



Workplace Violence Prevention Toolkit

**HR advice, guidelines
and policies to keep
your workplace safe**

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Special thanks to the employment law firm of **Ogletree Deakins** and its Director of Client Training Dennis A. Davis, who generously contributed to this toolkit. With offices in 35 cities, Ogletree Deakins' Labor and Employment Practice provides counsel to management in every area of labor and employment law. Learn more about Ogletree Deakins at **www.ogletreedeakins.com**

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Preventing workplace violence in 5 steps

An effective workplace violence prevention program starts with employee screening and ends with publicizing a tough anti-violence policy, according to Dennis A. Davis, a former police SWAT team liaison who now directs client training for the employment law firm Ogletree Deakins.

Davis says tough economic times could be a catalyst for violence—violence that could erupt at work. There’s never been a better time to implement a workplace violence prevention plan with these five elements:

1. Screen applicants

“Your best chance to avoid workplace violence is to avoid letting in a violent person in the first place,” Davis says.

Ask all applicants for personal as well as professional references. Insist on a face-to-face interview so managers can gauge an applicant’s temperament. Ask everyone who comes in contact with the applicant about their impressions.

Then trust your gut. Does this person seem stable?

2. Craft a tough anti-violence policy

You need a policy that stands on its own—not part of some other general policy on professional behavior or misuse of office equipment. That sends the signal that you’re serious about preventing workplace violence.

“Most people will go along with your expectations if you’re clear about them,” Davis says. Having a written policy does that.

Make sure it states you have zero tolerance for any kind of violence—and threats of violence. You can even expand it to cover off-duty threats that might spill back into the workplace later. Prohibit weapons on your premises. Require employees to read the policy and sign a receipt. Ask your vendors to read and enforce the policy when their employees are on your premises or work site.

3. Establish a crisis management team

A crisis management team consists of six to eight people who function as coaches before violence erupts and incident managers if it does. Include staffers from the HR, legal and security functions. There should be a representative from senior management and your employee assistance program if you have one.

The team should track complaints of violent or intimidating employee behavior. That can help identify potentially violent employees before they become physically dangerous. The crisis management team also functions as your liaison to the police if an incident occurs.

4. Train front-line supervisors and greeters

“These people are your eyes and ears, your early warning system,” says Davis. They’ll probably know if someone is about to become violent long before anyone else does.

Instruct supervisors to report every incident. Train receptionists and security how to read aggressive body language and how to use verbal skills to defuse dangerous situations.

Tell everyone to call 911 if they are in danger or believe a situation is about to become violent.

5. Publicize your anti-violence program

Use meetings, newsletters, e-mail and the intranet to get the word out that your organization has a zero-tolerance policy on workplace violence. Be sure everyone knows how to contact the crisis management team and when to call 911.

8 warning signs of violent employee behavior

When violence occurs at work, employees may say their violent co-worker “just snapped.” But, the truth is, people usually don’t snap. They display warning signs long before they actually act out. The key is to talk to employees early in this “pre-violence” stage to offer assistance and let them know their behaviors are unacceptable.

Be on the lookout for workers who display any of these eight warning signs of violent behavior, according to Davis:

- 1. Fascination with weapons.** That’s different than *ownership* of weapons. (Think Robert De Niro in *Taxi Driver*.)
- 2. Substance abuse.** Research shows a big correlation between substance abuse and violence.
- 3. Severe stress.** Stress is a function of modern society, but people with a propensity toward violence allow that stress to become an excuse for violence.
- 4. Violent history.** “Once people cross that moral, ethical or professional barrier into violence,” Davis says, “it’s a lot easier for them to do it the next time.”
- 5. Decreased or inconsistent productivity.** Employees with a tendency toward violence have a harder time keeping a consistent level of productivity.
- 6. Social isolation and poor peer relationships.** Loners are more likely to act violently because they don’t have a social network to work out problems.
- 7. Poor personal hygiene.** These people have moved into the dangerous “I don’t care” phase.
- 8. Drastic changes in personality.** It’s a myth that you need to watch out for ultra-shy or ultra-outgoing employees. Davis says, “You need to pay attention to the person who flip-flops between the two.”

