Preventing Workplace Violence: Managing the Troubled Employee

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Preventing Workplace Violence – Managing the Troubled Employee

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Agenda

• Administrator’s Role in Redefining Workplace Violence
• Beyond Bullying . . .
• Identifying Warning Signs & Risk Factors
• ADA Issues Relating to Workplace Violence
• Investigating, Separating and Monitoring the Troubling Employee
• Preventing Incidents through Compassionate Leadership
What To Do To Prevent And Respond to DV and WV

1. Create the team, educate the team, work the team
   ➢ Review of team formation, members and duties
   ➢ Review of team training recommendations – what content and practice standards should be met

2. Overview of Requisite Knowledge for Team AND Managers

3. And Now...use the new “bullying” content to educate your workforce – don’t treat as a necessary evil, but an opportunity to lead

5-Step Workplace Violence Prevention Plan

- Workplace Violence Prevention Team
- Violence Vulnerability Audit/Gap Analysis
- Policy
- Site Plan
- Effectiveness Evaluation
Prevention Team

- **Members**
  - Firm Administrator/Human resources
  - Training and Development
  - Security
  - Employment law specialist
  - Threat assessment specialist
  - Employee assistance program (ex-officio)
  - Other ad-hoc members

WVPT - Responsibilities

- Program development and management
- Violence Vulnerability Audit (sites)
- Policies and procedures
- Communications
- Participate in threat assessment process
- Responds to workplace violence threats/incidents (all typologies)
- Coordinate continuous training plan
- Trauma response
- Act as resource specialist
Bullying in the Workplace: Old Problem, New Laws

• Almost every state and territory has anti-bullying laws covering K – 12 schools (including prohibitions on cyber-bullying)

• Many states, including Rhode Island, W. Virginia and Washington have introduced some version of the model “Healthy Workplace” Bill

• CA has new “abusive conduct prevention” training requirement

• But NO state has a law prohibiting workplace bullying and no federal law
Abusive Conduct: Example of California Law

- Conduct of an employer or employee in the workplace:
- With malice;
- That a reasonable person would find hostile, offensive; and
- Unrelated to an employer’s legitimate business interests.

“Intentional Infliction of Emotional Distress”

- CA Legal Definition: “Conduct that shocks the conscience of a civilized and decent society.”
- WA State: The “Tort of Outrage”!
- Goes to how we communicate poor performance, not “why”...
- EXAMPLE: The Story of Debbie Agis, Howard Johnson’s Restaurants, and the well-intentioned but frustrated manager...
Rethinking “Hell’s Kitchen” and “Workplace Darwinism”

- We make stereotypical assumptions about certain work environments:
  - The “Construction Site” Theory
  - “If you can’t stand the heat, don’t come in this kitchen!”
  - “Survival of the Fittest” (workplace Darwinism) is neither smart nor valid as a workplace leadership principle

Troubled v. Troubling

- **Troubled** – internalized stressors and resulting low-level behaviors, often showing up in basic performance or changes in workplace socialization

- **Troubling** – escalated, externalized behaviors disrupting the workplace, raising levels of concern among peers
Fearful, Frustrated, Predatory

- Levels of Control
  - Fearful - afraid of you taking control from them
  - Frustrated - out of control
  - Predatory (bully) - wants to take control from you

Workplace Violence Red Flags - Depression

- Depressed Mood
- Anhedonia
- Weight Changes
- Insomnia
- Psychomotor Agitation/Retardation
- Anergia
- Worthlessness
- Decreased Concentration
- Recurrent thoughts of death
- Hopelessness
- Self-esteem impacted
Workplace Violence Red Flags - Cognitions

- Obsession with weapons
- Obsessive involvement w/ job
- Unwanted romantic interest in co-worker
- Low Frustration Tolerance
- Holds a grudge
- Interest in recently publicized violent events
- Un-accepting of criticism
- Perceived Unjust Treatment; “injustice collector”
- Paranoid

Workplace Violence Red Flags - Behavior

- History of violent behavior
- Direct or veiled threats
- Carrying concealed weapon
- Impulsive
- Loner
- Any extreme changes in behavior, labile
- Intimidation
- Tests limits of accepted behavior
Workplace and Personal Factors That Can Escalate Potential For Violence

- Toxic supervisor (bullying)
- Stress in workplace such as layoffs, downsizing
- External factors including family problems, financial concerns, relationship difficulties
- Medical considerations including struggles with depression, physical or emotional impairments; serious family illness
- Substance abuse
  - Focus is on work and personal environment that might be triggering or exacerbating of depression, behavior or cognition

