



# Active Shooter & Workplace Violence

---

LEGAL PERSPECTIVE!

JUNE 19, 2019



**Frank C. Botta**  
**The Lynch Law Group**

375 Southpointe Blvd., Suite 100  
Canonsburg, PA 15317



# Did You Know?

An average of 2 million U.S. workers report having been a victim of violence at work? – According to the Occupational Safety & Health Administration (OSHA) concerns that many under-reporting continues for non-fatal injuries and illnesses (25%).

Roughly 400 annual workplace homicides have been reported by the U.S. Bureau of Labor.

According to a 2019 SHRM research report - 55% of HR professionals do not know whether their organization has a workplace violence prevention program.

# Did You Know?

Over the span of 2 decades, close to 1,000 people have lost their lives in active – shooter or aggressor events inside schools, buildings, parks and other public areas.

There were 280 active aggressor events for 2000 – 2017 according to the Institute for Real Estate Management's recent webinar on active shooters. In those 280 events, 831 people lost their lives, 1,520 people were injured.

The largest portion, 45% of those events occurred at commercial businesses, followed by schools (24%), outdoors (19%) and other miscellaneous places (12%).

# Did You Know?

Although employees in the healthcare & social assistance sector account for 12.2% of the working population, nearly 75% of workplace assaults occurred in a healthcare setting.

80% of Emergency Medical Services personnel have been attacked by patients.

Homicide is the 2<sup>nd</sup> leading cause of workplace death for home healthcare workers.

Among nursing homes with dementia units, 50% of nursing aides reported being assaulted by patients weekly and 16% daily.

# Did You Know?

44% of teachers reported being physically attacked while at school within one year.

Workplace violence is the second leading cause of death for women while on the job.

Domestic violence accounts for 27% of violent events in the workplace.

30,000 rape and sexual assaults occur to women at work each year.

# Did You Know?

Companies save \$3, or more, for each dollar invested in workplace safety.

\$130 billion annual losses are attributed to workplace assaults.

Domestic violence issues that are brought to the workplace cost nearly \$727 million in lost productivity.

# Did You Know?

96% of active shooters are lone males.

40% of victim shooter assailants commit suicide.

25% of companies are unprepared for active shooter incidents.

4 – 5 observable behavior characteristics are found in each shooter.

The most frequent behaviors demonstrated are related to (1) mental health (2) problematic interpersonal interactions and (3) expressing violent intent.

# Stressors

---

<b>Table 1: Stressors</b>		
	<b>Number</b>	<b>%</b>
Mental Health	39	62
Financial strain	31	49
Job Related	22	35
Conflicts fifth friends/peers	18	29
Marital problems	17	27
Abuse of illicit drugs	14	22
Other (e.g. caregiving responsibilities)	14	22
Conflict at school	14	22
Physical injury	13	21
Conflict with parents	11	18
Conflict with other family members	10	16
Sexual stress/frustration	8	13
Criminal problems	7	11
Civil problems	6	10
Death of friend/relative	4	6
None	1	2



# DEFINITION OF WORKPLACE VIOLENCE



## NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH (NIOSH)



Any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site.



Can range from threats and verbal abuse to physical assaults and even homicide.



Can involve employees, clients, customers and visitors.

# Jobs With High Risk For Workplace Violence

---



HEALTHCARE



SOCIAL SERVICES



TRANSPORTATION  
(TAXI DRIVERS,  
DELIVERY DRIVERS)



RETAIL  
(LATE NIGHT  
ESTABLISHMENTS,  
GAS STATIONS OR  
CONVENIENCE  
STORES)



PUBLIC SECTOR  
(TEACHERS,  
CORRECTIONS  
OFFICERS)

# Occupational Safety And Health Act (OSHA)

## GENERAL DUTY CLAUSE: Section 5(a)(1)

Requires employers to keep their workplace free from recognized hazards likely to cause death or serious physical harm to its employees for which feasible means of abatement existed.

