

CLIENT ALERTS

Employer Liability for Safety of Employees and Customers

Client Alert

2.23.2023

With the recent tragedy at Michigan State, it is becoming sadly apparent that gun violence is all too common. An unfortunate part of reality is that gun violence can occur anywhere. For employers, workplace violence—whether by third-parties or a company's own employee or former employee—is a growing concern. The Bureau of Labor Statistics reported that of the 5,333 fatal workplace injuries that occurred in the United States in 2019, 761 were cases of intentional injury by another person. Of course that number does not include workplace violence that results in injuries short of death. Nor does it account for the significant number of cases that go unreported. Protecting its employees' safety should be a priority of all employers, and employers can be held liable in certain circumstances if they fail to protect their employees or customers.

Under the federal Occupational Health and Safety Act (OSHA), all employers have a general duty to provide a safe workplace for employees, free from recognized hazards that cause or are likely to cause death or serious physical harm to employees. Although a few states have imposed specific obligations on a small segment of employers in particular industries, the vast majority of workplaces are governed only by the OSHA "general duty clause" or by common law principles of negligence.

According to OSHA workplace violence encompasses is any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. This includes actual acts of violence such as shooting, hitting and other forms of physical abuse, as well as threats of violence, including surveillance and stalking. It can affect and involve employees, clients, customers and visitors. Under the general duty clause, an employer can be liable for any such violence if they failed to take appropriate precautions.

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In addition to federal OSHA standards, employers also need to be wary of negligent hiring, supervision or retention. Negligent hiring, supervision, or retention of an employee occurs when (1) the company owed a duty to the victim, (2) the company breached that duty, and (3) the breach of duty was the proximate cause of the individual's injuries. The amount of contact the employee has with the public, the nature of that contact, and the employer's knowledge of the employee's dangerous propensities are all relevant considerations. If an employer is found to have a duty of care to protect third parties coming in contact with its employees, it can be found to have breached this duty if it knew or should have known of the employee's violent acts or bad character but nevertheless hired or retained that employee or failed to reasonably investigate the employee's background or take appropriate steps.

As the risk of an active shooter continues to grow, employers are at an increased risk of liability for failing to take appropriate precautions. In addition to OSHA violations and negligent hiring and retention claims, there could also be worker's compensation claims by employees or wrongful death claims by the families of employees that are victims in fatal workplace violence incidents. In light of the growing threats to employee safety and potential liability, employers should consider options to protect themselves and their employees and customers:

- Whether to have a policy prohibiting weapons at work?
- Does the company have a zero tolerance for violence policy?
- What security measures are in place in any building or work location? Are there security cameras, locked doors, security personnel, etc.?
- Has there been any training on workplace violence or active shooter training?

While it is not possible to prevent all acts of violence, employers should have policies and practices in place to increase awareness and reporting of actual or potential incidents of workplace violence. At the very least, employers should routinely evaluate security and how it can be improved. If you have any questions about your workplace safety policies or any other Labor & Employment issue, please contact your Butzel Labor & Employment Attorney.

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