

COMBATING WORKPLACE VIOLENCE



Guidelines for Employers

ORANGE COUNTY SHERIFF'S OFFICE

Combating Workplace Violence

Guidelines for Employers and Law Enforcement

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Section 1. Introduction

Violence in the workplace can have a devastating effect on the productivity of organizations and on the quality of life of employees. All across America today we are seeing an increase in acts of violence that occur within the workplace. Recognizing this contemporary problem is growing, the Orange County Sheriff's Office has prepared this document to provide employers with guidelines on the steps they should consider to help reduce certain workplace violence hazards.

We would like to encourage you to develop your own workplace violence program, which we believe will help reduce your liability and afford a greater deal of protection to you as well as your employees.

Today, more than ever, it is crucial that employers take into consideration the possibility of violent acts occurring and take action to minimize the hazards stemming from those crimes. The guidelines can be used as benchmarks for helping assess the state of an organization's current policies and practices, however not every recommendation may be appropriate for all organizations.

We have included in this packet a model policy on workplace violence, which is offered for possible use by organizations without any existing policy. If you have additional questions or concerns, please contact our Crime Prevention Unit at 407-254-7000.

Reasons for Establishing a Program

Some organizations may not see the need for creating a program to reduce the hazards of violence in the workplace, especially if they have never experienced an incident of violence. The following reasons are why it is important for all employers to consider the recommendations included in this document.

- ◆ Businesses are beginning to realize the high cost of just one violent incident. These costs can include medical and psychiatric care as well as potential liability suits, lost business and productivity, repairs and clean-up, higher insurance rates, consultants' fees, increased security measures and - most important of all - the death or injury of valued employees and coworkers.
- ◆ Threats and other violent, abusive behaviors are no longer being tolerated in the workplace.
- ◆ Executives, professionals, and administrative personnel are no longer immune to acts of violence in the workplace.
- ◆ Layoffs, increased workload, having to do more with less, and other unpopular changes in the work environment have been associated with increased risk for violence.

- ◆ Recent reports and surveys suggest that workplace violence impacts large numbers of employers and employees. (See the following inset for further details.)

Impact of Workplace Violence

While working or on duty, U.S. residents experienced 1.7 million violent victimizations annually from 1993 to 1999 including 1.3 million simple assaults, 325,000 aggravated assaults, 36,500 rapes and sexual assaults, 70,000 robberies, and 900 homicides. Workplace violence accounted for 18% of all violent crime between 1993 to 1999.

Source: Bureau of Justice Statistics website - www.ojp.usdoj.gov/bjs/

- ◆ It's the right thing to do. Employers have both a moral and a legal obligation to provide a safe workplace for their employees, clients, and visitors (refer to page 15.)

These issues are spurring employers to develop plans for addressing workplace violence. When compared to the potential costs of an incident, these plans are a relatively inexpensive way to reduce the risk of violence and to minimize its impact.

Section 2. Guidelines for Employers

After reading these guidelines, employers should have a better understanding of the most important steps they can take to minimize the impact of workplace violence and threats. This section concludes with a description of all employers' legal obligations and potential liabilities regarding workplace violence issues.

I. Pre-Incident Violence Prevention and Preparation

Pre-Employment Screening

Employers who conduct effective background checks can often improve productivity and reduce the number of personnel prone to exhibiting violent behaviors.

- ◆ Use a job application form that includes an appropriate waiver and release (permitting the employer to verify the information reported on the application.) Prior to hiring any applicant, check references and inquire about any prior incidents of violence. In addition, conduct thorough background checks and use drug screening to the extent practicable.
- ◆ Also, evaluate the need for screening contract personnel who work at your facility. Vendors and service organizations whose personnel make frequent visits or spend long periods of time at your facility should certify that those individuals meet or exceed your firm's safety and security requirements. Conversely, contractors who assign personnel to work at other organizations' facilities should also consider the host firm's safety and security policies and practices.

- ◆ Recommend to legislative bodies that access to conviction records in all states be made available to businesses when conducting their background investigation process.

Take Advantage of Community Resources

There are many programs and resources in the community that can help you develop your workplace violence plans. Some examples follow.