3 keys to managing the aftermath of workplace violence

by Dennis A. Davis, Ph.D., Ogletree Deakins

Increasingly, companies have to deal with violence and tragedy in the workplace. In today's work environment, employees are experiencing trauma at alarming rates. These incidents of trauma are most widely known as critical incidents.

Since people experience trauma in many different ways, critical incidents can be tricky to define. Generally, a critical incident is any violent or traumatic event that is far out of the norm for an individual or organization and that is beyond usual occurrence on the job, such as death threats, arson, suicide, rape, assault with a deadly weapon or murder. Critical incidents overwhelm the normal coping resources of the employees.

Most companies believe “It will never happen to us,” but it can and—unfortunately—it does.

A critical incident can have far reaching ramifications for any organization. Some critical incidents cause major injuries or even death to those involved. Often, employees who were not around when the incident occurred experience just as much trauma as those who were present. Some incidents also attract unwanted media attention and scrutiny to the impacted organization.

Critical incidents can vary in intensity and severity. They can involve one person or many. Most critical incidents occurring in the workplace, however, have several resulting elements in common:

- An increase in absenteeism
- An increase in employee turnover
- Loss of productivity
- Business interruptions
- Increased workers' compensation claims
- Increased insurance premium rates.

Checklist: If violence erupts

Follow this checklist of basic steps to help manage the aftermath of a traumatic situation:

- ☐ Remove all employees, customers and clients from further harm.
- ☐ Contact local law enforcement.
- ☐ Arrange for emergency medical care.
- ☐ Schedule debriefings as soon as the threat is removed.
- ☐ Refer employees to EAP/insurance programs.
- ☐ Renew commitment to established security measures.
- ☐ Have management agree on what information is appropriate for general release.
- ☐ Present spokesperson as contact to local media.
- ☐ Touch base with personnel several days after debriefing to communicate concern.

However, those results can be influenced. With proper crisis management methods and post-incident intervention, an organization can recover from and decrease the negative fallout from an incident.

The following is a basic step-by-step crisis management guide to help you and your organization get back on track after a critical incident.

Security: Out of harm's way

First and foremost, be certain that all employees, customers, clients and visitors have been removed from harm's way. Make sure that local law enforcement has been informed of the incident. Provide emergency medical care for any injured parties.

If a threat remains, keep all personnel away from the site until it has been cleared by security or police.

If the incident involves a threat of bodily harm, increase the visibility of security. If your organization has a security department, increase the number of “rounds” or “walk-throughs.” If your company does not have a security department, consider bringing in an outside security firm. Very few things can decrease employee productivity and customer confidence as much as the perception of being unsafe. Contrary to popular belief, increased security helps employees and customers feel safe.

Finally, make sure that your security director or a designee maintains contact with local law enforcement in cases where there is criminal prosecution. Knowing where a suspect or perpetrator is in the justice system can serve to dissipate fear.

After an incident occurs, it is imperative to reinforce security precautions with all personnel. Frequently, an organization has adequate physical/site security, but the measures have been disregarded or disabled by employees—usually as a corner-cutting convenience. *Some examples:* The locked security door that is propped open with a chair while an employee goes to smoke a cigarette, and the receptionist who buzzes in an employee even though he doesn't have his identification, because he looks familiar.

With the heightened awareness following a critical incident, your personnel will be more likely to hear and heed your warnings against these types of security breaches.

Human resources: Critical incident response debriefings

As soon after the removal of the threat as possible, your HR director should schedule Critical Incident Stress Debriefings (CISD). CISDs are extremely important to the recovery of an organization following a critical incident.

They are not therapy sessions, but rather “psycho-educational” meetings. The intent is to educate employees on what to expect as a result of the trauma. There are three main phases of a CISD:

1. Information. This is where the employees are given as much information about the incident as possible. This helps to decrease the number of rumors and myths that follow many traumatic incidents.

2. Venting and validation. During this phase of the CISD, the participants are encouraged to share their fears, concerns and other feelings. Once these emotions are expressed, they are validated. This serves to reduce anxiety in an organization and minimize the need to talk about the incident when employees should be working.

