



"IN A NUTSHELL" SUMMARY OF PREVENTING VIOLENCE IN THE WORKPLACE: WHAT EMPLOYERS NEED TO KNOW

No business can completely prevent or eradicate violence in the workplace, but with proper planning by management and the institution of effective policies, the chances of violence in the workplace occurring in a business can be dramatically reduced. This article is from many years ago, but still very relevant.

At a Kane County Bar Association Labor and Employment Law Committee Meeting, Dick Wessels suggested that the Committee invite local law enforcement to address the Committee members on the subject of the role of the police in workplace violence. Therefore, the Geneva Police Department Chief of Police addressed the Committee on November 22, 2002.

In preparation for the presentation by the police, Dick put together a survey on the issue of potential workplace violence. He constructed his survey by first creating a fictional (but commonly found) fact pattern on potential workplace violence. Here is that fact pattern:

You are the Human Resource Manager for Quality Manufacturing Company. There are 125 employees in your manufacturing plant. It is a new facility located in a recently developed industrial park. This is a campus type facility with no special security provisions. Indeed, the Company has neither security guards nor fencing, and there is open access to the facility.

Sally, your 28-year-old Quality Control Assistant Manager, has just broken off a relationship with her boyfriend. Sally is an excellent employee. You are well aware that this has been an emotional experience for her. In the past two days, there have been a number of incoming calls for her, which you assume have been from the ex-boyfriend. You do not have a particular policy on phone calls, and you have pretty much stayed out of it, although it is clear that Sally has come under severe emotional strain.

Your Receptionist/Switchboard Operator, on her own this morning, began an attempt to cut off these calls from the ex-boyfriend. The ex-boyfriend in the past 30 minutes exploded over the phone and said words to the effect of: "Bitch, put me through! I know where you live!" Now, both the Receptionist and Sally come to your office. Sally indicates that she just concluded a conversation with the ex-boyfriend who made statements along the lines that he would see to it that she never dated anyone else again.

You know little about the ex-boyfriend other than the fact that he is an outside salesman and an avid hunter. What do you do?

Dick sent the above fictional fact pattern to all the attorneys in Wessels Sherman offices, as well as to experienced Human Resource professionals and consultants, workplace violence specialists, et al. Sixteen responses came back. Dick selected 16 “recommended actions” and tabulated how many individuals suggested any particular recommended action. Below is the summary table:

ANALYSIS OF RESPONSES TO POTENTIAL WORKPLACE VIOLENCE SCENARIO

RECOMMENDED ACTION BY RESPONDENT	NUMBER OF RESPONDENTS MENTIONING THIS RECOMMENDED ACTION
Call local police.	16
Institute better security procedures.	11
Develop protocol for handling future calls.	10
Hire private security company.	10
Restraining order obtained by Sally.	9
Meeting with Sally and Receptionist to discuss the matter, gather more facts, and evaluate the situation.	8
Other self-help procedures such as issuing cell phones, recording incoming calls, escorting employees to their cars, etc.	7
Restraining order obtained by Company.	5
Put Sally on a leave of absence.	5
Contact other law enforcement agencies such as States Attorney.	3
Employee Assistance Program (EAP) involvement for Sally.	3
Focus on boyfriend with such things as background check, etc.	2
Comments about OSHA safe workplace requirements.	1
Comments about danger of invasion of privacy issues.	1
Comments about potential negligence liability for failure to act.	1
Comments about potential defamation liability.	1

All 16 suggested calling the local police. Only 2 of the respondents suggested focusing on the potentially violent ex-boyfriend with such things as a background check, etc. The Chief of Police stressed that this is one of the very first things the police would do – that is to run a background check on the ex-boyfriend (to see if he has a criminal history, and, if so, what kind of criminal history). That would give them a lot of information as to how immediate a threat he might be.

Committee members were struck by how eager the police are to assist a company in times of potential workplace violence. The police, upon being contacted by a company and told about a serious potential workplace violence incident, will immediately come to the company, and will, at the same time, have others running an immediate background check on the perpetrator.

If a person such as Sally (in our fact pattern) is being threatened, the police will often escort that person to her vehicle. The police will possibly park a squad car in the company parking lot. Sometimes, the police will escort the person right to their home or another location.

COMPANY POLICIES: One of the important parts of a prevention program is to have an effective 1) Workplace Violence Policy, and 2) Workplace Search Policy in your Employee Handbook. The following are sample policies to consider:

1) WORKPLACE VIOLENCE PREVENTION POLICY

The Company is concerned about the increased violence in society, which has also filtered into many workplaces throughout the United States. The Company has taken steps to help prevent incidents of violence from occurring at the Company.

It is the policy of the Company to expressly prohibit any acts or threats of violence by a Company employee or former employee against any other employee in or about the Company's facilities or elsewhere at any time. The Company will not condone any acts or threats of violence against the Company's employees, customers, or visitors on the Company's premises at any time or while they are engaged in business with or on behalf of the Company, on or off the Company's premises.

