said.

The Role of Law Enforcement

According to the ASIS national standard, incidents that involve physical assault or significant destruction of property or serious threats—especially with a weapon—will generally require intervention by law enforcement and possibly other public safety agencies as well.

Law enforcement’s role as an emergency responder during instances of workplace violence is the same as in any other emergency situation, ASIS said. If a situation in a workplace puts life, personal safety, or property in immediate danger, a 9-1-1 call should be immediately placed to summon police and other emergency personnel.

Once there, law enforcement officers have the responsibility for controlling the situation, ending the threat, and if necessary arresting an offender and gathering evidence for criminal prosecution.

Emergency response is not the law enforcement community’s only role in workplace violence, however. Establishing contact and exchanging information with local police or sheriff’s departments before a violent act occurs are “vital in developing and administering an organization’s workplace violence program,” ASIS says, and an existing relationship and communication channel between an organization and local law enforcement may also make the response more effective if an emergency arises.

In developing workplace violence plans, employers should contact police command staff for their area and meet to discuss police response and investigation procedures to ensure an effective collaboration, ASIS says.

Employers should put the following questions to local law enforcement:

- What is the standard response to a report of a suspicious person on company property? to an unauthorized person on company property with a firearm?
- Is there a policy of investigating threats before any injury occurs?
- What is the response to conduct that creates fear—such as threatening, bullying, and intimidation—that may not be characterized as criminal?
- What is the procedure following a report of a crime in progress?
- How long will it take for police to reach the scene after an emergency call?
- Is there a dedicated domestic violence officer or unit to provide preventive services to victims?

The employer and the local law enforcement agency should each establish a single point of contact to ensure the most effective communication during an

An existing relationship with local law enforcement may make the response more effective if an emergency arises.

emergency, ASIS said, adding that “a cooperative relationship with local police can also benefit an organization by providing a channel to resources that can only be accessed through law enforcement agencies.”

If an organization is concerned about a potentially dangerous employee, for example, and this cooperative relationship with law enforcement has been established, the local police can contact the FBI’s National Center for the Analysis of Violent Crime and request a violence risk assessment and advice on possible intervention strategies if the employee is judged to present a serious risk of violence.

“This mutual exchange of information permits a seamless plan for intervention and assistance,” ASIS says. “This partnership, based upon the knowledge of each other’s capabilities and enhanced communication, will strengthen an organization’s overall violence prevention efforts.”

CONCLUSION

Ultimately, workplace violence—in all its forms—is impossible to predict or prevent completely. Nevertheless, it is the responsibility of any employer to develop and implement effective policies and procedures that best mitigate the risk of an incident.

Education and awareness lie at the heart of successful workplace violence prevention and response efforts. This includes understanding the nature and scope of all possible types of violence, an employer’s obligation to address this complex problem, and the practical steps that can be taken to ensure adequate prevention and management.

An integrated, multidisciplinary approach is key to a successful workplace violence program. No one sector of an organization can successfully act alone to prevent violence, and no single profession or discipline possesses the skills or capabilities needed to design, implement, and administer a successful workplace violence prevention program.

The benefits of adopting a proactive and reasoned approach to workplace violence are many, because disturbing, threatening, and violent behavior affects more than just the person or persons directly threatened or harmed.

Violent incidents can have many unforeseen consequences, including loss of brand reputation and damaged community relations, and “that loss is felt throughout the community, not just in a corporation,” Slotnick said.

Having a proactive violence prevention plan in place has “significant cost savings” potential for a company, Slotnick said, but beyond questions of legal liability and other tangible financial costs, organizations that lack effective means of detecting, managing, and preventing workplace violence can face more fundamental costs in the form of disrupted productivity, low employee morale, and a public image that potentially communicates a disregard for employee safety.

An organization prepared to effectively confront the danger or occurrence of workplace violence, on the other hand, can not only avoid costly incidents, but will benefit as well from employee confidence in the safety of the workplace.

An organization prepared to effectively confront the danger of workplace violence will benefit from employee confidence in the safety of the workplace.

RESOURCES

Abcarian, Michael, attorney and partner, Fisher & Phillips LLP: <http://www.laborlawyers.com/showbio.aspx?Attorney-Michael-Abcarian&Show=2961>

ASIS and SHRM National Standard for Workplace Violence Prevention and Intervention: <http://op.bna.com/hl.nsf/r?Open=gdos-8zrlx2>

Branciforte, Jason, attorney and shareholder, Littler Mendelson: <http://www.littler.com/people/jason-m-branciforte>

Lies, Mark, attorney and partner, Seyfarth Shaw LLP: <http://www.seyfarth.com/MarkLiesII>

Slotnick, Jeffrey, chairman, ASIS International Physical Security Council: <http://www.linkedin.com/pub/jeffrey-a-slotnick%E2%80%8F-cpp-ppsp/6/54a/8a>

Slotnick, Nancy, chief executive officer, Setracon Inc.: <http://www.setracon.com/#!/home/mainPage>