

2011 CV ASSE PDC

VIOLENCE IN THE WORKPLACE

**Preparing for the Day You Hope
Does Not Come**

Presented by:

**Patrick S. Moody
Barsamian & Moody
A Professional Corporation
Attorneys at Law
1141 W. Shaw Ave., Ste. 104
Fresno, CA 93711-3704
Tel: (559) 248-2360
Fax: (559) 248-2370**

**Office E-Mail: laborlaw@theemployerslawfirm.com
Personal E-mail: pmoody@theemployerslawfirm.com**

We wish to express confidence in the information contained herein. Used with discretion, by qualified individuals, it should serve as a valuable management tool in assisting employers to understand the issues involved and to adopt measures to prevent situations which commonly give rise to legal liability. However, this text should not be considered a substitute for experienced labor counsel, as it is designed to provide information in a highly summarized manner.

The reader should consult with Barsamian & Moody at (559) 248-2360 or toll-free at (888) 322-2573 for individual responses to questions or concerns regarding any given situation.

EMPLOYER ALERT! “JURY AWARDS \$2.25 MILLION TO SECURITY GUARD PLACED IN DANGEROUS WORKPLACE SITUATION BY SUPERVISOR”

Gantt v. Security USA Inc.

Dominique Gantt was a security guard at Security, USA, Inc. After being repeatedly abused by her boyfriend, Gary Sheppard, a guard for another company, she was able to obtain a protective order preventing him from contacting her, either at home or at work, in person, or by telephone. The day after she obtained the order, Gantt gave a copy of it to Security, USA officials, who in turn notified all of the supervisors that they were to assign Gantt only to inside, secure posts, so that Sheppard could not get near to her while she was at work.

Angela Claggett was a Security, USA supervisor on the weekends, but during the week, she worked with Sheppard at the other company, and later acknowledged that she had a friendly relationship with him. Claggett admitted that she was aware of the protective order regarding Sheppard staying away from Gantt, and the requirement that she was to assign Gantt to inside secure posts. Claggett also admitted that Gantt had told her about Sheppard hitting her, about Sheppard trying to break into Gantt’s mother’s house while Gantt was there, and about Sheppard threatening to kill Gantt if she did not drop charges regarding the attempted break in. Claggett even admitted that Sheppard himself had told her that he had “put his hands” on Gantt. In response to that, Claggett told Sheppard that “it’s understandable,” and that “you all need to talk.”

Despite her knowledge of the protective order, and of Sheppard’s threats against Gantt, Claggett urged Gantt to take Sheppard’s call when he telephoned her at work one day. Gantt refused to take the call, telling Claggett that Sheppard was not allowed to call her. Claggett then transferred the call to Sheppard’s post anyway. Gantt reported that incident to Claggett’s supervisor, but several weeks later, Claggett did the same thing, telling Gantt “all he wants to do is talk to you.”

A short time later, as Gantt reported for duty one day, Claggett ordered her to an unsecured post, outside of a building. When Gantt refused, and reminded Claggett that she was only supposed to work at indoor posts, Claggett loudly ordered her to the outside post. Moments later, Claggett transferred a call from Sheppard to Gantt’s post. Gantt hung up and called Claggett, requesting to be moved indoors, but Claggett refused. A short while later, Sheppard showed up at Gantt’s post and kidnapped her at gunpoint. Two other guards saw the kidnapping and reported it to Claggett, who said that they need not call the police because “he doesn’t want to hurt her, he just wants to talk to her.” Sheppard held Gantt hostage for the next six hours, raping her, physically assaulting her,

and threatening to kill her. He only let her go after she convinced him that she would reconcile with him and tell the police that she had gone with him willingly. Sheppard was eventually sentenced to twenty years in prison.

Gantt sued Security, USA, and a jury awarded her \$2.25 million in compensatory and punitive damages on the ground that Security, USA, acting through its agent Claggett, had intentionally placed Gantt in a situation which lead to the events with Sheppard. (*Gantt v. Security USA Inc.*, D. Md., No. JKS-00-637, jury verdict 2/9/05, order entered 2/10/05, BNA DLR 3/2/05. For those interested in additional information on this case, a full discussion of the facts and legal theories is available in the 4th Circuit Court of Appeal decision 356 F.3d 547 (4th Cir. 2004).) This case is a stark reminder that employers absolutely must take the issue of violence in the workplace seriously.

COURT SIDES WITH EMPLOYER IN CALLING POLICE

Aviles v. Cornell Forge

The 7th Circuit Court of Appeal, on the other hand, sided with an employer who chose a more cautious approach. Alfredo Aviles worked for Cornell Forge and filed a discrimination charge with the EEOC, alleging national origin discrimination. Several days later, he was suspended, but refused to leave the premises. He got into an argument with his supervisor and threatened to kill himself and others in the plant with a gun. The employer called the police and had Aviles removed. Later that day, an employee saw Aviles sitting in his car right outside the gate. The employee called the police, and the dispatcher, knowing that Aviles had been escorted off the premises earlier, asked if he was armed. The employee said that he did not know for sure, but said that he might be armed. The police showed up in great force and took Aviles into custody. He was unarmed, however, and said that he was merely there to pick up his final paycheck. He then sued Cornell Forge alleging that their calling the police on him was in retaliation for his having filed a claim with the EEOC.

In rejecting the claim, the 7th Circuit court said:

If an employer had to face Title VII liability for truthfully reporting to the police that a disgruntled employee had threatened a supervisor and could be armed, we might discourage employers from taking the most prudent action to protect themselves and others in the workplace.

The court cautioned, however, that:

If the employer knew Aviles was just there to pick up his check, and that he was unarmed, then there would

be a basis for finding that Cornell Forge retaliated against Aviles.

This case illustrates what a tight line employers have to deal with in this type of situation, but also shows that courts understand that tight line, and are willing to grant the employer reasonable leeway in protecting its employees and premises.

WHY WORKPLACE SAFETY AND SECURITY IS ONE OF THE TOP FACTORS IN EMPLOYEE “JOB SATISFACTION” AND WHAT EMPLOYERS NEED TO DO IN RESPONSE

History of “Workplace Violence”

Interestingly, prior to approximately 1989, workplace violence was virtually unheard of as a potential issue in employment satisfaction. However, 1989 was the year that the term “going postal” entered common discussions after a disgruntled postal worker named Patrick Sherrill walked into an Oklahoma post office and shot fourteen co-workers to death, before killing himself. This was not the first case of workplace violence obviously, but after that incident, the issue of workplace violence seemed to rapidly grow into a major issue in workplaces across the country as reports of incident after incident of employees murdering other employees spread. In 1998, a lottery accountant in Connecticut killed four co-workers; in 1999, a Xerox technician in Hawaii killed seven co-workers; in 2000, a software engineer in Massachusetts killed seven co-workers; in 2001, a forklift driver in Chicago killed four co-workers; in 2002, an insurance executive in New York City killed three co-workers; in 2003, a worker in Missouri killed three co-workers, and a worker at Lockheed-Martin in Mississippi killed six co-workers; and in 2005, a former ConAgra employee in Kansas shot four employees to death and wounded three others before killing himself. Unfortunately, the list goes on and on. When Timothy McVeigh bombed the federal court house in Oklahoma, 168 people died, many of them at work, and of course, approximately 3000 people died when terrorists attacked the World Trade Center, again, many of them employees who had recently arrived for work on an otherwise normal Tuesday morning.