3. Prediction and preparation. During this final CISD phase, the facilitator helps the employees understand what to expect next. *Example:* Who will be questioned during the police investigation?

Research has suggested that a CISD following a critical/traumatic incident can drastically reduce the negative impact on employees.

Make sure attendance at the debriefings is voluntary, but encourage all employees to attend. It is generally a good idea to have separate debriefings for management and nonmanagement staff, especially if the critical incident in any way involved an issue between management and the workforce.

During the management debriefing, be sure to make it clear to all managers exactly what information is to be released to the workforce.

It has been found that the most successful CISDs are those that take place within 72 hours of an incident. This is partly because this short period of time does not allow inappropriate coping strategies to set in permanently. If no one in your organization is qualified to conduct a debriefing, your local mental health association can refer a facilitator to you.

After the debriefing, be ready to discuss your company's employee assistance program (EAP), as well as insurance benefits that may cover counseling. CISDs are meant to fill an employee's need for immediate, short-term counseling; however, some of your personnel may have a more difficult time dealing with the incident and may feel uncomfortable in the CISD setting. In these instances, additional outside counseling may be required.

Allow only a limited amount of venting with you directly. Once you become the support system to the employee, it is hard to change roles. Politely remind them of the counseling services available through your EAP or insurance program. If your company does not have an EAP or your insurance carrier does not include a therapy allowance, make sure you are familiar with counseling centers and social service agencies in your area. Be prepared to refer to these agencies and have the agency names and numbers available.

Have your HR director touch base with your employees about two to three days after the debriefing. An increased presence lets the employees know that the company cares, and this is a big concern for many.

Public relations: Manage the message

One of the most difficult invasions for most people is to have a microphone thrust in their face and asked to be instantly prophetic (coherent, intelligible, informed, etc.) following a critical incident. Don't allow any of your employees to be put in this situation.

If there is ever an incident in your organization that is of such magnitude that it generates media interest, it is essential that a company spokesperson be designated. If you have not already designated this person, do so immediately, before an incident can occur.

Make sure this designee is accessible to the media and well informed. It helps if he or she has already established credibility with your local media. Remember, a proactive approach with the media often allows you to convey the appropriate message you want the public to hear.

Implementing a workplace violence and weapons policy

Often it is an employee or ex-employee who turns violent. The Society for Human Resource Management reports that 57% of all workplace violence is directed against fellow employees by a co-worker, and 17% is an employee against a supervisor. Six percent of the attackers are customers; 4% are boyfriends or girlfriends of employees; 3% are spouses of employees. In many cases, at least some co-workers knew that the person might turn violent.

Still, you can't predict the behavior of your employees, clients and all their friends and relatives. You can't anticipate or plan for every possible danger. But the law dictates that you, as the employer, have a "duty of care" to keep all individuals in your workplace safe

By the numbers

One in six violent crimes occurs at work:

- 7% of all rapes
- 8% of all robberies
- 16% of all assaults

Sources: Department of Justice, Bureau of Justice Statistics, Bureau of Labor Statistics, Centers for Disease Control

from dangers you can reasonably anticipate, both from inside and outside forces. To do that, you need to evaluate potential dangers and formulate an appropriate action plan.

Weapons in the workplace present an obvious potential for violence. Aside from allowing designated, trained security personnel to carry them, you should explicitly ban weapons from the premises. Even in the case of security staff, carefully weigh the risks posed by the mere

presence of their weapons against the potential for them to protect others from harm. Some organizations leave no room for doubt by listing categories of prohibited weapons.

Policy considerations

To reduce the chance of workplace violence—or your liability if it does happen—establish a program that covers the following:

- **Ban weapons**, and have a zero-tolerance policy regarding threats in the workplace.
- **Screen carefully** by checking references and doing criminal background checks.
- **Train supervisors** to recognize personality changes and warning signs.
- **Defuse disputes**. Establish a mediation program to resolve employee disputes rather than letting them simmer.
- **Evaluate your security system** at least once a year. Consider whether you might need silent alarms, ID keys, cameras or even an armed guard.
- **Make it a policy** that any restraining orders involving employees must be reported to management, and include this in your employee handbook.

