

# **CLIFTON BUDD & DeMARIA, LLP**

## **BREAKFAST BRIEFING**

### ***PREVENTING WORKPLACE VIOLENCE***

**October 11, 2001**

**Howard G. Estock, Esq.  
Shaffin A. Dato, Esq.  
420 Lexington Avenue, Suite 420  
New York, New York 10170  
(212) 687-7410  
labor@cbdm.com  
www.cbdm.com**

## PREVENTING WORKPLACE VIOLENCE

presented by:

**Howard G. Estock, Esq.**  
**Shaffin A. Datto, Esq.**

October 11, 2001

### OPENING COMMENTS

Situations that might lead to violence and the methods of dealing with them are typically unique as to fact and situation. Nevertheless, there are established guides for preparing for and dealing with violence as a generic workplace issue.

- **What is workplace violence?**
  - ✓ **Obvious violence**
  - ✓ **Hostile Work Environment**
    - Verbal assaults
    - Threats
    - Coercion
    - Intimidation
    - Harassment

### Corporate Liability and the Cost of Violence

#### 1. Legal Consequences

- *Respondeat superior* ;
- Negligent hiring and retention; Negligent Security;
- OSHA requirements under the General Duty clause;
- Workers' Compensation; Suit by non-employee parties injured by your employee.

#### 2. Facts and Figures

- The cost of workplace violence is estimated between \$4.2 and \$36 billion annually
- In 1992, 111,000 violent incidents were committed in work environments resulting in 750 deaths. The rate has been steadily increasing.
- Consequently, suits for negligent hiring , negligent retention and negligent security are increasing. A recent jury verdict in an employee-caused workplace death resulted in a \$3 million verdict!

## Policies

### 1. Advantages of Written Policies

- Informs employees of objectionable types of behavior or conduct
- Encourages employees to report incidents
- Demonstrates management's commitment to deal with violence

### 2. Contents *[Handout: sample program]*

- Keep it simple;
- List or describe all types of prohibited conduct including violence, harassment, threats, intimidation, etc.;
- Prohibit weapons, alcohol & drugs at workplace or on premises;
- Cover incidents involving both co-workers and other individuals;
- Require all incidents to be reported;
- Commit to investigate promptly and act accordingly;
- ***ESTABLISH ZERO TOLERANCE FOR WORKPLACE Violence;***  
--Benefits and risks of Zero tolerance.

## Prevention

### 1. Warning Signs of Potentially Violent Behavior:

#### (a) Obvious signs requiring immediate action:

- Direct threats of harm;
- Possession of a weapon or inappropriate references to weapons;
- Statements of desperation or intention to do violence.

#### (b) Less Obvious signs requiring attention:

- Belligerent, harassing, bullying, or other abnormally aggressive behavior;
- Numerous conflicts with supervisors and co-workers;
- Statements showing abnormal fascination or approval with incidents of workplace violence;
- Increased use of alcohol / drugs;
- Frequently losses of temper;
- Difficulty with authority figures and difficulty accepting criticism;
- History of domestic abuse, cruelty to animals or unwelcome sexual comments / actions.

#### (c) The above signs when coupled with drug/alcohol abuse or extreme changes in behavior require more urgent attention.

## **2. Training:**

At a minimum, workplace violence prevention training should emphasize the existence of a workplace violence prevention policy, management's intolerance of any violent behavior and the supervisor's duty to report incidents of possible or actual violence. Security procedures for dealing with violence should be explained.

Depending upon factors such as risk assessment and time and money committed to training, more detailed factors may be taught to your employees, including:

- Methods of preventing or diffusing volatile situations or aggressive behavior; How to deal with hostile persons; managing anger; techniques and skills to resolve conflicts; stress management, relaxation techniques, wellness training; personal security measures.

Supervisors can also be trained in:

- Ways to encourage employees to report incidents in which they feel threatened; skills in behaving compassionately and supportively towards employees who report incidents; skills in taking disciplinary actions; basic skills in handling crisis situations; basic emergency procedures

## **3. Pre-employment Screening:**

- Employers should carefully check references and do pre-employment screening anytime the job position puts the prospective employee in a position that others rely on the employee for their well-being. (e.g. Pre-employment screening Required by New York law for Security personnel and Nurses Aids in Nursing Homes)
- The Internet offers an inexpensive source for gathering information on prospective employees. (e.g.: Canadian Hijacker caught through Internet after 30 years!)
- Prior to doing pre-employment screening be aware that federal and state fair credit reporting laws limit certain types of inquiries. Legal counsel should be consulted.
- Experts advise that at least two people interview applicants and that both verify everything on the employment application.
- Reference checks should be in writing, both to show diligence in the hiring process and because previous employers are more likely to provide only earnings & date of hire over the phone.

