

# Legal Briefs

## Workplace Violence

### Participant's Desk Reference

Legal Briefs  
Employment Law Training Series

*Workplace Violence: The Legal Role in Keeping Your Workplace Safe*

Participant's Desk Reference

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## INTRODUCTION

Like it or not, workplace violence is an issue that no one can afford to ignore. Obviously, an organization's top priority is making sure the workplace is safe. But there are also some legal liability issues that you need to be aware of.

This desk reference contains critical information on the things you need to be aware of in terms of how workplace violence impacts you as a manager, on a daily basis. It provides a complete review of the key information covered in the course, along with supplemental information regarding workplace violence. Please keep this desk reference in your office as a permanent resource for information on workplace violence.

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## PRE-ASSESSMENT

**Instructions:** Read the statements and circle the appropriate response.

1. Managers should always obtain a candidate's written permission before conducting any kind of check into a candidate's criminal or personal background.

True or False

2. A manager is under no legal obligation to take action as long as an employee's physical or verbal behavior is not directed at people (i.e. – banging on a desk, yelling at a computer, etc.).

True or False

3. It is always legal to reject a candidate for employment if they have a criminal record.

True or False

4. If Employee A resigns due to the persistent hostile or violent behavior of Employee B, Employee A cannot sue the organization or manager for a constructive discharge.

True or False

5. Talking directly to an employee about a problem situation is often the most effective way of redirecting and diffusing the employee's behavior before it leads to something more serious.

True or False

6. In the eyes of the law, there is no excuse for permitting unacceptable or unprofessional behavior of any kind, regardless of circumstances.

True or False

7. If an employee threatens someone outside the organization, like a vendor or customer, the manager isn't legally obligated to address the issue.

True or False

8. If an employee has a disability that is protected by the Americans with Disabilities Act, a manager must make allowances for occasional episodes of inappropriate behavior as part of the "reasonable accommodation" provisions of the law.

True or False

9. Some possible warning signs that could lead to potential violence include a negative change in performance, difficulty accepting constructive criticism, becoming a loner, showing signs of stress due to changes at work or home, an unhealthy interest in guns or violent behavior of others.

True or False

9. The single most important action you can take as a manager to minimize the potential for violence is to pay attention to your people.

True or False

## KEY CONCEPTS & DEFINITIONS

### 1. Adequate Prescreening of Job Candidates

One of the best ways to prevent violence in the workplace is to prescreen job candidates. However, make sure you obtain written permission and authorization for information to be released before you conduct any kind of check into a candidate's criminal or personal background. Any information gathered regarding the candidate should be kept in a separate confidential file and access to that information should be limited.

If your background check does uncover something, don't automatically reject the candidate just because he or she has a criminal record. Automatic rejection based solely on a criminal record may violate the law, particularly if the offense is unrelated to the job. Interviewers should look at the nature of the conviction. If it directly relates to the job or if the crime was violence related, then it would be reasonable and advisable to carefully weigh your hiring decision. This is important for two reasons:

- 1.) The safety of your staff.
- 2.) Your organization can be held liable for hiring or retaining someone where there is a foreseeable risk that the employee will harm someone else in the workplace.

If you use any information from the prescreening background check as part of your reason for not hiring the candidate, you must let him or her know the reason for denial and the name of the agency used during the prescreen.

### 2. An Employee with a Temper

If an employee has a problem controlling their temper you need to address the situation immediately, even if his temper isn't directed at a person but at machinery or some other inanimate object. Your organization's employee handbook should clearly list examples of "unacceptable or unprofessional behavior."

As a manager, you have a responsibility to take immediate action when you observe any behavior that crosses the line. If you don't, you could find yourself facing all kinds of legal problems.

Another issue that these types of situations create if they are not appropriately dealt with is the impact on other employees. If an employee feels they have to resign because of the inappropriate behavior of a coworker, then they could claim a constructive discharge. A constructive discharge means that the coworker was forced to resign from the company in order to avoid a situation that was detrimental to his or her health or well being.