Various studies indicate that employees have a great deal of concern regarding workplace safety issues and potential violence. Of course, most incidents of workplace violence are not as serious or as spectacular as the World Trade Center attacks. Statistics on actual numbers of workplace violence are sketchy at best, perhaps due to the varied nature of the incidents, but the United States Justice Department conducted an extensive study in 2009 and estimated that there were nearly 600,000 incidents of violence in workplaces across the country every year from 2009, including rape/sexual assault, robbery, and aggravated and simple assault. (*Workplace Violence, 1993-2009, Special*

Report, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Washington, D.C.: March 2011, NCJ 233231.) In 2007, there were 517 workplace homicides in the United States. In 2009, there were still 521 workplace homicides. While there has actually been a 35% decrease in workplace violence since 1993, obviously, employees still have a legitimate reason for concern.

“General Duty” Clause of Occupation Safety and Health Act

Employers have an affirmative duty to address violence in the workplace issues. Section 5(a) of the Occupational Safety and Health Act, 29 USC 654, requires that each employer:

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees; [and]

(2) shall comply with occupational safety and health standards promulgated under this Act.

Further, twenty-two states and Puerto Rico have also adopted full OSHA-approved state plans that require employers to provide safe work environments. Three states and the Virgin Islands have adopted OSHA-approved state plans that cover public employees. Most of the state plans are identical to the OSHA standards, but some of them (California, Hawaii, Michigan, Oregon and Washington) extend to hazards that are not covered by the OSHA standards.

California Statutes Addressing Workplace Violence

In California, there are several statutes that expressly govern the employer’s obligation to provide a workplace that is free from violence and credible threats of violence.

Labor Code section 6400(a): Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.

Labor Code section 6401: Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code section 6402: No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.

Labor Code section 6403: No employer shall fail or neglect to do any of the following:

- (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.
- (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe.
- (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code section 6404: No employer shall occupy or maintain any place of employment that is not safe and healthful.

Code of Civil Procedure section 527.8(a): Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an injunction on behalf of the employee and, at the discretion of the court, any number of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer.

A copy of the forms required to seek an injunction on Code of Civil Procedure section 527.8(a) are included in the Forms section of this presentation.

California's courts have made it clear that: **“Labor Code section 6400 et seq. and Code of Civil Procedure section 527.8, when read together, establish an explicit public policy requiring employers to provide a safe and secure workplace, including a requirement that an employer take reasonable steps to address credible threats of violence in the workplace. A credible threat of violence is one that an employee reasonably believes will be carried out, so as to cause the employee to fear for his or her safety or that of his or her family.”** *Franklin v. Monadnock Co.* (2007) 59 Cal.Rptr.3d 692, 697.

The difficulty for employers frequently, is determining what exactly is a “credible” threat of violence, because courts have also said that there is no “obligation to automatically fire any employee who makes a threat of violence regardless of the employee’s intent in uttering it and the actual risk to workplace safety,” however, the employer “might be required to summarily place an employee on administrative leave to fulfill its duty of providing a safe workplace where the [employer] has reasonable proof that an employee has made a

credible threat of violence against a coworker...” *City of Palo Alto v. Service Employees Internat. Union* (1999) 91 Cal.Rptr.2d 500, 506.

There are several California statutes that attempt to define “credible threat of violence.” Code of Civil Procedure section 527.8(b)(2) says it is a “knowing and willful statement or course of conduct that would place a **reasonable person in fear** for his or her safety, or the safety of his or her immediate family.” Penal Code section 139(c) says it is “a threat made with the **intent and apparent ability to carry out the threat** so as to make the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.” Penal Code section 646.9(g) says it is a **verbal or written threat** ... made with the intent ... and ...with the apparent ability to carry out the threat...” Penal Code section 76(c)(5) says it is a “verbal or written threat or a **threat implied by a pattern of conduct** or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat”

Thus, the critical criteria that must be assessed and evaluated by the employer are:

1. Has there been a threat?

This can be a verbal threat, a written threat, or a threat implied by a pattern of conduct.

2. Does the person making the threat appear to have the intent to carry it out, **and** the apparent ability to do so?

3. Would a reasonable person be in fear for his or her safety, or the safety of his or her family, based upon the threat?

In order to properly address these questions, the employer will have to:

- a. Conduct an appropriate investigation of the situation;

This includes interviewing any employees involved and any witnesses, conducting any follow-up interviews necessary, and otherwise doing whatever is necessary to obtain a full understanding of the facts;

- b. Evaluate the facts in good faith, and furnish an answer to each of the questions above;

- c. Communicate the results of the investigation to the affected employees; and

- d. Take appropriate action based upon the findings of the investigation.

This may include suspending the employee making the threat, imposing other appropriate discipline, up to and including termination, and may even require the employer to seek an appropriate restraining order. Again, the forms necessary for that purpose are included in the Forms section of this material, below. Remember, if the answer to the three questions above is “Yes,” then the employer **must**, by statute, “do every other thing reasonably necessary to protect the life, safety, and health of employees.”

Threat Assessments

When faced with a situation that reasonably indicates a potential for violence, it is imperative that the employer conduct a thorough threat assessment. The goal of such an assessment is to review the credibility and viability of the threat; i.e., is this threat likely to be acted upon, or is it simply “blowing off steam.”

The assessment should evaluate the following issues:

1. The exact nature and context of the threat or threatening behavior;
2. The target of the threat, if identifiable;
3. The motivation behind the threat; and
4. The threatener’s apparent ability to carry out the threat.

The assessment should allow the employer to preliminarily designate the threat as either something that requires immediate intervention (“I’ve got a gun in my locker and I’m ready to shoot Bob if he says one more thing” means you call the police), or one that can be dealt with by less immediate measures (“Bob is really a jerk” means you can try to find out why he or she thinks Bob is a jerk.)

Each employer will need to develop its own threat assessment procedure, based primarily upon its resources. Employers with substantial resources may well have dedicated security personnel on staff who are trained to evaluate threats and determine appropriate responses. Employers with lesser resources may have to contact an outside resource, such as a trained psychologist or counselor, to help evaluate the threat (watch for potential ADA issues though). In such a circumstance, it is preferable to have pre-selected a person to assist in such evaluations, and have that person already familiar with the employer’s workplace.

Cal/OSHA’s Response

Cal/OSHA is required by California Labor Code section 6313(a):

To investigate all industrial accidents which are fatal to one or more employees or which result in a serious injury or illness or a serious exposure, unless the Division determines an investigation is unnecessary, in which case the Division shall summarize the facts indicating that the accident need not be investigated and the means by which the facts were determined.

Labor Code section 6302(h), however, excludes "any injury or illness or death caused by the commission of a Penal Code violation" from the definition of serious injury or illness. Therefore, Cal/OSHA has no mandatory duty to respond to such incidents. However, Cal/OSHA does have the authority to investigate any such workplace incident on a discretionary basis, as provided by Labor Code section 6313(b):

The division may investigate the causes of any other industrial accident or occupational illness which occurs within the state in any employment or place of employment... and shall issue any orders necessary to eliminate the causes and prevent reoccurrence.

Cal/OSHA has stated that in order to learn more about how to prevent the occurrence of homicides and other serious injuries arising from workplace violence, it will exercise the statutory discretion granted to it under Labor Code section 6313(b) to investigate such incidents. Knowing what the investigator will look for in an investigation, can provide valuable insight into how to avoid these situations altogether.

Cal/OSHA has instructed its investigators that when investigating any incident of workplace violence, Cal/OSHA compliance personnel shall, **at a minimum**, determine the answers to the following six questions:

1. Is the inspected establishment one which is considered to be at significant risk of a Type I, II or III workplace violence event?
2. What are the physical characteristics and the work practices of the establishment that affect the security of the employees who work in the establishment?
3. Have assaults occurred in the establishment in the past? If so, how often have these assaults occurred and what was their severity?
4. What measures were taken by the employer to investigate the cause(s) of assault(s) and what corrective measures were taken by the employer to prevent other assaults?

