



## Workplace Violence Prevention

Workplace violence is a serious safety and health issue. While no federal law specifically addresses violence in the workplace, several laws impose a duty on employers to maintain a safe workplace.

The Occupational Safety and Health Act (OSH Act) imposes a general duty on all employers to provide employees with a workplace that is free from hazards. Federal civil rights laws also require employers to keep the workplace free from threats of violence, and state workers' compensation laws hold employers responsible for injuries sustained by employees while performing job-related duties.

In addition to these requirements, Texas law also places a duty on employers to provide employees with a safe workplace.

This Employment Law Summary provides a high-level overview of laws related to workplace safety and suggests items to include in a workplace violence plan for employees.

### WORKPLACE VIOLENCE DESCRIBED

The National Institute for Occupational Safety and Health (NIOSH) defines workplace violence as "violent acts (including physical assaults and threats of assaults) directed toward persons at work or on duty." The Occupational Safety and Health Administration (OSHA) recognizes four different types of workplace violence:

- **Criminal Acts:** Violent acts by people, employees or former employees who enter the workplace with the intention to commit a crime;
- **Customers/Clients/Patients:** Violent acts directed at employees by individuals who enter the employer's premises to obtain some type of service;
- **Co-Worker Conflict:** Violence directed at co-workers, supervisors, or managers by a current or former employee, supervisor, or manager; and
- **Personal:** Violence in the workplace by someone who does not work there, but who is known to, or has a personal relationship with, an employee.

Workplace violence is a particularly prevalent issue in healthcare and social service settings as well as late-night retail establishments.

### EMPLOYER LIABILITY IN LAWSUITS FOR INTENTIONAL INJURY

An employee or a deceased employee's survivors may bring a civil lawsuit against an employer, and the employer may be held liable for damages, for actions or omissions that were intended to injure the employee or that involved substantial certainty that the injury would occur.

For example, an employer might deliberately remove an equipment safety guard or deliberately misrepresent a toxic or hazardous substance. In these situations, if an employee is injured as a direct result of the removal or misrepresentation, it is presumed that the injury was caused intentionally.

Texas courts impose further obligations on employers to provide employees with a safe work environment by requiring employers to hire, train and supervise their employees properly. This means that if an employer does not adequately hire, train or supervise its employees, the employer may be sued for negligence and held liable for damages if the employer knew or should have known the employee would subject a coworker, customer or third party to an unreasonable risk of harm.

### **TEXAS OPEN AND CONCEALED CARRY LAW**

Texas law allows Texas residents and some residents of other states to obtain a license to carry open or concealed handguns in the state of Texas. Before Jan. 1, 2016, a license extended a person's right to carry only a concealed handgun in places other than the person's own premises or vehicle. As of Jan. 1, 2016, a handgun license grants the holder the right to carry a handgun that is secured in a holster.

However, Texas law prohibits all individuals—including those holding a valid handgun license—from carrying an open or concealed handgun in certain places. Texas law also allows individuals, businesses and other entities to prohibit open or concealed (or both) handgun carrying on their properties by providing notices that meet specific requirements. Certain types of businesses are required to prohibit the carrying of handguns on their premises by providing specific notices.

Regardless of whether handgun carrying is allowed on a particular premises, an employer may not prohibit an employee who holds a license to carry handguns, or who otherwise lawfully possesses firearms or ammunition, from transporting or storing them in his or her privately-owned, locked car on the employer's premises.

### **EMPLOYER IMMUNITY**

Texas law provides employers with immunity from civil liability, except in cases of gross negligence, for injury, death, property damage or other damage caused by an incident involving a handgun or ammunition that the employer is required by law to allow on its property.

An employer is **not** required to patrol, inspect or secure any parking area that the employer provides for employees, or to investigate or confirm an employee's compliance with laws related to possession of a handgun. In addition, the lawful presence of a handgun on an employer's property does not constitute a failure by the employer to provide a safe workplace.

Regardless of whether an employer decides or is required to prohibit weapons on its premises, employers should revise all company policies and their employee handbooks to ensure that their handgun carrying policies are properly conveyed to their employees.

## WORKPLACE VIOLENCE PLAN IMPLEMENTATION FOR EMPLOYERS

Although Texas does not have a statute or a regulation explicitly governing workplace violence, employers are still required to take all actions reasonably necessary to ensure a safe workplace and take all steps reasonably necessary to protect the life, health and safety of the employees. Employers may be liable for incidents of workplace violence under both federal and state law for failure to provide employees with a safe workplace.

Employers can create a workplace violence plan to outline policies and processes that can help prevent workplace violence. If an employer elects to have a workplace violence plan, the plan will be most effective if it is tailored to the individual needs and circumstances of the employer. It should take into account the resources available to the employer to enact and maintain the program.

A workplace violence policy may include the following items:

- A statement summarizing the employer's workplace violence policy and its relation to other policies the employer has enacted;
- Standard practices to address workplace violence or threats of violence;
- Designation and training of an incident response team;
- Clearly stated disciplinary procedures designed to prevent violent behavior in the workplace;
- Procedures for workplace violence that will handle all levels of violence;
- Reference to sources outside of the workplace that employees may consult to deal with workplace violence; and
- An effective training program to inform employees of the workplace violence policy.

## MORE INFORMATION

For more information on workplace violence prevention in Texas, please contact your The Cincinnati Insurance Companies representative.