



PLUNKETT COONEY
ATTORNEYS & COUNSELORS AT LAW

FLASHPOINT

**Frank Talk About the Legal Issues
Surrounding Workplace Violence**

Presented by
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Today's Presenters

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Cost of Workplace Violence

- Loss of life
- Physical or psychological repercussions felt by:
 - The victim
 - The victim's family
 - Friends
 - Co-workers
- Loss of productivity and morale
- Public relations impact

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Adverse Impacts Organization & Individual

- Temporary/permanent absence of skilled employees
- Psychological damage
- Property damage, theft, sabotage
- Productivity impediments
- Diversion of management resources
- Increased workers' compensation costs
- Increased personnel costs

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Statistics

- 1,000 workplace homicides a year – a leading cause of fatal injuries at work
- As a result of:
 - Robberies and other crimes
 - Actions by frustrated or dissatisfied clients and customers
 - Acts by disgruntled co-workers
 - Domestic incidents that spill over into the workplace
- Two million victims of non-fatal violence at work

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Strong Policy

- Elements:
 - Commitment to safe, secure workplace – zero tolerance policy
 - No weapons allowed (explosive, firearm, chemical weapon, switchblade, tasers, knuckles, etc.), regardless if concealed or not
 - On company property (including personal vehicle, purse, locker, briefcase, desk) or on company time

Continued

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Strong Policy

- No violence, attempted violence or threats of violence - while on company premises, company time, or off the clock/premises if directed at another employee, vendor, business partner, etc.
- Any *felony* arrest for violent act, threats of violence, use of weapon or unlawful possession of weapon, or any conviction of misdemeanor, ordinance for similar crimes

Continued

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Strong Policy

- Searches by employer based on suspicion/reports of policy violation including of private vehicles being used on company time/or on company property, purses, desks, lockers, briefcases, etc.
- No reasonable expectation of privacy
- Termination for refusal to submit to search; consent required as condition of employment

Continued

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Strong Policy

- Require cooperation in investigations into policy violations (including written statement if requested).
- Require reporting of any violations or suspected violations of policy.
- Termination for refusal to cooperate in investigation, or failure to report violations or suspected violations of policy.

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Strong Policy

- Encourage employees to come forward with concerns:
 - Employee engaging in bullying or acting aggressively
 - Employee purchasing weapons, large quantities of ammunition
 - Employee acting out of character, short fuse, snapping back, throwing objects
 - Employee expressing suicidal/homicidal thoughts

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Strong Policy

- Identify who to report concerns to (by title, several options, not low level supervisors).
- No retaliation pledge
- Confidentiality to extent practicable
- Law enforcement may be involved.
- Workers' Comp may be denied if injured employee participated in threat.

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Preventing Workplace Violence

- **Work Environment** that minimizes negative feelings
 - Sincere, open communication among managers, employees and union reps
 - Opportunities for professional development
 - Family friendly work environment
 - Complaint mechanism that includes timely feedback
 - Mediation program to resolve employee disputes
 - Quality of life issues such as facilities and job satisfaction

Continued

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Preventing Workplace Violence

- Maintaining impartial and consistent discipline for employees who exhibit improper conduct and poor performance
- Document any threats and your response to them, including terminating employees who make a threat.
- Terminate employees with care and caution by involving witnesses or security/law enforcement for violent employees.

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Preventing Workplace Violence

- **Security** – maintain a secure and physically safe workplace.
 - Designated security personnel to respond to requests for assistance.
 - Employee photo identification badges and coded card keys for access to secure areas
 - Train employees not to hold open doors for persons without security credentials.
 - If aware of a PPO protecting an employee, make sure security/supervisors know what the person looks like.
 - Other measures could include metal detectors.

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Preventing Workplace Violence

- **Education**
 - Communicating an awareness among employees, supervisors, and managers regarding all aspects of the Workplace Violence Program
 - Educating employees and communicating to them techniques designed to effectively deal with conflict resolution, stress reduction, etc.

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Preventing Workplace Violence

- **Know performance and conduct indicators**
 - Attendance problems
 - Adverse impact on supervisor's time
 - Decreased productivity
 - Inconsistent work patterns
 - Concentration problems
 - Safety issues
 - Poor health and hygiene

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Preventing Workplace Violence

- **Additional performance and conduct indicators**
 - Unusual/changed behavior
 - Evidence of possible drug or alcohol use/abuse
 - Evidence of serious stress in the employee's personal life
 - Continual excuses/blame
 - Unshakable depression
 - Etc.

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Preventing Workplace Violence

- REMEMBER, however, the presence of any of the above characteristics does not necessarily mean a violent act will occur. They may be indicators of another type of problem such as being ill, depressed, bereaved, etc.
- May be a concern if there is a pattern or they represent a change from normal behavior

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Preventing Workplace Violence

- Employee support services
- Early intervention
- Take appropriate action when necessary.

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Workplace Violence Warning Signs

- Always respond to actual threats.
- Respect the “gut feeling” you may get when talking to people.
- Defuse situations or they may escalate.

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Warning Signs

- Early warning signs – the person is:
 - Intimidating/bullying
 - Discourteous/disrespectful
 - Uncooperative
 - Verbally abusive

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Response to Early Warning Signs

- Observe the behavior.
- Report it to your supervisor.
- Document the behavior in question.
- The supervisor should meet with the employee to discuss concerns.