5. What, if any, are the specific workplace security issues the employer's IIP Program should address?

6. If the employer is required to address workplace security issues through the IIP Program, how effective is the employer's IIP Program in identifying and correcting workplace security hazards and in investigating workplace assaults? Does the IIP Program result in effective communication, hazard assessment, hazard correction and supervisory and employee training.

Certain employers are required by law to address workplace violence in their IIP Program, such as taxi companies, liquor stores, convenience stores, gas stations, hotels, jewelry stores and security companies. Other companies may be required to do so, however, if their employees are at risk of an attack by virtue of their providing services to a client or customer, or where the employer has reason to believe that their employees might be at risk.

DEVELOPING POLICIES AND TRAINING PROGRAMS THAT EMPHASIZE ZERO TOLERANCE FOR WORKPLACE VIOLENCE

As with virtually all workplace issues, it is essential that employers have policies and plans in place *prior* to an incident of workplace violence arising, in order to potentially avoid violence, and to properly and effectively deal with violence if it does occur.

Basic Types of Workplace Violence

Most experts agree that workplace violence falls into one of four main categories:

Type 1: Violence instigated by criminals who have no connection to the workplace, but who enter solely to commit a crime, such as a robbery, etc.;

Type 2: Violence instigated by customers of the business, or others who are there for legitimate purposes;

Type 3: Violence instigated by present or former employees; or

Type 4: Violence instigated by someone who has an outside relationship with an employee.

Type 1 violence is estimated to account for nearly 80 percent of all workplace homicides, and is generally limited to a small group of particular occupations, such as taxi drivers, which is the job that carries the highest possibility of being murdered. Taxi drivers suffer nearly 27 homicides per 100,000 workers per year, while liquor store clerks, the job with the second highest homicide rate, suffer 8 homicides per 100,000 workers per year. Other jobs particularly susceptible to Type 1 violence are late-night retail clerks and gas

station attendants. Preventing Type 1 violence is highly dependent upon employing particular physical security measures that are not often applicable to most other occupations, and therefore those measures will not be covered in this presentation.

Formulating an Effective Workplace Violence Policy

In formulating an effective workplace violence policy, there are a number of important principles for employers to contemplate:

1. There is no one specific policy that will work for every workplace. Each employer will have to evaluate the particular issues it faces, in conjunction with its resources to deal with those issues. For example, not every employer can afford to have its own security force on staff, but every employer should have a written policy prohibiting violence and setting forth procedures for employees to report threats, etc.

2. All employees must know that the employer is serious about dealing with this issue, and management must be consistent in enforcing that belief. If the employer tolerates bullying from particular employees, and is inconsistent with discipline, it can lead to high levels of frustration for the employees.

3. Management must take an active role in being alert to potential violence or other issues, such as plant security, that need to be addressed before an act of violence occurs. This includes conducting a physical assessment of the facilities and evaluating ways to minimize the risk of intruders, and maximizing the employees' ability to avoid dangerous situations.

4. An effective workplace violence plan requires ongoing evaluation and re-evaluation, taking into account changes in the workplace, staff changes, etc.

Having a written workplace violence policy can go a long way toward helping to ease employee concerns, and toward enhancing the employees' ability to properly and effectively deal with a violent situation if one occurs. The policy should include:

1. An express prohibition of violence, threats, bullying, harassment, etc., emphasizing the employer's commitment to a safe workplace;

2. A reporting procedure through which employees can report harassment, threats or violence. The reporting procedure should provide that the employer will promptly address each report, and will take each report seriously; and

3. Some mechanism through which employees can offer suggestions for improving security, whether via a "suggestion" box, or otherwise.

Pre-employment Screening

An additional consideration is including a provision for pre-employment screening of new employees. Such screening, however, raises a number of issues, primarily dealing with the applicant's privacy, and with prior employers being forthcoming regarding the employee's history while at that employer.

A thorough background screening can be both time-consuming and expensive, which may prevent many employers from doing one for each new employee. Therefore, most employers limit themselves to asking applicants to list their prior employers, and then doing follow-up with those employers. The problem is that many prior employers are reluctant to provide any negative feedback on ex-employees, whether out of fear of being sued for defamation, or perhaps because the employer and employee agreed to a confidentiality agreement as part of a severance agreement. For whatever the reason, it is difficult for potential employers to get information from prior employers.

One tactic that has become increasingly utilized over recent years is having applicants sign a waiver allowing prior employers to freely discuss an ex-employee's work history. In such a situation, the prior employer should be free to discuss such things as the employee's work history, discipline, etc., all of which can help the prospective employer properly evaluate the applicant.

Some states are even codifying protections for employers to discuss former employees. California, for example, has enacted legislation which specifically provides that conversations between a former employer and a prospective employer, regarding an employee's "job performance or qualifications," are privileged. If the employee were to sue over any of the conversation, for defamation for example, he or she would have to show that any negative comments were made with malice. (Civil Code section 47(c).)

Even in the absence of such protective legislation, it is important for employers to try to obtain what information they can from prior employers. Failure to do so can subject employers to potential liability for failing to fulfill the "general duty" under § 5 of the Occupational Safety and Health Act and/or California's Labor Code section 6400 et seq. Further, employers can also face liability under tort theories for negligent hiring and/or retention.

Sample Policy

This company does not tolerate workplace violence. We define "workplace violence" as actions or words that endanger or harm other employees, or cause other employees to reasonably believe that they, or their immediate family members, are in danger. Such actions or words include, but are not limited to:

- *Verbal or physical harassment, bullying, etc.*
- *Verbal or physical threats*
- *Assault or other violence*

- *Any other behavior that reasonably causes employees to feel threatened*

We encourage employees to report any workplace violence to your immediate supervisor, or to _____ . We will conduct a prompt review of the situation, including investigating and documenting each situation, and issuing appropriate discipline where necessary.

Employees have an obligation to avoid engaging in workplace violence, and to report such activity to management. Together, we can help to promote a safe work environment.

Training Your Employees

Police and emergency medical providers, who are typically the first outside personnel to respond to a situation of workplace violence, frequently state that it is imperative that employers train their employees on how to respond appropriately in a crisis situation. A full “Emergency Action Plan” is outlined below in a subsequent section, but, in short, it is critical that employees know: (1) how to evacuate their particular facility, and (2) that somebody must contact the proper authorities to deal with the situation. Most police departments and emergency responders are more than willing to help employers train their employees on these issues because it is only through prior practice that the employees will know how to properly respond.

Training should entail making sure that all employees know where the closest exit to their work station is, what alternate exit they should use if they cannot get to the closest exit, and making sure that they know where to find a phone if they need to dial 911. Training should also address what an employee should do if he or she observes a person in the workplace who does not appear to belong there, such as contacting a supervisor.

The key to making any training program a success is that it should be covered on a regular basis. Doing the training just once, and then expecting employees to respond appropriately years later is not realistic. Just like other safety training, this training must be done on an ongoing basis.

IDENTIFYING “EARLY WARNING SIGNS” OF WORKPLACE VIOLENCE AND ENSURING THAT EMPLOYEES KNOW SPECIFIC PROCEDURES FOR REPORTING AND DEALING WITH WORKPLACE THREATS AND EMERGENCIES

Unfortunately, there is no single profile, or litmus test for determining when an employee might become violent. Therefore, employers need to be on the lookout for particular situations that may lead to violence, such as layoffs, terminations or other discipline (particularly in a situation like sexual harassment or other discipline which is not based upon poor work performance), personality

conflicts between employees, marriage break-ups, or the end of other romantic relationships, family conflicts, or outright threats.