**4. Security Measures:**

- Conduct an audit of safety precautions (OSHA requires it annually for workplace safety)
- Focus on access control (Photo identification badges, guard services and/or coded key cards),
- Do not overlook things such as outside lighting, employee controlled “panic buttons”, and escorts for employees after dark.
- Take Computer security precautions to avoid retaliation by disciplined /disgruntled employees.

**5. Employee Assistance Programs & Other Outside Intervention:**

- EAP is most helpful as part of workplace violence programs when used at the point when a problem first surfaces and before an employee’s conduct rises to a level that warrants discipline
- Other techniques to defuse employee problems include:
  - (i) Ombudsmen
  - (ii) Mediation - formal or informal
  - (iii) Problem resolution procedures, including arbitration
  - (iv) Peer review
  - (v) Family or community intervention

**Threat Assessment:**

When a situation occurs that may lead to violence, a Threat Assessment should be done. The functions of a Threat Assessment Program are the identification of a potential perpetrator, the assessment of the risks of violence and management of both the subject and the risks presented.

**1. Resources:**

- Threat assessment professional;
- Behavioral Psychologist or Psychiatrist;
- Law enforcement agencies as an alternative to the above.

**2. Fundamental Principles of a Threat Assessment Investigation:**

- Violence is a process, as well as an act
- Violence is the product of an interaction among three factors:
  - (i) Aggressor
  - (ii) Stimulus
  - (iii) Setting

In order to manage the risk all three factors need to be reviewed to see how to best diffuse the situation.

**3. Assessment of risk:**

The primary objective is to gather information on a subject and potential targets by means of:

- (i) Interviews
- (ii) Material created or possessed by the subject
- (iii) Persons who know the subject
- (iv) Record or archival information

and then evaluating the evidence for conditions and behaviors that would be consistent with violent behavior.

**Response To Threat:**

If a threat is deemed credible, management must work to diffuse it by dealing with the three violence factors, Aggressor, Stimulus and Setting:

**1. Dealing with the Aggressor:**

- Transfer to another position
- Leave of Absence
- Discipline

**2. Dealing with the Stimulus:**

- All of the above
- EAP
- Working with the other employees, especially if they are the stimulus

**3. Dealing with the Setting:**

- Closer or different supervision
- Transfer to another position
- Change work assignments, break time, etc.

**Special considerations: Employees With Disabilities:**

- Violence as an ADA protected characteristic;
- Screening for violence & ADA issues;
- EEOC position (*Reed v. LePage Bakeries, Inc.*)

## WORKPLACE VIOLENCE PREVENTION PROGRAM

### Crisis Control :

- Have plans & policies in place to deal with worst-case scenarios.

### Recovery:

#### **1. Steps to Help an Organization Recover:**

- Ensure management presence in the worksite
- Share information with employees
- Include union leadership
- Bring in crisis response professionals
- Remember the healing value of work
- Review process to determine if violence could have been prevented & revamp violence policy as necessary

SAMPLE

WORKPLACE VIOLENCE PREVENTION PROGRAM

Program Includes:

- Assessment and Feedback System (Executive Committee);
- Physical Security;
- Pre-Employment Screening;
- Good Discipline & Termination Practices;
- EAP, Grievance or other mechanism for resolving problems;
- Written Policy

EXECUTIVE COMMITTEE:

Makeup:

- ✓ Top management
- ✓ Human Resources
- ✓ Security
- ✓ Other members to be considered:
  - Legal
  - Risk Management
  - Public relations
  - Union Representative

Purposes:

- ✓ Assess current policies regarding security, violence & harassment;
- ✓ Assess current risk;
- ✓ Assess security measures;
- ✓ Assess need for outside security consultants, lawyers, psychiatrists, crisis managers, etc.

Duties:

- ✓ Draft, amend, update policies;
- ✓ Establish employee & supervisor reporting procedures / reporting hot line;
- ✓ Establish zero tolerance philosophy;
- ✓ Establish Crisis Control Plan.

