

Workplace Violence in the Public Sector

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Ours is a violent society, and it is not surprising that this violence carries over to the workplace. In recent years, organizational scholars have increasingly focused on various forms of inappropriate behavior in the workplace, including deviance, aggression, antisocial behavior, and violence. According to the Bureau of Justice Statistics, homicides accounted for more than 1000 deaths in the workplace and workplace assaults injure an estimated 1.7 million workers each year; in addition, violent workplace incidents account for 18 percent of all violent crime in the United States. Liberty Mutual, in its annual Workplace Safety Index, cites "assaults and violent acts" as the tenth leading cause of nonfatal occupational injury in 2002, representing about 1 percent of all workplace injuries and a cost of \$400 million (Sample, 2007).

The Bureau of Labor Statistics (BLS) Census of Fatal Occupational Injuries (CFOI) concluded that during the thirteen-year period from 1992 to 2004, an average of 807 workplace homicides occurred annually in the United States. From 2006 to 2010, an average of 551 employees per year were killed because of work-related homicides. In 2010, the last year for which complete data are available, the COFI reported a total of 518 workplace homicides, or 11 percent of all fatal work injuries for that year. A total of 77 of those were multi-fatality homicide incidents in which two or more employees were killed, including 69 homicides and 8 assailant suicides, all of whom were working at the time of the incident. Shootings accounted for 78 percent of all workplace homicides in 2010 (405 fatal injuries).

OSHA and the Department of Justice classify victims of workplace violence as follows:

- Stranger violence: Victims have no business relationship with the perpetrators. This includes cab drivers, sales clerks, gas station attendants, and police. The main motive is robbery. About 80 percent of workplace homicides are of this type.
- Client violence: A current or former client, customer, or patient attacks victims. Common settings are hospitals, psychiatric facilities, mental health clinics, drug abuse centers, long-term care facilities, prisons, and schools.
- Employee violence: Victims are current or former employers, spouses, or significant others of the perpetrators.

Workplace Violence and Public Employees

Public employees are at particular risk from client violence. They must serve all segments of the population, including many who are mentally ill, have convictions for violent crimes, or are under the influence of drugs or alcohol. Further, they must enforce laws, rules, and policies that are unpopular. Potentially violent "customers" are not inclined to distinguish between levels of government or types of agencies. They can resent local government officials simply because they dislike the national government's policies.

According to a Bureau of Justice Statistics report in 2013,

- In 2011, about 1 in 5 victims of workplace homicide was a government employee.

- From 2002 to 2011, the annual average rate of simple assault in the workplace against government employees (18.9 per 1,000) was more than three times that of private-sector employees (4.6 per 1,000).
- Serious violent crime accounted for a larger percentage of workplace violence against private-sector employees (25%) than government employees (15%).
- From 2002 to 2011, about 96% of workplace violence against government employees was against state, county, and local employees, who made up 81% of the total government workforce.
- Male government employees were more likely than female government employees to face a stranger in an incident of workplace violence from 2002 to 2011.
- From 2002 to 2011, female government employees were more likely than male government employees to be attacked in the workplace by someone with whom they had a work relationship.

An earlier 1997 Department of Justice survey indicated that although public employees made up only 16 percent of the US, workforce, 37 percent of the victims of workplace violence work in local state and federal government. Women are likely to be victims of employee violence. Workplace homicide was the greatest cause of death among female workers from 1980 to 1985. A National Institutes of Occupational Safety and Health (NIOSH) report found that homicides accounted for 12 percent of workplace deaths among men and 42 percent among women. Some workplace violence is attributed to domestic violence: husbands and boyfriends commit 13,000 acts of violence against women in the workplace every year. Abusive husbands and lovers harass 74 percent of employed battered women at work—either in person or over the telephone—causing 56 percent of them to be late at least five times a month, 28 percent to leave early at least five days a month, and 54 percent to miss at least three full days of work annually in lost productivity, increased health-care costs, absenteeism, and workplace violence.