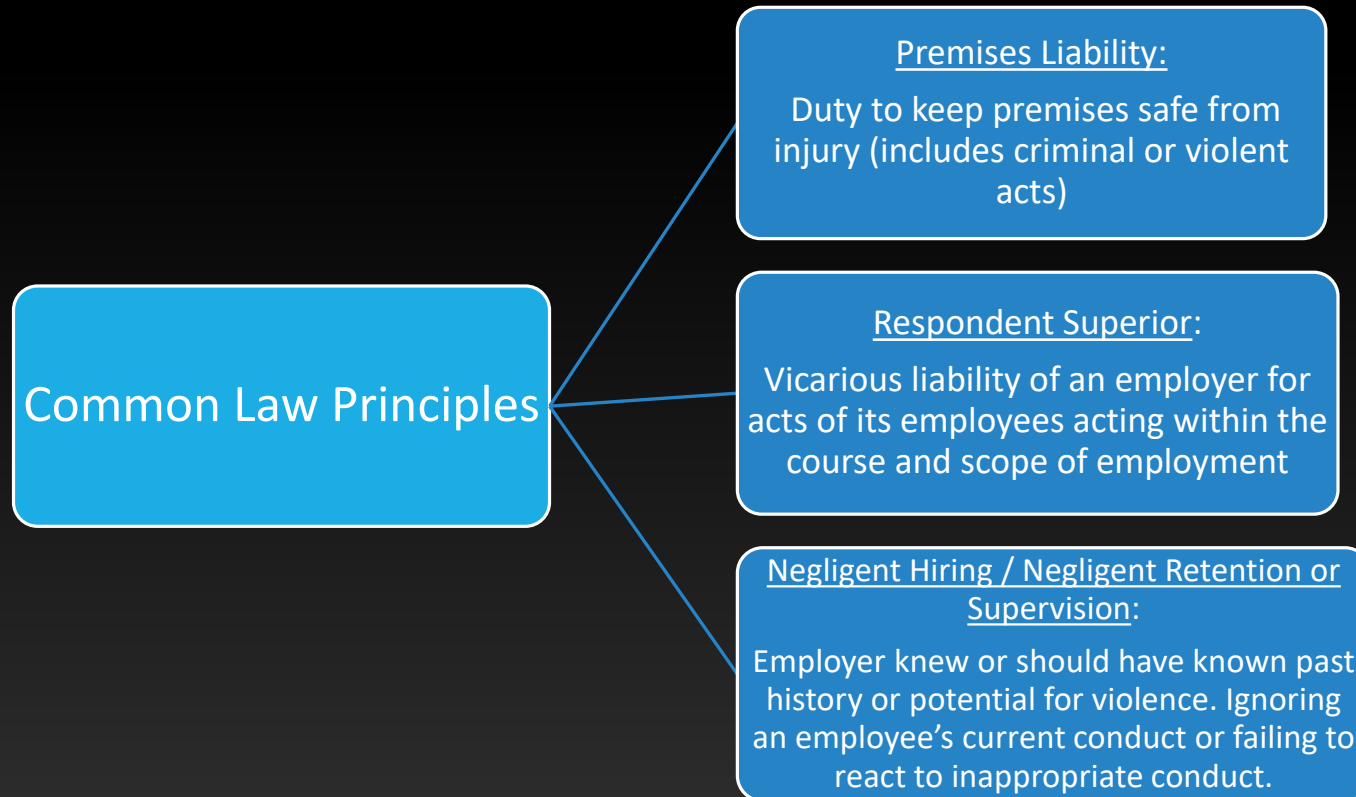


March 4, 2019: US Department of Labor and  
Integra Health Mgt., Inc.

OSHRC upheld a decision of ALJ Dennis L. Phillips which affirmed the citation issued against a healthcare company after a woman was stabbed to death. Cited for a \$10,500.00 penalty.

# Employer Liability For Workplace Violence

---



# Workers' Compensation

---



## Exclusive Defense

### Pennsylvania Workers Compensation Law

- **“Third-Party Attacks”** or **“Personal Animus”** exception
- Cover Injuries
  - “Shall not include injury caused by an act of a third-person intended to injure the employee because of reasons personal to him, and not directed against him as an employee or because of his employment” 77 P. S. § 411(1)

“Third Person” includes fellow employees



# Recent Workers' Compensation Case

---

Employee was a female security guard who was sexually assaulted by an intoxicated guest

Employee claimed that the guest was well-known to the casino as a “serial sexual harasser”

Court refused to grant the casino’s motion to dismiss the employee’s claims

- (CLEMONS V. WASHINGTON TROTTER ASSOC., d/b/a MEADOWS CASINO, et. al., 2019 WK 1359238 (W.D. Pa. March 26, 2019)

# Americans With Disabilities Act (ADA)

---



**The ADA prohibits discrimination against employees based on an actual disability or mental illness.**

- Use caution when taking adverse action if there is good reason to believe that one has a condition that may present a threat of harm to himself or others requiring an exam (fitness for duty).
- Are there objective facts?
- The significant risk to the health and safety of others cannot be eliminated by a reasonable accommodation.
- Threat must be based on “an individualized assessment of the employee’s present ability to safely perform the essential functions of the job: based on a reasonable medical judgment or objective evidence.”