- ◆ Invite local police into your firm to promote good relations and to help them become more familiar with your facility. The police can explain what actions they typically take during incidents involving threats and violence. Such visits can help your firm work better with police when incidents do occur.
- ◆ Use law enforcement and security experts to educate employees on how to prevent violence in the workplace. Such experts can provide crime prevention information, conduct building security inspections, and teach employees how to avoid being a victim.

- ◆ Consider utilizing local associations and community organizations, such as the Chamber of Commerce, security organizations, and law enforcement groups, as a resource in order to stay abreast of crime trends and prevention techniques. Communicate to your employees those issues and trends which pose a significant threat.

Institute and Review Security Procedures

Periodic review of security policies and procedures will help minimize your organization's vulnerability to violence and other forms of crime.

- ◆ Conduct security surveys at scheduled intervals to help determine whether modifications should be made. Four examples of improvements that might be considered during a security survey are:
 - a) Improved lighting in and around the place of work (including parking lots);
 - b) Arranging escorts for employees who are concerned about walking to and from the parking lot;
 - c) Having reception areas that can be locked to prevent outsiders from going into the offices when no receptionist is on duty; and
 - d) When appropriate, having more than one employee on the
- ◆ Use, maintain, and regularly review appropriate physical security measures, such as electronic access control systems, silent alarms, metal detectors, and video cameras in a manner consistent with applicable state and federal laws.

- ◆ Limit former employees' access to the workplace as appropriate.

Develop policies regarding visitor access within facilities. For example, if warranted, require visitors to sign in and out at reception, wear an identification badge while on the business premises, and/or be escorted.

Use a Common Sense Approach to Risk Management

Your organization's program to reduce the hazards of violence in the workplace should be based on common sense, reflecting: 1) the potential impact of one or more violent incidents, 2) the likelihood of violent incidents occurring, and 3) the measures you could take to reduce your risk. Your risk assessment should consider the likelihood of incidents occurring given the individuals, community, and type of organization involved. Among the sources of information available to help you make those determinations are 1) your organization's incident history, 2) police data concerning the type and rate of violent acts in your area, and 3) published reports comparing the violence rates across different types of organizations.

Improve Internal/External Communications

Employees should have a means to alert others in the workplace to a dangerous situation (see Case 2) and to provide information requested by emergency responders.

- ◆ If appropriate, establish an internal emergency code word or phone number similar to 911.

- ◆ Place lists of contact persons, crisis management plans, evacuation plans, and building plans where they can be made available to emergency responders. Keep important telephone numbers in several places (including off-site locations), available to all appropriate managers and employees.

Establish Ground Rules for Behavior

Organizations that do not tolerate drug abuse or aggressive interaction lower the risk of workplace violence.

Organizations should inform employees about policies concerning drugs, violent acts, and possession of weapons so that employees know exactly what is expected of them.

- ◆ Implement procedures for your organization to become a drug-free workplace. This includes prohibiting unauthorized use or possession, or being under the influence of alcohol at work.
- ◆ Disseminate to all employees a policy of zero tolerance to threats or actual violence at the workplace. For example, discipline or terminate every threat-maker if the complaint is substantial.
- ◆ Establish a policy applicable to everyone employed by the company or on company property, including the company parking lot, prohibiting the possession of weapons which have not been authorized by your organization.

Model Policy for Workplace Threats and Violence

Nothing is more important to (Company Name) than the safety and security of its employees. Threats, threatening behavior, or acts of violence against employees, visitors, guests, or other individuals by anyone on (Company Name) property will not be tolerated. Violations of this policy will lead to disciplinary action which may include dismissal, arrest, and prosecution.

Any person who makes substantial threats, exhibits threatening behavior, or engages in violent acts on (Company Name) property shall be removed from the premises as quickly as safety permits, and shall remain off (Company Name) premises pending the outcome of an investigation. (Company Name) will initiate an appropriate response. This response may include, but is not limited to, suspension and/or termination of any business relationship, reassignment of job duties, suspension or termination of employment, and/or criminal prosecution of the person or persons involved.

No existing (Company Name) policy, practice, or procedure should be interpreted to prohibit decisions designed to prevent a threat from being carried out, a violent act from occurring or a life threatening situation from developing.