### 3. Potential Consequences

If an employee should sue you for a constructive discharge and the court agrees, at a minimum any non-compete and confidentiality agreements you have in place may not

be enforceable; and you will probably end up having to pay unemployment compensation. You could also face an infliction of emotional distress lawsuit, as well as having to pay workers' compensation based on physical or emotional problems that resulted from your failure to stop the behavior. In extreme cases, you might find yourself in court if a coworker claims he or she was a victim of assault. Unlike battery, which requires actual physical contact, assault only requires that someone be in fear of harmful physical contact.

#### **4. The Bottom Line**

There's no excuse in the eyes of the law for permitting unacceptable or unprofessional behavior of any kind—regardless of the circumstances. If you are unsure how to deal with the situation, consult with an EAP professional, human resources, your security officials or upper management.

#### **5. Any Employee Who Threatens an Outsider**

If an employee has threatened someone outside your organization, it may be a warning sign of an employee who is under stress and having a difficult time maintaining control of his or her emotions. If you fail to take action, you could end up facing the kinds of hostile work environment lawsuits mentioned earlier.

#### **6. Dealing with an ADA-protected Employee**

Whether an employee is protected by the ADA, or not, you don't have to accommodate or tolerate unprofessional behavior of any kind from an employee. Period. The ADA only means that you have to provide an equal opportunity to do the job. It doesn't excuse the employee from the same standards of professional behavior established for the workforce as a whole. If an ADA-qualified employee exhibits violent behavior, you should treat him or her like you would any other employee, up to and including termination.

#### **7. Investigating Rumors of Threats**

If a manager hears about rumors that employees in other departments are making threats, that manager has an obligation under the law to investigate any hearsay reports or rumors like this, no matter who is involved. Under OSHA's general duty clause, employers are required to provide a safe working environment. The best course of action is to meet directly with the manager of the employee who is making the alleged threats and let him know what is going on.

#### **8. Investigation Actions**

First, give the employee who makes the alleged threats the chance to tell his or her side of the story. And second, only people with a genuine need to know should be able to access any kind of information you gather during an investigation. Confidentiality is critical because if someone sees something they shouldn't see, or hears something they shouldn't hear, both you and the organization could be sued for defamation.

## THE THREE ACTIONS

There are three action steps to help make sure you and your coworkers stay safe.

### 1. Enforce the Rules—every time, all the time.

Your organization's policies regarding inappropriate behavior are there for a reason. If you make exceptions to the rules, you put yourself and your organization in jeopardy of expensive and time consuming litigation, not to mention potential physical harm to yourself and your coworkers.

### 2. Screen Candidates Very Carefully.

Not hiring employees who may be violence prone is one of the best ways to minimize potential problems down the road. So take the time to do legally appropriate background checks; and be sure your interview questions are designed to help identify candidates who may have problems dealing with stress and controlling their emotions.

### 3. Pay Attention to Your People.

This is the single most important action you can take as a manager to minimize the potential for violence. Paying attention to people and getting to know them on a personal basis allows you to be able to recognize the warning signs that could lead to real problems. Some possible warning signs are:

- Change in performance
- Difficulty with criticism
- A loner
- Signs of stress due to change
- Interest in guns or violent behavior

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**ADDITIONAL FAQ'S ABOUT WORKPLACE VIOLENCE**

**Q. Isn't all the TV and newspaper coverage of workplace violence overblown, giving the public a misleading sense of the level of actual danger?**

A. *No! While it's true that you have a greater chance of being hit by lightning than hurt by a coworker, workplace violence is the fastest growing category of violence in the U.S. And homicide is now the leading cause of on-the-job death for women (and second leading cause for men). 1 in 4 workers are attacked, threatened or harassed each year-costing \$13.5 billion annually in medical costs. According to the U.S. Department of Justice, the workplace is the most dangerous place to be in America! The problem is so pervasive that the Center For Disease Control has classified workplace violence as a national epidemic.*

**Q. What is verbal violence?**

A. *More than 6 million employees are threatened, intimidated or harassed at work each year. This ranges from gender or racial slurs to bullying and/or actual threats of bodily harm.*

**Q. Newspapers give the impression that most workplace violence is caused by disgruntled former employees. Is that accurate?**

A. *No. Actually, they represent only 3% of workplace violence incidents. Seven times that level of reported violence (20%) comes from current employees but over two-thirds of attacks (both physical and verbal) come from strangers or customers. This is especially the case for male victims. Women are more likely to be attacked by someone they know. For example, domestic violence spillover is the fastest growing category of workplace violence (e.g., battering husbands or romantic stalkers pursuing their prey to the workplace, often injuring others in the process).*

