

Workplace Violence and Active Attackers: Employer's Legal Obligations

**FLORIDA CHAMBER
SAFETY COUNCIL**

Making Florida Safer, Healthier and More Sustainable

Jason Mozo, J. D.

Executive Director

JMozo@FlChamber.com

(850) 521-1237



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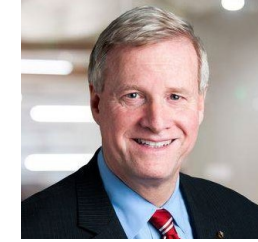
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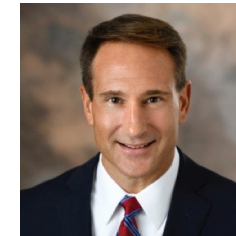
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Safety Training Courses Include, but are not limited to:

- OSHA 10 Hour - Construction Industry
- OSHA 30 Hour – Construction Industry
- OSHA 10 Hour – General Industry
- OSHA 30 Hour – General Industry
- HAZWOPER 8 Hour
- HAZWOPER 24 Hour
- HAZWOPER 40 Hour
- Advanced Safety Certification
- Active Shooter
- Bloodborne Pathogens
- CPR/First AID/AED
- Confined Space Entry
- Crane & Hoist Safety
- Creating a World Class Safety Culture
- Defensive Driver 4HR / 6HR / 8HR
- Electrical Safety
- Fall Protection
- Fire Protection & Prevention
- Flagger
- Hazard Communications
- Hazardous Materials and Waste
- Heat Stress Prevention
- Heavy Equipment Operator Training
- Hearing Protection
- Hand Protection
- Incident Investigation: Root Cause Analysis
- Job Safety Analysis
- Ladder Safety
- Lock Out/Tag Out
- Mobile Elevating Work Platforms - MEWP's (Boom Lift & Scissor Lift)
- OSHA Recordkeeping
- Personal Protective Equipment - PPE
- Powered Industrial Trucks – Forklift Operator
- Principles of Occupational Safety & Health
- Respirable Crystalline Silica
- Respiratory Protection
- Safety Inspections
- Safety Audits
- Safety for Supervisors
- Safety Management Techniques
- Safety Training Methods
- Scaffold Safety
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- Slips, Trips & Falls Prevention
- Team Safety
- Trenching & Excavation for Competent Person

Active Shooter & Threat Management Virtual Training

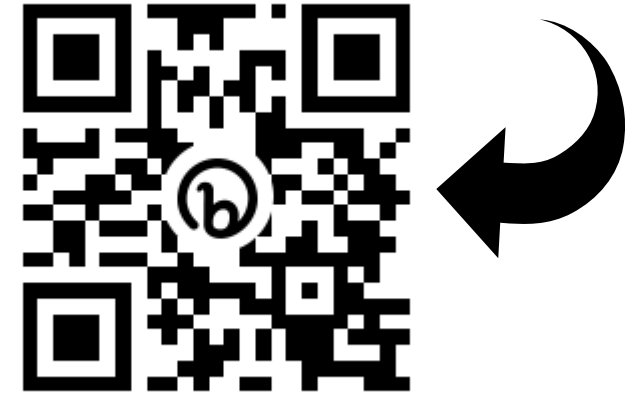
Instructed by:



Sean Collins
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June 10, 2022
\$79.95
Via Zoom

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Workplace Violence and Active Attackers: Employers Legal Obligations



Edwin G. Foulke

*Former Head of OSHA &
Current Partner Fisher Phillips,
Florida Chamber Safety Council Advisory
Board member*



Workplace Violence and Active Attackers: Employers' Legal Obligations

April 28, 2022

Presented by:

Edwin G. Foulke, Jr.

Phone (404) 240-4273 | Email: efoulke@fisherphillips.com

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What Would You Do?

- An employee enters the building carrying a large paper sack. The employee does not speak to anyone. The employee is wearing camouflaged clothing. The employee has been acting strangely the past few months, making threats to his supervisor and fellow employees and making comments about getting even.



Some Dangers Are Unavoidable

Workplace violence cannot be completely prevented.

We can only work to reduce it and minimize the impact.