Personal Factors

Cal/OSHA has identified the following behavior as an indication of potential violence:

- Specific threats
- Increasing belligerence
- Hypersensitivity to criticism
- Fascination with weapons
- Obsession with a co-worker or supervisor
- Angry outbursts
- Extreme disorganization
- Homicidal or suicidal comments

Workplace Factors

There are also a number of workplace issues that can lead to increased stress and/or frustration by employees, including:

- Understaffing which leads to compulsory overtime
- Poorly defined job tasks and/or responsibilities
- Impending or recent downsizing or reorganization
- Labor disputes, ongoing collective bargaining, strikes, etc.
- High employee injury rates
- Poor management style, such as arbitrary or unexplained orders, discipline in public, inconsistent enforcement or work rules, etc.

While any of these factors, whether behavioral issues or workplace issues, can be an indicator of potential violence, combinations of such factors should be taken particularly seriously. For example, assume that a particular employee is working very frequent overtime, and then says that he hates having to do so because his supervisor is so incompetent that he cannot properly plan out the workflow. In that situation, there is a serious potential for future violence, and the

employer should conduct an assessment of that issue to see what can be done to defuse the situation.

Domestic Violence

Domestic violence frequently inserts itself into the workplace, leaving employers in the difficult situation of having to involve themselves in their employees' private personal relationships. While employers are legitimately concerned with respecting their employees' privacy, likewise, employers need to be legitimately concerned when private matters intrude into the workplace and present a potential for violence against its employees.

Unfortunately, many victims of domestic violence are reluctant to report that issue to their employers, partly due to the fact that some employers have chosen to deal with that issue by removing the potential problem from the workplace by firing the employee. Therefore, employers may frequently have to decipher clues as to a potential problem. The following list of observable behavior may suggest possible domestic violence:

- Unexplained tardiness or absences, or frequent unplanned use of leave
- Unexplained changes in job performance, lack of concentration, anxiety
- Disruptive phone calls or e-mail, or disruptive visits
- Unexplained requests to be moved from public areas of the workplace
- Unexplained injuries or bruises
- Noticeable changes in make-up (to cover injuries/bruises)
- Inappropriate clothing, such as sunglasses indoors, or a turtleneck sweater in summer

Obviously, this list is just a highlight of items that may be relevant. The important thing to remember is to be on the lookout for situations where outside relationships may intrude upon the workplace.

Reporting Procedures

It is important, in developing policies and procedures for dealing with workplace violence situations, and those situations where domestic violence may touch upon the workplace, that employees know that the employer is receptive to

an employee's fears, and that there is an appropriate reporting mechanism in place. For example, if a woman has been threatened by a boyfriend or husband, and she is afraid that she may be attacked at work, she should know that she can talk to her supervisor, or directly to the Human Resources Department, and that her fears can be addressed. In such a situation, the employer could discuss with the employee the possibility of obtaining a restraining order, the availability of local domestic violence resources, and measures to help ensure her safety at work, such as obtaining an escort to and from her car, for example.

Another common situation is when an employee sees somebody in the workplace that does not appear to belong there. Just like the employer goes through a threat assessment in certain situations, employees naturally do the same thing in this type of situation. There should be a procedure in place, that employees are aware of, to handle this scenario. Employees should know who they are to report strange individuals to, and who should receive any back up reporting.

The reporting procedure should be spelled out in the Employee Handbook, and should be part and parcel of the employer's training program on workplace violence and other emergency situations.

Potential Problem with "Perceived" Disability under the ADA

Of course, in evaluating and responding to a threat, employers must also keep in mind issues such as "perceived" mental illness under the Americans with Disabilities Act. (42 USC 12101 et seq.) For example, if in evaluating a threat by an employee, the employer has him or her evaluated by a mental health professional, the employee may be able to argue that the employer "perceives" him or her as having a mental disability. To help alleviate such concerns, it is critical for the employer to document that it is evaluating a threat by the employee in fulfillment of its obligations in the "general duty" clause of the Occupational Safety and Health Act.

DETERMINING WHAT TECHNICAL EXPERTISE YOUR ORGANIZATION NEEDS TO HELP SUPERVISORS AND MANAGERS DETERMINE WHAT COURSE OF ACTION IS APPROPRIATE IN SPECIFIC SITUATIONS

Obviously, most employers are not in the security business, and many have no on-staff security officers who are trained to properly evaluate the employer's violence risk factors. Fortunately, there are many resources that employers can tap into in order to obtain that expertise. Of course, there are professional security experts who will evaluate your facility and recommend changes to physical layout, evacuation routes, and other security measures. Likewise, there are psychologists and counselors who are trained to help employees deal with the aftermath of an incident of workplace violence. Further, employers can even consult with such experts *prior* to any specific incident

happening, for information on how best to deal with the trauma of workplace violence. In that regard, most local police departments and/or fire and emergency rescue personnel will have personnel on staff who can help with an assessment of your facility and help plan for potential violence. Most agencies will even do so free of charge.

Emergency Action Plan

Once an employer has consulted with the appropriate experts, whether in regard to physical plant security, or otherwise, it is imperative to put a plan into place and make certain that the employees are aware of the plan. The following is a list of items that should be addressed in each such plan:

1. A designated employee should have a copy of the building floor plan(s) in a secure location **outside** of the building, either in a car, a lockbox, etc., so that the police/firefighter/rescue personnel can enter the building with advance knowledge of the layout.
2. Make certain that at least one employee will have keys to all doors in the building, and that those keys will be available **outside** of the building in case of an emergency.
3. Have designated employees responsible for knowing the location of all utility shut-off valves in their area, and how to operate the valves. Those valves should also appear on the floor plan(s).
4. Require all visitors to enter the premises through a designated entry point, and have them sign in and out. Never let visitors into the facility unescorted. Instruct employees to report any unescorted visitors to their supervisor.
5. Require employees to have some form of company identification that is plainly visible.
6. The employees should have a designated meeting area outside of the building where they can be accounted for in case of an emergency.
7. There should be designated personnel who are responsible for knowing who is at work on any given day and who is absent. Those people should not be required to keep track of more than approximately 10-15 employees. Obviously, existing supervisors are ideal for this, but if a particular supervisor oversees more employees than that, the employees should be broken down into smaller groups with another person who is required to know who, in that smaller group, is present.

8. Designate a company official to make contact with arriving police, fire, or other emergency personnel. That person should be able to provide the building floor plan, the keys, and a report of any missing employees.
9. Instruct employees that once they have gathered outside of the building, they should not discuss the facts, as the police may well want to interview them and get their version of what happened without that version being influenced by another employee's account.
10. Take all threats seriously. If an employee says that he or she has been threatened, the employer **must** take reasonable steps to address the situation.
11. Do a periodic security audit of the facility, with a view toward how people could get into the facility and how the employees would get out of the facility if need be. Most local police and fire departments have personnel who are trained to help with such an audit, and as mentioned above, will do so free of charge.

These tips were originally designed after an incident where an ex-employee entered his former workplace in Visalia, California, where he tracked down and shot a former co-worker to death, then killed himself. The interesting thing about that particular situation was that the shooter had not worked at the employer for approximately two years, but for some unknown reason had held a grudge against the co-worker for all that time. While originally designed with workplace violence in mind, it is obvious that these tips are equally applicable to many types of emergencies, whether fires, gas leaks, chemical spills, etc.

Once an employer has considered these items, and come up with an appropriate plan for their particular facility, **it is absolutely imperative to practice an actual building evacuation**, for example, and to continue practicing the procedure on an ongoing basis. If the first time the employees attempt to evacuate the building is in the midst of an actual emergency, the likelihood of a successful evacuation is virtually non-existent. With some advance thought, planning and practice, however, an employer may well be able to help protect its employees in an emergency.

