

# Workplace Violence

## ▶ Occupational Safety and Health Administration (OSHA) Definition

- any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. It ranges from threats and verbal abuse to physical assaults and even homicide. It can affect and involve employees, clients, customers and visitors.
- Can include physical or verbal assault, homicide, sexual harassment.

# OSHA General Duty Clause

- ▶ Each employer shall furnish a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees.
- ▶ Can be used as a “catch-all” when no direct standard applies.

# Where Can It Come From?

- ▶ **In short...anywhere**
  - Can be random or pre-meditated
- ▶ **Examples could include:**
  - Stranger who has no direct relationship (random act)
  - Violence by a dissatisfied customer/client
  - Violence by co-worker/former/prospective employee
  - Personal relationship not directly related to the worksite

# Who Is Most At Risk?

- ▶ **OSHA lists several types of occupations that could be at risk:**
  - Exchanging money with the public
  - Working with volatile or unstable individuals
  - Working alone or in isolated places
  - Working where alcohol is served
  - Late nights/early mornings
  - Working in areas with high crime rates

# Workplace Violence

▶ Occupational Safety and Health Commission recently issued its first decision upholding a citation under OSHA's General Duty Clause based on an incident involving workplace violence:

- *Integra Health Management, Inc.* - OSHA issued a General Duty Clause citation following a fatality in the field.
- “An employer that has **experienced acts of workplace violence, or becomes aware of threats, intimidation, or other indicators showing that the potential for violence in the workplace exists**, would be on notice of the risk of workplace violence and should implement a workplace violence prevention **program** combined with **engineering controls, administrative controls, and training.**”
- Abatement in this case: (a) create a specific policy; (b) communicate risks both ways; (c) train on hazard recognition and response; (d) use the “buddy system” based on a hazard assessment; (e) provide a means for requesting help; and (f) coordinate with law enforcement.

# Illinois Health Care Violence Prevention Act

- ▶ The Illinois General Assembly recently passed the Healthcare Workplace Violence Prevention Act to combat the violence that regularly occurs against health care workers in nearly all care settings.
- ▶ Healthcare providers must post a notice stating that verbal aggression will not be tolerated and that physical assault will be reported to law enforcement.
- ▶ Develop a program based on OSHA Guidance. Each program must also include:
  - Descriptions of the four classifications of workplace violence;
  - Commitment by management and health care worker participation;
  - Worksite analysis and identification of potential hazards;
  - Hazard prevention and control;
  - Safety and health training (with required hours determined by rule); and
  - Recordkeeping and evaluation of the violence prevention program.
- ▶ Provide resources to workers harmed by patients or their associates.

# So What Does OSHA Expect Us To Do Now?

## ▶ Review

- Are we ready if something happens?

## ▶ Plan

- How will we handle such an event?

## ▶ Train

- Ensure our employees know what steps to take in the event something happens.

# Employer Policies

- ▶ How handbook policy initiatives often look:
  - High-level rhetoric about the importance of certain issues within the organization
  - Tailored training or “canned course” presentations
  - Implementation -
    - Without attention to employee understanding



# Employer Policies (cont.)

- ▶ Policies that should facilitate communication:
  - Open Door
  - VESSA
  - No Harassment
  - Personal Leave
  - Anti-Bullying
  - Workplace Safety
  - Reporting Hotlines

# Proactive Steps Employers Can Take To Minimize the Risk of Workplace Violence

Not only developing and maintaining policies, but:

- Requiring employees to submit a completed application and/or resume and cover letter;
- Conducting reference checks, both personal and professional;
- Conducting checks of candidate's educational and employment history;
- Conducting a criminal background check;
- Training - both anti-harassment and active shooter/preparedness training;
- Determine stance on “no guns” sign;



# Note On Terminations

- ▶ Consider whether you really need a face-to-face meeting
- ▶ Law enforcement or private security can be present on the job site
- ▶ Be aware of prior threats (even “jokes”), a “persecution complex,” inability to accept criticism, or erratic behaviors

# Negligent Hiring/Retention

- Based on the principle that an employer is liable for the harm resulting from its employee's acts
- Question is whether the employer exercised reasonable care in choosing or retaining an employee for the particular duties to be performed
- Courts have begun to accept that “Google stalking” falls within the standard of care for an employer

# Fair Workweek

City of Chicago's PASSED "Fair workweek"  
Ordinance at Section 1-25-40(b)(3):

- ▶ an employee who is the victim of domestic or sexual violence or who has a family or household member who is a victim may request that his or her schedule not be posted or transmitted to other employees.

# Protective Orders

- ▶ Workplace restraining orders
- ▶ Domestic violence orders of protection
- ▶ Sexual Assault Civil No Contact Order
- ▶ Stalking/no contact orders

# Workplace Violence Prevention Act

Employers may seek a **workplace protection restraining order** if:

- (1) an employee has suffered unlawful violence and the respondent has made a credible threat of violence to be carried out at the employee's workplace;
- (2) an employee believes that the respondent has made a credible threat of violence to be carried out at the employee's workplace; or
- (3) an unlawful act of violence has been carried out at the workplace or the respondent has made a credible threat of violence at the workplace.

# Domestic Violence Orders of Protection

- ▶ Petitioners for an **order of protection** file against someone with whom they have a domestic relationship.
  - ▶ Includes, but not limited to:
    - ▶ Spouses,
    - ▶ parents,
    - ▶ relatives by blood or marriage, or
    - ▶ someone with whom they live or have a dating relationship.



# Domestic Violence Orders of Protection

- ▶ These orders can extend to the Petitioner's workplace if:
  - ▶ “The Respondent has no right to enter/remain at such place(s); or
  - ▶ The balance of hardships favors the Petitioner in prohibiting the Respondent from entering or remaining at such place(s).”

# Sexual Assault Civil No Contact Order

- ▶ Any person who is a victim of nonconsensual sexual conduct or sexual penetration.
- ▶ These orders also can protect the following
- ▶ people:
  - Family or household members of a victim; and
  - Rape crisis center employees and volunteers

Among other things, Judge can:

- ▶ Order the offender to stay away from victim generally and/or to stay away from specific locations

# Stalking/No Contact Orders

- ▶ **Stalking/no contact orders** serve a similar purpose as orders of protection, but are available for those who do not have a family or household member relationship with the respondent who is stalking them.
- ▶ These orders can extend to prohibiting the respondent from coming within a specified distance of the petitioner's workplace.

# Consequences for Violation

- ▶ What happens if one of these orders is violated?
  - ▶ First violation = Class A misdemeanor
  - ▶ Subsequent violations = Class 4 felony

# Trespass under IL Law

- ▶ “A person commits a **criminal trespass** to real property when he or she:
  - ▶ knowingly and without lawful authority enters or remains within or on a building;
  - ▶ enters upon the land of another after receiving, prior to entry, notice from the owner or occupants that the entry is forbidden;
  - ▶ remains upon the land of another, after receiving notice from the owner or occupant to depart;
  - ▶ presents false documents or falsely represent his or her identity orally to the owner or occupant of a building or land in order to obtain permission from the owner or occupant to enter or remain in the building or on the land; or
  - ▶ intentionally removes a notice posted on residential real estate . . . before the date and time set forth in the notice . . .”