Today's Topics

- Workplace violence generally
- Preventing workplace violence
- Active attackers

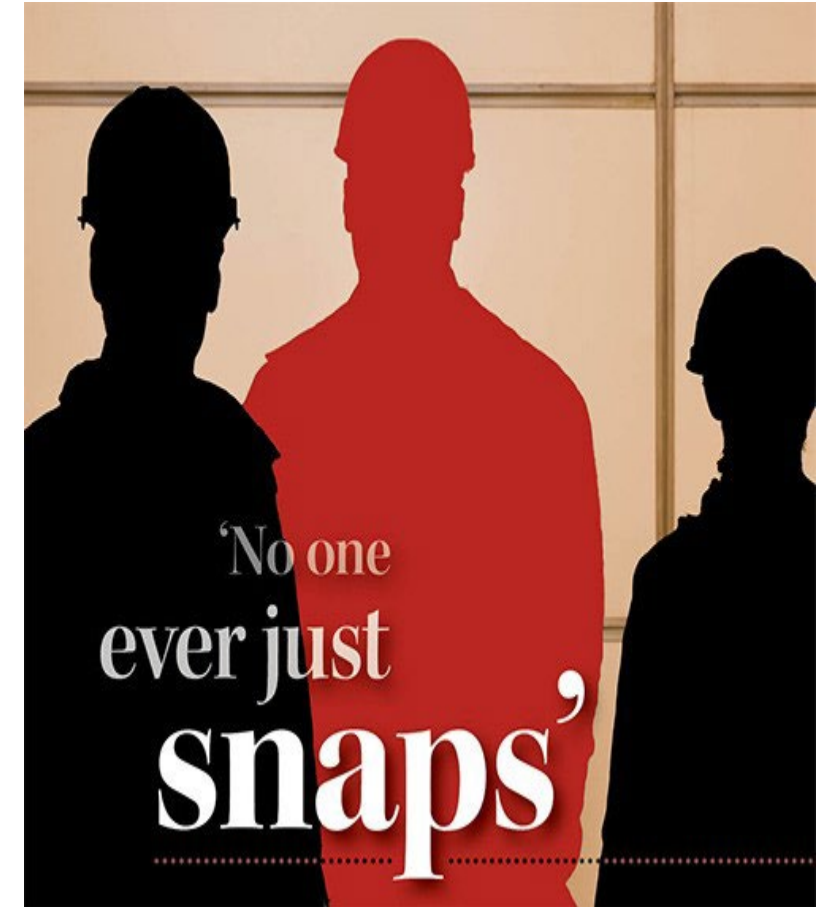
What is Workplace Violence?

- Examples of workplace violence include:
 - Physical or verbal assault
 - Threats
 - Coercion
 - Intimidation
- The ultimate nightmare:
 - An armed, disgruntled employee, client, or visitor who shoots or otherwise unleashes deadly force at persons present in the workplace.
- Others are common—shootings are extremely rare.



Common Myths About Workplace Violence

- That couldn't happen here.
- Violent employees just snap without warning signs.
- If violent employees provide clues, then all workplace violence is preventable.



Common Myths About Workplace Violence

- I work in the “safe” part of town. I don’t have to worry about that.
- A general philosophy of dignity and respect will prevent workplace violence.



How May Employers Be Held Liable For Workplace Violence?

- In most states, there is no law that requires employers, generally, to:
 - Have a workplace violence policy; or
 - Prohibit weapons in the workplace; or
 - Have a plan for an active shooter event.
- Not even OSHA specifically requires any such thing.
- Employers are, however, responsible for exercising **ordinary care to prevent foreseeable harm**.

How May Employers Be Held Liable For Workplace Violence?

- Employee harms Employee
 - Workers' comp generally limits employer's liability
- Third party harms Employee
 - Employer may be liable under OSHA general duty clause
 - May be liable under common law theories of negligence
- Employee harms third party
 - Employer may be liable under common law theories of negligence

Employer Liability For Negligence

- Hiring: insufficient screening results in hiring a person with a history or evidence of criminal acts.
 - Employer places employee in a situation where the employee's propensity for harm results in harm to another.
- Retention: keeping an employee after learning of his/her unsuitability.
- Supervision: failing to provide adequate supervision to safeguard employees and customers from potential threats.

Oakley v. Flor-Shin Inc., 964 S.W.2d 438 (1998)

- Flor-Shin hired X, knowing of X's history of criminal violence.
 - Assigned X to clean floors in Kmart's closed store, in the middle of the night, where X was alone with Kmart's female employee Oakley.
 - X sexually assaulted Oakley.
- Flor-Shin held liable for negligent hiring and retention
 - Failed to exercise ordinary care in assigning X;
 - Creating a foreseeable risk of harm to a third person.