RELATED ISSUES

Workers' Comp Coverage

California employers are specifically required to provide written notification to any employee who is the victim of a crime in the workplace that he or she is entitled to workers' compensation benefits for any resulting injuries, including psychological injuries. (Labor Code section 3553.) Such notice must be given **within one day** after the employer reasonably should have become aware of the crime.

Mandatory Time Off

California employers with 25 or more employees are prohibited from discriminating against any employee who takes time off when that person has been the victim of domestic violence or sexual assault, whether the violence or assault took place at work or otherwise. This includes time off:

1. To seek medical attention for injuries caused by domestic violence or sexual assault;
2. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence or sexual assault;
3. To obtain psychological counseling related to an experience of domestic violence or sexual assault; and
4. To participate in safety planning and take other actions to increase safety from future domestic violence or sexual assault, including temporary or permanent relocation. (Labor Code section 230.1(a).)

All California employers, regardless of size, are required to grant employees who have been the victim of domestic violence or sexual assault time off to go to court, obtain restraining orders, or “to help ensure the health, safety or welfare of the victim or his or her child.” (Labor Code section 230(c).)

Such time off is unpaid, but the employee may utilize any accrued paid time off.

CONCLUSION

Violence in the workplace is, unfortunately, an issue that is difficult to address, difficult to prevent, and difficult to deal with once it arises. Only through thoughtful and thorough pre-planning, can an employer hope to be ready for that day when it happens.

CAL-OSHA EXCERPT ON
WORKPLACE SECURITY

THE FOLLOWING IS AN EXCERPT FROM THE CAL-OSHA PUBLICATION "CAL/OSHA GUIDELINES FOR WORKPLACE SECURITY." THIS DOCUMENT WAS LAST UPDATED ON MARCH 30, 1995, BUT IT IS STILL RELEVANT, PARTICULARLY THE SECTION BELOW SHOWING THE QUESTIONS THAT A CAL-OSHA INSPECTOR WOULD ASK WHEN CONDUCTING AN INSPECTION HAVING TO DO WITH WORKPLACE SECURITY ISSUES. THE ENTIRE DOCUMENT IS AVAILABLE AT: [HTTP://WWW.DIR.CA.GOV/DOSH/DOSH_PUBLICATIONS/WORKSECURITY.HTML](http://www.dir.ca.gov/dosh/dosh_publications/worksecurity.html).

HANDLING COMPLAINTS ALLEGING WORKPLACE SECURITY HAZARDS

All complaints alleging a workplace security hazard shall be evaluated by the Cal/OSHA District Manager receiving the complaint in the same manner as any other complaint according to the criteria set forth in Cal/OSHA's Policy and Procedure (P&P) Manual, Section C-7 (Complaint Evaluation and Documentation).

If a complaint alleges a workplace security hazard which has a reasonable basis in fact, and does not represent willful harassment of the employer, the complaint is valid and shall be classified and handled as are other valid complaints. A complaint is valid even if there is no standard which specifically addresses the hazard alleged.

Conducting a worksite inspection to evaluate potential security hazards is a relatively new activity for Cal/OSHA. However, based on Cal/OSHA's compliance experience to date, such inspections can be effectively accomplished by following the inspection procedures found in P&P C-1 (Inspection Report) and C-1A (Inspection Procedures).

During a workplace security evaluation, Cal/OSHA compliance personnel shall, at a minimum, determine the answers to the following six questions:

1. Is the inspected establishment one which is considered to be at significant risk of a Type I, II or III workplace violence event?
2. What are the physical characteristics and the work practices of the establishment that affect the security of the employees who work in the establishment?
3. Have assaults occurred in the establishment in the past? If so, how often have these assaults occurred and what was their severity?

4. What measures were taken by the employer to investigate the cause(s) of assault(s) and what corrective measures were taken by the employer to prevent other assaults?
5. What, if any, are the specific workplace security issues the employer's IIP Program should address?
6. If the employer is required to address workplace security issues through the IIP Program, how effective is the employer's IIP Program in identifying and correcting workplace security hazards and in investigating workplace assaults? Does the IIP Program result in effective communication, hazard assessment, hazard correction and supervisory and employee training.

Proper documentation of the findings from each workplace security complaint inspection is important if Cal/OSHA is to learn by its experience in this new area of occupational safety and health. Proper documentation and review of inspection findings will add to Cal/OSHA's fund of knowledge about workplace security issues. An internal Cal/OSHA Workplace Security Task Force, composed of representatives of Regions I through IV, will periodically review the results of all workplace security complaint inspections.

Therefore, District Managers should ensure that all compliance personnel who conduct workplace security inspections document their inspection findings and the evidentiary foundation for any proposed citations or Special Orders issued as a result of their inspections.

Any enforcement action arising from a workplace security hazard inspection shall be thoroughly reviewed in all cases by the District Manager and by the Regional Manager. Until further notice, all proposed citations arising from complaint investigations shall be forwarded to the Chief's Office for review by the Legal Unit prior to being issued to the employer. In addition, District and Regional Managers shall evaluate any problems encountered by compliance personnel during the performance of workplace security complaint inspections.

When compliance personnel observe a condition or work practice which poses a workplace security hazard to employees, appropriate sections of 8 CCR §3203(a) shall be cited. Compliance personnel shall keep in mind that the relevant subsections of 8 CCR sections 3203(a)--(a)(3) through (a)(7)--are directed to specific features that the employer's IIP Program must have, each of which must be effective to meet the intent of the requirement. If it is alleged that an employer has failed to comply with section 3203 as it applies to workplace security, the allegation shall clearly state which subsection of 3203(a) was not met and how it was not met. It is never sufficient to simply allege that an employer's IIP Program does not address workplace security or does not adequately address it. The manner in which the Program falls short must be described specifically so that the employer can ascertain what is deficient and how to correct the problem.

When a workplace security hazard falls outside the scope of section 3203, e.g., specific corrective measures are needed to eliminate a hazard, compliance personnel shall consider a Special Order. See P&P Section C-3.

INVESTIGATING ASSAULTS INVOLVING

DEATH OR SERIOUS INJURY

Cal/OSHA is required by California Labor Code section 6313(a):

"To investigate all industrial accidents which are fatal to one or more employees or which result in a serious injury or illness or a serious exposure, unless the Division determines an investigation is unnecessary, in which case the Division shall summarize the facts indicating that the accident need not be investigated and the means by which the facts were determined."

Because the Labor Code section 6302(h) excludes "any injury or illness or death caused by the commission of a Penal Code violation" from the definition of serious injury or illness, Cal/OSHA has no mandatory duty to respond to such accidents. However, Cal/OSHA does have the authority to investigate any workplace accident on a discretionary basis, as provided by Labor Code section 6313(b):

"The division may investigate the causes of any other industrial accident or occupational illness which occurs within the state in any employment or place of employment... and shall issue any orders necessary to eliminate the causes and prevent reoccurrence."

In order to learn more about how to prevent the occurrence of homicides and other serious injuries arising from workplace assaults, Cal/OSHA will exercise the statutory discretion granted to it under Labor Code section 6313(b) to investigate such accidents.

On 1 August 1994, Cal/OSHA initiated a twelve-month Workplace Security Accident Investigation Pilot Project which has now been extended six months and will now end on 31 December 1995. Investigations shall be initiated by a report of a workplace homicide or other serious incident from employers, employees, labor unions representatives, law enforcement agencies, the print or electronic media, or from a member of the general public.

Each District Manager shall select one to two compliance personnel from his or her District Office to participate in the Workplace Security Accident Investigation Project. Medical Unit and Bureau of Investigation personnel will be available to provide information and expertise to compliance personnel as appropriate.

