

## Workplace Violence: Reducing the Risk

By Meghan N. Cox

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An estimated 2 million American workers are victims of workplace violence each year, costing businesses billions of dollars per year in impaired productivity, employee turnover, security measures, and legal costs.<sup>1</sup> More and more often, employers are being held liable for workplace violence incidents, resulting in significant jury verdicts and settlements. Most recently, a California helpdesk technician was awarded nearly \$7.4 million in damages following a workplace violence incident where a coworker grabbed the plaintiff's neck and choked him.<sup>2</sup>

According to the plaintiff, the coworker "regularly exhibited violent and dangerous work place temper tantrums." Specific examples provided by the plaintiff included the coworker "explod[ing] in anger over coffee," expressing anger about the plaintiff placing coke cans in the freezer, expressing anger towards the plaintiff for knocking his foot against the plaintiff's own chair, and yelling at the plaintiff for eating a piece of candy during a team meeting.

The disagreements came to a head when the coworker complained to management about the plaintiff, and management suggested either the coworker or the plaintiff move cubicles. Within approximately twenty to thirty minutes following this meeting, the coworker reportedly charged at the plaintiff, screaming expletives before grabbing the plaintiff around the neck while shouting "I will kill you." The plaintiff alleged he was terminated the following day without an adequate investigation by his employer.

Following his termination, the plaintiff brought a lawsuit alleging claims against his employer for wrongful termination in violation of public policy, failure to provide a workplace free from violence and bodily harm, state law civil rights violations, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent hiring, retention, and supervision.

On March 17, 2016, a jury found in favor of the plaintiff on his claims for wrongful termination in violation of public policy, failure to provide a workplace free from violence and bodily harm, and negligent infliction of emotional distress. The jury awarded \$2,393,540 in compensatory damages and \$5,000,000 in punitive damages.

These types of cases are not limited to California or to violence committed by coworkers. Last year, OSHA cited a Florida employer for failing to provide a reasonably safe workplace in violation of OSHA's General

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<sup>1</sup> U.S. Dept. of Labor, Occupational Safety and Health Administration, *Safety and Health Topics: Workplace Violence*, <https://www.osha.gov/SLTC/workplaceviolence>; U.S. Dept. of Justice, Federal Bureau of Investigation, *Workplace Violence: Issues In Response*, <https://www.fbi.gov/stats-services/publications/workplace-violence>.

<sup>2</sup> *Yowan Yang v. ActionNet, Inc., et al.*, 2:14-cv-792 (C.D. Cal. 2014).

Duty Clause<sup>3</sup> after one of its healthcare service coordinators was fatally stabbed during an at home visit with a patient.<sup>4</sup>

While an individual OSHA citation currently carries a maximum penalty of \$70,000 for a repeat or willful violation, the citations can carry much greater implications for employers. Several courts have held a willful violation of an OSHA regulation is evidence of a breach of the standard of care due to employees under state law. Thus, in these jurisdictions, an OSHA citation totaling \$70,000 could affect workers compensation exclusivity and allow the plaintiff to sue the employer for the injury in state court.

## OSHA's Recommendations

If an incident of workplace violence occurs, one of the first things OSHA is going to do is determine whether the employer has an adequate written workplace violence program in place. According to OSHA's *Enforcement Procedures for Investigating or Inspecting Workplace Violence Incidents*<sup>5</sup> and its *Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers*,<sup>6</sup> a written workplace violence program should include, among other things:

- Written workplace violence *policy* statement for employees
- Appropriate employee training on the workplace violence *program* and *policy*
- Assignment of oversight and prevention responsibilities to appropriate personnel
- Workplace violence hazard assessment and security analysis, including a list of the risk factors identified in the assessment and how the employer will address the specific hazards identified
- Employee questionnaire to obtain input on potential risks and vulnerabilities
- Development of workplace violence controls, including engineering and administrative controls, to prevent incidents
- Recordkeeping system and guidelines
- Training program, including a written outline and/or lesson plan
- Annual review of the workplace violence program, including an updated hazard assessment each year
- Procedures, policies, and responsibilities to be taken in the event of a workplace violence incident, including investigation procedure

As shown by the \$7.4 million verdict in California, juries expect employers to provide a safe workplace. This includes not only having and enforcing a written workplace violence program as OSHA recommends, but also training on how to recognize warning signs in advance. A comprehensive workplace violence program can only go so far if management does not recognize warning signs and take appropriate action.

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<sup>3</sup> 29 C.F.R. § 654(a).

<sup>4</sup> *Integra Health Mgmt.*, 2015 OSAHRC LEXIS 46 (O.S.H.R.C. June 4, 2015).

<sup>5</sup> U.S. Dept. of Labor, Occupational Safety and Health Administration, *OSHA Instruction: Enforcement Procedures for Investigating or Inspecting Workplace Violence*, Sept. 8, 2011.

<sup>6</sup> U.S. Dept. of Labor, Occupational Safety and Health Administration, *OSHA 2015 Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers*, <https://www.osha.gov/Publications/osha3148.pdf>.

In the case in California, management had advance warning of some of the coworker's outbursts but had taken little to no action prior to the incident where the coworker choked the plaintiff.

It's not just the tragic workplace violence incidents we hear about on the news that can result in significant liability. These days, what may appear to be an isolated incident of a physical altercation between employees with no serious injuries can result in significant liability for an employer if the employer has not implemented the appropriate procedures and taken appropriate action to prevent these types of incidents.

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**If you would like more information, please contact:**

[Meghan N. Cox](#) in Birmingham at (205) 458-5248 or [mcox@burr.com](mailto:mcox@burr.com)  
or the Burr & Forman attorney with whom you regularly work.

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