

Avoiding a Saint Valentine's Day Massacre

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Besides sending flowers or a card to your sweetheart on Valentine's Day, we like to remind our employer clients that a good way to show some love to your employees is by taking steps to protect them from workplace violence.

But first, a little history. Valentine's Day became forever linked with workplace violence in 1929 when Al Capone's South Side gang fatally shot seven members of Bugs Moran's North Side gang at a warehouse in Chicago. The incident became known as "the Saint Valentine's Day Massacre" and has been depicted in numerous movies ever since, including *Scarface* and *Some Like it Hot*. One victim, Frank Gusenberg, was still alive for a short time after the shooters fled the scene. When asked who shot him, he replied, "Nobody shot me" despite being riddled with bullet holes. Now known as "Tight Lips Gusenberg," he became the inspiration behind *The Simpson's* character "Johnny Tightlips."

Unfortunately, workplace shootings still occur on a far too frequent basis. A new study from the Bureau of Labor Statistics reports an average of 551 workplace homicides per year in the United States. In 2010, 78 percent of these homicides were from shootings. In the last year, we have seen mass shootings in schools, movie theatres, places of worship and in the heart of the financial district in New York City.

Homicides are the second leading cause of death in the workplace for women. In 39 percent of these cases, the assailants were relatives or other personal acquaintances – another reason why Valentine's Day is a good time to think about your workplace violence prevention strategy.

Certain industries are more likely than others to be the target of workplace homicides by shootings. Three occupations account for more than half of the cases:

- Retail - 27 percent
- Government - 17 percent
- Leisure and Hospitality - 15 percent

While workplace violence is often unpredictable, employers are obligated under the Occupational Safety and Health Act (OSHA), 29 U.S.C. § 654, to provide their employees with a place of employment free from "recognizable hazards that are causing or likely to cause death or serious harm to employees." OSHA's General Duty Clause has been interpreted to mean that employers must take reasonable steps to eliminate or reduce known risks of violence.

The websites for OSHA (www.osha.gov) and the National Institute for the Prevention of Workplace Violence (www.workplaceviolence911.com) are good places to look for industry-specific suggestions for the prevention of workplace violence. OSHA also provides details on its website for the steps its field staff should take when investigating an incident of workplace violence within a high-risk industry.

Based on our experience in dealing with workplace violence, we would like to offer some suggestions for proven steps you can take to reduce the risk of violence even though there are no foolproof means of absolutely preventing it.

- Conduct background checks before hiring (if not for all positions, then certainly for those dealing with children, members of the public or for employees in high-risk occupations).

Conduct a threat assessment of the workplace: evaluate physical surroundings, security systems, lighting, parking lots and physical barriers between employees and the public.

- Update and/or reissue a workplace violence prevention policy that:
 - States the company's commitment to a safe workplace, including a zero tolerance plan;
 - Identifies and defines unacceptable behaviors from bullying to threats to actual criminal conduct;
 - Prohibits weapons in the workplace to the extent permitted by law. (See our prior Alert on weapons in the workplace [here.](#));
 - Encourages employees to inform the company of any restraining orders or threats of violence against them by others outside the company;
 - Identifies persons and procedures for complaints or concerns of workplace violence and intimidation; and
 - Prohibits retaliation against those who make a complaint.
- Assign managers responsible to address incidents of workplace violence when they occur.
- Have a plan for investigating incidents when they occur to identify strategies to prevent future incidents.
- Consider an Employee Assistance Program (EAP) that offers counseling to employees suffering from depression or other mental health impairments, and/or offers drug/alcohol treatment.

Train supervisors on monitoring the workplace, promptly addressing bullying and harassment, and executing discipline in an appropriate and respectful manner to avoid retaliation by an employee.

Establish a crisis response plan in the event an incident occurs to include such issues as:

- Who will call 911;
- Who will handle cleanup;
- Who will address the mental health needs of bystanders; and
- Who will deal with benefit claims of victims.

There is no "one size fits all" prevention strategy. Like love, policies come in all shapes and sizes and must be custom fit to the needs of your workplace. But when it comes to speaking out about workplace violence, this is not a time to be a Tight Lips Gusenberg.

Happy Valentine's Day.

To discuss any questions you may have regarding the opinion discussed in this Alert, or how it may apply to your particular circumstances, please contact:

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