THE ELEMENTS OF AN EFFECTIVE WORKPLACE VIOLENCE PREVENTION & INTERVENTION PROGRAM

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Todays Training Objectives
Upon Completion of Todays Training Participants Will Be Familiar With:

• The Definition of Workplace Violence
• The Scope & Objectives of a Formal WPV Prevention & Intervention Program
• How to Plan, Implement, and Manage a WPV Prevention & Intervention Program
• The Key Elements an Effective Program with an Emphasis on
  • The Legal Aspects Related to Planning, Implementing, and Managing a Formal Program
  • The Importance of Knowing When to Engage Outside Experts When Assessing Behavior Threats
  • The Incident Management Process
• What Additional Resources Are Available To Assist With Implementing a Program and Where to Find Them

What Should an Employer Do?
Following the news of recent mass shootings, an employee has expressed his fear of working in a department with lots of people, and has asked to transfer to a smaller department and for the Company to hire armed security and use metal detectors at the entrances. How do you respond?

A. Terminate the employee as the result of his failure to accept the team approach fostered at the Company.
B. Deny the employee’s request for transfer or other security measures and tell employee if he doesn’t like it he can quit.
C. Transfer the employee and hire armed security and buy metal detectors.
D. Meet with the employee to discuss concerns, determine whether there are medical issues that may require accommodation, consider possible safety enhancements and employee meetings to discuss safety issues.
Defining the Reach of Prevention & Intervention Efforts

- Defining Workplace Violence

So What is Workplace Violence

- OSHA defines workplace violence to be:
  - "any act or threat of physical violence, harassment, intimidation or other threatening disruptive behavior that occurs at the work site."

- Examples of what it includes:
  - Beatings
  - Shootings
  - Rapes
  - Suicides (including attempted suicide)
  - Psychological traumas
  - Threats or Obscene Phone Calls
  - Intimidation
  - Harassment

OSHA Requirements

- WHAT DOES OSHA REQUIRE?
  - Neither Federal OSHA nor individual State OSHAs have official workplace violence regulations.
  - Cal-Osha currently has proposed regulations for health care facilities (due July 1, 2016)
  - APPLIES GENERAL DUTY CLAUSE Sec. 5(a)(1)
  - Employers have a duty to provide employees with a place of employment that is “free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees.”
OSHA Targeting Certain Industries

- Health Care and Social Services
  - Psychiatric facilities, pharmacies, social workers
  - Biggest focus as in 2013 more than 70% of reported workplace violence occurred in this area
  - 4x more common than in private industry

- Retail/Dollar Stores/Late Night Establishments
- Entertainment
- Taxicabs/Uber
  - High crime areas
  - Valuable items or cash on premises
  - Late nights or early mornings
  - Poor lighting, visibility, design
  - Working alone

Other Potential Legal Claims Associated with Workplace Violence

- Constructive Discharge/Wrongful Termination
- By Injured Employees
  - OSHA
  - Workers' Compensation
  - Anti-discrimination laws (harassment/bullying)
  - Title VII, ADEA, ADA, state and local laws
  - Negligent Hiring/Retention/Supervision
  - Intentional Infliction of Emotional Distress
- By Employee Inflicting Injury (allegedly)
  - Defamation laws
  - Invasion of Privacy Claims

Establishing Multidisciplinary Involvement
Effective Workplace Violence Prevention & Intervention Efforts Require A Clear “Top –Down” Commitment To Ensure:

- The Right Resources Are Allocated to Develop a Program
- To Effectively Carry Out Incident Management
- To Secure Training, Outside Consulting, Physical Security Measures, and Other Essential Items

Establishing Multidisciplinary Involvement
Top Management Support

Establishing Multidisciplinary Involvement
Other Key Stakeholders & Participants

Planning a WPV Prevention & Intervention Program
Begin With a Needs Assessment

- Know Your Existing Threats/Risks
- Assess Their Likelihood
- Understand Their Potential Impact
- Know Your Vulnerabilities
- Evaluate Your Current Prevention & Intervention Practices
- Evaluate Your Physical Security

Elements of a Formal WPV Prevention & Intervention Program

1. A Workplace Violence Prevention Policy
2. The Interdisciplinary Threat Assessment Team
   a. A Team Environment and the Use of External Experts
3. An Incident Management Process
4. Protocols to Address Emergencies and Incidents That Generate Heightened Concerns
5. Employee Awareness & Education Training
6. Specific Strategies for High-Risk Workplaces
7. Centralized Recordkeeping
8. A Process for Continuous Program Review and Improvement

What Should an Employer Do?