- **Train front-line employees.** Receptionists and front-desk clerks should be on the lookout for unusual or unsettling encounters, and have clear instructions on how to handle and report them to minimize risk to themselves and others. Every employee should be instructed as to when and how to contact the police.
- **Establish procedures** for employees to report threats or other violent behavior. Offer several avenues for reporting: supervisors, security personnel, human resources, or if there's imminent danger, everyone nearby.
- **Document any threats** and your response to them. Your zero-tolerance policy should dictate dismissal of an employee who makes a threat. If it's a worker's relative or friend who's being disruptive and dangerous, you are within your legal rights to terminate the employee, provided you give adequate warning.

Caution: When an ADA-related disability is involved, you must generally tolerate a certain level of disability-caused conduct, but you do not have to tolerate direct, violent threats to the health or safety of others in your workplace.

- **Assess** how your company handles stress-inducing events. For example, what is your procedure when a law enforcement officer or process server comes to see an employee? Confrontations shouldn't occur in view of other employees. You could instruct your receptionist to direct the officer to a private part of the office near an outside door, then quietly ask the employee involved to report to that area.
- **Terminate with care.** Have someone along as a witness if you have to terminate a violent employee; consider engaging backup security. Treat the worker with dignity, and allow a way for the person to depart quietly. Afterward, change the locks.

Have a game plan

You should have a plan for what to do in case violence does erupt, starting with protecting yourself, calling police and warning those in the vicinity. The plan should include the following steps after the assailant leaves:

- Seek assistance from co-workers and attend to those who are injured.
- If the assailant is an employee, pull his personnel file.
- Designate someone to notify the victims' families. Be sure all employees have a current emergency contact on file. Update that information annually.
- Inform a designated media spokesperson.
- Notify your in-house counsel.
- Provide counselors trained in handling post-traumatic stress to talk with all the employees affected by the incident.
- Ask law enforcement for approval to clean up the site. You don't want to damage the integrity of the evidence, but you do want to restore the site as soon as possible.
- Beware of looters, who might try to take advantage of your situation.
- Begin documentation of the event as soon as possible.

Sample policy #1: Violence and weapons

The following sample policy was excerpted from *The Book of Company Policies*, published by HR Specialist, © 2007. To order, call (800) 543-2055 or visit www.BusinessManagementDaily.com.

Please feel free to edit this policy to suit your organization's purposes.

Purpose

All employees have the right to work in an environment free from physical violence, threats and intimidation. The Company's position is that violence is a form of serious misconduct that undermines the integrity of the employment relationship. No employee should be subject to unsolicited and physical violence, threats or intimidation. Such behavior may result in disciplinary action, up to and including dismissal.

Policy

The Company has a strong commitment to its employees to provide a safe, healthy and secure work environment. The Company also expects its employees to maintain a high level of productivity and efficiency. The presence of weapons and the occurrence of violence in the workplace during working hours or otherwise are inconsistent with these objectives. While the Company has no intention of intruding into the private lives of its present or potential employees, it expects all employees to report on the work site without possessing weapons and to perform their jobs without violence toward any other individual.

Coverage

All applicants considered for employment [and all current employees] will be required to sign an acknowledgment that they have received this Policy and understand its contents and intent. Any applicant or employee who refuses to sign the acknowledgment will be subject to discipline, up to and including discharge.

Definitions

Crime of Violence or Violence: Includes any degree of murder, voluntary manslaughter, aggravated rape, rape, mayhem, especially aggravated robbery, robbery, burglary, aggravated assault, assault, physical or verbal threats and battery.

Weapon: Includes an explosive or an explosive weapon, a device principally designed, made or adapted for delivering or shooting an explosive weapon, a machine gun, a short-barrel rifle or shotgun, a handgun, a firearm silencer, a switchblade knife or any other type of knife, or knuckles, or any other implement for infliction of bodily injury, serious bodily injury or death that has no common lawful purpose.

On the Work Site: Includes all property owned or occupied by the Company (including Company job sites) or in a Company vehicle.