All (Company Name) personnel are responsible for notifying the management representative designated below of any threats which they have witnessed, received, or have been told that another person has witnessed or received. Even without an actual threat, personnel should also report any behavior they have witnessed which they regard as threatening or violent, when that behavior is job-related or might be carried out on a company controlled site, or is connected to company employment. Employees are responsible for making this report regardless of the relationship between the individual who initiated the threat or threatening behavior and the person or persons who were threatened or were the focus of the threatening behavior. If the designated management representative is not available, personnel should report the threat to their supervisor or another member of the management team.

All individuals who apply for or obtain a protective or restraining order which lists company locations as being protected areas, must provide to the designated management representative a copy of the petition and declarations used to seek the order, a copy of any temporary protective or restraining order which is granted, and a copy of any protective or restraining order which is made permanent.

(Company Name) understands the sensitivity of the information requested and has developed confidentiality procedures which recognize and respect the privacy of the reporting employee(s).

The designated representative is:

Name: _____ Title: _____ Telephone: _____

Department: _____ Location: _____

Employee and Manager Training

- ◆ In order for policies and procedures concerning workplace violence to be effective, they must be implemented in conjunction with appropriate employee training.
 - ◆ Training managers and other selected individuals on appropriate ways to handle employee terminations, layoffs, and discipline. Examples include appropriate use of Employee Assistance Program (EAP) counselors and out-placement services; providing managers with sensitivity and aggression management training; and, when possible, assessing violence potential of individuals prior to termination and taking appropriate measures such as hiring additional security.
 - ◆ Suggest local police encourage victims of threats and violence outside the workplace to notify their employers about
- the incident when warranted so their employers can take appropriate measures to help protect them and their coworkers from possible future incidents of violence at the work site. It is recommended that employers reinforce this message to their employees. Upon notification, employers should provide receptionists and other frontline personnel having a need to know a description or picture of the alleged offender and inform them what actions they should take in the event that individual seeks entry or contact.
- ◆ Have available for your employees information about the potential for violence in the workplace, how to recognize the early warning signs of a troubled or potentially violent person, how to respond to those individuals, and how to report such incidents. See the following two side bars for details on identifying and conducting yourself around potentially violent individuals.

Warning Signs of Potentially Violent Individuals

There is no exact method of predicting when a person will become violent. One or more of these warning signs may be displayed before a person becomes violent but does not necessarily indicate that an individual will become violent. A display of these signs should trigger concern as they are usually exhibited by people experiencing problems.

- Irrational beliefs and ideas.
- Verbal, nonverbal or written threats or intimidation
- Fascination of weaponry and/or acts of violence
- Expressions of a plan to hurt himself or others
- Externalization of blame
- Unreciprocated romantic obsession
- Taking up much of supervisor's time with behavior or performance problems
- Fear reaction among coworkers/clients
- Drastic change in belief systems
- Displays of unwarranted anger
- New or increased source of stress at home or work
- Inability to take criticism
- Feelings of being victimized
- Intoxication from alcohol or other substances
- Expressions of hopelessness or heightened anxiety
- Productivity and/or attendance problems
- Violence towards inanimate objects
- Steals or sabotages projects or equipment
- Lack of concern for the safety of others

Personal Conduct to Minimize Violence

Follow these suggestions in your daily interactions with people to de-escalate potentially violent situations. If at any time a person's behavior starts to escalate beyond your comfort zone, disengage.

Do

- ◆ Project calmness. Move and speak slowly, quietly, and confidently.
- ◆ Be an empathetic listener. Encourage the person to talk and listen patiently.
- ◆ Focus your attention on the other person to let them know you are interested in what they have to say.
- ◆ Maintain a relaxed yet attentive posture and position yourself at a right angle rather than directly in front of the other person.
- ◆ Acknowledge the person's feelings. Indicate that you can see he or she is upset.
- ◆ Ask for small, specific favors such as asking the person to move to a quieter area.
- ◆ Establish ground rules if unreasonable behavior persists. Calmly describe the consequences of any violent behavior.
- ◆ Use delaying tactics which will give the person time to calm down. For example, offer a drink of water (in a disposable cup.)
- ◆ Be reassuring and point out choices.
- ◆ Break big problems into smaller, more manageable problems.
- ◆ Accept criticism in a positive way. When a complaint might be true, use statements like "You're probably right," or "It was my fault." If the criticism seems unwarranted, ask clarifying questions.
- ◆ Ask for his recommendations. Repeat back to him what you feel he is requesting of you.

