



Security and Workplace Safety

By Brad Hiles

HUSCH BLACKWELL



OSHA Has No Standards . . .

- Governing weapons in the workplace
- Prohibiting workplace violence
- Banning dangerous people (even known terrorists) from the workplace
- Requiring heightened security in certain situations
- Governing background checks

HUSCH BLACKWELL



OSHA's General Duty Clause 29 USC 654(a)

- Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.

HUSCH BLACKWELL



How Could Workplace Violence Trigger the General Duty Clause?

- Something occurs to put the employer on notice that there is a reasonable (not remote) possibility of violence
- The violence, if it were to occur, would likely cause death of serious physical harm to employees

HUSCH BLACKWELL



Avoiding OSHA Citations is Only Part of the Issue

- OSHA Penalties are modest
- The real reason to act is to avoid harm to your employees
- Prevention is the key
- 8 steps to implementing a prevention program

HUSCH BLACKWELL



1. Prohibit Workplace Violence & Weapons

- Create and implement a Workplace Violence Policy
- Ban guns and other weapons as part of the policy
- Post signs prohibiting weapons on the premises (minimum size requirements may apply)
- Banning weapons must be done after examining your state's conceal carry law

HUSCH BLACKWELL



1. Prohibit (continued)

- An example of a Workplace Violence Policy is available at the sign-in desk, but note that one-size-does-not-fit-all
- Customize your policy! Seek the advice of counsel.
- A list of state conceal-carry laws is available at the sign-in desk. Examine the law of your state.


HUSCH BLACKWELL



Weapons in the Workplace – Missouri

- Carrying concealed weapons is lawful in Missouri
- Employers may have a “no weapons” policy, but most post notices
- Notice must be provided “by means of one or more signs displayed in a conspicuous place of a minimum size of eleven inches by fourteen inches within the writing thereon in letters of not less than one inch.”


HUSCH BLACKWELL



Weapons in the Workplace – Kansas

- The Personal and Family Protection Act permits individuals who are properly licensed to carry a concealed handgun
- Private employers are expressly permitted to restrict the carrying of weapons on their premises, or while the employee is engaged in employment duties
- Licensed employees are permitted to keep firearms in their vehicles while at work

HUSCH BLACKWELL



2. Determine Potential Violence Scenarios at Your Company

- Employee arguments, fights
- Rumors of arguments/fights
- Erratic behavior of hostile attitudes (especially newly-displayed ones)
- Angry/hostile customers
- The discharged employee – from the HR office to the employee’s vehicle
- “Off-property” exposure

HUSCH BLACKWELL



2. Determine Scenarios(continued)

- Ex-employees
- Ex-spouses or boyfriends
- Is your facility in a dangerous neighborhood?
- Has violence previously occurred at your facility?
- Does your company have a history of bullying, verbal abuse, horseplay or hazing?

HUSCH BLACKWELL



3. Put Legs to your Policy

- Establish a reporting system
- Establish a violence response team and put someone in charge of it
- Establish an anonymous reporting procedure
- Check anonymous complaints daily
- Act immediately

HUSCH BLACKWELL



4. Roll Out the Policy Like You Mean It

- The highest-ranking officer at the facility or (better yet) the Company, should personally roll out the policy
- Give every employee a copy of the Workplace Violence Policy at the meeting
- Enlist the support of the union, if applicable (Note: prior notice and possibly bargaining may be necessary)

HUSCH BLACKWELL



5. Assess Outside Resources

- Hire security guards or arrange for a stand-by, on-call, security response team
- Security cameras (inside and outside?)
- Alarm system
- Invite local law enforcement to weigh in (or at least assess their response capability)
- Metal detectors
- Access badges
- Do you need a lock-down plan?

HUSCH BLACKWELL



6. Train All Supervisors

- Share statistics on workplace violence
- Explain potential liability following violence
- Explain OSHA consequences
- Introduce the response team (and its leader)
- Describe the action plan for responding to threats
- Require immediate reporting of potential threatening situations

HUSCH BLACKWELL



7. Make Wise Hiring Decisions

- This is becoming difficult
- Some jurisdictions restrict inquiries into criminal convictions

HUSCH BLACKWELL



Ban the Box

- In jurisdiction where “ban the box” legislation is in effect, employers are prohibited from asking on job applications if an applicant has a criminal record
- Employers are permitted to run criminal background checks on applicants or otherwise inquire into criminal history at later stages in the applicant process
- Many categories of employers are exempted, depending on the jurisdiction

HUSCH BLACKWELL



Examples of Exempted Industries

- Childcare
- Long term care providers
- Industries where employees must be licensed
- Industries where bonding of employees is required

HUSCH BLACKWELL



Jurisdiction Adopting “Ban the Box” Rules

- California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey and New Mexico
- 70 counties/municipalities have their own restrictions
- St. Louis, Columbia and Kansas City have restrictions
- State surveys are available at sign-in table

HUSCH BLACKWELL



8. Set a Plan to Manage Threats

- Who will analyze the threat?
- If possible, conduct an immediate investigation
- Be decisive, conservative and immediate on suspensions and leaves of absence
- Determine how to manage actual violence
- Have an immediate system to contact stand-by security and/or law enforcement

HUSCH BLACKWELL



Questions?

Brad Hiles
Partner
314.345.6489
brad.hiles@huschblackwell.com

HUSCH BLACKWELL