PHYSICAL SECURITY:

Audit workplace safety at least annually:

- ✓ Access control: Identification cards, identifying visitors, restricting or denying access;
- ✓ Outside safety: Parking lots, lighting, fences, locks, surveillance, etc.;
- ✓ Inside safety: Locks, “panic buttons,” late night workplace policies, policies on possession of weapons, alcohol or drugs; computer backup protocols, control of dangerous workplace chemicals;

PRE-EMPLOYMENT SCREENING:

- ✓ Establish protocols for questioning applicants regarding application and background;
- ✓ Check up on gaps in background;
- ✓ Check up on details in application -- education, past jobs, references.
- ✓ Make written reference checks & follow up;
- ✓ For security sensitive positions do more extensive background checks;
- ✓ Make employment offers conditional upon completion of reference checks;
- ✓ Include statement on application that material misrepresentation will be cause for revocation of job offer.

***NOTE: Work carefully with legal counsel to avoid violations of Fair Credit Reporting Act, Americans with Disabilities Act and other civil rights laws.***

## GOOD DISCIPLINE AND TERMINATION PRACTICES

- ✓ Follow Progressive Discipline concepts;
- ✓ Write up all incidents, even if no action is taken;
- ✓ Investigate thoroughly; Always allow the employee an opportunity to tell his / her side of the story; Generally, employees have the right to have union's or other employee's assistance in investigative interviews;
- ✓ Remember the employees need for dignity and saving "face" in the process;
- ✓ Utilize EAP, grievance mechanism or other problem resolution process to defuse difficult personnel issues
- ✓ Where conditions suggest the possibility of violence, provide for security personnel to be available at discipline or discharge meetings.

## PROBLEM RESOLVING MECHANISMS

Use those problem-solving mechanisms that are available and appropriate. Such mechanisms may include:

- ✓ EAP;
- ✓ Grievance Procedure;
- ✓ Peer Review Processes;
- ✓ Ombudsman;
- ✓ Mediation;
- ✓ Family intervention;
- ✓ Community Intervention;
- ✓ Police Intervention

WRITTEN POLICY ON WORKPLACE VIOLENCE PREVENTION

- ✓ Commits the organization to the concept of preventing violence;
- ✓ Provides evidence of due care taken to protect employees, customers or others from workplace violence;
- ✓ Informs employees and supervisors of what is expected of them with regard to reporting incidents;
- ✓ Offers victims or potential victims a means to avoid escalating violence;
- ✓ Defines unacceptable behavior;

*A Sample Workplace Violence Prevention statement is attached.*

## SAMPLE WRITTEN POLICY STATEMENT

### POLICY AGAINST WORKPLACE VIOLENCE

It is the [COMPANY NAME]'s policy to promote a safe environment for its employees. [COMPANY] is committed to working with its employees to maintain a work environment free from violence, threats of violence, harassment, intimidation, and other disruptive behavior. No company is immune from this kind of conduct. Every company will be affected by disruptive behavior at one time or another.

Violence, threats, harassment, intimidation, or other disruptive behavior in our workplace will not be tolerated. All reports of incidents will be taken seriously and will be dealt with promptly and appropriately. Such behavior can include oral or written statements, actions, gestures, or expressions that communicate a direct or indirect threat of physical harm. Individuals who commit such acts or who otherwise violate this policy may be removed from the premises and may be subject to disciplinary action, criminal penalties, or both.

We need your cooperation to implement this policy effectively and maintain a safe working environment. Do not ignore violent, threatening, harassing, intimidating, or other disruptive behavior. If you observe or experience such behavior by anyone on company premises, whether he or she is an employee or not, report it immediately to a supervisor or manager. Supervisors and managers who receive such reports are required to treat them seriously. The Human Resources Office will assist in investigating the incident and initiating appropriate action. To the maximum extent possible, such reports will keep your identity confidential. If you choose, you may make such reports directly to \_\_\_\_\_ in the Human Resources Department. [PLEASE NOTE: Threats or assaults that require immediate attention should be reported first to security at xxx-xxxx.]

A part of this policy, no weapons, alcohol or illegal drugs are allowed anywhere on company premises. Do not bring such things into your workplace, locker, or the parking lots.

I will support all efforts made by supervisors and managers in dealing with violent, threatening, harassing, intimidating or other disruptive behavior in our workplace and will monitor whether this policy is being implemented effectively. If you have any questions about this policy statement, please contact \_\_\_\_\_ at xxx-xxxx.

---

President.