Do Not

- ◆ Use styles of communication which generate hostility such as apathy, brush off, coldness, condescension, robotism, going strictly by the rules or giving the runaround.
- ◆ Reject all of a client's demands from the start.
- ◆ Pose in challenging stances such as standing directly opposite someone, hands on hips or crossing your arms. Avoid any physical contact, finger-pointing or long periods of fixed eye contact.
- ◆ Make sudden movements which can be seen as threatening. Notice the tone, volume, and rate of your speech.
- ◆ Challenge, threaten, or dare the individual. Never belittle the person or make him/her feel foolish.
- ◆ Criticize or act impatiently toward the agitated individual.
- ◆ Attempt to bargain with a threatening individual.
- ◆ Try to make the situation seem less serious than it is.
- ◆ Make false statements or promises you cannot keep.
- ◆ Try to impart a lot of technical or complicated information when emotions are high.
- ◆ Take sides or agree with distortions.
- ◆ Invade the individual's personal space. Make sure there is a space of 3' to 6'

Prevention Programs

Companies need to have programs in place to assist troubled employees and to address managerial concerns before violence or threats arise.

- ◆ Provide confidential employee assistance programs (EAP) to deal with emotional, substance abuse, marital and financial problems. Or, provide employees with a list of relevant community resources. Employees, supervisors, and managers should be actively encouraged to use these services.
- ◆ Conduct exit interviews when employees retire, quit, or are transferred or terminated to identify potential violence-related security or management problems.

Reporting Procedures

All employees should know how and where to report violent acts or threats of violence.

- ◆ Encourage employees to report and establish avenues of communication so they can do so without fear of reprisal or criticism:
 - a) Incidents of threats, harassment, and other aggressive behavior (see the side-bar for more details);
 - b) Conditions where employees are subjected to excessive or unnecessary risk of violence; and
 - c) Suggestions for reducing risk of violence or improving negative working conditions, such as establishing a telephone hotline, identifying specific points of contact in the organization for addressing those issues, having a suggestion box or computer bulletin board, or providing an ombudsman.

Recognizing Inappropriate Behavior

Inappropriate behavior is often a warning sign of potential hostility or violence. When left unchecked, it can escalate to higher levels. Employees who exhibit the following behaviors should be reported and disciplined in accordance with your company policy:

- ◆ Unwelcome name-calling, obscene language, and other abusive behavior
- ◆ Intimidation through direct or veiled verbal threats
- ◆ Throwing objects in the workplace regardless of the size or type of object being thrown or whether a person is the target of a thrown object
- ◆ Physically touching another employee in an intimidating, malicious or sexually harassing manner. That includes such acts as hitting, slapping, poking, kicking, pinching, grabbing, and pushing
- ◆ Physically intimidating others including such acts as obscene gestures, “getting in your face” and fist shaking.

- ◆ Establish a policy to assure that reports which are submitted from outside the company concerning potentially violent people who are likely to be present at your worksite are routed to the appropriate manager and then investigated. The types of information are discussed in the box below.

Threat Incident Report

Company policy should require employees to report all threats or incidents of violent behavior which they observe or are informed about to the Designated Management Representative (DMR). The DMR should take the steps necessary to complete a threat incident report as quickly as possible, including private interviews of the victim(s) and witness(es). The report will be used by the Threat Management Team (see box on page 10) to assess the safety of the workplace and to decide upon a plan of action. The following facts should be included in the threat incident report:

- Name of threat-maker and his/her relationship to the company and to the recipient
- Name(s) of the victims or potential victims
- When and where the incident occurred
- What happened immediately prior to the incident
- The specific language of the threat
- Any physical conduct that would substantiate an intention to follow through on the threat
- How the threat-maker appeared (physically and emotionally)
- Names of others who were directly involved and any actions they took
- How the incident ended
- Names of witnesses
- What happened to the threat-maker after the incident
- What happened to the other employees directly involved after the incident
- Names of any supervisory staff involved and how they responded
- What event(s) triggered the incident
- Any history leading up to the incident
- The steps which have been taken to ensure that the threat will not be carried out
- Suggestions for preventing workplace violence in the future

Elements of the threat incident report and any subsequent actions relating to the incident should be recorded in a tracking system for use by the DMR and the Threat Management Team. Such systems range from simple card files to commercially available relational databases. The tracking system as well as all investigative files should be kept secure and maintained separately from other records.

