

Managing Risk



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Safety

Winter 2014

Volume 24 • Number 1

Preventing Workplace Violence

On average, two Americans die due to violence in their workplace every work day. Some jobs are more likely to expose a worker to stranger-on-stranger violence—such as convenience store clerks, who might be injured in a robbery. But many Americans suffer violent attacks from a co-worker or former co-worker. In either instance, the employer could be liable for workers' compensation benefits to the victim (or his/her family).

OSHA recommends a “zero-tolerance policy towards workplace violence,” while the FBI says “employers should adopt clear no-threats and no-violence policies and prevention plans.” An employer should prevent the root causes of workplace violence by “creating an atmosphere of fairness, trust and cooperation between em-

ployees and management,” says the FBI’s National Center for the Analysis of Violent Crime.

Other recommendations include:

- ✱ Communicate anti-violence policies for employees
- ✱ Survey employees to get their ideas about the risk of violence and preventive measures
- ✱ Train employees to recognize the warning signs of violence
- ✱ Provide violence prevention training for managers, especially regarding downsizing and termination procedures
- ✱ Provide physically secure workplaces
- ✱ Adopt staffing policies that keep staff safe on the job

Risk Tip

In June 2013, the American Medical Association (AMA) officially classified obesity as a disease. In its statement, the AMA said obesity is “a disease requiring a range of medical interventions to advance...treatment and prevention.” The classification will also make it easier for physicians to obtain reimbursement from medical insurers for treating obesity and related conditions.

Proponents say “medicalizing” obesity will increase physician attention to the problem and remove its stigma. However, it could redirect resources currently devoted to wellness toward pharmaceuticals and surgery—both of which bring increased costs and complications.

Research proves that obesity often leads to complications and longer healing in injury cases. But

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- ✱ Cooperate with unions and other local businesses on employee safety
- ✱ Formulate action plans so managers and supervisors know what to do when violence occurs.

“There is not one absolute factor that predisposes an individual to workplace violence,” said Eugene A. Regale, supervisory special agent for the FBI’s National Center for the Analysis of Violent Crime. “Managers and employees should be familiar with each potential warning sign, but look at a totality of factors including the work environment, the employees’ home life and his or her behavior as a whole.”

Managers and employers should also beware of focusing too much on dysfunctional and violence-prone individuals, while not paying enough attention to the dysfunctional workplace, say Richard V. Denenberg and Mark Braverman, the authors of a book called *The Violence-Prone Workplace: A New Approach to Dealing with Hostile, Threatening, and Uncivil Behavior*. They identify failure to recognize and defuse conflicts as the primary causes of workplace violence.

“It is not enough to have an anti-violence policy on the wall and an employee manual on the shelf that purports to address the problem,” adds Larry Chavez, an expert on workplace violence and crisis communications. He recommends providing formal instruction for managers to recognize and eliminate organizational risk factors that have led to violence in other organizations. “They must also be instructed in defusing hostile employees so as to prevent an angry outburst from escalating into violence.”

Guns in the Workplace?

After nearly every mass shooting, a public figure suggests that fewer people would have been killed if someone else on site had been armed. Should employers allow or even encourage employees to carry arms as a way to deter violence?

Researchers with the Injury Prevention Research Center at the University of North Carolina, Chapel Hill compared data from workplaces where employers allowed employees to carry firearms to those where employers forbade guns. The workplaces that permitted guns were five times as likely to experience a homicide as those that pro-

the workers’ compensation system has usually regarded obesity as a co-morbid condition, or one that exists along with but independently of an occupational condition. The California Workers’ Compensation Institute responded to the AMA’s move by saying it could result in “an increasing number of claims that include obesity as a co-morbidity, as well as an increase in cases in which obesity is claimed as a compensable consequence of injury...”