**Q. Who's at the greatest risk of workplace violence?**

A. *Anyone in a job that involves contact with the public is at the greatest risk- especially if limited attention is paid to customer satisfaction. Also, organizations where limited attention is paid to employee satisfaction are also at risk. In this context, supervisors and managers are particularly at risk; employee-boss murders have doubled during the past ten years.*

**Q. One of the most unnerving aspects of workplace violence is the randomness of it. Is it true that the quietest people are the ones who will just lose control one day?**

A. *That is not really true although it is a pretty commonly held belief among people. Actually, the scariest thing about workplace violence is the denial and cover-up of people that witness odd behavior from coworkers, but do or say nothing about it. In fact, 85% of workplace violence perpetrators exhibit clear warning signs.*



**Q. What about those observable warning signs?**

- A. *These are often newly acquired negative traits. Their value is that they can be detected in your day-to-day dealings with current employees- or non-employees (e.g., customers) with whom you have contact.*
- Violent and Threatening Behavior, including hostility and approval of violence.*
- Performance Problems, including difficulty concentrating and problems with attendance or tardiness.*
- Emotional Problems, e.g., appearing to be under unusual stress or inappropriate emotional display.*
- "Strange" Behavior, e.g., becoming reclusive, deteriorating appearance/hygiene, erratic behavior.*
- Interpersonal Problems, e.g., numerous conflicts, hypersensitivity, resentment.*
- "At the end of his rope", e.g., indicators of impending suicide, has a plan to "solve all problems."*

**Q. How can organizations prevent violence?**

- A. *The best way to prevent employee-initiated violence is during the hiring process. For the existing workforce, they can use a combination of motivational management practices, a zero-tolerance violence policy (effectively communicated and enforced), employee training, and appropriate use of counseling, referral to the organization's Employee Assistance Program and disciplinary action plus sound security measures.*
- Understand the mindset of the hostile or potentially violent person. He has a compelling need to "communicate" his grievance to someone now! Give him a verbal outlet.*
- Practice active listening.*
- Avoid confrontation. Instead, build trust and provide help.*
- Allow a total airing of the grievance without comment or judgment.*
- Preserve the individual's dignity. Once a person has calmed down, it is the fear of embarrassment that can prevent him from abandoning his plans for violence.*
- Allow him to suggest a solution and move to a win-win resolution.*

**Q. What's the bottom line?**

- A. *Eliminating violence in the workplace should be the top priority for every executive, manager and team leader. If your organization hasn't experienced this issue yet, that's great. Do not, however, feel content! Rather than doing nothing or waiting until a serious act of aggression occurs in your organization, get proactive by training your team to eliminate violence before it happens.*

## FOR FURTHER INFORMATION

Here are some sources for additional information on workplace violence.

### Web Sites

The U.S. Equal Employment Opportunity Commission Home Page—  
<http://www.eeoc.gov/>

The Occupational Safety and Health Administration  
<http://www.osha-slc.gov/SLTC/workplaceviolence/>

National Institute for Occupational Safety and Health  
<http://www.cdc.gov/niosh/violcont.html>

Findlaw.com labor and employment law links—  
<http://guide.biz.findlaw.com/01topics/27labor/index.html>

### Telephone Numbers

Equal Employment Opportunity Commission  
1-800-669-4000

Equal Rights Advocates  
1-800-839-7372

National Job Problem Hotline  
1-800-522-0925

National Victim Center  
1-800-FYI-CALL

### Addresses for Workplace Violence Information

U.S. Equal Employment Opportunity Commission  
1801 L Street, NW  
Washington, DC 20590

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**POST-ASSESSMENT**

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True or False

### CERTIFICATION OF TRAINING

I understand the information presented in the course, *Workplace Violence: The Legal Role in Keeping Your Workplace Safe*. I have also completed the post-assessment for this course and reviewed the correct answers with my session facilitator or manager.

Employee's Signature	Date
Facilitator's or Manager's Signature	Date

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This Certification of Training may be included in your personnel file as a record of having successfully completed this training.