Employers' Legal Liability for Employee Violence

Employers may be reluctant to confront workplace violence because they fear that if they know that an employee is being abused and do nothing, they will be sued. Nevertheless, this may happen in any event. Under the traditional doctrine of respondent superior, an employer is "vicariously" liable for the violent actions of its employees if (1) the employee is acting within the scope of her employment, (2) the employer authorized the employee's action, or (3) the employer ratified the employee's actions subsequent to the occurrence.

Courts have also held employers liable to victims under the theory of negligent hiring, retention, and referral. Under these theories, courts have established that there is a duty that the employer owes its employees, customers, suppliers, and other individuals who meet its employees. An employer can be liable for acts of violence committed by current or former employees for:

1. negligent hiring if it failed to verify references or employment gaps which could indicate the applicant had spent time in prison;
2. negligent retention if it is aware that an employee has dangerous or violent tendencies but takes no action to reclassify or discharge the employee; or
3. negligent referral for terminating an employee for violent behavior and then failing to disclose the violent behavior to prospective employers during reference checks, or providing a positive letter of recommendation to the employee (Sample, 2007).

To establish employer liability, a victim generally must show that the employer breached the duty it owed to the victim and the employer's breach of that duty "caused" the victim's injury. The principal means of limiting or expanding employer liability for negligent hiring and retention claims is the requirement of "reasonable foreseeability." The stronger the connection between the information known or available to the employer and the harm ultimately suffered, the greater the likelihood that the employer will be found liable for negligence.

Employers who attempt to screen job applicants for violent tendencies run the risk of violating applicants' civil rights. For example, Title VII of the 1964 Civil Rights Act prohibits employers from refusing employment or discharging employees based on (1) an arrest record (since an arrest is not a conviction); or (2) a criminal conviction unless the prospective employer can establish that the conviction would indicate that the applicant poses "a substantial and foreseeable threat to the safety of individuals or property." Liability issues are not limited to the hiring process. Employers who attempt to discharge an employee for violent outbursts, threatening staff, or demonstrating odd and erratic behavior can also be sued under the American with Disability Act (ADA). Under this law, employees who exhibit these behaviors may have a legally protected disability, for which the employer must make a reasonable accommodation prior to considering termination. However, given the human, legal and financial risks of workplace violence, there is widespread agreement that employers should institute a zero-tolerance policy for direct physical assault or the threat of assault,

Employer Responses to Workplace Violence

What precautions can employers take to protect themselves and their employees from workplace violence? First, employers should examine hiring policies and procedures to be sure that information about gaps in employment, disciplinary action from former employers, use of illegal drugs, and previous criminal convictions are available to those making a hiring decision. References should be checked with at least two prior employers and document everything that is said about the prospective employee in the event they were not disclosing all the relevant facts. A criminal background check may be worthwhile depending on the position.

Second, profiling is not an effective risk management technique. The characteristic profile of the violence-prone employee is a middle-aged white male with seniority of five to fifteen years who owns or collects guns and has few social ties. Because many nonviolent employees also fit this profile, employers should work to create an employee culture that makes violence unthinkable. They should take verbal and physical violence seriously and establish a "zero tolerance" policy that sets consequences for perpetrators. An employer who moves immediately to stop dangerous behavior at the first instance cannot be blamed for allowing it to continue past the point at which when a reasonable person might conclude that the violence-prone employee was placing coworkers or clients at risk. Furthermore, it is usually easier to discipline or separate an employee for misconduct than it is for poor performance. All incidents of workplace violence should be reported to the police for investigation and possible criminal prosecution.

Managers should be aware of the link between workplace violence and deteriorating organizational culture. If people communicate freely with each other and with management, threats will be reported more readily and agency values will be transmitted more clearly. Supervisors should be trained in how to handle verbal violence. The best form of prevention is to remain calm and decide on the best course of action, listening carefully and being

interested in what the angry person is saying. The objective is to let the angry person calm down and lead him or her to focus more on facts rather than on opinions or personality dynamics.

