

# 5 Workplace Safety Tips to Protect Employees from Violent Co-Workers (While Complying with Employment Laws)

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According to the Occupational Safety & Health Administration (OSHA), homicide is the fourth-leading cause of fatal occupational injuries in the United States. This article gives employers practical advice aimed at keeping the workplace safe while complying with federal employment laws.

- **Have an employee handbook with workplace violence policies, including a zero tolerance policy.**

Employees should receive training on the policies, and in some instances, additional training through a workplace violence prevention program and personal safety training program. Be sure to encourage employees to report incidents at work. Investigate acts or threats of violence and harassment quickly. Take action quickly. Where the employer needs more time to investigate, suspend the employee with pay to avoid a claim of adverse action.

- **Enforce consequences of workplace violence violations consistently to avoid claims of pretext.**

Threatening workplace violence is a legitimate, non-discriminatory reason for firing an employee under Title VII. Employees who engage in such behavior cannot insulate themselves because they are members of a protected class or have engaged in protected activity.

- **Employees who are mentally ill and dangerous to co-workers, customers, or the general public are not protected by the Americans with Disabilities Act.**

Workplace safety is a legitimate business reason for terminating an employee who poses a direct threat to health or safety. See 42 U.S.C § 12113. Employers can make inquiries, or require medical examinations, where the employer reasonably believes that such inquiries are necessary to determine whether the employee is fit for duty and whether the employee poses a direct threat. See 29 C.F. R. §1630.14(c).

A 'direct threat' is a significant risk that cannot be eliminated or reduced through reasonable accommodation. *Id.*; 29 C.F.R. §1630.2. This requires an individualized assessment of a person's present ability to safely perform essential job functions. A conclusion that a person poses a direct threat "shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence." 29 C.F.R. §1630.2(r). The risk's duration, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm should all be considered under applicable regulations. 29 C.F.R. §1630.2(r) (1)-(4).

- **Refer a troubled employee to an Employee Assistance Program (EAP)—if the business has one.**

Where an employee has been suspended because of inappropriate conduct at work not warranting immediate discharge, consider linking reinstatement to meeting EAP goals, or to some kind of EAP report that indicates reinstatement is appropriate. Where an employee has not been suspended, but is believed to be potentially violent, some employers arrange for off-duty police or private investigator protection/involvement (this option can be expensive and any such approach should be handled with advice of counsel).

- **Review OSHA Guidelines**

OSHA has issued voluntary guidelines and recommendations for employers seeking to reduce the risk of workplace violence, but has not promulgated any mandatory standards. The guidelines, which are aimed at health care workers, have many practical suggestions, including training, investigations, and checklists of workplace safety features, like alarms, applicable across all industries.

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