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2018 EMPLOYMENT LAW CONFERENCE
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WORKPLACE SAFETY AND SECURITY
SESSION SEVEN

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AGENDA



- Introduction
 - Relevant Statistics | Recent Incidents
- The Legal Landscape
- Preventive Measures
- Conducting a Threat Assessment
- Response | Regulation
- Conclusion

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RELEVANT STATISTICS

- Homicides comprise eight percent of workplace fatalities.
 - U.S. Bureau of Labor Statistics, 2016
- Two out of three workplace homicides are committed by someone not close to the victim.
 - (U.S. Bureau of Labor Statistics, 2015)
- The fastest growing sector of workplace homicides are those committed by customers.
 - (Brandongaille.com, 25 Surprising Statistics on Workplace Violence, May 28, 2017)

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RECENT INCIDENTS IN CALIFORNIA

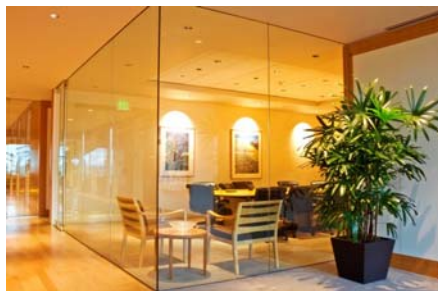
- In May 2012, an employee opened fire with stolen automatic weapons on a package delivery facility in San Francisco, killing four.
- A 58-year old former partner in a Long Beach law office killed himself and another partner over the 2017 holidays.



LEGAL LANDSCAPE

WORKPLACE VIOLENCE

- Negligent Hiring or Supervision of Other Employees
- Negligent Misrepresentation
 - *Randi W. v. Muroc Joint Unified School Dist.* (1997) 14 Cal.4th 1066
- Negligent Retention
- Disability Discrimination



PREVENTIVE MEASURES

PREPARE A WRITTEN POLICY

- A written policy prohibiting violence in the workplace is an essential component to placing employees on notice of what is expected of them and laying the basis for disciplining or terminating employees for violating the policy.
- Implemented organization-wide
- Managers should actively communicate

IDENTIFY AND ELIMINATE POTENTIAL THREATS

- Ability to identify the profile of individuals who most commonly participate in workplace violence incidents enables organizations to be better prepared to anticipate problems and take effective action
 - Four Typologies of Workplace Violence:
 - Criminal intent (85% of all workplace homicides)
 - Customer/client (3% of all workplace homicides)
 - Worker on worker (7% of all workplace homicides)
 - Personal relationship (such as domestic violence) (5% of all workplace homicides)
 - Source: WORKPLACE VIOLENCE, Issues in Response Critical Response Group, National Center for the Analysis of Violent Crime, FBI Academy, Quantico, Virginia, 2003 ("2003 Issues in Response"), p. 13.

INDICATORS OF VIOLENT BEHAVIOR

- Increasing belligerence;
- A history of violent threats or acts;
- Verbal abuse or harassment of co-employees or customers;
- Inability to take criticism or responsibility, habitually making excuses;
- Chronic complaints about persecution or injustice;
- Possession or mention of any kind of weapon in the workplace;

INDICATORS OF VIOLENT BEHAVIOR

- Statement of a specific threat or actual plan to engage in workplace violence;
- Constant rumination or fixation on an idea or individual;
- Ominous fascination with weapons or violent events; and
- Bizarre comments or behavior, especially if these include violent content.
 - (WORKPLACE VIOLENCE, Issues in Response Critical Response Group, National Center for the Analysis of Violent Crime, FBI Academy, Quantico, Virginia, 2003 ("2003 Issues in Response"), p. 21-22.)

DEVELOP PROTOCOLS

- Conduct pre-employment screenings;
- Conduct a security audit to plug security breaches;
- Investigate and discipline employees for violation of personnel policies; and
- Engage training consultants, including trainers in Active Shooter Training.



CONTACT RESOURCES

- Local law enforcement;
- Workplace violence consultants, who may be referred by human resource organizations; or
- Threat Assessment organizations to obtain referrals to qualified threat assessment professionals.



ASSESSMENTS

- Definition of a Threat Assessment
- Threat Assessors Will Generally
 - Interview the victim
 - Interview other victims of instigator including family members
 - Address safety concerns and identify other possible targets
 - Review instigator's conduct and behavior
 - Determine current employment status
 - Other relevant factors
 - Referral to resources
 - Record retrieval
 - Conduct a post-assessment intervention

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OSHA RESPONSE

- Traditional focus has been on unsafe work practices or hazardous conditions
- Assessing Violence Guidance
 - Federal OSHA
 - California OSHA (four categories of violent events)
 - Committed by a person who has no legitimate business at the work site;
 - Directed at employees by customers, clients, patients, students, inmates, or visitors;
 - Against an employee by a present or former employee, supervisor, or manager; and
 - Committed in the workplace by someone who does not work there, but has or is known to have had a personal relationship with an employee.

REGULATION

- According to Federal/OSHA, the healthcare industry accounts for nearly as many workplace violence injuries as all other industries combined.
- California was the first state to adopt regulations addressing violence in the workplace.
- Cal/OSHA adopted new standards to address “Workplace Violence Prevention in Health Care” in 2016.
- The definition of “workplace violence” includes the threat or use of physical force.



PREVENTION PLANS

- Identify persons responsible for implementation;
- Develop procedures to obtain active involvement to ensure everyone understands their role in the plan
- Develop procedures to obtain assistance from law enforcement;
- Develop procedures for accepting and responding to reports of workplace violence;
- Ensure that all employees comply with the plan;
- Develop procedures to communicate; and
- Identify and evaluate environmental risk factors.