Prepare a Threat Management

It is important to prepare a threat management plan so that when a threat occurs, everyone will know that there is a policy and will understand what to do. The plan might include:

- ◆ Designating a threat management team;
- ◆ Providing guidance concerning liaison with outside assistance;
- ◆ Providing guidance developed in concert with local authorities for collecting and preserving evidence, including interviews of involved parties;
- ◆ Managing of communications regarding the incident, for example, media relations, internal communications, and possible use of a rumor control desk;
- ◆ Managing the release of sensitive information where appropriate;
- ◆ Assigning responsibilities for contacting the families of victims;
- ◆ Managing clean-up and repairs;
- ◆ Making decisions about returning to work;
- ◆ Notifying customers and suppliers about changes in orders;
- ◆ Providing employees and their families with information about their benefits; and
- ◆ Managing operations and trauma care after the crisis.

The threat management team is a critical component of every successful threat management plan. For more information about the composition and role of the threat management team, see the following box.

Threat Management Team

The threat management team consists of representatives from security, human resources, legal, medical services (or EAP) and safety. It may include external consultants such as psychologists, psychiatrists or threat assessment experts. The primary responsibility of this team is to develop a plan of action to resolve bona fide threats or acts of violence. Team members provide liaison with outside resources such as police, threat assessment professionals, and trauma teams. In addition, team members may be responsible for managing violence prevention programs, including needs assessment and awareness training.

II. Addressing Violent or Threatening Incidents

Use All Available Resources

When an incident occurs, bring together all the necessary resources, which may include help from outside the company.

- ◆ When a serious threat is made, consult the sources available to you to help evaluate the level of risk posed by the threat-maker.
- ◆ When appropriate, obtain fitness-for-duty examinations of employees exhibiting seriously dysfunctional behaviors at the workplace.
- ◆ Maintain an internal tracking system of all threats and incidents of violence.
- ◆ When a threat has been made or an incident has occurred, evaluate the situation and, if warranted, notify the potential victims and/or police.

Evaluate Security After a Threat

The threat management team should review risks and determine what additional security measures, if any, should be put in place after an incident.

- ◆ If warranted, provide increased worksite protection when serious threats of violence have been made. Such protection might include requesting additional police patrols, hiring security guards, and/or alerting organizations or people who might be affected.
- ◆ Consider the costs and benefits of providing increased protection to threatened employees. This could include changing their phone numbers, relocating them, loaning them a cellular phone, or providing them with a quick response distress button or information about where this device can be obtained.
- ◆ Seek guidance and training on what procedures should be taken to screen mail and packages after a threat has been made or after a large-scale layoff. Contact the U.S. Postal Service or local police for guidance.
- ◆ After a violent incident, evaluate the potential for further violence at your workplace and reassess your threat management plan.
- ◆ Counsel potential victims about the various civil and criminal options available to them, such as obtaining a restraining order.

Considerations Regarding Restraining Orders and Other Interventions

The potential reactions of the offender need to be considered when deciding whether or not to seek a restraining order. At a minimum, additional security precautions should be taken if the offender is likely to respond negatively to the intervention chosen, especially during the period immediately following that intervention.

III. Managing the Aftermath of an Incident

Trauma Plan

Helping employees with the psychological consequences of workplace violence is the humane thing to do. It also greatly helps to reduce financial losses caused by absence, loss of productivity among employees, and workers' compensation claims.

After a violent incident, provide information and offer counseling services to employees and their families which may include:

- ◆ Providing a debriefing 24 to 72 hours after a serious incident of violence to include all affected employees so that the cause of the violence and expectations can be discussed, a plan of action can be addressed, and those needing further counseling can be identified;
- ◆ Providing a group debriefing after a serious incident of violence for immediate coworkers in how to communicate with the victim/coworker who is reentering the job after absence; and
- ◆ Providing ongoing follow-up treatment, as needed.