Risk Inhibitors – Mitigation Factors

- Fear of Negative Consequences
- Education Level/Transferable Job Skills
- Friends and Organizational Relationships
- Intact Family Structure
- Religious Beliefs/Faith
- Severance Benefits/Ongoing Counseling
Do you See/Hear About these Behaviors?
Summary of Level One Concerns

- Verbally abusive, now expresses themselves through excessive profanity
- Consistently argumentative, uncooperative with co-workers and supervisors
- Voicing consistently negative attitudes toward policies and procedures
- Expresses suicidal thoughts
- Frequently display signs of anger – barely “holding it together”
- Inappropriate reasoning, impaired judgment
- DRAMATIC AND SUSTAINED CHANGE IN JOB PERFORMANCE

See/Hear: Watch Out for this Conduct (Serious Level Two Concerns)

- Makes threats: expresses desire/wish for harm to others
- Insubordinate – openly disobeys policies
- Vandalizes or misappropriates property, including data
- Engages in drawing battle lines, “me against them,” openly expresses hatred for identified co-workers/mgrs
- Escalates beyond suicidal ideation to known gesture or rumor of attempt
- Can’t control anger – now acts it out (slamming doors, punching walls, instigating fights)
Level Three Acts of Violence

• Physical fights
• Destruction of property
• Utilization of weapons to harm others
• Attempts/commits suicide
• Murder, rape, arson

Special Considerations: Domestic Violence

• **Domestic violence**: The use of physical, sexual or emotional abuse or threats to control another person who is a current or former husband, wife or other intimate partner, such as boyfriend or girlfriend.
A National Tragedy

Victims and perpetrators

- 1 out of 3 women report physical abuse by an intimate partner
- Majority of adult domestic victims are women
- Most perpetrators are men

Alarming statistics

- Over 1,400 women are murdered every year by an intimate partner
- One million women per year are victims of non-lethal domestic violence, such as physical and sexual assaults

Work-related homicides by gender of decedent and assailant type, 2014*

Robbers were the most common type of work-related homicide assailant for men and the second-most common for women. The most frequent type of assailant in work-related homicides involving women was a relative or domestic partner.

Victim Warning Signs

Warning signs indicating a potential victim:

- Excessive calls/visits/contacts from current/former partner
- Reluctance to respond to contacts
- Irrational/unfounded fear of losing job
- Inability to travel for work
- Seasonally inappropriate clothing
- Wearing sunglasses indoors
- Overachiever

Risk Factors – Escalation Potential

- Recent break-up
- Prior physical violence
- Threats to harm
- Substance abuse
- Unemployed
- Stalking
- Jealousy/possessiveness
Managing Domestic Violence Cases

- Recognize domestic violence as a workplace issue
- Respond with understanding and compassion within the context of the workplace
- Refer to professionals who can assist the victim
- Employer’s obligations
  - primary: workplace community
  - secondary: victim
- Employer’s goal
  - eliminate the threat

Disability Law and Practical Ramifications for Threat Management

Focus on “Essential Functions” and the “Unstated” Obligations of All Employees
- The “Reasonable Accommodation” obligation, and what that means for the “troubled” employee
- “Interactive dialogue” requirements

Practical Considerations in Threat Management
- “Fitness for duty” vs. “dangerousness assessment” (expert analysis of known behaviors)
- Disability-induced misconduct: the Gambini v. Total Renal Care question, the Wills answer, the EEOC’s position, and application to management of threatening behavior
The “Concern” Equation

WARNING SIGNS + WORKPLACE/PERSOMAL FACTORS = CONCERN...
AND THE NEED FOR COMPASSIONATE LEADERSHIP

See/Here/Care – Now SHARE!
Level One Behaviors

Level One Behaviors (warning signs of the troubled – not troubling – employee):

a. SUPERVISING ATTORNEYS/STAFF MANAGERS MUST ALWAYS REPORT THE CONCERN TO OFFICE ADMINISTRATOR/HR

b. If you are comfortable, and it is a low level behavior, manager may engage/intervene

c. BUT manager must report immediately to human resource after they engage
SHARE It! Level Two Behaviors

Level Two Behaviors ("troubling" employee):
  a. Unless you are in fear of immediate harm to you or others immediately inform Human Resources and/or Team Leader
  b. If you are in fear of immediate harm to self or others, and cannot safely or quickly call security, then call 911.