Costs Of Workplace Violence

- Physical & emotional harm, death
- Counseling
- Time spent dealing with crisis
- Lost productivity, during & after
- Legal fees
- Jury awards



Costs Of Workplace Violence

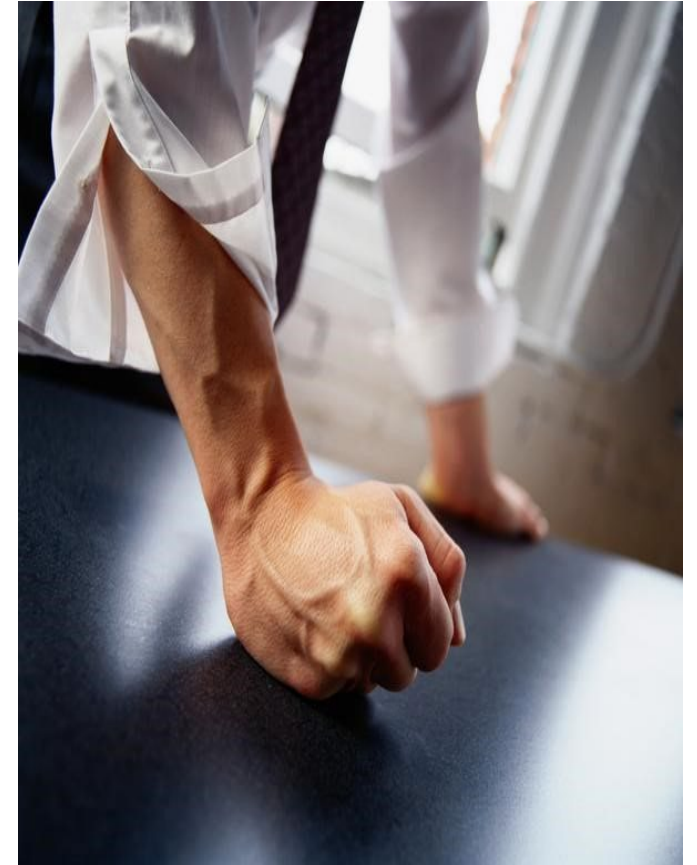
- Temp agency failed to carefully screen applicant & do background check.
 - Employee stabbed a worker at a client company.
 - \$5.5 million award.
- Amtrak failed to discipline employee with violent tendencies.
 - Employee shot and seriously injured his supervisor.
 - \$3.5 million award.
- Employee sexually assaulted co-worker at a pizza parlor.
 - A criminal background check would have shown a similar prior felony.
 - \$1.5 million award.

Who Is At A Highest Risk?

- Employees who:
 - exchange money with the public;
 - deliver passengers, goods or services;
 - work alone or in a small group during late night or early morning hours;
 - work in high-crime areas; or
 - work in community settings and homes, experiencing extensive contact with the public.

Causes of Workplace Violence?

- Too many “causes” to list, but they include:
 - Mental instability
 - Insensitive employment action (e.g., termination decisions)
 - Type of industry (e.g., liquor stores, banks, “quickie marts”)
 - Labor disputes
 - Offensive management styles
 - Downsizing/reorganizations
 - Trouble at home



The “Profile” Of The Typical Offender (Not Just Shooters)

- White male, 35-45 years old
- Transient job history
- A “loner” with little or no family or social support
- Chronically disgruntled
- Externalizes blame (victim mentality)
- High maintenance employee
- Fascination with weapons



Identifying Potentially Violent Employees

The profile is not a “rule”

- Some violent people do not fit the profile.
- Profiles, like prejudices, are a substitute for logic, active awareness, and good judgement.
- Focus on behaviors, not just “profiles.”

Signs To Watch For

- History of violence
- Threats
- Mood swings
- Alcohol/drug abuse
- Decrease in, or inconsistent, productivity
- Overreaction to minor events
- Paranoid/Obsessive behavior
- Recent poor attendance



Signs To Watch For

- Frequent, unreasonable complaints
- Erratic, impulsive, reckless or unsafe behavior
- Baiting or provoking others
- Insubordination, open defiance or disrespect for authority
- Stalking: overly frequent visits, calls, faxes, emails, letters, gifts, etc.
- Derogatory comments, such as racist or sexist remarks



Prevention

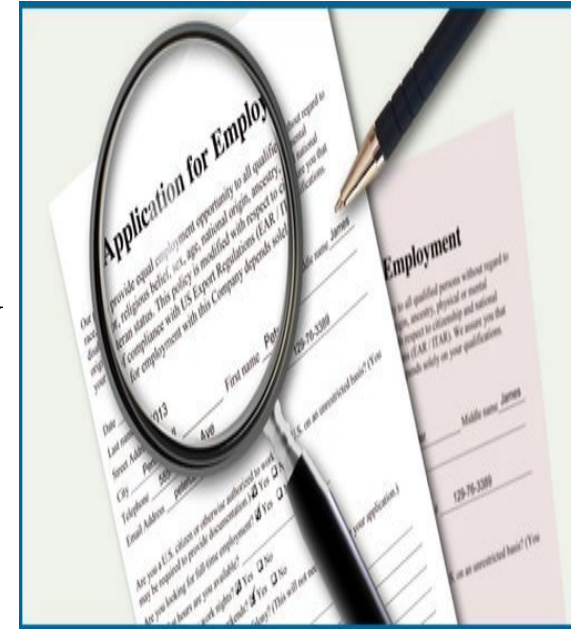
So, what should employers do to *prevent* workplace violence--and avoid the need for *damage control* mode?