Wellness programs can address obesity and its effects on both your medical and workers’ compensation claims costs. Please call us for information.

hibited all weapons. The study also found an increased risk of homicide, albeit lower than where guns were permitted, in workplaces that allowed types of weapons besides guns. (Source: “Employer Policies Toward Guns and the Risk of Homicide in the Workplace,” Loomis, Marshall and Ta, *American Journal of Public Health*, May 2005)

Every situation differs, and in some instances an armed bystander might prevent a tragedy from escalating. But having procedures for reporting, referring and, where necessary, disciplining employees who exhibit violent behaviors could more effectively prevent employee-on-employee violence. Your procedures should also include steps for dealing with behaviors that are not violent, but that could indicate a deteriorating “fitness for duty.” These include excessive absenteeism without approval or rationale, degenerating physical appearance or hygiene, poor work performance, evidence of alcohol/substance abuse, excessive complaining, insubordination, poor relationships with others in the workplace and expression of bizarre or inappropriate thoughts.

An employee assistance program (EAP) can help. With an EAP, supervisors who observe violent, threatening or suspicious behaviors in employees can refer them for confidential assessment and counseling. An EAP can also provide post-event counseling to help victims and bystanders cope with the emotional trauma caused by violent events.

For more information on preventing workplace violence, see OSHA’s Web site at www.osha.gov/SLTC/workplaceviolence/index.html or contact us for assistance. ■

Structured Settlements: Benefits for Employer and Employee

"Structured settlements have enjoyed widespread acceptance and have become an established part of our legal landscape over the past twenty-five years. More than \$6 billion is now paid each year to fund new structured settlements in the United States, and an estimated \$100 billion or more has been paid in the aggregate to fund structured settlements that are in force today."^{1*}

Successful claimants in tort injury cases and workers' compensation injury claimants typically receive their settlements as a lump sum. In a structured settlement, the victim and defendant agree to a schedule of periodic payments. This arrangement has benefits to both employees and employers.

The National Structured Settlements Trade Association, whose members help arrange financing for structured settlements, says, "Independent surveys show that the more serious the injury, the greater the likelihood that a structured settlement will be used."

Advantages for Employees

The Internal Revenue Code specifically excludes "damages received by an individual on account of personal injuries or sickness" from gross income.

Why would a claimant want periodic payments instead of a lump sum? Anyone receiving a sudden financial windfall can make unwise spending choices. A lottery winner might blow his winnings on cars and boats, but still return to work. In the case of a workers' compensation claimant, that lump sum



could represent the cash she needs to live on the rest of her life. A structured settlement ensures that the victim of an occupational accident or illness will have income for life.

The Periodic Payment Act of 1982 encourages structured settlements by specifically excluding compensation for tort or workers' compensation injuries and illnesses from gross income whether paid as lump sums or over time. It also generally excludes amounts an injury victim receives for agreeing to undertake an assignment when he/she uses

that money to buy an annuity. This allows an accident victim to receive the earnings on his/her settlement tax-free, with a properly structured settlement.

Advantages for Employers

A structured settlement has benefits for employers and their insurers as well.

- ✱ Lower litigation costs. A structured settlement involves negotiations between the injured worker, the insurer and some-

times the employer. Bringing all parties to the table can reduce the possibility of litigation.

- ✱ Less animosity. Knowing he/she has income for life can reduce an injured worker's animosity toward the employer. And because negotiating a structured settlement involves experts, the process can enlighten a worker who might have unrealistic expectations of what he/she might expect to receive in a settlement.
- ✱ Certainty. A structured settlement typically closes a disability claim, although an injured worker may still be eligible for workers' compensation medical payments.
- ✱ Savings. Because a structured settlement uses the present value of money, it typically costs less to provide benefits over time than in a lump sum.
- ✱ Security. Insurers or self-insured employers buy an annuity to fund the settlement, thus guaranteeing the funds will be available as scheduled.

Structured settlements are just one tool an insurer or claims administrator can use to help employers manage the cost of claims. For more information on controlling workers' compensation costs in your organization, please contact us. ■

**Source: ABA Judges' Journal, Spring 2005, "Transfers of Structured Settlement Payment Rights..." by Daniel W. Hindert and Craig H. Ulman*

Premises, Premises. Are You Adequately Covered?

Google the phrase "premises liability" and you'll find page after page of plaintiffs' lawyers eager to make businesses pay for accidents on their premises. Reducing this risk exposure is easier and less expensive than you might expect.



Premises liability claims can occur when a third party (non-employee) has an accidental injury on your premises. Whether it's a visitor tripping over an extension cord or a passerby slipping on a rain-slicked sidewalk outside your door, if the victim can claim any negligence on your part, his or her injury would be considered premises liability.

