

Blog Post

Employers: Take Steps Now to Prevent Workplace Violence and Protect Employees

June 7, 2022

By Paige S. Newman

There have been over 240 mass shootings nationwide in 2022 so far – more shootings than days of the year. Many of these shootings involve workplace violence. For instance, four of the victims in the recent Buffalo shooting were employees of the grocery store where the attack occurred, and two teachers were among the victims in the recent school shooting in Texas. These are only the latest; among many others in recent years, there was a shooting in Milwaukee in which a brewery employee killed five people; a shooting in which a railyard employee in Northern California killed nine people; a shooting at the Santa Clara Valley Transportation Authority in which an employee killed nine people and then himself; and a shooting in Texas in which an employee killed one person and wounded five others in a cabinet manufacturing facility.

The rise in workplace violence, and violence in general, should prompt employers to consider what they can and should do to protect their employees, customers, and business. It is especially important to do so now, as more and more employers are requiring their employees to return to work in person following the pandemic.

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First, make sure your employee handbook has a comprehensive anti-violence policy consistent with your state's law. Such a policy should include banning weapons of any kind in the workplace, and, wherever possible, in related sites such as the parking lot or outdoor break areas. However, note that state laws impact the rules employers may impose. For example, Florida law allows employees to keep weapons in their locked vehicles in the employer's parking lot and prohibits employers from interfering with employees' and customers' rights to do so. In Texas, people may carry a gun in most public places – even those who are not licensed to carry. The state imposes different rules for unlicensed carry and licensed carry near schools and colleges. Private businesses are generally permitted to choose whether to prohibit unlicensed carry, open carry by license holders, and/or concealed carry by license holders. Thus, employers should determine whether their state has any laws governing weapons in the workplace and employers' regulation of same, and ensure that their anti-violence policies are as thorough as possible within the constraints of the law.

Employers also should consider implementing a pre-hire background check policy as part of their anti-violence initiatives. Employers might try to find out about the candidate's work history, education, criminal record, financial history, medical history, or use of social media. Except for certain restrictions related to medical and genetic information, it is not unlawful to seek such information. However, in doing so, employers must comply with federal and state laws that prohibit discrimination, and ensure that the background check is properly conducted or the information obtained is not used in a manner that denies equal employment opportunity to anyone on a protected basis, by intent or by unlawful disparate impact.

In addition, when an employer conducts a background check through a company that is in the business of compiling background information, the

employer must comply with the Fair Credit Reporting Act (FCRA). Employers should advise applicants that they must submit to a background check before commencing employment and then carefully review the results.

Conducted properly, background checks can provide important protections to employers. In some states, such as Florida, employers are entitled to qualified immunity from lawsuits for death or injuries caused by an employee to a third person if the employer first conducts such a background check before hiring an individual, and the investigation did not reveal any information that reasonably demonstrated the unsuitability of the candidate for the particular work to be performed or for the employment in general. (Keep your eyes peeled for more on properly conducting and using background checks in an upcoming blog...)

Employers should also ensure that their anti-violence policy includes information for employees on how to report concerns about other employees' behavior in the workplace, including threats and acts of violence.

Additionally, depending on the size of the employer's premises and the number of employees reporting to work in person each day, employers should consider implementing a badge security system so that employees must show and/or scan their ID each day to access the building. This could lessen the risk of a third party bringing weapons onto the employer's premises. To the extent possible, employers should also consider implementing a system through which employees and their personal belongings (i.e., purses, briefcases, bags) pass through a metal detector to enter the premises, to ensure that weapons are not brought onto the premises. While this might seem like an extreme measure to take, and employers could possibly receive pushback from employees if they implement such security measures, employers should consider any and all

measures that will protect their employees and anyone on their premises.

Note however, that employers with unionized worksites must pay special attention to their duty to give the union notice and an opportunity to bargain before implementing safety measures that would affect terms and conditions of employment. The National Labor Relations Act requires an employer to bargain with a Union concerning mandatory subjects, including “wages, hours, and other terms and conditions of employment,” and prohibits an employer from taking unilateral action.

If an employer operates a business in which members of the public are allowed on the premises, they should post a “NO WEAPONS” sign on all entrances to the premises. While there is always a risk that a third party may still choose to enter the premises with a concealed weapon, posting such a sign could at the very least help limit an employer’s liability should a shooting or other safety incident occur.

Given the prevalence of mass shootings in the United States, it is important to ensure employees know what to do in such a situation in the workplace. Employees should be trained on how to respond to situations involving violence, including the locations of emergency exits on the premises, how to lead employees and invitees off the premises in emergency situations if possible, and how to report any suspicious behavior of employees and invitees. Consider implementing an annual active shooter training, which in some situations can be provided by your local police department. Employers should also consider investing in safety equipment such as security cameras, bulletproof windows, office doors that lock from the inside, and, depending on the size of the premises, potentially hiring security guards.

Employers should also consider other circumstances where an employee might engage in

violence and do as much as possible to prevent it. If an employer plans to terminate a volatile employee, the employer should take extra precautions to protect others at the worksite.

Note that this is not an exhaustive summary of ways in which employers can protect themselves and their employees in active shooter situations and other instances of workplace violence. The best practices will be fact-specific and depend on the circumstances of each employer. If you have any questions or wish to discuss or review your anti-violence policies and procedures, please contact your Akerman attorney.

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