Possession: Includes, but is not limited to, the presence of a weapon on the employee, in his/her motor vehicle, lunch box, locker, tool kit, bag, purse, cabinets, office, etc.

Policy implementation

It is the responsibility of the Plant Manager to ensure that all employees are informed of and aware of this Policy and legal guidelines. Employees who are victims of or witnesses to violent incidents should immediately report such conduct to their supervisors or the Human Resources Manager.

Prohibited activities

The Company specifically prohibits the following and will routinely discipline an employee, up to and including discharge for any of the following:

- Use, possession or sale of any weapon as described above.
- Storing any weapon in a locker, desk, vehicles, lunch box, tool kit, bag, purse or other repository on the work site or other Company premises.
- Illegal possession, use or sale of a weapon off Company property that adversely affects his/her own or other's safety at work, or indicates a propensity for same.
- Refusing to submit to an inspection for the presence of a weapon that is requested by the Company.
- Conviction under any criminal statute for the illegal possession of a weapon or for committing a violent act against the person or property of another.
- Refusing to sign a statement to comply with the Company's Policy on Workplace Violence.
- Refusing to participate in an investigation pertaining to allegations or suspicion that violence has or is likely to occur, or an investigation pertaining to the carrying of a weapon by the employee or a co-employee.
- Verbal or physical threats, threatening gestures or statements.
- Fighting.

The Company, in its discretion, may from time to time modify this policy. In the event the Workplace Violence Policy is revised, a copy of the revised policy will be provided to each employee, and to the extent that the employee acknowledgment of the Policy may need to be updated or revised, each employee will be required to sign an updated version.

Reporting

An employee who witnesses an incident of violence or threatening language or conduct must report the incident to his or her supervisor or Human Resources promptly. No employee who reports an incident of violence or threatening conduct or participates in an investigation of such an incident shall be subject to retaliation.

Discipline

An employee who violates this Policy by engaging in violent conduct or bringing a weapon into the workplace is subject to discipline, up to and including immediate termination.

An employee who violates this Policy by bringing onto the work site a weapon and whose employment is not terminated by the Company will be subject to searches from time to time, for an indefinite period of time not to exceed one (1) year from the date of the violation.

An employee's consent to submit to a search is required as a condition of employment and the employee's refusal to consent may result in disciplinary action, including discharge, for a first refusal or any subsequent refusal.

Miscellaneous

The Company has the right to search any areas on Company premises for weapons, including, but not limited to, lockers, furniture, containers, drawers, equipment or other facilities, lunch boxes, briefcases, personal bags, personal toolboxes or tool kits, parking lots, Company vehicles and personal vehicles parked on Company premises.

If an employee is injured while participating in a fight or after instigating a fight, then entitlement to workers' compensation benefits may be denied.

No part of this Policy, nor any procedure therein, is intended to affect the Company's right to manage or control its workforce, or be construed as a guarantee or contract of employment or continued employment.

Nonretaliation

This policy also prohibits retaliation against employees who report incidents of threats, physical violence, intimidating conduct or weapons possession. Any employee bringing a harassment complaint or assisting in the investigation of such a complaint will not be adversely affected in terms and conditions of employment, nor discriminated against or discharged because of the complaint.

Modification and revision

This policy is subject to modification or revision in part or in its entirety to reflect changes in conditions subsequent to the effective date of this policy.

Sample policy #2: Violence and weapons

The following sample policy was developed by Dennis A. Davis, director of client training for the employment law firm Ogletree Deakins. Used by permission.

1. Prohibited behavior in the workplace

To ensure both safe and efficient operations, XYZ expects and requires all of its employees, visitors, consultants/contractors and temporary workers to display common courtesy and engage in safe and appropriate behavior on its premises at all times. The Company has zero tolerance for any behavior that is considered violent, intimidating, dangerous and/or threatening. All acts of violence and threats of violence will be taken seriously. This includes fighting, aggressive horseplay and other behavior that would cause a reasonable person to be seriously alarmed, upset or frightened. Such prohibited conduct includes behavior in person, by telephone, mail, e-mail or any other form of communication.