Preventive Measures

1. Hiring Process

- Application form: **verify all information**, especially relating to skills, qualifications, job history and education
- Face-to-face interviews: conduct them at two different times by **someone skilled** in interviewing and the use of open-ended questions
- Background checks: review **criminal**, credit, driving and other records



Preventive Measures

2. Policies

- Basic work rules
- Anti-violence policy
- Electronic communications policy (prevent harassment)
- Robust issue identification & resolution policy
- Workplace searches
- Emergency action plans



Preventive Measures

3. No Violence Policy

- One or two managers ultimately responsible for the policy
- Easy to understand – zero tolerance
- Violence, threats, and abuse = discharge
- Complaints taken seriously
- Multiple means of reporting concerns
- No retaliation



Preventive Measures

No Violence Policy

- Prompt, well documented investigations
- Follow up with reporter/accuser
- Document all reports and violations
- Check back to ensure effectiveness of remedies
- Conduct training
- Enforce policy consistently



Preventive Measures

4. Education and Training

- Train all employees, supervisors, and managers on:
 - Company workplace violence policy, including **what to report**:
 - Weapons at work
 - Any threat, veiled or direct
 - Situations that could lead to violence
 - **Potential implications of domestic abuse**
 - Employees who are known to be violent
 - Outsider threats

Preventive Measures

Education and Training

- Be alert to potential dangers and trust their instincts (situational awareness)
- Recognize pre-attack behavior
 - Physical signs:
 - Widening of the eyes
 - Quick breathing
 - Clenched fists
 - Uncontrolled yelling
 - Twitching muscles
 - Jerky eye movements



Preventive Measures

Education and Training (Continued)

- Avoiding an assault
 - Don't block exits — leave escape route for the subject and yourself
 - Speak in a calm voice
 - Avoid physical contact and offensive gestures
 - Keep communication simple, to the point and focused
 - Allow personal space and watch subject's hands
 - Remove objects that may be used as a weapon



Preventive Measures

Education and Training

- What to do in an emergency situation
 - Call 911 for police emergency response
 - Activate panic/emergency alarms
 - Alert the security



Preventive Measures

5. Physical Security

- Limited access/access control system
 - Intercom/locks and alarms
 - Photo ID badges
- Lighting (especially parking)
- Receptionist/security officers
- Surveillance/video monitoring
- Rules for working alone
- Professional security audit/review



Preventive Measures

6. Searches

- Use common sense
- Don't touch their bodies
- If they refuse to submit, let them leave
- Keep the parking lot gun laws in mind (vs. concealed carry laws)



Preventive Measures

7. Threat investigation

- Check with counsel
- Witness interviews
 - Who made the threat?
 - Where, when, what exactly said?
 - Isolated or part of pattern?
 - Other witnesses?
- Do not promise confidentiality.



Preventive Measures

Threat investigation

- Appropriate corrective action
 - Document your actions
- Follow through
 - Inform the accuser of action taken
 - Demand prompt complaint upon recurrence
 - Check back with accuser



Preventive Measures

8. Employee Assistance Programs

- Stress management
- Trauma counseling
- Fitness for duty
- Be aware of ADA and other legal implications
- Protect confidentiality



Preventive Measures

9. Discipline and Discharge

- Discharge is the most common trigger for workplace attacks
- Do it at the beginning or end of a shift
- State the facts; do not debate the decision
- Manage, or prevent, employee's return to work area
- Anticipate security needs
- Plan for contingencies (off duty cop in the next room?)

Special Considerations

- Protecting isolated employees
- Protecting travelers
- Protecting executives

Protecting Isolated Employers

- Conduct a risk assessment and take appropriate steps to reduce risks on a case-by-case basis
 - Physical security (locks, cameras, panic button, bullet proof glass, safe room, periodic phone checks, etc.)
- Train employees to:
 - Be alert to potential dangers and trust their instincts (**situational awareness**)
 - **Understand (psychologically) that they are ultimately responsible for their own safety**
 - Know how to respond to the most likely dangers at their work sites
- Assure employees their lives are more important than your products and property—they have to believe you mean it!