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Warning Signs

- Escalation of the situation – the person
 - Refuses to obey policies and procedures;
 - Sabotages equipment and steals property for revenge;
 - Verbalizes wishes to hurt co-workers and/or management;
 - Sends threatening notes to co-workers and/or management; and/or
 - Sees self as victimized by management (me against them)

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Response to Escalated Behavior

- If necessary, call 911.
- Immediately contact the supervisor.
- If necessary, secure your safety and the safety of others.
- Document the observed behavior in question.
- Supervisor should meet with the employee to discuss concerns and progressive discipline.

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Warning Signs

- Further Escalation – Usually resulting in an emergency response. The person displays intense anger resulting in:
 - Suicidal threats
 - Physical fights
 - Destruction of property
 - Display of extreme rage
 - Utilization of weapons to harm others

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Response to Highly Escalated Behavior

- Call 911.
- Remain calm and contact a supervisor.
- Secure personal safety first.
- Leave the area if your safety is at risk.
- Cooperate with law enforcement when they have responded to a situation.

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Gun Permits

- In both Michigan and Ohio, employers can prohibit carrying a weapon on company time/premises even if employee has a permit to lawfully carry weapon
- Consult with an employment attorney in other states

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Special Considerations – Public Employers

- Private employers and property owners can prohibit guns.
- Guns are prohibited on federal property.
- However, in Michigan, Michigan Firearms Statute MCL 123.1101 et seq, has been found to prohibit local regulation of firearms.

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Public Employers

- *Capitol Area Dist. Lib. v Michigan Open Carry, Inc.*, 298 Mich App 220 (2012) –public libraries can't ban guns.
- *MOC/Herman v Clio Area Schools*, 318 Mich App 356 (2016), schools are not local unit of government for purposes of preempting firearm regulation.
- *Wade v University of Michigan*, 320 Mich App 1 (2017), University not a local unit of government thus can ban guns on campus.

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Reports of Potential Threats and Investigations

- Get complaint in writing.
- Interview witnesses, get statements in writing.
- Statement from subject employee
- Consider administrative leave (paid/unpaid).
- Conduct search.
- Criminal record
- Hire private investigator (consult with attorney, who to use and who gets report).

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ADA Issues

- “ADA letter” for employee to give to treating physician
- Independent medical examination (ask your attorney who to use and who gets report.)
- Can the employee perform the essential functions of their position (with or without a reasonable accommodation) and “without creating a significant threat of substantial harm to him or others?”

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Terminating Angry Employee

- Security (during termination/after)
- Advise local police of threat.
- Lock down facility following termination/change codes.
- Make sure employees know individual no longer employed and not allowed on property.

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Active Shooter Response

- Have a policy in place on how to respond.
- Initial Action – call the company emergency number and announce a pre-arranged code that states for active shooter, with the location and a description of the shooter and the weapon if possible.
- Operator should announce code over PA along with location, then call 911.

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Active Shooter Response



- 911 Caller should report
 - Description of suspect and possible location
 - Number and types of weapon
 - Suspect's direction of travel
 - Location and condition of any victims

Continued



Active Shooter Response



- Three potential courses of action
 - **Evacuate** if there is an accessible path.
 - If Evacuation isn't possible, find a place to **hide**.
 - If not possible to evacuate or hide, then consider **self-defense**.



Active Shooter Response

- EVACUATE
 - Have an escape route and plan in mind.
 - Go even if others won't.
 - Leave belongings behind.
 - Help others escape if possible.
 - Prevent individuals from entering area with shooter.
 - Keep hands visible, follow police instructions.
 - Call 911 if no one has; once you are safe.



Continued



Active Shooter Response



- HIDE
 - In an inconspicuous place
 - Out of the shooter’s view
 - Provide physical protection in case shots are fired, such as bathroom, lock door, lay low.
 - Don’t trap yourself or restrict your movement options.
 - Lock the door.
 - Blockade door with heavy furniture.

Continued



Active Shooter Response



- When hidden
 - Silence cell phones and pagers.
 - Turn off any source of noise (radios, tvs).
 - Hide behind large items (cabinets, desks).
 - Remain quiet and motionless.



Active Shooter Response

- SELF-DEFENSE
 - If not possible to evacuate or hide, consider self-defense.
 - Remain calm.
 - Dial 911, if possible, to alert police to shooter’s location.
 - If you can’t speak, leave the line open so 911 dispatcher can listen.

Continued



Active Shooter Response

- Take action against the active shooter ONLY when you believe your life is in imminent danger, by attempting to disrupt and/or incapacitate the active shooter by:
 - Acting as aggressively as possible against him/her
 - Throwing items and improvising weapons
 - Yelling
 - Commit yourself to defensive physical actions.

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Active Shooter Response

- Arrival of law enforcement
 - Follow their instructions and remain calm.
 - Put down any items in your hands.
 - Immediately raise your hands and spread your fingers.
 - Keep hands visible at all times.
 - Avoid making quick movements towards officers.
 - Avoid pointing, screaming, yelling.
 - Don't ask questions, just follow instructions.
 - Let company know you have been evacuated.

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Active Shooter Response

- Inform law enforcement about:
 - Number of shooters
 - Number of victims and any hostages
 - Type of problem causing the situation
 - Type and number of weapons shooter possibly has
 - All necessary company representatives in area

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Active Shooter Response

- Identity and description of participants, if possible
- Keys to all involved areas as well as floor plans
- Locations and phone numbers in the affected area

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Questions?



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Post-Webinar Survey



We want to hear from you!

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