SHARE It! Level Three Response Options

• Consider immediate mobilization of entire team, including EAP; mandatory for aggravated level three incidents
• First priority – avoid physical harm to persons
• Emergency response calls/911
• Security notification at site level
• Evacuation procedures to be pre-determined and communicated (policy/procedures)...?
• Emergency medical care considerations
• Confirmation of personnel on-site, determination of safety of individual associates
• Post-trauma response
What You Might Be Asked For: Preliminary Risk Assessment Information

- The Presenting Concern – Level 1 or 2 behaviors?
- Any known history of past threats or violent behavior, including domestic violence
- Past and current performance concerns, recent warnings
- Living situation – alone, with family, dependents
- Military or law enforcement background
- Known history of mental or emotional disabilities
- Known or suspected drug or alcohol abuse, prescribed medications
- Current financial or familial stressors (including health or care issues)
- Workplace socialization habits
- Gun ownership, references to weapons

What Might Be Asked For: Preliminary Risk Assessment Information (cont’d)

- Instances of impaired reasoning
- Blaming others for problems in workplace
- History of discriminatory harassment, slurs about co-workers
- Social Media posts indicating hatred, depression, isolation, threat
- Non-normative behaviors generally
- Obsessive focus on co-worker/simple obsessional behaviors
- Age (if known)
- Level of Education
- Elements of fearful, frustrated, predatory profiles
- Suicidal ideation or attempt (current or historic)
Concerns Related to Threat Investigations

- Reconsideration of order of interviews for purposes of safety and witness/data integrity
- Identifying the Claimant for Investigation purposes?
- Coordination with law enforcement
- Interim Actions pending investigation

Ordering of Interviews

Exception In Violence Cases:
“Reordering” Interviews To Address Your Organization’s Safety Concerns And Responses
Claimant Considerations In Threat Investigations

• **ASK: DO YOU NEED TO IDENTIFY A CLAIMANT?**
  • Anonymous Claimant
  • Identification of Claimant and possible escalation/retaliation
  • “Troubled” employee investigations or inquiries, and absence of direct victim: Organization as “Claimant”

Coordination with Law Enforcement for Special Investigations

• **WHAT SHOULD YOU DO WHEN PERSONNEL ISSUE IS ALSO CRIMINAL IN NATURE?**
  • Coordination with law enforcement
  • Witness interview considerations, including tainting of evidence
The “Do’s” and “Do Not’s” of “Care” and Compassionate Leadership (1)

- **DO NOT** lower professional expectations and standards thinking that is kind/compassionate
- **DO** expect employees to meet organization’s performance standards of excellence
- **DO NOT** engage in “survival of the fittest” thinking
  - “Workplace Darwinism” does not foster the best performers, and can lead to perceived bullying
- **DO** be a leader in what you say and how you conduct yourself. Be honest.
- **DO NOT** foster discontent. Avoid undue cynicism and negativism.
- **DO** ensure that our associates have the resources to succeed
- **DO NOT** be an “unengaged bystander”: do not tolerate bullying. Put a stop to it.
- **DO** consider available resources, including EAP (coordinate with HR)

The “Do’s” and “Do Not’s” of “Care” and Compassionate Leadership (2)

- **DO NOT** conduct evaluations by phone or email; can correct emergencies, but **DO** meet with employees in person to discuss evaluation and sustained remedial actions
- **DO** use the “Fairness” (just cause) standards when communicating concerns over performance
- **DO NOT** indulge in expressing anger toward employee – you have the power, they do not
- **DO** put yourselves in their shoes; ask what you would want to know/how would you want to be treated
- **DO NOT** yell, scream or cuss – set example, don’t confuse having ability to get away with it w/leadership
- **DO** remember that with “great power comes great responsibility”
- **DO NOT** approach “discipline” of an employee as “punishment.” You’re not law enforcement. Discipline = behavioral correction.
- **DO** recognize when you need help – and get it
Pre-Termination Monitoring of Social Media: It’s all About “Concerted, Protected Activity”

- A post references “terms and conditions of employment,” as opposed to an individual gripe or customer concerns
- It is made “with or on the authority of other employees”
  - It involves common concerns of employees or seeks to induce action by other employees, and directed to an “audience” of other employees or seen by co-workers
- It is not delivered in “a manner reasonably calculated to harm the company’s reputation and reduce its income.”

NLRB Attacks Neutral Social Media Policies

- If there is any possibility that a policy prohibits protected activity, NLRB strikes it down:
  - “Maintain company’s image/No damaging statements about company”
  - “No statements that are disruptive”
  - “Not in the best interests of the company”
  - “No confidential information can be disclosed”
Concluding Thoughts: Zero Tolerance and Escalated Reality Checking

“I could kill someone . . . .”

• What do you mean?
• Who are you mad at?
• How would you do it?

Your opinion matters!
Please take a moment now to evaluate this session.
Thank you and have a safe day!

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