2. Prohibited weapons

All nonwork-related weapons are prohibited. Weapons of any kind, including, but not limited to guns, knives, mace, explosives, hazardous devices or substances are prohibited from Company premises, Company-sponsored events and may not be carried while on Company business.

3. Nonwork disputes

The Company encourages employees to manage their nonwork-related disputes in a respectful manner, outside of work, and off company premises. However, the Company recognizes that off-duty events can have an impact on the workplace. Therefore, employees are encouraged to notify Human Resources when such events have the potential to create a disruption in the workplace. In addition, should these disagreements reach the workplace, the Company may initiate mitigating actions as warranted, such as contacting local law enforcement, obtaining restraining orders or any other necessary means to alleviate the situation.

4. Reporting a violation

Employees should never take any action that might jeopardize their own safety. Any perceived threat or other knowledge of a violation of this policy should be reported immediately to Human Resources, Security or your supervisor. In addition, any suspicious individuals or activities in the workplace should be reported immediately to Human Resources, Security or your supervisor. If any employees should feel they are in imminent danger at any time, they are instructed to call 911 for assistance. The identity of anyone reporting a suspicious incident will be maintained in confidence, as much as is possible.

5. Discipline

Human Resources will promptly investigate any reports of physical or verbal altercations, threats of violence or other conduct by employees that threatens the health or safety of other employees or the public. Human Resources will also investigate any reports of violations of this policy. All incidents of physical altercations are treated as gross misconduct and may result in disciplinary action or termination of employment. In some cases, depending on the severity of the behavior, local law enforcement may be contacted. Pending the results of its investigation, XYZ may suspend employees who are involved in physical altercations that result in injuries, create a significant risk of injury or have a significant adverse impact on productivity, safety or morale.

6. Employee assistance program

Employees are reminded about the availability of the Employee Assistance Program (EAP). The EAP is available to employees and members of their household who may need assistance in resolving both work related and nonwork-related issues.

Memo to Managers: **How your management style can stop workplace violence**

Use this “Memo to Managers” article to educate your supervisors. Paste the content into an e-mail, company newsletter or other communication. Edit as desired.

Workplace violence has gone far beyond the stereotype of the disgruntled postal worker. No workplace is immune. In fact, each week, an average of 20 employees are killed and about 18,000 are assaulted on the job, according to government statistics.

What triggers on-the-job violence? The top reasons: personality conflicts, work-related stress, family or marital problems, mental illness, firings and drug and alcohol abuse. An American Management Association survey found that the most violent incidents occurring on the job involve (in order):

1. Employee and employee
2. Employee and supervisor
3. Customer and employee
4. Employee and spouse/significant other.

Also, lawsuits surrounding workplace violence are rising. Legal action often centers on negligent-hiring and negligent-supervision issues.

So, what can you do? If you tolerate negative behaviors among the employees you supervise, or display those behaviors yourself, you can contribute to an unsafe work environment. That’s why it’s best to:

- 1. Address misconduct right away.** Allowing aggressive or inappropriate conduct without taking action can foster a workplace in which employees feel harassed or intimidated. Notify HR with concerns about discipline or potentially explosive situations.
- 2. Provide clear rationale for decisions.** Making employee-related decisions without employee input or explanation can lead to frustrated employees who don’t feel valued as anything but “worker bees.”
- 3. Treat employees fairly and equitably,** and apply rules consistently. If you are inconsistent or unpredictable, your employees will be unsure of your expectations and become frustrated. Communicate clear standards of performance and behaviors, then set a good example yourself.
- 4. Provide feedback** throughout the year. Saving up all your critiques for performance reviews can intensify anger and spark violence.
- 5. Get to know your employees,** but keep it professional. Remember that engaging in relationships with employees that are too personal or too informal may lead to misunderstandings, as well as to other employees feeling alienated.