Case Facts: “In Hindsight We Could See It Coming”

In the predawn hours on February 9, 1996, a disgruntled former park and recreation department employee, Clifton McCree, burst into the maintenance trailer where six of his former coworkers were starting their day's work. In five minutes, six people were dead of gunshot wounds: Clifton McCree had killed five of the six coworkers, and then had turned the gun upon himself; one coworker escaped to tell the story of horror and death.

After eighteen years of employment, Clifton McCree had been discharged from the City of Ft. Lauderdale in October of 1994 after failing a drug test. After this, he had been unable to find steady work, and he had grown increasingly depressed and angry over what he saw as racial discrimination and retaliation by white employees and supervisors. Mr. McCree had a history of workplace confrontations with coworkers. In the past, other employees had complained about his occasional threats to kill them. His supervisors had counseled him informally about the need to control his temper. Although he frequently went into rages, and coworkers were afraid of him, his supervisors and other employees had avoided formal complaints and tried to handle the problem initially because they did not want him to lose his job. Despite his temper, he continued to receive satisfactory performance evaluations for nine years, and there was no formal record of his problems. Finally, in 1993, after a screaming match with a white coworker, McCree's supervisor counseled him informally.

Personnel Policies and Procedures

Ironically, the problem came to head just days after the City issued a new policy on workplace violence in 1994. This policy grew out of another tragedy — the murder of two lawyers in a downtown office building earlier that year. The City's policy was designed to raise awareness of what a potentially violent worker might do, and it set up a procedure for handling such incidents.

Immediately after the policy was issued, the supervisor came to the park and recreation department director, who had just come on the job a few weeks before, and told her about Clifton McCree. Within days, she had interviewed other workers and prepared a chilling memo detailing McCree's threats and racial slurs against his coworkers. The memo indicated that McCree exhibited at least five of the warning signs of potential trouble, including threats, paranoid behavior, and a fascination with workplace violence. City officials acted quickly, ordering a psychiatric evaluation and a drug test within days. By the end of the month, McCree had been suspended without pay; he flunked the drug test and his firing was in the works. Until the day of the murders, eighteen months to the day after his discharge, he never returned to his workplace.

The Postmortem: Should the City Have Done Anything Differently?

In hindsight, it is difficult to find fault with anyone's actions. Most coworkers and supervisors would initially attempt to counsel a troubled employee informally because they were his friends and they knew he needed the job. With no formal counseling taking place, there would be no written record of previous performance incidents upon which to base a negative performance evaluation. When formal counseling finally occurred in 1993, it was only because coworkers had exerted pressure on management to do something. The City developed a clear and

responsible policy on workplace violence in 1994. This policy led to a strong and immediate response by the park and recreation department, and it was the department director's memo that led the City to act. Appropriately, Clifton McCree was removed from work pending psychiatric evaluation and drug testing. He tested positive and was discharged. Yet six people died. In addition to the human tragedy, the City will undoubtedly face civil charges from the victims' families, alleging that the City knew that Clifton McCree was violent but did not take adequate precautions to protect coworkers against violence (Klinger, Nalbandian & Lorenz, 2010).

The content for this newsletter is adapted and updated from Klingner, D. E., Nalbandian, J., and Lorenz, J. (2010). *Public personnel management*. N.Y: Longman/Pearson, pp. 297-298 and Sample, J. A. (2007). *Avoiding liability for adult educators, human resource developers, and instructional designers*. Malabar, FL, pp. 86-92.

Additional resources:

- Workplace Violence, U.S. Department of Labor, OSHA: <https://www.osha.gov/SLTC/workplaceviolence/>
- Workplace Homicides from Shootings, Bureau of Labor Statistics: <http://www.bls.gov/iif/oshwc/foi/osar0016.htm>
- Centers for Disease Control and Prevention, Occupational Violence: <http://www.cdc.gov/niosh/topics/violence/>
- Harrell, E. (2013). Workplace violence against government employees, 1994-2011. Bureau of Justice Statistics. Retrieved October 31, 2014 from <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4615>

This information should not be construed as legal advice or as pertaining to specific factual situations. Always consult competent legal counsel regarding important employment law questions.

Have any thoughts, comments or feedback? Drop Dr. Sample an email at John@sampleandassociates.org.