According to a U.S. Bureau of Justice Statistics study, successful plaintiffs won a median of \$98,000 in state court premises liability cases. However, a significant portion (30.7 percent) won awards of \$250,000 or more. Could your organization absorb a loss of that size, along with legal defense costs?

Who Needs Premises Liability Coverage?

To protect itself from the possibility of catastrophic slip-and-fall and other accidental injury claims, every organization needs premises liability coverage. Even a home office needs coverage, since homeowners insurance generally excludes claims for business-related exposures.

The commercial general liability policy provides coverage for premises liability claims. Most standard commercial liability policies have a limit of \$2 million per year and \$1 million per occurrence and come with little or no deductible. If you have exposures greater than this, you can cover them with an umbrella policy.

What about businesses that rent their premises? Although your landlord likely has liability coverage, that doesn't let you off the hook. The party responsible for an injury will depend on a variety of factors, including the terms of your lease, where the injury took place (inside or outside the building), and what factors contributed to the injury.

How Much Does It Cost?

Prices vary hugely according to the general risk of the sector and your company's specific loss experience. Rates go up based on the frequency and severity of loss events. Frequency is worse than severity when it comes to rates. Accidents can happen anywhere, but frequent claims tell an insurer that your organization is not paying adequate attention to safety.

If you have frequent losses, consult with loss control experts. Implement their recommendations and let your broker know. You should see a significant drop in rates. Even if you have a high-risk enterprise, plenty of excess and surplus lines carriers would be more than happy to give you a quote. Your broker can help you access the surplus lines market. The closer you can get to qualifying for a standard policy, the more reasonable your rates will be.

Premises liability coverage through a business owners policy (BOP) tends to provide the most competitive rates. However, you will need to qualify for a BOP—most limit coverage to businesses with premises of less than 5,000 square feet and with less than \$2 million in sales.

Claims Management

Make sure your organization has a reporting structure to alert your risk manager as soon as an accident occurs. Make sure the injured person gets timely treatment, and report the incident to police if it is serious. Alert your insurer, note or record any statements made by the victim and by witnesses or others involved in the incident, and take photos of the incident area.

Policy Pointers

Make sure your policy is not restricted to a single location and that it makes provision for unintentional errors, omissions or endorsements. This will allow you to make a claim even if you accidentally filed a wrong address, omitted a site that should have been covered or mistakenly omitted other relevant details from your policy application.

Risk Retention

Companies with known levels of loss exposures can consider retaining some risk, rather than insuring their entire premises liability exposure. Insurance companies have to pay their legal costs, claims administrations, commissions and other fees out of premiums paid, so it usually costs less to self-insure at least a minimal amount of risk, if cash flow permits. For more information on insuring premises liability and other business liability exposures, please contact us. ■

Waiver of Subrogation

In some situations, an injured worker can file a lawsuit against a third party for his/her injuries, in addition to obtaining workers' compensation benefits. Unlike the workers' compensation system, the tort system allows an injured person who prevails in a lawsuit to receive compensation for lost wages (past, present and future), pain and suffering, property damage, loss of monetary support, loss of consortium, disfigurement and sometimes punitive damages.

When an employee collects tort damages or other settlements in addition to workers' compensation payments, the employer's insurer or the employer has the right to "subrogate," or claim a credit against any settlement or recovery received. As dictionary.com defines it, subrogation is "to substitute (one person) for another with reference to a claim or right." Subrogation prevents an injured worker from collecting for the same injury twice; it also helps lower workers' compensation costs.

Most workers' compensation contracts include subrogation provisions that give the insurer the right to recover claims paid from anyone liable for an injury covered by the policy. However, in some instances an insured might not want an insurer to go after a third party for recovery of a claim. This can happen when the injury takes place on a client's premises, or when the insured has a contract with a general contractor or government entity that requires the insured's carrier to waive its subrogation rights. Employers can ask their workers' compensation underwriter to add a "waiver of subrogation" provision to their policy, which will waive the insurer's rights to pursue recovery from a third party. Expect to pay an extra premium if your policy includes this provision.

For a review of your workers' compensation policy's provisions and how they might apply to your organization's unique situation, please contact us. ■

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