Support Prosecution of Offenders

To prevent further incidents from occurring and to show their support of the victims, employers should support prosecution of

- ◆ Accommodate employees after a violent incident so they can make court appearances and work with the prosecution.
- ◆ Cooperate with law enforcement authorities to help identify and prosecute offenders through the use of any means at your disposal, such as crime stoppers and rewards.

IV. Legal Obligations and Duties of Employers

The duty of an employer to provide a reasonably safe workplace may arise from a variety of federal or state statutes, regulations, or judicial decisions. Employers seeking to avoid liability for acts of workplace violence should become familiar with the legal requirements. The following highlights provide a foundation for the legal audit of your current business policies and practices for reducing workplace violence.

Workplace Safety

- ◆ Compliance with the Occupational Safety and Health Act, and similar state laws, may contribute positively to reduction of the risk of workplace violence.
- ◆ Many state courts have ruled that an employer is liable for the dangerous acts of employees if such harm was foreseeable. The employer must use reasonable care in hiring, training, supervising, and retaining employees.
- ◆ Case law in some jurisdictions suggests that the employer may be liable for the negligent acts of independent contractors, where such contractors are incompetent, negligently selected, or engaged in abnormally dangerous activities.
- ◆ Under both federal and state statutes, the employer may be liable for the failure to intervene in situations of harassment of employees by supervisors or management, and in situations involving coworkers where the employer was aware of the harassment.
- ◆ The employer may be liable for the acts of an employee who is intoxicated or otherwise a risk to others, if the employer exercises control over the employee and is negligent in exercising that control.

- ◆ Employers are expected to use reasonable security precautions and other measures to minimize the risk of foreseeable criminal intrusion (based upon the prior experience of the employer, its location in a dangerous area, or industry victimization base rates.)
- ◆ Employers should be cautious about reducing the level of security because of financial pressures. To avoid or reduce liability, the employer should first assess whether the level of security risk justifies reducing security measures.

Training Issues

- ◆ Various federal and state laws or case law may require the employer to establish written policy and procedures dealing with harassment, as well as the training of employees as to company policies prohibiting sexual or racial harassment, fighting, and the use of drugs or alcohol in the workplace.
- ◆ The employer may avoid or reduce liability for acts of violence in the workplace where it is shown that the employer conducted training for employees on the recognition of warning signs of potentially violent behavior, and on precautions which may enhance the personal safety of the employee at work.

Duty to Warn

- ◆ In some jurisdictions, an employer, employment counselor, or therapist may have a duty to warn an identified employee, spouse, or third party of a threat made by another to do bodily harm to that person.

Nondiscrimination

- ◆ Under state and federal law, the employer must refrain from retaliation against employees who express their concerns regarding unsafe working conditions, such as threats of violence.

- ◆ The Americans with Disabilities Act of 1990 (ADA) and related state statutes prohibit employers from discriminating against qualified individuals with physical or mental disabilities. An employee could claim that his violent or threatening behavior was the result of a disability and request reasonable accommodation from the employer. While federal law and judicial decisions provide that an employer may disqualify an employee who is a danger to self or others, the employer may be obliged to investigate a claim or disability to determine whether dismissal is necessary for the protection of the employee or others in the workplace.

Respecting Employee Rights

- ◆ In the event that an employer warns employees of an individual's threat of violence, the employer could be liable for defamation if the employer is subsequently proved to be mistaken. The employer can minimize this liability by conducting a prompt investigation of all allegations and by notifying only those individuals who have a need to know of the risk.
- ◆ An employee terminated for having violent tendencies could file a wrongful discharge suit against the employer if the employee disputes his employer's characterization. A thorough investigation of complaints against an employee should be conducted prior to termination. Employers should consider suspension of the employee with pay while the charges are being investigated. The employer might also consider offering the employee a chance to resign as an alternative to termination.

The employer must respect the privacy rights and confidentiality rights of employees during any investigation.

The above list of legal obligations is not meant to be comprehensive. To find out more about the requirements in your state, refer to your state statutes or ask your legal counsel.