An employee who is an avid hunter and Second Amendment enthusiast asks to be allowed to possess a gun while at work, consistent with his concealed carry license. How do you respond?

A. Tell employee he can carry a gun at work if he wishes, but he should keep it concealed and should not tell other employees about it.
B. Tell employee he can keep the gun in his parked and locked vehicle, but cannot bring it into work.
C. Tell employee he cannot have a gun anywhere on the employer’s premises, including in the parking lot.
D. After ensuring the Company's weapons policy is consistent with applicable law, meet with employee to discuss concerns, employer's safety procedures and his obligation to comply with its weapons policy.
Planning The Program
A Workplace Violence Prevention

Contents of the Policy
- Commitment to providing a safe workplace.
- Clearly defines unacceptable behavior
  - E.g., "prohibits all violence, threats and behavior that reasonably could be interpreted as an intent to cause physical harm, either on-site or off-site during work-related activities."

- Regulate or prohibit weapons on-site or during work-related activities.
  - consistent with applicable state laws
- Policy which clearly communicates ZERO TOLERANCE for workplace Violence.
- Should be communicated at time of hire and during the course of employment
- Emphasized in ongoing training during employment
Contents of Policy (cont’d)

- Require prompt reporting of violations or concerns under the policy.
- Provide multiple mechanisms for reporting concerns. (i.e., manager, human resources representative, security personnel, members of the Threat Management Team, hotline)
- Assure employees reports taken seriously and investigated promptly.
- Include Non-retaliation language for good faith reports.
- Establish disciplinary procedures for policy violations (i.e., subject to disciplinary actions as appropriate, up to and including termination)

Request Report of Protective or Restraining Orders listing the workplace as a protected area.

Other Policies to Support Workplace Violence Prevention and Intervention

- Anti-Harassment/Anti-discrimination
- Substance Abuse Policy
- Standards of Work Conduct
- Code of Business Conduct/Ethics Policy
- Electronic Communications Policy
- Computer Use Policy
- Weapons in the Workplace
- Workplace Inspections

Planning the Program

Interdisciplinary Threat Management Team

A cross-functional team comprised of organizational members who possess the requisite:

- Training
- Experience
- Judgment
- Authority
- Temperament, and:
- Credibility

To:

- Respond to violent incidents or;
- Reports of troubling behavior, and;
- Manage incidents within a defined process
Threat Management Teams should be accompanied by the identification of qualified external resources that can be called upon as needed to assist with incident management, where the organization lacks the expertise in-house.

Planning the Program
Interdisciplinary Threat Management Team

The Use Of Subject Matter Experts

Know When To Go

- “When in doubt, refer out.”
- Best predictor of future violence?

Consultation with the Threat Management Team

- Informal in nature
- Based on pre-existing relationship
- Finding a consultant
  - EAP
  - Department of Safety & Professional Services
  - Psychological Associations
  - Psychiatric Associations

The Use Of Subject Matter Experts

Violence Risk Assessment

- Specialty area or part of a general skill set
- Harm to self/Harm to others
- Risk Factors
  - Premeditated Intent
  - Acute stress or triggering event
  - Compromised mental status
  - Poor coping ability
  - Dysfunctional family dynamics
  - Limited or no community involvement
  - Negative or no peer group involvement
  - Abnormal interests
  - Access to deadly weapons
The Use Of Subject Matter Experts

Mental Health Treatment Aspects and Options

- Levels of care
- Immediate versus delayed
- Psychotherapy and medication
- Confidentiality versus Duty to Warn
- Obtaining Authorization to Release Information

What Should an Employer Do?

