

Employer Obligations

- General Duty to Provide a Safe Workplace
 - California Labor Code § 6400
 - Cal-OSHA
- Workplace Violence Prevention in Health Care
 - Effective April 1, 2017 (8 C.C.R. § 3342)
 - Regulation requires health-care employers, home health and hospice providers, and emergency responders:
 - Develop workplace violence-prevention plans
 - Train employees
 - Maintain records related to workplace violence incidents

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Legal Liability

- Employer liability for violence in the workplace generally arises under two circumstances:
 - Employer Knew or Should Have Known – and failed to act appropriately
 - No Disclosure vs. Full Disclosure

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Legal Liability

- Respondeat Superior
 - Responsible for employee conduct within the scope of employment regardless of fault except for intentional or malicious conduct.
- Negligent Hiring and Negligent Retention
 - Employer knew, or with a reasonable investigation, should have known, employee was unfit for job or prone to violence.
 - *Senger v. United States of America* (1996) 103 F.3d 1437 (Post Office aware of employee's propensity for violence)
- Negligent Misrepresentation
 - Employer's failure to provide full disclosure regarding material fact.
 - *Randi W. v. Muroc Joint Union School District* (1997) 14 Cal.4th 1066 (School's recommendation for former janitor failed to disclose child molestation suspicion)

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Predictors of Potential Trouble

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Predictors of Potential Trouble

1. History of violence or aggressive behavior
2. Suffers from personality disorders or psychosis
3. Romantic obsession
4. Chemical dependence
5. Unshakable depression

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Predictors of Potential Trouble *continued*


6. Pathological blamer
7. Elevated frustration with work environment
8. Fascination with weapons
9. Self-esteem highly correlated with job
10. Unusual/change in behavior
11. Evidence of serious stress in personal life

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Prevention

- Pre-Employment
- During Employment
- Post-Employment

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Prevention

- Pre-Employment
 - Criminal Background Inquiry
 - California
 - Arrests - no
 - Juvenile - no
 - Los Angeles
 - Ban The Box (inquiry allowed after conditional employment offer)
 - San Francisco
 - Inquiry allowed after initial job interview
 - Public Employers
 - Inquiry allowed after applicant clears early stages of hiring process
 - Psychological/Personality Testing
 - *Griggs v. Duke Power Co. (1971) 401 US 424 (permissible if test reasonably measures job performance without discriminatory impact)*

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Prevention

- During Employment
 - Policies & Procedures
 - Anti-violence | Cyber misconduct
 - Criteria for appropriate conduct
 - No reasonable expectation of privacy in the workplace
 - Internet, e-mail, text messaging
 - Visitor and vendor access
 - Training
 - Safety Training
 - Abusive Conduct Training
 - Employee Assistance Programs

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Prevention

- Post-Employment
 - See Responding to Violence and Threats of Violence
 - Employee Removal
 - Recourse under the Workplace Violence Safety Act

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Responding to Violence and Threats of Violence



- Establish a Threat Assessment Team
 - Proper intervention can profoundly impact the outcome and safety of a threatening situation.
 - Inappropriate intervention can escalate a situation and precipitate violent behavior.
- Employee Removal
- Recourse under the Workplace Violence Safety Act

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Goal of Threat Assessment Team

- Ensure immediate security to affected individuals;
- Acquire consultation and resources necessary for a comprehensive investigation;
- Investigate and assess risk posed by the circumstance;
- Plan and implement a risk abatement action plan;
- Determine appropriate intervention for both the subject and the target(s);
- Oversee post-incident counseling or intervention for the workforce;
- Documentation; and
- Suggest workplace changes to prevent future threats or violence.



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Responding To Violence And Threats Of Violence





- Establish a Threat Assessment Team
- Employee Removal
 - Removing a threatening employee requires security personnel be alerted to potential risk.
 - If warranted, notify private security or local law enforcement.
- Recourse under the Workplace Violence Safety Act


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Removing Terminated Employee



- Treat employee with respect and dignity;
- Have a witness present;
- Escort the employee off the premises;
- Consider the need for additional security personnel;
- Change locks, security codes, and shut off access to information systems; and
- Be alert in the event the employee returns to the workplace.

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Responding To Violence And Threats Of Violence



- Establish a Threat Assessment Team
- Employee Removal
- Recourse under the Workplace Violence Safety Act
 - Allows employer to seek injunctive relief (Temporary Restraining Order) on behalf of an employee who is subjected to violence or is faced with a credible threat of violence in the workplace.

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Workplace Violence Safety Act

- Types of Threatening Conduct
 - Following employee to or from work;
 - Entering the worksite to find employee;
 - Following employee during working hours;
 - Calling employee at work; or
 - Corresponding with the employee by mail, email, or text.

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Conclusion

No one is
Immune to
Workplace
Violence

Employers have an obligation to provide a safe workplace for their employees. Unfortunately, employers are also increasingly being called upon to address and resolve workplace violence, including stalking, harassment, and threats. Employers must implement policies and procedures to address potential workplace violence and limit employer liability. Employers must ensure that no one is immune to workplace violence. Employers who are prepared, will assist employees in avoiding or minimizing workplace violence and resulting liability.

- Provide Safe Workplace
- Liable if knew or should have known about violent tendency
- Have a Plan
 - Pre-Employment
 - During Employment
 - Post-Employment

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Thank You

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