



Legal Alert: Keeping Violence Out of the Work Environment

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After the tragic shooting in Tucson, details have emerged about the alleged gunman's history of disturbing behavior. Although there are no easy answers, people continue to ask whether there were any warning signs that could have been addressed in a way that might have prevented such a tragedy. Because of the complexity of the issue, employers may be unsure how to deal with employees who exhibit unsettling behavior that could foreshadow violence in the workplace. In considering their alternatives, employers should keep in mind both state and federal laws as well as workplace safety.

Workplace violence is a problem. According to the Bureau for Labor Statistics, nearly five percent of 7.1 million private businesses experienced an incident of workplace violence in the previous year. Half of employers with more than 1,000 employees experienced a violent workplace incident in the last year. The National Center for Victims of Crime states that one out of six violent crimes experienced by U.S. residents occur at work, and in 2009, there were 521 homicides at work.

In addition to the devastating effects on victims, workplace violence is costly to employers. Employers are likely to see morale and production of coworkers drop off, and the National Safe Workplace Institute has determined that each single episode of workplace violence costs, on average, \$250,000. These costs include necessary legal expenses as well as lost work time.

It's impossible to predict every incidence of violence. No one expects employers to recognize and prevent every intentional act of aggression. Still, employers still should take measures to ensure that they do their best to create an environment where such behavior is less likely to occur.

There are several things that employers can do to create an environment less conducive to violence. The first step is to hire the right people. With many tools available, such as the internet, employers can learn a lot about their applicants. It's best to be upfront with your data collection. Ask for permission from applicants to perform background checks and inform them that you intend to call all of their references. Also remember if you use an outside agency to conduct background or reference checks of potential employees, you must comply with the requirements of the federal Fair Credit Reporting Act. The requirements of this law do not apply if you use your own employees to check an applicant's references; however, state laws may apply.

If you find out personal information about applicants, remember that you are restricted from using certain information in your hiring decisions. Take, for example, uncovering information that suggests the presence of a disability. You don't want to be accused of unlawfully screening because you became aware of a potential mental condition. In some cases, applicants with mental disabilities may request a reasonable accommodation, or may need no accommodations at all to perform their job effectively. It's best not to leap to conclusions regarding a person's condition. Instead, focus on the conduct they have engaged in and actions they have taken.

Make sure your policies indicate that you do not tolerate violence, and you may terminate employees as a result. Require witnesses to report potential violence and provide multiple reporting avenues, such as different managers to whom they can speak. Be sure to investigate all concerns and document your findings. Also, monitor your employees and pay attention to changes in behavior or routine. Employees should understand through your policies that their use of company phones and computers is not private.

State laws may limit some of your policy choices. When considering whether to ban weapons in the workplace, for instance, you will necessarily need to consider state law. As an example, Kentucky allows licensed gun owners to carry weapons in their vehicles while in an employer's parking lot. Thus, employees may keep guns in their cars while on the employer's premises or using the car on company business. Florida, Georgia, and Louisiana also have similar laws protecting employees who wish to keep firearms locked in their vehicles. Thus, employers may be restricted in their attempts to manage completely the presence of firearms on their premises.

The effects of domestic and sexual violence can carry over to the workplace as well, and statutes may create special considerations with respect to those situations. For instance, in Florida, victims of domestic or sexual violence may be entitled under some circumstances to three days of leave in a twelve-month period. Employers also must be careful to keep confidential all information related to the leave. Illinois and North Carolina also have laws providing protection to victims of domestic violence.

Employers are not expected to solve employees' personal problems, but they can refer them for help, where appropriate. Doing so may prevent an employee's stress from escalating to a dangerous level. Employee assistance programs or hotlines are a great initial resource. Employers should always try to maintain positive relationships with their employees – those efforts may help prevent a violent situation from arising.

If you have any questions regarding this Alert, please contact the author, Christopher M. McFadden, cmcfadden@fordharrison.com, or the Ford & Harrison attorney with whom you usually work.