Workplace violence prevention resources

Federal Bureau of Investigation

- Best-practices workplace violence prevention strategies.
www.fbi.gov/publications/violence.pdf

National Institute for Occupational Safety & Health

- Downloadable video presentations on preventing violence on the job.
www.cdc.gov/niosh/docs/video/violence.html
- “*Workplace Violence Prevention Strategies and Research Needs*”
www.cdc.gov/niosh/docs/2006-144/

National Institute for the Prevention of Workplace Violence

- Tools and resources for preventing workplace violence.
www.workplaceviolence911.com

Occupational Safety & Health Administration

- Links to violence-prevention strategies for various kinds of workplaces.
www.osha.gov/SLTC/workplaceviolence/solutions.html
- Resources to help recognize potential workplace violence threats.
www.osha.gov/SLTC/workplaceviolence/recognition.html

Society for Human Resource Management

- Links to violence prevention articles and resources.
www.shrm.org/hrdisciplines/safetysecurity/pages/violence.aspx

More on preventing workplace violence from www.theHRSpecialist.com

Hundreds of articles like these—full of practical HR advice—are available to **HR Specialist** Premium Plus Online subscribers. For more information, visit www.theHRSpecialist.com/site.aspx?articleid=3851

Background check isn't enough; tight supervision keeps liability at bay

Your organization can be held liable for “negligent hiring” if an employee commits a crime and you could have (or should have) prevented it. That’s why it’s crucial to run background checks to screen out risky applicants, particularly those who would have contact with customers (especially minors).

But don’t think your duty ends after you receive a clean background check. A background check may save you from negligent-hiring liability, but if supervisors allow employees to run wild, you could still face liability for negligent supervision.

That’s why it’s vital to train employees continually, remind them of the complaint process and follow up immediately on complaints. That won’t prevent all employee misdeeds, but it will give you a solid defense against negligent supervision claims.

Recent case: A mental-health facility placed one of its employees, Sam Craft, on leave after he allegedly sexually assaulted a female patient. The patient sued the facility, alleging negligent hiring and negligent supervision.

The court tossed out the negligent hiring claim.

Reason: The facility proved it ran a background check on Craft that came back clean. However, the court did allow the patient’s negligent supervision claim to go to trial, saying a jury must decide whether the facility failed to supervise its staff. (*Vellafane v. Foundations Behavioral Health*, No. 03-1019, ED Pa, 2005)

Final note: Several national employers have recently lost cases involving negligent hiring. Retail giant WalMart began running criminal record checks on all applicants after being found responsible for sexual assaults committed by employees.

Specify some offenses as dischargeable, and follow through

Employers have a legal obligation to provide a safe working environment, and that includes taking reasonable measures to ensure that violence stays outside the workplace gate. That’s one reason no employer should tolerate violence or threats against the company or its employees.

Your employee handbook should include “no violence” and “no threats” clauses, explaining that verified violence or threats mean immediate dismissal. Designate

someone in HR to handle such incidents consistently and swiftly.

As the following appeals court case shows, you don't have to worry that a court will second-guess your decision if you can show you treat all employees who threaten or commit violence exactly the same.

Recent case: Albert Robinson, who is black, was fired when HR learned he had threatened to kill a co-worker. Robinson sued, alleging race discrimination. But the 11th Circuit Court of Appeals tossed out his case. It reasoned that making death threats is a legitimate reason for discharge and can't be the basis for a race discrimination case unless there's proof that someone not belonging to the same protected class got a "get out of jail free" pass for the same conduct. Robinson had no such proof. (*Robinson v. Adventist Health Systems*, No. 06-13828, 11th Cir., 2007)

Final note: Concerned about workplace violence? You have good reason for that concern, since about 10% of workplace deaths are directly attributable to violence. OSHA has extensive information on how to make your workplace safe, including specific information for industries that typically experience more violence than others, including health care and food service.

It's your right! Prohibit guns in parking lot

As the economy falters, there are reports that attendance at gun shows is way up. In fact, the gun industry is one of very few experiencing robust growth.

What does it mean? Well, chances are now greater that one of your employees will bring a gun to work—and that could be a threat to employee safety.

But there is good news. A recent 6th Circuit Court of Appeals decision has specifically upheld the right of employers to ban guns in locked cars on company property. You can and should have a clear policy prohibiting guns at work and in the parking lot. You can discipline employees who violate that rule.

Recent case: Gary Plona, a UPS employee in Cleveland, parked his car in the company parking lot and locked it. Plona had signed a company policy that clearly stated guns were not allowed on any company property, including in locked cars in the parking lot.