Compliance personnel who conduct investigations of workplace homicides or other serious violence-related incidents shall follow the accident investigation procedures set forth in P&P C-170 & 170A (Accident Investigation). Proper documentation of the findings from each accident investigation is important if Cal/OSHA is to learn by its experience in this new area of workplace safety. Proper documentation and review of investigation findings will add to Cal/OSHA's fund of knowledge about workplace security issues. The Cal/OSHA Workplace Security Task Force will periodically review the results of workplace security accident investigations.

During the performance of an investigation at a workplace at which local police agencies are also conducting an investigation, compliance personnel shall work cooperatively with all police personnel investigating the same event. When feasible, compliance personnel shall also supplement their own accident investigation report by obtaining a copy of the police investigator's report.

Cal/OSHA District Managers should ensure that compliance personnel who conduct accident investigations following the occurrence of a workplace homicide or other serious incident thoroughly document their findings and the evidentiary foundation for any proposed citations or Special Orders to be issued as a result of the investigation.

Any enforcement action arising from a workplace security investigation shall be thoroughly reviewed in all cases by the District Manager and by the Regional Manager. Until further notice, all proposed citations shall be forwarded to the Chief's Office for review by the Legal Unit prior to being issued. In addition, District and Regional Managers shall evaluate any problems encountered by compliance personnel during the performance of a workplace security accident investigation.

When compliance personnel observe a condition or work practice which poses a workplace security hazard to employees or determine that it was related to the occurrence of the accident, compliance personnel shall cite appropriate sections of 8 CCR §3203(a). Compliance personnel shall keep in mind that the relevant subsections of 8 CCR 3203(a)--(a)(3) through (a)(7)-- are directed to specific features that the employer's IIP Program must have, each of which must be effective to meet the intent of the requirement. If it is to be alleged that an employer has failed to comply with section 3203 as it applies to workplace security, the allegation shall clearly state which subsection of 3203(a) was not met and how it was not met. It is never sufficient to simply allege that an employer's IIP Program does not address workplace security or does not adequately address it. The manner in which the Program falls short must be described specifically so that the employer can ascertain what is deficient and how to correct the problem.

When a workplace security hazard falls outside the scope of section 3203, e.g., specific corrective measures are needed to eliminate a hazard, compliance personnel shall consider a Special Order. See P&P Section C-3.

IN THE FUTURE

In the occupational safety and health community, we have for many years educated employers about how to provide a safe and healthful workplace for their employees. Now, the time has come for us to educate employers about how to provide a secure one, too.

Even though many of the causes of workplace violence have their origin outside the workplace, and even though there are gaps in our fund of knowledge about how to prevent the occurrence of some types of workplace assaults, enough is currently known about the problem for us to make a start.

As the statistics in these Guidelines indicate, workplace violence has become a serious occupational health problem whose solution will require all of our efforts. The problem cannot be solved by government alone.

Cal/OSHA invites employers, labor unions, employees, occupational health and safety professionals, the public health community, other government agencies and security professionals to continue to work with us in developing and promoting strategies to prevent workplace violence.

APPENDIX I--LATE NIGHT RETAIL VIOLENCE PREVENTION CHECKLIST

Pre-Event Measures

- Make your store unattractive to robbers by:
 - Removing clutter, obstructions and signs from the windows so that an unobstructed view of the store counter and/or cash register exists.
 - Keeping the store and parking lot as brightly lit as local law allows.
 - Keep an eye on what is going on outside the store and report any suspicious persons or activities to the police.
 - When there are no customers in the store, keep yourself busy with other tasks away from the cash register.
 - Post emergency police and fire department numbers and the store's address by the phone.
 - Mount mirrors on the ceiling to help you keep an eye on hidden corners of the store. Consider surveillance cameras to record what goes on in the store and to act as a deterrent.

- Post signs which are easy to spot from the outside of the store that inform customers that you have a limited amount of cash on hand.
- Limit accessible cash to a small amount and keep only small bills in the cash register.
- Use a time access safe for larger bills and deposit them as they are received.
- Use only one register after dark and leave unused registers open with empty cash drawers tilted up for all to see.
- Let your customers know that you only keep a small amount of cash on hand.
- Event Measures
 - If you are robbed at gunpoint, stay calm and speak to the robber in a cooperative tone. Do not argue or fight with the robber and offer no resistance whatsoever. Hand over the money.
 - Never ever pull a weapon during the event--it will only increase your chances of getting hurt.
 - Always move slowly and explain each move to the robber before you make them.
 - Post-Event Measures
 - Make no attempt to follow or chase the robber.
 - Stay where you are until you are certain the robber has left the immediate area, then lock the door of your store and call the police immediately.
 - Do not touch anything robber has handled.
 - Write down everything you remember about the robber and the robbery while you wait for the police to arrive.
 - Do not open the door of the store until the police arrive.

APPENDIX II--WORKPLACE SECURITY PROFILE FOR TYPES I AND II

Date:

Inspection No.

Employer Name:

Address:

Nature of Business:

Hours of Operation:

Describe the physical layout of the establishment. Indicate its location to other businesses or residences in the area and access to the street.

Number/Gender of employees on-site between 10 p.m. and 5 a.m.

Describe nature and frequency of client/customer/patient/passenger/other contact:

Are cash transactions conducted with the public during working hours? If yes, how much cash is kept in the cash register or in another place accessible to a robber?

Is there a safe or lock-box on the premises into which cash is deposited?

What is the security history of the establishment and environs?

What physical security measures are present?

What work practices has the employer implemented to increase security?

Has the employer provided security training to employees? If so, has the training been effective?

The following is a model Injury and Illness Prevention program addressing workplace security, published by Cal-OSHA.

INJURY & ILLNESS PREVENTION MODEL PROGRAM FOR WORKPLACE SECURITY

Revised August, 1995

This publication is not meant to be either a substitute for - or a legal interpretation of - the occupational safety and health standards. The reader is cautioned to refer directly to [Title 8 of the California Code of Regulations](#) for detailed and exact information, specifications, and exceptions.

WHO SHOULD USE THIS MODEL PROGRAM?

NO ONE IS REQUIRED TO USE THIS MODEL PROGRAM.

However, if you determine that workplace security hazards exist in your workplace, you may want to use some or all of this Model Program or develop your own program independently.

Many workplaces are at risk for workplace violence, but certain workplaces are recognized to be at significantly greater risk than others. Therefore, every employer should perform an initial assessment to identify workplace security issues. If the initial assessment determines that workers are at a significant risk for workplace violence then the employer should review the material presented in this Model Program.

There are a number of factors that have been shown to contribute to the risk of violence in the workplace. If you have one or more of the following factors at your workplace, then you should consider your workplace to be

- Exchange of money.
- Working alone at night and during early morning hours.
- Availability of valued items, e.g., money and jewelry.
- Guarding money or valuable property or possessions.
- Performing public safety functions in the community.
- Working with patients, clients, customers or students known or suspected to have a history of violence.
- Workers with a history of assaults or who exhibit belligerent, intimidating and threatening behavior to others.

These are just some of the major factors that contribute to workplace violence. If you have identified any of these, or other indicators of violence in the workplace, then a further evaluation should be performed.

at potential risk of violence:

WORKPLACE VIOLENCE IN CALIFORNIA

The circumstances associated with workplace violence in California can be divided into three major types. However, it is important to keep in mind that a particular occupation or workplace may be subject to more than one type.

Type I - In California, the majority of fatal workplace assaults involve a person entering a small late-night retail establishment, e.g., liquor store, gas station or a convenience food store, to commit a robbery. During the commission of the robbery, an worker, or more likely, the proprietor, is killed or injured.

Workers or proprietors who have face-to-face contact and exchange money with the public, who work late at night and into the early morning hours, and who often work alone or in very small numbers are at greatest risk of a Type I event. While the assailant may feign being a customer as a pretext to enter the establishment, he or she has no legitimate relationship to the workplace.