# Americans With Disabilities Act (ADA)

## **Introduced in House (02/19/2019): HR 1309**

### (Workplace Violence Prevention for Health Care and Social Service Workers Act)

This bill requires the Department of Labor to address workplace violence in the health care and social service sectors. Specifically, Labor must promulgate an occupational safety and health standard that requires certain employers in the health care and social service sectors, as well as employers in sectors that conduct activities similar to the activities in the health care and social service sectors, to develop and implement a comprehensive plan for protecting health care workers, social service workers, and other personnel from workplace violence.

In addition, those employers must:

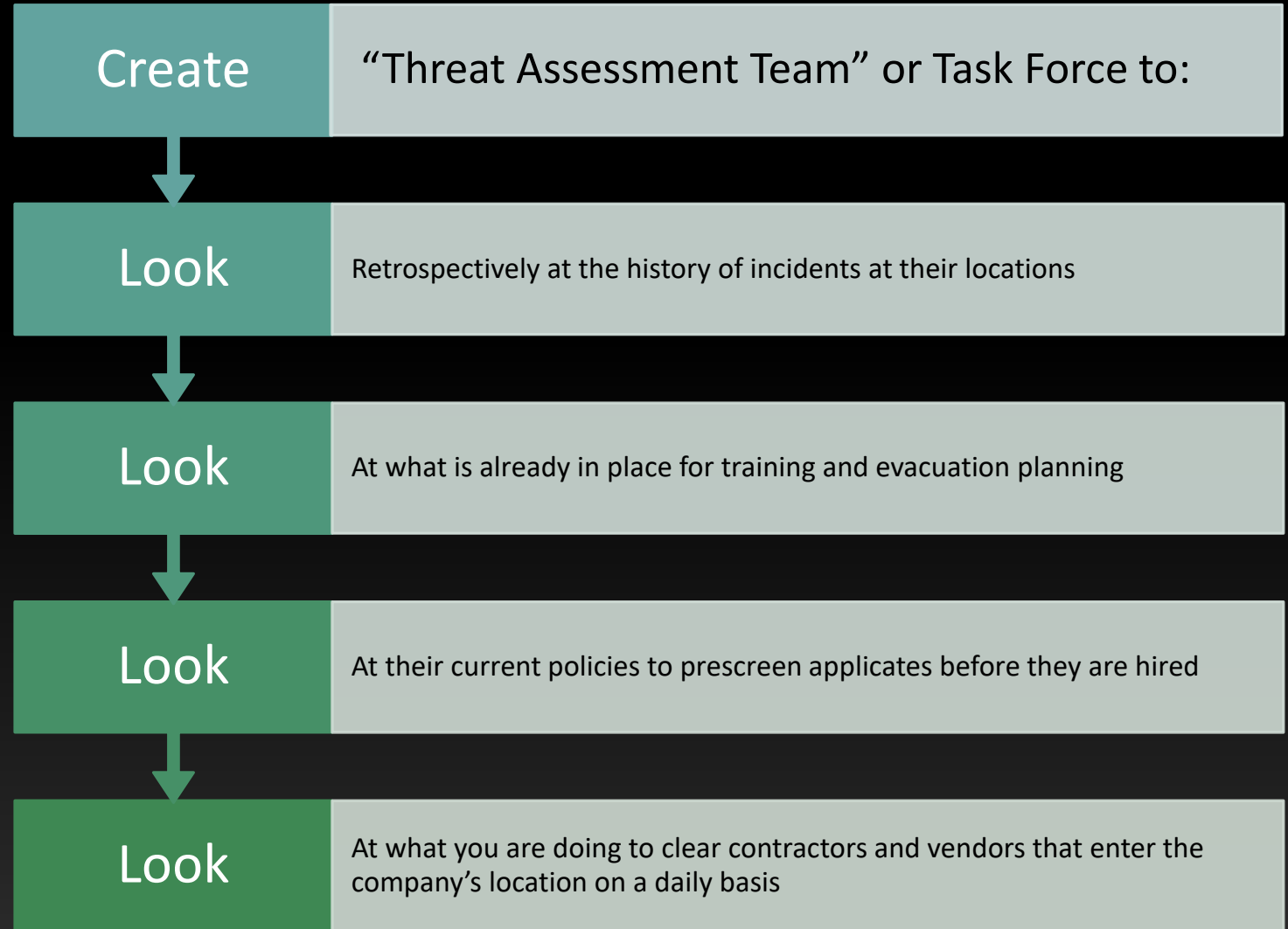
- Investigate workplace violence incidents, risks, or hazards as soon as practicable;
- Provide training and education to employees who may be exposed to workplace violence hazards and risks;
- Meet record keeping requirements; and
- Prohibit acts of discrimination or retaliation against employees for reporting workplace violence incidents, threats or concerns.



