

VACCINES, VARIANTS AND VIOLENCE IN THE WORKPLACE

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We live in a time when heated disagreements and frequent violence are becoming an increasingly significant problem in society and, not surprisingly, for employers. Every year, nearly two million workers face violence at work, and that number is on the rise. Workplace violence may consist of an act or threat of physical violence, harassment, bullying, intimidation or other disruptive behavior. It ranges from threats and verbal abuse to physical assaults and, in the most extreme cases, homicide. In fact, workplace violence is the third leading cause of fatal occupational injuries in the United States.

Preventing violence in the workplace should be a priority for employers, yet fewer than 55 percent of human resource professionals are even aware of their company's policies on the subject. While there are no federal standards governing workplace violence, the Occupational Safety and Health Administration ("OSHA") requires that employers provide a workplace that is free from recognized hazards that are either causing, or are likely to cause, death or serious physical harm to employees. Some states also have OSHA-approved plans that require employers to have workplace violence prevention policies in place. In addition to state or federal OSHA penalties, employers may

also be held liable in court for workplace violence under various theories of liability, including premises liability, respondeat superior, negligent hiring and retention, and discrimination and harassment.

When it comes to COVID-19, unfortunately, tensions are likely to continue to increase. On September 9, 2021, in response to the surge in cases due to the Delta variant, President Biden issued two Executive Orders mandating that federal employees and contractors become vaccinated against COVID-19. He further directed OSHA to develop an Emergency Temporary Standard ("ETS") requiring that private employers with 100 or more employees mandate COVID-19 vaccinations or weekly testing. That ETS, which was issued on November 4, 2021, was met with strong criticism and contrasting voracious support. A mass of litigation immediately ensued across the country. Ultimately, the legality of the mandate will be decided by the United States Supreme Court, who gave President Biden until December 28, 2021, to respond to several pending appeals. Employers should be aware of employee conflicts that will continue to be an issue and ensure that adequate attention and efforts are focused on protecting employees. Below are some suggestions to help in this regard.

HAVE A WORKPLACE VIOLENCE PREVENTION PLAN

A good plan to deter violence in the workplace should clearly identify to whom verbal threats or intimidation and physical aggression should be reported. The individuals responsible for implementing and enforcing the plan should be aware of the steps that should be followed in response to complaints. Employees should be trained and encouraged to report all incidents of workplace violence, and assurances should be given that no retaliation will occur in response to reports. Additionally, to the greatest extent possible, confidentiality must be maintained whenever reports are made.

IMPLEMENT A ZERO-TOLERANCE POLICY TOWARDS WORKPLACE VIOLENCE

Absolutely no amount of workplace verbal or physical harassment or aggression should be tolerated. Regardless of who the offending employee is or at what level he or she works, swift and effective action should be taken in response to reports of workplace threats or violence. Employers must ensure that all employees, including those in management positions, are aware of the zero-tolerance policy and the consequences for failure to comply.

KNOW THE WARNING SIGNS

Tragically, after many violent workplace incidents have occurred, co-workers only then speak up to note that they felt something was “off,” or wrong, with the aggressor employee. Not only should employees be encouraged to pay attention to the warning signs, but they should also be directed to report the same to management. If a co-worker’s words or actions cause someone else discomfort or fear, an investigation should be conducted and appropriate action taken. Some of the most common troubling behavior includes an employee being openly aggressive, hostile or disruptive to the work environment, displaying hypersensitivity to even slight criticism, blaming others for mistakes, or being preoccupied with violence. Also, sharp changes in personality should be monitored, such as usually friendly individuals who begin acting quiet and withdrawn. Increased reliance on alcohol, significantly increased absenteeism, a decline in attention to hygiene or physical appearance, emotional outbursts and an inability to focus on job tasks are also warning signs indicating that an employee may have an increased risk of aggressive behavior at work.

In addition to behavioral changes, challenging life situations for employees should be observed as well, particularly those related to COVID-19. If an employee’s family member becomes seriously ill or dies from COVID-19, that employee may exhibit a great deal of anger and blame towards co-workers who refuse to become vaccinated. In addition, an employee who is experiencing financial hardship because of a reduction in hours or loss of a family member’s job related to COVID-19, may be intolerant of co-workers who decline the vaccine. Similarly, an employee whose employment is terminated for refusing to become vaccinated may become angry and act out towards co-workers or managers. All of these situations should be carefully monitored.

CONDUCT PERIODIC EMPLOYEE AND MANAGEMENT TRAINING

Training should be conducted for all new hires and periodic refresher courses should be given for the entire workforce. All levels of management should be included in the training. The employer’s workplace violence prevention plan should be reviewed and any hazards particular to the workforce should be noted. Tips for helping diffuse volatile situations should also be given so employees and management can take steps to de-escalate an encounter before it gets out of hand.

ENCOURAGE EMPLOYEE REPORTING OF SUSPICIOUS OR THREATENING BEHAVIOR

The most effective method of preventing a violent workplace incident is employee reporting of concerning conduct followed by management intervention. Employers should maintain an open-door policy and encourage employees to express any and all concerns. Reports should be investigated quickly and completely, while maintaining the highest level of confidentiality possible. If inappropriate behavior is confirmed, swift action should be taken by management. Employees who report being subject to violent or potentially violent behavior should never be subject to punitive action or retaliation.

In addition to encouraging open reporting, employers should consider implementing a method whereby employees can report potentially harassing or violent situations anonymously. This will help ensure that employers are able to address concerns and situations that a worker may fear reporting in person. This is particularly important when an employee is subordinate to the aggressor.

PROMPTLY CONDUCT THOROUGH INVESTIGATIONS AND TAKE APPROPRIATE ACTION

Specific individuals, preferably in human resources or management, should be tasked with investigating reports of workplace violence. Questions should be asked of the reporting individual to determine the details and extent of the alleged incident. Exactly what was said or done? Why did the reporter feel the behavior was threatening? Did the offending behavior occur on more than one occasion? Were there witnesses to the incident that caused concern? Is the alleged offender in a position of authority over the reporter? These and other questions should be asked to get as much detail as possible so the employer will be better able to understand and address potentially violent situations.

Likewise, the alleged offender should be questioned. Why did the employee act in the way she did? Does the employee accept responsibility for her words or actions? Does the employee understand that certain behavior is not acceptable in the workplace? Does she understand the consequences of failing to comply with work policies against violence?

In certain situations, outside assistance, such as law enforcement, should be called in to help. This is particularly important in the event that active threats of violence are made or physical altercations have occurred. Employers may also consider calling

in mental health professionals to provide assistance to employees in certain high-stress work environments or if several employees have exhibited inappropriate behavior towards co-workers or management.

CONSIDER WHETHER ADDITIONAL INSURANCE IS NEEDED

General liability and workers’ compensation policies should be reviewed to determine whether additional, specific workplace violence coverage is needed. For employers in higher-risk industries, such as restaurant and hospitality, delivery services, drivers for hire, healthcare and customer service, additional coverage should be carefully considered. The more severe the act of workplace violence, the more important having adequate insurance becomes.

BE PROACTIVE

In a time marked by frequent strong disagreements and heated debates, it seems that people are finding it more difficult to get along. Tensions about many issues are soaring. Patience is waning, intolerance is increasing and frustrations run very deep. The divide across the country concerning COVID-19 vaccine mandates is very likely to grow in the coming months. Despite best efforts, personal feelings and life situations inevitably spill over into the workplace. Employers should be prepared by developing and implementing an effective plan to deal with violence that, unfortunately, may be on the rise as we move forward.



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