

LABOR & EMPLOYMENT UPDATE



**WILLARD KRASNOW,
PARTNER**

Will's practice focuses in the areas of immigration, labor and employment law including matters related to Fair Employment Practices, Wage and Hour Law, Occupational Safety and Health and Labor-Management Relations.

VIOLENCE OR THE THREAT OF VIOLENCE IN THE WORKPLACE: AN EMPLOYER RESPONSE

The threat and reality of workplace violence once again are illustrated by a horrific incident of employee violence. On August 3, 2010, an employee of a beer distribution company, who was scheduled to meet with the Company and his Union about matters that could have affected his continued employment, went on a shooting spree at the workplace. The employee killed eight people and injured others and then shot and killed himself.

Workplace violence is not rare. From 2004 - 2008, an average of 564 work-related homicides occurred each year in the U.S. In 2008, there were 421 fatal workplace shootings. Co-workers and former co-workers were the shooters in 12% of all shootings. Twenty-four percent of the fatal shootings occurred in retail stores.

While workplace violence cannot be eliminated, employers should develop a comprehensive program to prevent and to detect risks of violence and to be better prepared to respond to an act of violence. There also are legal issues to consider.

In summary form, these issues will be addressed.

VIOLENCE PREVENTION STRATEGIES

Some or all of the following violence prevention strategies should be considered:

- Consider conducting background checks consistent with state and federal law.
- Train supervisors to be aware of common risk factors for violent employees.
- Develop an EAP and refer these employees to the EAP for professional intervention.
- Develop written programs for job safety and security which disseminate and enforce a clear policy of zero tolerance for workplace violence, threats and related actions and encourage employees to report incidents of workplace threats or violence.
- Conduct a worksite analysis by a threat assessment/violence prevention team.
- Conduct periodic security reviews and provide workplace security devices, such as alarm and other security systems (e.g., panic buttons, noise devices or video cameras); proper lighting, secured entry systems and metal detectors.
- Provide training to security officers to deal with violent behavior.

- Establishing an employee hotline to report threats and acts of violence.
- Investigate promptly all reports of threats and acts of violence.

RESPOND TO AN ACT OF VIOLENCE

Prior to any incident, employers should create a crisis plan to respond to acts of violence. The following elements should be included in the crisis plan:

- Designation of the crisis team members.
- Designation of the crisis center.
- Establishment of a relationship with applicable law enforcement officials.
- Training of the crisis team regarding a variety of simulated incidents.
- Establishment of procedures to investigate the incident, including when to notify law enforcement officials and who makes that decision.

LEGAL ISSUES AND RISKS

Legal issues and risks for employers could arise in dealing with an employee, who has exhibited abnormal behavior in the workplace but has not committed an act of violence. The employee may seek or be entitled to a reasonable accommodation under state and federal disability laws or could claim discrimination under these laws if the employee believes that the employer

has taken adverse action because he or she has been regarded as a disabled individual. There also is potential liability of the employer to employees (whose remedies are likely under state workers' compensation laws) or to non-employees who can sue in court for injuries suffered.

Background checks and employee investigations also need to be conducted in accordance with state and federal laws and without violating any employee/applicant privacy rights.

On the other hand, an employee that commits an act of violence in the workplace may be disciplined by an employer without significant legal restrictions so long as the employer's actions are implemented in a non-discriminatory manner, and consistent with its customary practices and procedures and/or any collective bargaining agreement. The employee, of course, also is subject to arrest and conviction for the criminal behavior.

If you have any questions about these issues or any other labor and employment-related issues please do not hesitate to contact any members of the Labor & Employment Group.

Noble F. Allen, Partner
 David D. Barricelli, Partner
 William H. Champlin III, Partner
 Lori Rittman Clark, Partner
 Amy E. Drega, Associate
 Robert C. Hinton, Partner
 Timothy F. Holahan, Associate
 Richard L.E. Jocelyn, Partner
 Michael F. Kraemer, Partner
 Willard Krasnow, Partner
 Christina L. Lewis, Associate
 Meghan E. Siket, Associate
 Kevin E. Verge, Associate
 Richard D. Wayne, Partner
 Joseph D. Whelan, Partner

BOSTON, MASSACHUSETTS
 PROVIDENCE, RHODE ISLAND
 HARTFORD, CONNECTICUT
 CONCORD, NEW HAMPSHIRE