- A cashier at a convenience store sees two customers who are about to shoplift Red Bulls and Mentos. What should he do?
  A. Physically apprehend the customers
  B. Advise the customers that if they do not drop the items, he will call the cops.
  C. Use a weapon to perform a citizen’s arrest.
  D. Inconspicuously contact security/911 and keep a low profile.

Planning the Program

Incident Management Process

A pre-determined general process by which the Threat Management Team will:

- Investigate
- Manage, and
- Resolve reports made under your organizations WPV policy.

The process may address:

- Who will receive reports
- Who will conduct data gathering
- Initial response steps
- Situations where additional investigatory steps may need to be taken
- Situations which may require engaging outside experts
- Options for resolution
- Documentation requirements
Planning the Program

Incident Management Process

The Incident Management Process should:

- Include protocols for addressing incidents and reports that generate;

  - An Immediate Emergency

  - Or Heightened Concern for Impending Violence

What Should an Employer Do?

- A hospital nurse approaches you and says that she is scared of a patient and does not want to treat him. The patient has had other outbursts and a number of nurses are afraid of him. What should you do?

  A. Refuse to treat the patient.
  B. Advise the nurse that her job requires her to treat all patients and that she will be disciplined if she refuses to do so.
  C. Assign another nurse who has not complained to treat the patient.
  D. Review all the circumstances of the situation, including discussing concerns with the patient and possibly his family, and also have security present during treatment.

Planning the Program

Training

Threat Management Team Trained On:

- Basic Facts About WPV
- The Policy
- Identifying Behaviors of Concern
- Emergency Response

Supervisors Trained On:

- Identifying Behaviors of Concern
- Escalating the Report of an Incident

Employees-at-large:

- The WPV Prevention & Intervention Program
- The Organizations Commitment to the Program
- Their Duty to Report Observed Behaviors of Concern
- The Reporting Procedures
- EAP Services
Specific Strategies for High-Risk Workplaces

In developing and implementing their workplace violence program, consider policies and training to address the particular risk of violence faced by employees.

Examples of High-Risk Workplaces:
- Health Care Facilities
- Taxi Services
- All-night Retail
- Banks

Available Consultative Resources:
- OSHA
- NIOSH

Centralized Record Keeping

The Program Should Include a System of Centralized Record Keeping To:
- Ensure All Reports Are Recorded & Tracked
- Provides a Historic Record of Events
- Assists With Identifying High-Risk Areas
- Aides Continuous Improvement Efforts

Additional Program Strategies & Protocols

Organizations should broadly evaluate the benefit of adopting additional security, employment, or management practices that can advance the goal of violence prevention. Examples:
- Enhanced Physical Security Measures
  - CCTV
  - Access Controls
- Pre-Employment Screening Processes
  - Adequate Background Checks
  - Pre-employment and Reasonable Suspicion Drug Screening
- Ethics/Integrity Programs
- Conflict Resolution Processes
- EAP
Implementing the Program

- Designate a Group to Design and Implement the Program
- Design the Program & a Plan to Implement
- Develop Essential Incident Management Elements
- Develop & Disseminate the Policy
- Conduct Training Throughout the Organization
- Implement Additional Strategies & Protocols as Required
- Monitor & Evaluate

Threat Response & Incident Management

Warning Signs and Their Significance to Incident Management

Be Alert For & Encourage the Reporting of:
- A history of past violence
- Threats of any kind
- Verbal Abuse
- Harboring Grudges
- The Injustice Collector
- Obsessive Intrusion Upon Others
- Persistent Unwanted Romantic Pursuit
- Erratic, Impulsive or Bizarre Behaviors
- Homicidal Thoughts or Ideas
- Suicidal Thoughts or Ideas
- High Degree of Emotional Stress
- Preoccupation with Violent Themes
- Any Behaviors that Instill Fear or Generate Concern

An Overview of the Incident Management Process
The Incident Response Process
Step 1 – Initial Notification of Incident

As an essential prevention and intervention tool, an organization should adopt practices designed to maximize the reporting of conduct or circumstances that raise a concern for possible violence, so that the organization can take appropriate action.

