

March 26, 2003

PURDUE ROAD SCHOOL

**WORKPLACE VIOLENCE,
GUNS & SEARCHES**

Presented by: Leo Litowich

NANTZ, LITOWICH, SMITH & GIRARD

ATTORNEYS AND COUNSELORS

A Professional Corporation

2025 East Beltline, S.E., Suite 600
Grand Rapids, Michigan 49546-7671
(616) 977-0077 • Facsimile (616) 977-0529

www.nlsg.com

©Copyright 2003 by Nantz, Litowich, Smith & Girard
All Rights Reserved

(Materials included in the following outline are not intended to provide legal advice and are for seminar use only.)

WORKPLACE VIOLENCE/GUNS/SEARCHES

By: **Leo Litowich**
NANTZ, LITOWICH, SMITH & GIRARD
2025 E. Beltline, S.E., Ste. 600
Grand Rapids, MI 49546
(616) 977-0077

March 26, 2003

I. SOME STATISTICS AND LIABILITIES

A. This is not that rare

1. According to the National Institute for Workplace Safety, workplace murder is the leading killer of working females, (35% of their fatal work injuries) and the second leading killer of males.
2. Current or former workers account for 9% of workplace homicides.
3. According to the figures released on August 3, 1995, by the U. S. Bureau of Labor Statistics (BLS), 1,071 workers were murdered in the workplace in 1994, a slight decrease from 1,074 the previous year. Nationally, 21 percent of occupational or workplace deaths are the result of violence.
4. For each murder, there are countless other incidents of workplace violence in which the victim is harassed, threatened or injured, sometimes seriously.
 - a. A major obstacle in quantifying the real extent of the problem is the issue of chronic under-reporting.

NOTES:

-
-
- b. The U. S. Department of Justice (DOJ) National Crime Victimization Survey statistics, published in July 1994, found that almost one million workers were victims of violence while working.
 - i. The survey excludes homicides since it was based on interviews with victims.
 - ii. According to the survey, one in six violent crimes in the United States – an estimated 8% of rapes, 7% of robberies and 16% of assaults – occurs at work. An indicator of the seriousness of the workplace violence problem was the finding in the study that 30% of the victims were confronted with armed offenders, one-third of whom carried handguns.
 - iii. The study noted that 16% of violent workplace incidents resulted in physical injuries and 10% required medical care.
 - c. Nonfatal assaults were primarily encounters between patients and nursing staff in health care institutions. Health care workers are assaulted more frequently in the workplace than any other working group in the United States, including police officers (OSHA, 1996).
 - i. In 1994, the Bureau of Labor Statistics (BLS) reported that 38% of nonfatal workplace assaults occurred in health care settings.
 - ii. A 1994 Emergency Nurse Association (ENA) survey revealed that 87% of the 5000 respondents were exposed to physical assaults without weapons and 24% with weapons up to five times a year.

NOTES:

-
-
- d. Almost two-thirds of nonfatal assaults occurred in service industries, such as nursing homes, hospitals, and establishments providing residential care.
- B. According to the U. S. Department of Justice survey, assaults at work cost 500,000 employees 1,751,100 lost days of work each year, which averages out to 3.5 days per crime.
 1. In terms of just lost wages, the estimated annual total was more than \$55 million.
 2. When lost productivity, legal expenses, property damage, diminished public image, increased security and other factors are included, total losses from workplace violence probably can be measured in the billions of dollars.
 - C. Third parties assaulted and/or seriously injured in the workplace have won significant awards in suits against businesses or others with responsibility in the workplace who were found to be negligent in this area.
 1. While workers' compensation insurance is generally the employee's only remedy for on-the-job injuries from assaults, in certain states, employees have successfully sued their employers in civil court.
 2. Occupational Safety and Health Administration requires companies with more than 25 employees to maintain a safe and secure work environment.

II. POLICY CONSIDERATIONS

- A. A clearly written company policy:
 1. Demonstrates management's concern and commitment to their employees' safety and health;

NOTES:

-
-
2. Encourages employee participation;
 3. Refuses to tolerate violence in the workplace;
 4. Provides consistent and fair application to all employees, including supervisors and managers;
 5. Requires prompt and accurate reporting of incidents of workplace violence, whether or not a physical injury occurred; and
 6. Does not discriminate against victims of workplace violence.

B. What if no policy?

1. Negligent hiring and negligent retention are fodder for lawsuits when employers fail to screen the applicants they employ. The difference between the two is in the time the employer becomes aware that the employee is unfit for the job.
 - a. Negligent hiring occurs when, prior to hiring, the employer knew or should have known that a particular applicant was not fit for the job. Failure to adequately screen applicants results in a liability for the employer.
 - b. Negligent retention occurs when an employer becomes aware of an employee's unsuitability – or should be aware of it – and fails to act on that knowledge.
2. Respondeat superior is the notion that a master/servant relationship exists between the employer and the employee, in which the employer may become liable for the behavior of an employee acting as the employer's agent.

NOTES:

-
-
3. Negligent entrustment generally involves the improper use of a weapon. A plaintiff must prove that the employer knew the employee or officer was incompetent or inexperienced in the use of the weapon, but failed to provide training to offset the employee's lack of knowledge.
 4. With the average out-of-court settlement of \$500,000 and an average \$3 million jury award, it makes sound business sense to reduce the potential for workplace violence and thus avoid exposure to litigation.

III. WORKPLACE CONFIDENTIALITY ISSUES

- A. Searches
- B. Expectations of Privacy
 1. Trucks
 2. Lockers
 3. E-mail
 4. Trunk of car in parking lot

IV. WHAT CAN WE DO?

- A. Know your legal obligations and liabilities.
 1. Employers have obligations to employees under ADA, the Rehabilitation Act of 1973, workers' compensation laws, OSHA, the National Labor Relations Act, Civil Rights Acts and other area-specific laws.

NOTES:

-
-
2. Consult with legal counsel when questions arise.
- B. Screen new hires.
 - D. Train supervisors, managers and employees to recognize signs of potential violent behavior.
 - E. Define how employees are expected to behave in policy manuals and employee handbooks.
 - F. Institute a reporting system to allow early identification and intervention.
 1. Require all employees participate.
 - G. Institute basic security measures.
 - H. Employee assistance programs.
 1. Counseling for employees and/or families for problems related to drugs, alcohol, family discord and mental disorders.
 - I. Know when to call the police.
 1. Don't be the "boy who cried wolf."
 - J. Develop an incident response team.
 1. Unit consisting of security, human resources, legal and psychological personnel to respond to incidents.

F:\DATA\SPEECHES\IN TRANSPORT CONF [4-11-02 LL]\WORKPLACE VIOLENCE OUTLINE.DOC

NOTES: