

Writer's direct phone
(312) 460-5877

Writer's e-mail
mlies@seyfarth.com

Writer's direct fax
(312) 460-7877



233 South Wacker Drive
Suite 8000
Chicago, Illinois 60606
(312) 460-5000
fax (312) 460-7000
www.seyfarth.com

WORKPLACE VIOLENCE - ACTIVE SHOOTER RESPONSE

Mark A. Lies, II*

INTRODUCTION

As the pace and emotional pressures of everyday life impact both employees at home and in the workplace, as well as unknown individuals (including terrorists), a distressing and tragic trend is occurring — employees and unknown individuals are unable to control their emotions at work or have ulterior criminal motives and violence erupts toward co-employees, customers or third parties. The unfortunate statistics show that homicide is the number one cause of death for women in the workplace and the third overall cause for men and women. This trend is expected to increase in times of economic uncertainty and social and political unrest. In many cases, these acts of violence occur as employees face the prospect of lay-offs and corporate reorganizations in many industries.

No employer wants such incidents to occur. Ironically, however, as employers struggle to avoid these potential legal liabilities through creation and enforcement of employment policies, they are met with a host of federal and state laws which may protect certain employee conduct. More importantly, since an employer has no objective “litmus test” for predicting

* Mark A. Lies, II, is an attorney and partner with the national law firm of Seyfarth Shaw. He practices in the areas of employment, occupational, safety and health, and tort litigation. He can be reached at Seyfarth Shaw, 233 South Wacker Drive, Suite 8000, Chicago, Illinois 60606 (312-460-5877), mlies@seyfarth.com.

which employee may become violent under particular triggering circumstances, there is no fool-proof way to effectively eliminate the hazard. Likewise, an employer cannot predict whether unknown individuals may decide to commit random acts of violence because of mental and emotional conditions or for misguided political or religious motivations.

OSHA

Under OSHA's General Duty Clause, an employer is required to protect its employees against "recognized hazards likely to cause serious injuries or death." As such, an employer should consider developing a workplace violence prevention and response policy.

In developing its policy, the employer should, at minimum, include these elements:

- a stated management commitment to protecting employees against the hazards of workplace violence, including both physical acts and verbal threats;
- a statement that the employer has a "zero tolerance" policy toward threats or acts of violence and will take appropriate disciplinary action against employees who engage in such conduct;
- identify means and methods for employees to notify the employer of perceived threats of violent acts in a confidential manner;
- establish a means to promptly investigate all such threats or violent acts;
- develop consistent, firm discipline for violations of the policy;
- provide training to managers and employees to identify signs and symptoms of employee behavior which may predict potential violence (erratic behavior; employee comments regarding homicide or suicide; provocative communications; disobedience of policies and procedures; presence of alcohol, drugs or weapons on the worksite; physical evidence of employee abuse of alcohol or drug use) which should be reported to the employer;
- a non-retaliation policy for employees who report verbal and physical conduct to the employer which they reasonably believe represents a threat of potential workplace violence;

- establish a team of qualified individuals (e.g. human resources; risk managers; legal; medical; security) either within the company or readily available third parties, to respond to a potential or actual incident; and
- consider establishing an Employee Assistance Plan (EAP) to provide assistance to employees who may be experiencing mental or emotional stress before an act of violence occurs.

ACTIVE SHOOTER EMERGENCY RESPONSE POLICY

Unfortunately, despite the fact that many employers have developed workplace violence prevention and response policies, there will tragically be instances where an “**active shooter**”, an employee or an unknown individual, will come to the premises and utilize a firearm to attempt to kill employees and other persons who may be at the workplace. In anticipation of such an eventually, the employer should consider developing an active shooter emergency response policy to inform employees of the three courses of action to take in such instance,

- **evacuate**
- **hide out, or**
- **self defense**

and how to react when law enforcement arrives. The enclosed policy sets out recommendations gathered from the Department of Homeland Security, the Federal Bureau of Investigation, other law enforcement agencies and recognized industry sources. The author recommends that the reader consider developing such a policy, utilizing the enclosure, while customizing it to the employer’s worksite. It is hoped that this article and policy template will be of assistance in preventing or minimizing another high profile workplace tragedy. The author welcomes comments on the policy. If an employer has an interest in receiving assistance in developing a policy or in conducting training the author is available to provide such assistance.

ACTIVE SHOOTER EMERGENCY RESPONSE POLICY

PURPOSE:

This policy is intended to provide guidance in the event an individual is actively shooting persons at the workplace and to comply with applicable regulations of the Occupational Safety and Health Administration (OSHA).

POLICY

It is the policy of the Company to provide an active shooter emergency response plan to alert employees that an active shooter appears to be actively engaged in killing or attempting to kill people at the workplace.

DEFINITIONS:

For purposes of this Policy: An **active shooter** is defined as a person or persons who appear to be actively engaged in killing or attempting to kill people at the Company's premises. In most cases active shooters use a firearm(s) and display no pattern or method for selection of their victims. In some cases active shooters use other weapons and/or improvised explosive devices to cause additional victims and act as an impediment to police and emergency responders. These improvised explosive devices may detonate immediately, have delayed detonation fuses, or detonate on contact.

PROCEDURES:

1. The first employee to identify an active shooter situation:
As soon as possible, should call the Company emergency number (_____) and announce a prearranged code (e.g., "Active Shooter") (with the location of the incident) and a physical description of the person(s) with the weapon, and type of weapon, if known.
2. The emergency operator upon notification will:
Provide a public announcement "Code _____ (and the location)" on the public address system.
3. The emergency operator or any employee who is at a location distant from the active shooter, such as in a different area or floor, will contact 911.
4. The phone call to 911 (from the area where the caller is safely concealed) should provide the following information to the police:
 - a. Description of suspect and possible location.
 - b. Number and types of weapons.
 - c. Suspect's direction of travel.
 - d. Location and condition of any victims

POTENTIAL RESPONSES

In response to an active shooter event, there will be three potential courses of action 1) evacuate, 2) hide out, 3) self-defense. The following guidelines identify these courses of action:

EVACUATE

If there is an accessible escape path, attempt to evacuate the premises, following these recommendations:

- Have an escape route and plan in mind
- Evacuate regardless of whether others agree to follow
- Leave your belongings behind

- Help others escape, if possible
- Prevent individuals from entering an area where the active shooter may be
- Keep your hands visible
- Follow the instructions of any police officers
- Do not attempt to move wounded people
- Call 911 when you are safe

HIDE OUT

If evacuation is not possible, find a place to hide where the active shooter is less likely to find you, with these recommendations:

The hiding place should:

- Be inconspicuous
- Be out of the active shooter's view
- Provide physical protection if shots are fired in your direction (e.g., locating into a bathroom and locking the door, staying as low to the floor as possible and remaining quiet and motionless)
- Not trap you or restrict your options for movement

To prevent an active shooter from entering the hiding place:

- Lock the door
- Blockade the door with heavy furniture

If the active shooter is nearby:

- Lock the door
- Silence cell phones and/or pagers
- Turn off any source of noise (i.e., radios, televisions)
- Hide behind large items (i.e., cabinets, desks)
- Remain quiet and motionless

SELF-DEFENSE

If it is not possible to evacuate or hide, then consider self-defense, with these recommendations:

- Remain calm
- Dial 911, if possible, to alert police to the active shooter's location
- If you cannot speak, leave the line open and allow the 911 dispatcher to listen

Take action against the active shooter and only when you believe your life is in imminent danger, attempt to disrupt and/or incapacitate the active shooter as follows:

- Acting as aggressively as possible against him/her
- Throwing items and improvising weapons
- Yelling
- Commit yourself to defensive physical actions

LAW ENFORCEMENT RESPONSE

The police will arrive to respond to the emergency, follow these recommendations:

1. Comply with the police instructions. The first responding officers will be focused on stopping the active shooter and creating a safe environment for medical assistance to be brought in to aid the injured.

2. When the police arrive at your location:
 - a) Remain calm, and follow officers' instructions
 - b) Put down any items in your hands (i.e., bags, jackets)
 - c) Immediately raise your hands and spread your fingers
 - d) Keep your hands visible at all times
 - e) Avoid making quick movements toward officers such as attempting to hold on to them for safety
 - f) Avoid pointing, screaming and/or yelling
 - g) Do not stop to ask officers for help or direction when evacuating, just proceed in the direction from which officers are entering the area or to an area to which they direct you
 - h) notify Company representatives that you have evacuated the premises
3. When the police arrive the following information should be available:
 - a) Number of shooters
 - b) Number of individual victims and any hostages
 - c) The type of problem causing the situation
 - d) Type and number of weapons possibly in the possession of the shooter
 - e) All necessary Company representatives still in the area as part of the Company's emergency management response
 - f) Identity and description of participants, if possible
 - g) Keys to all involved areas as well as floor plans
 - h) Locations and phone numbers in the affected area

POST-INCIDENT ACTION

When the police have determined that the active shooter emergency is under control, the emergency operator will provide a public announcement that the emergency is over by using a prearranged Code (e.g., "All Clear")

POLICE INVESTIGATION

After the police have secured the premises, the Company will arrange to have designated Management representatives participate in the law enforcement investigation of the incident, including identifying witnesses and providing requested documents.

MEDICAL ASSISTANCE

The Company will designate Management representatives who will engage with emergency responders who provide medical assistance to injured employees, including ensuring that all required medical benefit and insurance documentation is provided.

NOTIFICATION OF RELATIVES

The Company will designate Management representatives to notify relatives of any injured employees in a timely fashion.

OSHA

In the event that there is a fatality or one employee is hospitalized for treatment, OSHA must be notified. If there is a fatality, OSHA must be notified within eight (8) hours. In the event of a hospitalization of one employee for treatment, OSHA must be notified within twenty-four (24) hours.

In addition, if the fatality or injury is work-related, the Company may have to record the incident on its OSHA 300 Log within seven (7) calendar days.

MEDIA

The Company will designate Management representatives who will respond to any media requests for information. Such representatives will carefully consider the nature of any such requests in order to avoid disclosing information about any person that is confidential and protected by Federal and state privacy and medical information laws and regulations and interfering with any ongoing police or internal Company investigation.

REFERENCES:

US Department of Homeland Security Active Shooter-How to Respond, October 2008
US Federal Bureau of Investigation Active Shooter Planning and Response in a Healthcare Setting, April 2015

COORDINATION:

1. This policy has been coordinated with the _____ Police Department

NOTE: If you wish to receive complimentary copies of this article and future articles on OSHA and employment law related topics, please contact Mark A. Lies, II at mlies@seymfarth.com to be added to the address list.