“See Something, Say Something”
- Be alert for both internal and external notifications of incidents of concern
  - Anonymous Messages
  - Concerned Family Members
  - Employees
  - Contractors
- Make sure that all employees know what to do with that information
  - Who should get it
  - And how fast

The Incident Management Process
Step 2 – Initial Data Gathering

The Objectives of Initial Data Gathering Are:
- Preliminary Fact-Gathering
  - Who, What, Where, When, Why, and How
- Conduct a Rapid “Risk Screening”
- Determine the General Urgency of the Situation
- Identify the Appropriate Initial Actions to Take
The Incident Management Process

Non-Urgent or Non-Emergency Situations

This Process Should Include:

- Initial Data Gathering
- Preliminary Violence Risk Screening
- Develop Initial Action Plans Based On Known Info at The Time
- Gather Additional Information and Re-Evaluate
- Develop Response Recommendations and Assist with Implementation
- Perform Continued Monitoring and Follow Up
- Debrief Following Resolution

Urgent or Emergency Situations

When a Reported Situation Involves an Immediate Threat to Physical Safety

This Process Must Include:

- An Immediate Call To Local LE & EMS
- And Activation of The Organizations Emergency Response Plans

Once the Situation Has Been Brought Under Control

- Engage in the Non-Urgent or Non-Emergency Incident Management As Previously Discussed

Step 3 – Initial Actions by Threat Management Team

- Further Data Collection
- Further Risk Level Screening
- Conferring With Other Members of The T.M.T.
- Professional Risk Assessment Consultation
The Incident Management Process
Step 4 – Additional Actions by Threat Management Team
- Continued Data Gathering
- Security Measures Enhancement/ Law Enforcement
- Background Investigations
- Professional Risk Assessment
- Defusing & Treatment Interventions
- Legal Guidance & Actions
- Employment Status Actions
- Workgroup and Victim Interventions

Use of Background Investigations
- Legal Compliance – Fair Credit Reporting Act (FCRA) and Fair and Accurate Credit Transaction Act (FACTA)
  - FACTA Exception: Not a FCRA covered consumer report if:
    - made in connection with an investigation that concerns 1) suspected misconduct related to employment; 2) compliance with federal, state or local laws; or 3) any preexisting written policies of the employer
    - NOT made for the purposes of investigating creditworthiness, credit standing or credit capacity
    - Provided only to employer, government agency or person required by law.
  - FACTA Obligations: Only after taking adverse action, employer must provide a summary of the nature and substance of the communication upon which the adverse action is based. Do not need to provide a copy of the report.

The Incident Management Process
Step 5 – Safe Resolution
- Ensure Appropriate Record Keeping
- When the organization permits the person of concern to continue in his or her employment following an incident, it should instruct relevant managers and supervisors to:
  - Enforce Standards of Appropriate Workplace Behavior;
  - Closely Monitor the Workplace Conduct of the Employee in Question;
  - Immediately Report any Future Concerns to the Threat Management Team.
- Relevant management should remain alert to any new information indicating a need for additional action, either with respect to the specific situation at issue or the workplace in general.
- Conduct a Careful Review of the Incident in Question
Importance of Legal Oversight during Incident Management

- Involve legal counsel early in the process
- In-house counsel or an outside law firm
- Potential for Privileged Communication
- Common Legal Issues
  - Right to Privacy
  - Compliance with established policies and legal obligations
  - Disability Discrimination
  - Other Anti-Discrimination laws
  - Due Process
  - FCRA (state law equivalents)
  - Evidence Preservation/Litigation Holds
  - Collective Bargaining Agreements

Importance of Legal Oversight during Incident Management (cont’d)

- Review and recommend appropriate discipline or other remedial actions, up to and including termination.
- Separation Package or Release Forms
- Language for future communications
  - Internal communications
  - Future Employment Verifications
  - Assess potential legal risks or liabilities
  - Need for Restraining orders/cease & desist letters or other legal process
  - Notification of law enforcement
  - Record Retention

Incident Management Scenario