

# Workplace Violence:

## *A Disturbing Growing Trend*

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**W**orkplace violence is a growing trend, and the statistics are disturbing. Although not a novel threat, in recent years it is apparent that the risk has increased. It is an act of violence that we hear reported on the news, experience in our communities, or even witness firsthand. It is a trend that does not always intersect with insurance policies, but the industry is not immune to employing victims or the costly effects these acts of violence cause.

### **WORKPLACE VIOLENCE TRENDS AND STATISTICS**

Workplace violence takes on many forms – threats, verbal abuse, physical assault, and even homicide.

In the United States, it represents the third leading cause of job-related death as reported by OSHA. It can occur on or off the premises or jobsite. Women are the most common victims of workplace violence, and 30 thousand women report sexual assaults each year.

The Centers for Disease Control and Prevention (CDC) recognizes four types of workplace violence: criminal intent, customer / client, worker-on-worker, and personal relationship.

Criminal intent violence usually involves a perpetrator who enters a business that they have little or no connection to and occurs while a crime is being committed such as robbery or mugging.

Customer / client violence includes acts committed by current or former clients, customers, patients, family, and visitors. This is the most common type of workplace violence seen in the healthcare industry.

Worker-on-worker violence involves a perpetrator that is a current or former employee to the business and involves bullying and other types of verbal harassment and abuse, it also extends to physical assaults and homicide. Revenge is the most common cause.

In personal relationship violence cases, it usually occurs when the victim is followed to work and attacked or

threatened by a spouse, relative or other acquaintance that is not an employee of the business.

Workplace violence can impact employees, clients, customers, visitors, and family members.

According to Zippia, each year two million people report some form of workplace violence. Many more – perhaps as much as 25 percent – go unreported. There are a number of reasons that the reported numbers run significantly lower than estimated totals.

Employers do not always report incidents that do not result in serious injury or death. Employees may fear retribution – especially when the abuse comes from a fellow employee or management. In healthcare in particular, lack of a physical injury or need for time off work, plus the effort it takes to fill out the reports, are common reasons for incidents not being reported.

Overall, approximately one in seven people have attested to not feeling safe at work, according to Legaljobs. The CDC cites a 2009 study by Peek-Asa et al that found 80 percent of nurses do not feel safe at work.

When people do not feel safe at work it can lead to reduced productivity, and a negative impact on workplace morale. It also triggers a potential wave of unwelcome consequences for employers, including staffing vacancies, obstacles in acquiring qualified new hires, unfavorable publicity, employment-related insurance claims, and lawsuits. A report by the United States Department of Labor has stated that workplace violence costs businesses over \$130 billion per year. The impact is even more widespread, with increased costs trickling down to consumers.

While anyone can be a victim of workplace violence, some occupations are more prone to it. Jobs that bring people into regular contact with the public, either by exchanging money or direct interaction, are particularly susceptible. Examples include delivery drivers, customer service, and law enforcement, and especially healthcare.

In fact, OSHA advises that as much as 75 percent of



reported workplace violence incidents occur in the healthcare field. According to the CDC, possible reasons for this concentration of incidents include staffing shortages, increased patient morbidities, and lack of effective programs to prevent and address workplace violence.

## **WORKPLACE VIOLENCE RISK MANAGEMENT**

The Occupational Health and Safety Act of 1970 created the Occupational Health and Safety Association (OSHA). OSHA's mission is to "ensure safe and healthful working conditions for workers by setting and enforcing standards and by providing training, outreach, education and assistance."

While OSHA does not require formal workplace violence training, it does offer a number of guidelines and resources. Background checks on employees may help to ferret out known sex offenders or those with past violent behavior. Employers should have written anti-violence policies, with zero tolerance for infractions. Training is also recommended. Systems for documenting and reporting workplace violence, including verbal abuse, are essential.

Employers have a legal and moral responsibility to ensure that employees know their concerns are taken seriously. It is essential that these workplace violence policies be communicated regularly to all employees. OSHA recommends five components be included in a workplace violence prevention program:

- Management commitment and employee involvement
- Worksite analysis
- Hazard prevention and control
- Safety and health training
- Recordkeeping and program evaluation

Employees and management should be included in the development of the program. A program crafted with clear assignment of responsibility for such things as reporting, record keeping, and training will be the most

important part.

In addition to these recommendations, OSHA's General Duty Clause requires employers to provide a workplace that is safe and free from hazards. Employers who do not comply are subject to citation. In 2019, in *Secretary of Labor vs Integra Health Management, LLC*, the Occupational Safety and Health Review Commission determined that the General Duty Clause did apply to workplace violence situations. In this case, the healthcare employee was stabbed to death by a mentally ill patient. The employee had previously reported not being comfortable being alone with the patient.

Examples of citations include failure to keep the workplace free of a hazard to which employees were exposed, the hazard was recognized, the hazard was causing or was likely to cause death or serious physical harm, and there was a feasible and useful method to correct the hazard.

Workplace violence / active shooter insurance policies for relevant exposures are available. Coverage includes costs to care for the victims, including medical, dental, and psychiatric services. Additional security may also be needed. If there is an interruption of the company's operations, business interruption coverage could be triggered. Coverage may be available for the legal costs of responding to a lawsuit, as well.

In relation to recent events in New York, according to the Excess Line Association of New York (ELANY), in June of 2022 the New York State Department of Financial Services (DFS) informed ELANY of requirements for excess line workplace violence/active shooter insurance policies.

DFS advised that excess line workplace violence / active shooter insurance policies or endorsements must meet the following requirements:

- ◆ Business interruption and extra expense (first party) coverages must have a physical damage to property coverage trigger.
- ◆ The policy can include death benefits, medical payments and/or funeral benefits for invitees,



customers, and guests on the premises during a workplace violence incident, but it must be a liability policy to include these benefits. Employees cannot receive med pay, death, or funeral benefits under a workplace violence/active shooter policy.

- ◆ A liability policy must provide “pay on behalf of” defense as well as “pay on behalf of” losses. There must be a duty to defend; the policy cannot omit defense coverage.

The insured can be an entity, or an entity and its affiliates and/or subsidiaries. Invitees, customers, and guests who may be eligible for med pay, death or funeral benefits should not be described as insureds in the policy. Employees are insureds for liability coverage purposes.

Policies that are non-compliant with any of these requirements must be suspended as per the DFS’s interpretations.

Workplace violence is a concern for everyone. The impact of the lost work time, financial loss and emotional repercussions cannot be overestimated. Developing plans and procedures to prevent and address workplace violence is an essential part of every business’s operation. This presents an opportunity for insurers who offer appropriate coverages to provide additional gap policies for their insureds, therefore better serving their clients and communities.

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