IMPLEMENTATION

- Employers had to implement the sections related to the Violent Incident Log and Recordkeeping requirements by April 1, 2017; and
- Employers must have a WVPP, a system for reviewing the WVPP and training in place by April 1, 2018.

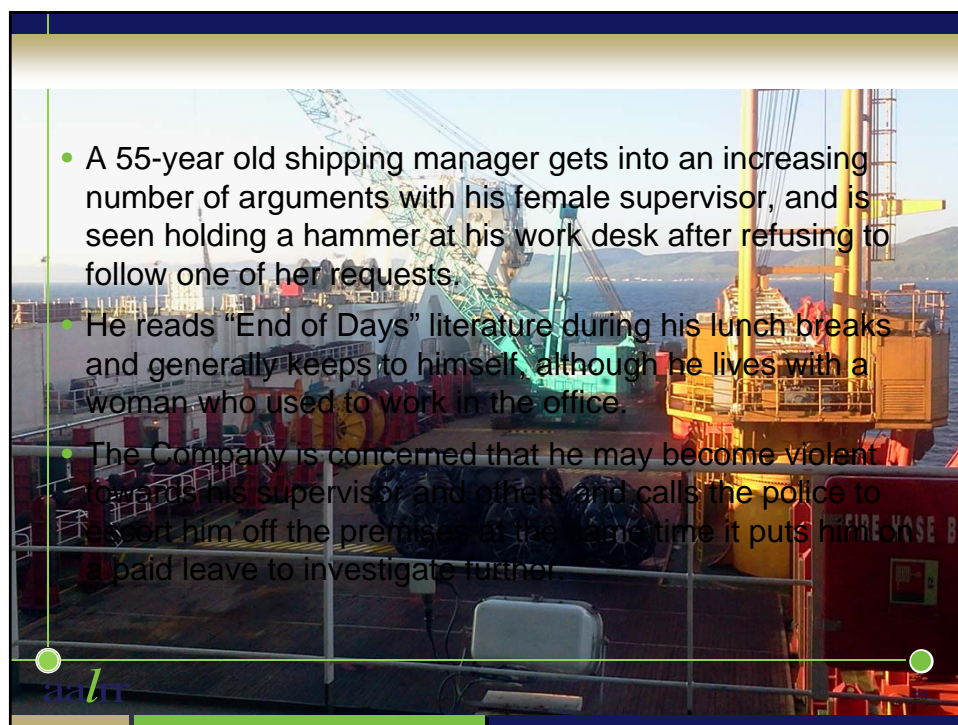


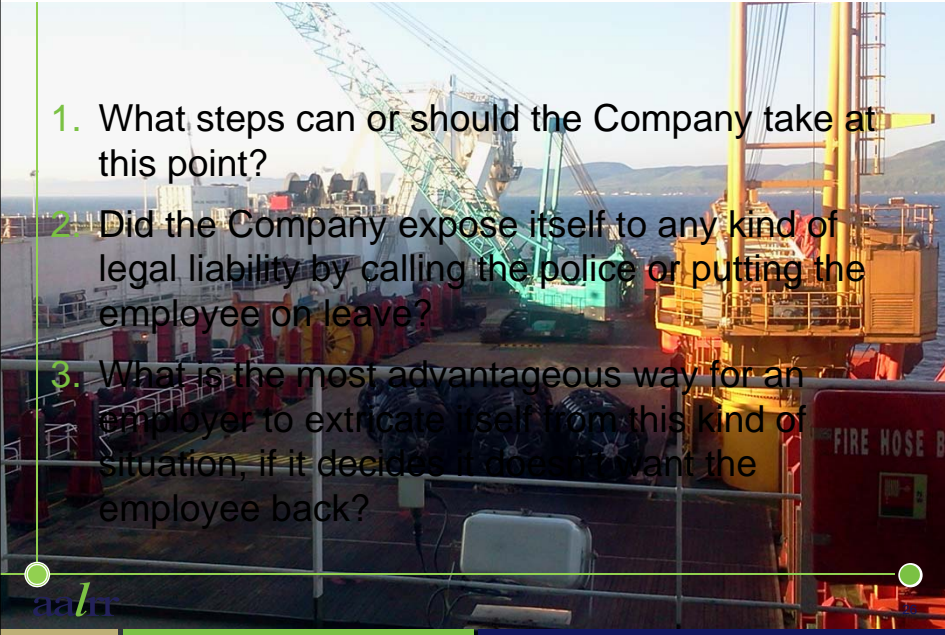
CAL/OSHA INVESTIGATIONS

- Cal/OSHA issued a report analyzing reports of violent incidents at hospitals between July 1, 2017 and September 30, 2017.
 - Cal/OSHA received 2,177 incident reports from 257 hospital facilities during this time.
- Cal/OSHA did not complete any inspections or issue any citations during this time frame.

GENERAL INDUSTRY REGULATIONS

- None currently exist
- Cal/OSHA has engaged in the rulemaking process as recently as January 25, 2018
- Identified six sectors most affected:
 - Medical Facilities not currently covered
 - Mental Health Facilities not currently covered
 - Education
 - Law Enforcement
 - Retail Outlets
 - Transportation





1. What steps can or should the Company take at this point?
2. Did the Company expose itself to any kind of legal liability by calling the police or putting the employee on leave?
3. What is the most advantageous way for an employer to extricate itself from this kind of situation, if it decides it does not want the employee back?

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CONCLUSION

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