Retail robberies resulting in workplace assaults usually occur between late night and early morning hours and are most often armed robberies. In addition to workers who are classified as cashiers, many victims of late night retail violence are supervisors or proprietors who are attacked while locking up their establishment for the night or janitors who are assaulted while cleaning the establishment after it is closed.

Other occupations/workplaces may be at risk of a Type I event. For instance, assaults on taxicab drivers also involve a pattern similar to retail robberies. The attack is likely to involve an assailant pretending to be a bona fide passenger during the late night or early morning hours who enters the taxicab to rob the driver of his or her fare receipts. Type I events also involve assaults on security guards. It has been known for sometime that security guards are at risk of assault when protecting valuable property that is the object of an armed robbery.

Type II - A Type II workplace violence event involves an assault or threat by someone who is either the recipient or the object of a service provided by the affected workplace or the victim. Type II events involve fatal or nonfatal injuries to individuals who provide services to the public. These events chiefly involve assaults on public safety and correctional personnel, municipal bus or railway drivers, health care and social service providers, teachers, sales personnel, and other public or private service sector workers who provide professional, public safety, administrative or business services to the public.

Law enforcement personnel are at risk of assault from the "object" of public safety services (suspicious persons, detainees, or arrestees) when making arrests, conducting drug raids, responding to calls involving robberies or domestic disputes, serving warrants and eviction notices and investigating suspicious vehicles. Similarly, correctional personnel are at risk of assault while guarding and transporting jail or prison inmates.

Of increasing concern, though, are Type II events involving assaults to the following types of service providers:

- (1) Medical care providers in acute care hospitals, long-term care facilities, outpatient clinics and home health agencies;
- (2) Mental health and psychiatric care providers in inpatient facilities, outpatient clinics, residential sites and home health agencies;
- (3) Alcohol and drug treatment providers;
- (4) Social welfare providers in unemployment offices, welfare eligibility offices, homeless shelters, probation offices and child welfare agencies;
- (5) Teaching, administrative and support staff in schools where students have a history of violent behavior; and
- (6) Other types of service providers, e.g., justice system personnel, customer service representatives and delivery personnel.

Unlike Type I events which often represent irregular occurrences in the life of any particular at-risk establishment, Type II events occur on a daily basis in many service establishments, and therefore represent a more pervasive risk for many service providers.

Type III - A Type III workplace violence event consists of an assault by an individual who has some employment-related involvement with the workplace. A Type III event usually involves a threat of violence, or a physical act of violence resulting in a fatal or nonfatal injury, by a current or former worker, supervisor or manager; a current or former spouse or lover; a relative or friend; or some other person who has a dispute involving an worker of the workplace.

Available data indicates that a Type III event is not associated with a specific type of workplace or occupation. Any workplace can be at risk of a Type III event. However, Type III events account for a much smaller proportion of fatal workplace injuries than Types I and II. Nevertheless, Type III fatalities often attract significant media attention and are perceived as much more common than they actually are.

INJURY AND ILLNESS PREVENTION PROGRAM FOR WORKPLACE SECURITY

Our establishment's IIP Program for Workplace Security addresses the hazards known to be associated with the three major types of workplace violence. Type I workplace violence involves a violent act by an assailant with no legitimate relationship to the workplace who enters the workplace to commit a robbery or other criminal act. Type II involves a violent act or threat of violence by a recipient of a service provided by our establishment, such as a client, patient, customer, passenger or a criminal suspect or prisoner. Type III involves a violent act or threat of violence by a current or former worker, supervisor or manager, or another person who has some employment-related involvement with our establishment, such as an worker's spouse or lover, an worker's relative or friend, or another person who has a dispute with one of our workers.

NOTE: No one is required to use this Model Program. However, if you determine that workplace security hazards exist in your workplace, you may want to use some or all of this Model Program or develop your own program independently.

RESPONSIBILITY

We have decided to assign responsibility for security in our workplace. The IIP Program administrator for workplace security is _____ and has the authority and responsibility for implementing the provisions of this program for _____.

All managers and supervisors are responsible for implementing and maintaining this IIP Program in their work areas and for answering worker questions about the IIP Program. A copy of this IIP Program is available from each manager and supervisor.

COMPLIANCE

We have established the following policy to ensure compliance with our rules on workplace security.

Management of our establishment is committed to ensuring that all safety and health policies and procedures involving workplace security are clearly communicated and understood by all workers.

All workers are responsible for using safe work practices, for following all directives, policies and procedures, and for assisting in maintaining a safe and secure work environment. Our system of ensuring that all workers, including

supervisors and managers, comply with work practices that are designed to make the workplace more secure, and do not engage in threats or physical actions which create a security hazard for others in the workplace, include:

1. Informing workers, supervisors and managers of the provisions of our IIP Program for Workplace Security.
2. Evaluating the performance of all workers in complying with our establishment's workplace security measures.
3. Recognizing workers who perform work practices which promote security in the workplace.
4. Providing training and/or counseling to workers whose performance is deficient in complying with work practices designed to ensure workplace security.
5. Disciplining workers for failure to comply with workplace security practices.
6. The following practices that ensure worker compliance with workplace security directives, policies and procedures:_____

NOTE: No one is required to use this Model Program. However, if you determine that workplace security hazards exist in your workplace, you may want to use some or all of this Model Program or develop your own program independently.

COMMUNICATION

At our establishment, we recognize that to maintain a safe, healthy and secure workplace we must have open, two-way communication between all workers, including managers and supervisors, on all workplace safety, health and security issues. Our establishment has a communication system designed to encourage a continuous flow of safety, health and security information between management and our workers without fear of reprisal and in a form that is readily understandable. Our communication system consists of the following checked items:

- New worker orientation on our establishment's workplace security policies, procedures and work practices.
- Periodic review of our IIP Program for Workplace Security with all personnel.
- Training programs designed to address specific aspects of workplace security unique to our establishment.
- Regularly scheduled safety meetings with all personnel that include workplace security discussions.
- A system to ensure that all workers, including managers and supervisors, understand the workplace security policies.
- Posted or distributed workplace security information.
- A system for workers to inform management about workplace security hazards or threats of violence.

- Procedures for protecting workers who report threats from retaliation by the person making the threats.
- Addressing security issues at our workplace security team meetings.
- Our establishment has fewer than ten workers and communicates with and instructs workers orally about general safe work practices with respect to workplace security.
- Other: _____

NOTE: No one is required to use this Model Program. However, if you determine that workplace security hazards exist in your workplace, you may want to use some or all of this Model Program or develop your own program independently.

HAZARD ASSESSMENT

We will be performing workplace hazard assessment for workplace security in the form of periodic inspections. Periodic inspections to identify and evaluate workplace security hazards and threats of workplace violence are performed by the following observer(s) in the following areas of our workplace:

Observer	Area

Periodic inspections are performed according to the following schedule:

1. _____;
Frequency (daily, weekly, monthly, etc.)
2. When we initially established our IIP Program for Workplace Security;
3. When new, previously unidentified security hazards are recognized;
4. When occupational injuries or threats of injury occur; and
5. Whenever workplace security conditions warrant an inspection.

Periodic inspections for security hazards consist of identification and evaluation of workplace security hazards and changes in worker work practices, and may require assessing for more than one type of workplace violence. Our establishment performs inspections for each type of workplace violence by using the methods specified below to identify and evaluate workplace security hazards.

Inspections for Type I workplace security hazards include assessing:

1. The exterior and interior of the workplace for its attractiveness to robbers.
2. The need for security surveillance measures, such as mirrors or cameras.
3. Posting of signs notifying the public that limited cash is kept on the premises.
4. Procedures for worker response during a robbery or other criminal act.
5. Procedures for reporting suspicious persons or activities.
6. Posting of emergency telephone numbers for law enforcement, fire and medical services where workers have access to a telephone with an outside line.
7. Limiting the amount of cash on hand and using time access safes for large bills.
8. Other:

NOTE: No one is required to use this Model Program. However, if you determine that workplace security hazards exist in your workplace, you may want to use some or all of this Model Program or develop your own program independently.