When police became aware of suspicious activity in the parking lot—activity unrelated to Plona—they asked for permission to search Plona's car. He consented, and police found a loaded gun under the front seat.

UPS fired Plona, and he sued the company, claiming that Ohio public policy allowed him the right to carry a firearm. The 6th Circuit Court of Appeals disagreed and upheld the discharge. (*Plona v. UPS*, No. 08-3512, 6th Cir., 2009)

Final note: Gun laws differ across the country. Another federal appeals court recently upheld the right of an employee in Colorado to keep his gun in his locked car at work. That case was based on a specific state law allowing people to store guns in their locked cars—even at work.

Does your violence policy address concealed-carry laws? It should

With the recent addition of Ohio, 46 states now have laws allowing competent adults to carry concealed weapons.

The good news: In most states, that right typically doesn't apply if a private employer notifies employees and visitors (before they enter the premises) that it bans weapons on its property. And some states, such as Ohio, grant legal immunity to employers who are sued after a concealed gun is discharged on their premises.

The bad news: Employment attorneys say nuances in state laws can affect how far your "no weapons" policy goes. And employers often fail to take advantage of language they can use.

The most common employer response to these growing laws has been to issue a blanket policy banning all weapons, concealed or not, from the workplace. But the differing laws make it necessary to determine whether you can legally prohibit weapons in common areas, such as parking lots and company vehicles.

What's your best policy? Take these three steps:

- 1. Add a no-concealed-weapons ban** to your employee handbook. Ask applicants and employees who have concealed-weapons permits to disclose that fact on applications and other company forms.
- 2. Consider additional language** prohibiting employees from taking weapons to customers' sites.
- 3. Notify visitors, contractors and vendors** that your premises is a gun-free zone. Signs at entrances do the trick, but so does "no weapons" language on sign-in sheets and visitor cards.

Threats at work: You can punish, even if weapon turns out to be a toy

You probably have workplace rules that ban weapons in the workplace and don't allow employees to come from the parking lot into the building with guns or knives. And that rule probably spells out that you will terminate an employee who threatens or displays a weapon at work.

But what if the "weapon" turns out to be a toy? Should you punish the employee on the basis of what the weapon looked like? That's the dilemma that one employer faced recently.

Recent case: Odis Tabor, who identifies himself as biracial, had a history of getting into confrontations at work with other employees. In fact, he had been disciplined at least once for getting into a screaming match with another employee, an argument that involved name-calling based on Tabor's mixed racial heritage.

The final straw came during a meeting in which several employees claimed they saw Tabor brandish a knife. Tabor was fired for violating a no-weapons policy. He sued, alleging racial bias and also argued that the alleged weapon was merely a plastic toy that belonged to his son.

The court didn't buy that as an excuse. It pointed out that a bank robber who uses a toy gun would still terrify the tellers and would still face armed robbery charges. It saw no difference between that and the toy knife in this case. (*Tabor v. Freightliner*, No. 1:08-CV-34, MD NC, 2009)

Echoes of Virginia Tech: 'Copycat comments' lead to firings around U.S.

"If I get one more write-up, if you think they had a problem in Virginia, it'll be worse here."

When an employee of Suffolk County (N.Y.) Community College spewed that reference to the 2007 Virginia Tech massacre during an argument with his supervisor, the supervisor quickly called police. Police charged the man with harassment and criminal possession of a weapon after he admitted owning a bolt-action shotgun. And the man was fired.

That wasn't an isolated incident. In the weeks following the tragic shooting at Virginia Tech, employers tried to figure out how to deal with "copycat comments" from employees.

Example: A SeaWorld employee in Florida told co-workers he idolized the Virginia Tech shooter and that he wanted to "do what happened at Virginia Tech here at SeaWorld." His employer promptly fired him and called police. The 20-year-old employee later said he was joking.

Advice: In today's environment, you can't shrug off threats like that as "jokes." It pays to take such comments seriously. Encourage employees to come forward with concerns about comments made by employees. And respond decisively when employees make threatening comments or when they act erratically.