# All Hazards Evaluation Plan

Companies need to incorporate planning for workplace violence, including active shooting, into the same plan they should already be using for other emergencies such as fire, chemical spills, gas leaks and natural disasters such as tornadoes or hurricanes (comprehensive “all hazards” evacuation plan).

# All Hazards Evaluation Plan



# All Hazards Evaluation Plan



Companies should consider some level of ongoing periodic screening for onboarding employees.



Specifically articulate, in writing for the benefit of all employees, the definition of “acceptable behavior” and also, what behaviors will not be tolerated and the consequences should company rules/policies not be followed.

# All Hazards Evaluation Plan



Companies should work to develop a quality Employee Assistance Program (EAP).



Employees must feel empowered to report suspicious behaviors within the chain of command.

# All Hazards Evaluation Plan



## Engineering or Controls:

Companies should assess the current physical security measures and potential vulnerabilities at their location(s). (Door access controls, security camera, lighting for exterior areas, alarms, locks and fencing).



## Administrative and Workplace Practice Controls:

Companies should have a designated in-house representative assigned to act as the company or floor captains to lead employees in time of conflict.

Panic button app enabled system for critical emergencies.

# Best Practices

---

Companies should train your employees in the “Run, Hide, Fight” program to start a discussion and to acknowledge that this issue is a reality (however unlikely) in today’s society.

Companies should practice for the highly unlikely possible event, just like they plan for fires, gas leaks or natural disasters.

An “All Hazards” Evacuation program should cover what employees expect from law enforcement response, and how the company should set up both internal and external communications to counter the incident.

Any quality program should cover and discuss potential “warning signs” for employers to watch for noting significant changes in behaviors for potential subjects. (Empower your employees-see something, say something.)

Ensure no reprisals are taken against employees who report incidents.

# Post Incident Response

---

Companies should provide comprehensive treatment for victimized employees and employees who may be traumatized by a workplace violence Incident.

Companies should implement:

- Trauma-Crisis counseling
- Critical incident stress debriefing
- Employee assistance programs to assist victims



# Post Incident Response

---

Maintaining legal defensible documentation is essential, because lawsuits are likely following a serious workplace violence incident (all written records will be subpoenaed). It is recommended that your attorney maintains one set of documentation to preserve the documents under the attorney-client work product doctrine.







## Priority

---

### Protecting Human Life!

Provide a safe and secure environment.

(Potential litigation issues should take a back seat to whether it is foreseeable for a company to implement an active-shooter program).



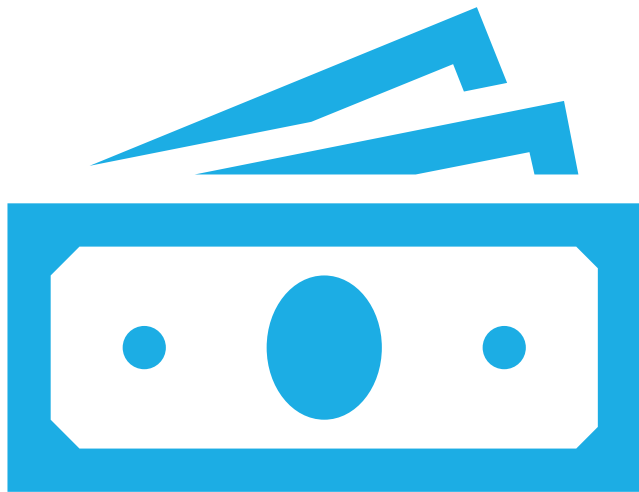
## Priority

---

Legal liability hinges on whether the landlord or owner possessed a duty of care to protect the victims from the shooter, and this duty is typically created when a crime becomes foreseeable for the landlord or business owner.

Most jurors would think it is negligent not to have a plan in place.

This can be diffused if you have a policy in place and train people. (where to go, having doors locked and a safe place)



# Priority

---

Even if found not liable for a shooting, building owners will face enormous litigation costs and legal fees mediating negligent cases.

## Insurance Considerations:

Affordable coverage for costs not part of commercial policies which include victim medical expenses, funerals, building refurbishing, loss of business coverage or victim settlements.