Inspections for Type II workplace security hazards include assessing:

1. Access to, and freedom of movement within, the workplace.
2. Adequacy of workplace security systems, such as door locks, security windows, physical barriers and restraint systems.
3. Frequency and severity of threatening or hostile situations that may lead to violent acts by persons who are service recipients of our establishment.
4. Workers skill in safely handling threatening or hostile service recipients.
5. Effectiveness of systems and procedures to warn others of a security danger or to summon assistance, e.g., alarms or panic buttons.
6. The use of work practices such as "buddy" systems for specified emergency events.
7. The availability of worker escape routes.
8. Other:

Inspections for Type III workplace security hazards include assessing:

1. How well our establishment's anti-violence policy has been communicated to workers, supervisors or managers.
2. How well our establishment's management and workers communicate with each other.
3. Our workers', supervisors' and managers' knowledge of the warning signs of potential workplace violence.
4. Access to, and freedom of movement within, the workplace by non-workers, including recently discharged workers or persons with whom one of our worker's is having a dispute.
5. Frequency and severity of worker reports of threats of physical or verbal abuse by managers, supervisors or other workers.
6. Any prior violent acts, threats of physical violence, verbal abuse, property damage or other signs of strain or pressure in the workplace.
7. Worker disciplinary and discharge procedures.
8. Other:

NOTE: No one is required to use this Model Program. However, if you determine that workplace security hazards exist in your workplace, you may want to use some or all of this Model Program or develop your own program independently.

INCIDENT INVESTIGATIONS

We have established the following policy for investigating incidents of workplace violence.

Our procedures for investigating incidents of workplace violence, which includes threats and physical injury, include:

1. Reviewing all previous incidents.
2. Visiting the scene of an incident as soon as possible.
3. Interviewing threatened or injured workers and witnesses.
4. Examining the workplace for security risk factors associated with the incident, including any previous reports of inappropriate behavior by the perpetrator.
5. Determining the cause of the incident.

6. Taking corrective action to prevent the incident from recurring.
 7. Recording the findings and corrective actions taken.
 8. Other:
-
-

HAZARD CORRECTION

Hazards which threaten the security of workers shall be corrected in a timely manner based on severity when they are first observed or discovered.

Corrective measures for Type I workplace security hazards can include:

1. Making the workplace unattractive to robbers.
 2. Utilizing surveillance measures, such as cameras or mirrors, to provide information as to what is going on outside and inside the workplace.
 3. Procedures for the reporting suspicious persons or activities.
 4. Posting of emergency telephone numbers for law enforcement, fire and medical services where workers have access to a telephone with an outside line.
 5. Posting of signs notifying the public that limited cash is kept on the premises.
 6. Limiting the amount of cash on hand and using time access safes for large bills.
 7. Worker, supervisor and management training on emergency action procedures.
 8. Other:
-
-

NOTE: No one is required to use this Model Program. However, if you determine that workplace security hazards exist in your workplace, you may want to use some or all of this Model Program or develop your own program independently.

Corrective measures for Type II workplace security hazards include:

1. Controlling access to the workplace and freedom of movement within it, consistent with business necessity.
2. Ensuring the adequacy of workplace security systems, such as door locks, security windows, physical barriers and restraint systems.
3. Providing worker training in recognizing and handling threatening or hostile situations that may lead to violent acts by persons who are service recipients of our establishment.

4. Placing effective systems to warn others of a security danger or to summon assistance, e.g., alarms or panic buttons.
5. Providing procedures for a "buddy" system for specified emergency events.
6. Ensuring adequate worker escape routes.
7. Other:

Corrective measures for Type III workplace security hazards include:

1. Effectively communicating our establishment's anti-violence policy to all workers, supervisors or managers.
2. Improving how well our establishment's management and workers communicate with each other.
3. Increasing awareness by workers, supervisors and managers of the warning signs of potential workplace violence.
4. Controlling access to, and freedom of movement within, the workplace by non-workers, including recently discharged workers or persons with whom one of our worker's is having a dispute.
5. Providing counseling to workers, supervisors or managers who exhibit behavior that represents strain or pressure which may lead to physical or verbal abuse of co-workers.
6. Ensure that all reports of violent acts, threats of physical violence, verbal abuse, property damage or other signs of strain or pressure in the workplace are handled effectively by management and that the person making the report is not subject to retaliation by the person making the threat.
7. Ensure that worker disciplinary and discharge procedures address the potential for workplace violence.
8. Other:

NOTE: No one is required to use this Model Program. However, if you determine that workplace security hazards exist in your workplace, you may want to use some or all of this Model Program or develop your own program independently.

TRAINING AND INSTRUCTION

We have established the following policy on training all workers with respect to workplace security.

All workers, including managers and supervisors, shall have training and instruction on general and job-specific workplace security practices. Training and instruction shall be provided when the IIP Program for Workplace Security is first established and periodically thereafter. Training shall also be provided to all new workers and to other workers for whom training has not previously been provided and to all workers, supervisors and managers given new job assignments for which specific workplace security training for that job assignment has not previously been provided. Additional training and instruction will be provided to all personnel whenever the employer is made aware of new or previously unrecognized security hazards.

General workplace security training and instruction includes, but is not limited to, the following:

1. Explanation of the IIP Program for Workplace Security including measures for reporting any violent acts or threats of violence.
2. Recognition of workplace security hazards including the risk factors associated with the three types of workplace violence.
3. Measures to prevent workplace violence, including procedures for reporting workplace security hazards or threats to managers and supervisors.
4. Ways to defuse hostile or threatening situations.
5. Measures to summon others for assistance.
6. Worker routes of escape.
7. Notification of law enforcement authorities when a criminal act may have occurred.
8. Emergency medical care provided in the event of any violent act upon an worker; and
9. Post-event trauma counseling for those workers desiring such assistance.

In addition, we provide specific instructions to all workers regarding workplace security hazards unique to their job assignment, to the extent that such information was not already covered in other training.

NOTE: No one is required to use this Model Program. However, if you determine that workplace security hazards exist in your workplace, you may want to use some or all of this Model Program or develop your own program independently.

We have chosen the following checked items for Type I training and instruction for managers, supervisors and workers:

- Crime awareness.
 - Location and operation of alarm systems.
 - Communication procedures.
 - Proper work practices for specific workplace activities, occupations or assignments, such as late night retail sales, taxi-cab driver, or security guard.
 - Other: _____
-
-

- We have chosen the following checked items for Type II training and instruction for managers, supervisors and workers: Self-protection.
- Dealing with angry, hostile or threatening individuals.
 - Location, operation, care, and maintenance of alarm systems and other protective devices.
 - Communication procedures.
 - Determination of when to use the "buddy" system or other assistance from co-workers.
 - Awareness of indicators that lead to violent acts by service recipients.
 - Other: _____
-
-

- We have chosen the following checked items for Type III training and instruction for managers, supervisors and workers:
- Pre-employment screening practices.
 - Worker Assistance Programs.
 - Awareness of situational indicators that lead to violent acts.
 - Managing with respect and consideration for worker well-being.
 - Review of anti-violence policy and procedures.
 - Other: _____
-
-

NOTE: No one is required to use this Model Program. However, if you determine that workplace security hazards exist in your workplace, you may want to use some or all of this Model Program or develop your own program independently.

JUDICIAL COUNCIL OF CALIFORNIA
WORKPLACE VIOLENCE FORMS