Protection for Travelers

- Some areas of the world, including some in the U.S., are known to be particularly dangerous.
- Develop general and destination-specific plans to protect employees who travel to those areas for work.
 - Notify U.S. Embassy
 - Private security
 - Secure transportation (e.g., company-only bus, armored vehicle)
 - Regular phone checks
 - Additional life insurance (peace of mind for the employee)

Protecting Executives

- The “face” of the company
 - Often targeted by individuals who are angry at the company (e.g., environmental protestors, union activists)
 - More likely to travel to high risk foreign destinations.
- Be alert for situations that could place executives at risk.
- Establish policies and procedures to protect them.
 - Private security personnel
 - Notify local police
 - Travel protections

The Worst Case Scenario: A Shooter In The Workplace

Highly Unlikely, Yet Highly Dangerous

- TORNADOS are unlikely, but you probably plan for them
- If your only plan is to “ban” weapons, you do not have an “active shooter” plan
 - Gun free zones are target rich environments
- A realistic, useful plan should include details for:
 - Prevention
 - Preparedness
 - Response
 - Recovery

Prevention Is Worth A Pound Of Cure

- Adequate background checks
- Appropriate physical security (locks, gates, cameras, etc.—that are actually used)
- Robust ways to report concerns—so you can resolve them.
- See something, say something
- Training (harassment, domestic violence, etc.)

Preparedness

- Identify vulnerabilities, ingress, egress, choke points, assembly areas, etc.
- Work with law enforcement to develop a plan
- Plan the emergency chain of command
 - Highest ranking manager on the ground should have full authority
- Train employees on the plan
 - They need to know escape routes and basic run/hide/fight strategy
- Practice the plan (drills)

Preparedness - Emergency Action Plan

- OSHA 29 CFR 1910.38 requires emergency plans to contain:
 - Means for **reporting emergencies**;
 - **Evacuation** procedures and emergency escape routes;
 - Procedure for employees to follow who remain to operate **critical plant operations** before they evacuate;
 - Procedures to **account for all employees** after evacuation; and
 - Names or job titles of persons **who can be contacted** for further information about the emergency action plan.
- OSHA does not specifically require workplace violence plans in most workplaces, but this is a good template.

Response

- Company should have a response plan
 - Who communicates with emergency responders?
 - Who gathers & instructs employees immediately after threat is neutralized?
 - Who communicates with the media?
 - Who contacts loved ones, and how?
- Employees should know how to respond, individually
 - Run;
 - Hide; or
 - Fight

Individual Response To A Shooter

1. Run

- If you can escape without getting closer to the shooter
- Be sure to:
 - Have an escape route and plan in mind;
 - Run--regardless of what others do;
 - Leave your belongings behind;
 - Help others escape--if it doesn't endanger you
- Hands Up!

Individual Response To A Shooter

2. Hide--if you cannot run

- Your hiding place should:
 - Be out of sight (concealment), e.g., a dark office;
 - Provide protection from bullets (cover), e.g., a heavy door; and
 - Not trap you or restrict your options for movement or escape.
- To prevent a shooter from finding/entering your hiding place:
 - Lock the door
 - Blockade the door with heavy furniture
 - Lights, radios, phones, etc. turned off

Individual Response To A Shooter

3. Fight—if you cannot run or hide.

- The experts say complying and begging usually don't work.
- You have to fully commit; you are fighting for your life
 - Highly aggressive, scream, yell, rush forward;
 - Throw things, use improvised weapons (scissors, lamp);
 - Attack groin, eyes, knees, throat; and
 - Do not ease up or stop until the shooter is down for good.

Recovery

- How will you operate if the facility is closed for a day, week, or month?
 - Off site access to electronic & physical information?
 - Meeting payroll (DOL doesn't care about your problems)
 - Communicating with customers and vendors
 - Communicating with employees
 - Production contingencies
- The day after is too late to start thinking about these things.



Final Questions

“Judge a man by his questions, rather than his answers.”

~ Voltaire



Be Safe!

Remember:

Bad decisions make good stories
and usually the evening news.

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Thank You!

Presented by:

Edwin G. Foulke, Jr.

Phone (404) 240-4273 | Email: efoulke@fisherphillips.com

Closing Remarks



Jason Mozo, J. D.

Executive Director

Florida Chamber Safety Council

JMozo@FlChamber.com

(850) 521-1237

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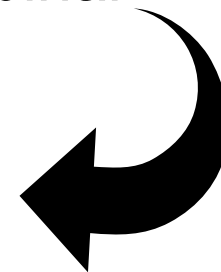
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Former Head of OSHA

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