In keeping with the spirit and intent of this policy, and to ensure that the Company's objectives in this regard are attained, it is the commitment of the Company:

1. *To provide a safe and healthful work environment, in accordance with the Company's safety and health policy.*
2. *To take prompt remedial action up to and including immediate termination, against any employee who engages in any threatening or intimidating behavior or acts of violence or who uses any obscene, abusive, or threatening gestures or language, including e-mail, graffiti, etc.*
3. *To take appropriate action when dealing with customers, former employees, or visitors to the Company's facilities who engage in such behavior. Such action may include notifying the police or other law enforcement personnel and prosecuting violators of this policy to the maximum extent of the law.*
4. *To prohibit employees, former employees, customers, and visitors from bringing unauthorized firearms or other weapons of any kind onto the Company's premises.*
5. *To establish viable security measures to ensure that the Company's facilities are safe and secure to the extent practicable and possible and to properly handle access to company facilities by the public, off-duty employees, and former employees.*

Any employee who displays a tendency to engage in violent, abusive, or threatening behavior, or who otherwise engages in behavior that the Company, in its sole discretion, deems offensive, dangerous, or inappropriate will be subject to disciplinary action, up to and including discharge.

***EMPLOYEES' DUTY TO WARN:** In furtherance of this policy, employees have a "duty to warn" their supervisors, security personnel, or human resources representatives of any suspicious workplace activity or situations or incidents that they observe or that they are aware of that involve other employees, former employees, customers, or visitors and that appear problematic. This includes, for example, threats or acts of violence, aggressive behavior, offensive acts, threatening or offensive comments or remarks, and the like. Employee reports made pursuant to this policy will be held in confidence to the extent possible in view of the Company's obligation to investigate the report. The Company will not condone any form of retaliation against any employee for making a report under this policy.*

*[*Larger companies who wish to be more proactive may want to include the following statement: The Company has also established a telephone "hotline" that employees may use to call in anonymous reports if they desire. The hotline number to call is posted conspicuously in all company facilities.*]*

Nothing stated in this policy is intended to interfere with an employee's rights to engage in lawful protected concerted activities under the National Labor Relations Act.

You will note that we include a "duty to warn." This is because the police stressed that most workplace violence incidents could have been prevented if the employees in the workplace had taken action on rumors that a certain individual has thoughts of violence, ideas of violence, or had been making threats of violence. Sadly, employees often ignore these vague rumors and don't report them to management. However, management and all employees should be instructed that there is an urgent duty to report (because prevention is so important in this area).

Frequently, there are clear warning signs! Employees should be encouraged that, even where the warning signs are vague or that things are just at the "rumor stage," this kind of information should still be immediately reported to management.

Without training, most employees feel that bringing odd behavior to the attention of the company constitutes a form of "tattle-tailing" on their co-workers. Not until effective training is instituted do the employees start to realize that reporting such potentially violent conduct is in the best interest of all, including the offender. Only if management is aware can they take appropriate steps.

2) WORKPLACE SEARCH POLICY

To 1) protect and secure the property of our employees, our customers, and the Company, and 2) help prevent the possession, sale, and use of illegal drugs on the Company premises (in support of the Company's drug-free workplace policy). The Company establishes the right to question employees (and all other persons entering and leaving our premises), and to inspect any property whether locked or unlocked including packages, parcels, purses, handbags, briefcases, lunchboxes, electronic equipment or any other possessions or articles carried to and from the Company premises.

In addition, the Company reserves the right to search any employee's office, desk, files, locker, cell phone, computer, laptop computer, or any other area or article on our premises, including personal or company vehicles, whether or not such property is locked or unlocked and whether or not the lock is company owned or employee owned. In this connection, it should be noted that all offices, desks, files, lockers, and so forth, whether locked or unlocked, are the property of the Company and are issued for the use of employees only during their employment with the Company.

Searches and inspections may be conducted at any time at the discretion of the Company.

To this end, the Company has posted notices in our facilities informing all employees, prospective employees, customers, visitors, and all other individuals of the Company's workplace search policy.

Individuals entering the premises of the Company who refuse to cooperate in an inspection or search conducted under this policy will not be permitted to enter the premises of the Company. Employees who refuse to cooperate in an inspection or search, as well as employees who after the inspection or search are believed to be in possession of stolen property or illegal drugs, will be sent immediately to the Human Resources Department and be subjected to disciplinary action up to and including discharge (if, on investigation, they are found to be in violation of the Company's security procedures or any other Company rules and regulations).

Employees should not have an expectation of privacy as to any property or articles on Company premises, including computers, cell phones, electronic equipment, etc.

All who attended this presentation were struck by how the police intend to partner with employers in what has become a national crisis of workplace violence. There is no question that the very first thing a business should do (upon learning of a potential threat of workplace violence) is to call the local police.

Hiring private security companies, instituting better security procedures, developing a protocol for handling threatening phone calls, improving workplace security, etc. are all steps that companies must certainly consider in these increasingly violent times.

Employees not only seek a safe work environment, but several states also mandate it. Labor and employment lawyers recognize that management may be exposing their companies to potentially costly litigation if there is no workplace violence prevention program and effective policies. There may be enormous costs associated with incidents involving workplace violence. There simply is no persuasive reason for a business, large or small, not to have a workplace violence prevention program in place. It protects the employees and management, avoids costly litigation, improves the bottom line, and preserves the company's reputation.

*Keep in mind – this is not a legal analysis – only a general summary.
Slight changes in facts can dramatically change the advice.
Specific situations need to be discussed completely with an attorney.*