



Establish Workplace Safety/Weapons Policy?

Question

Our company does not have a specific safety in the workplace or weapons policy; is it advisable that we establish one?

Answer

It is a best practice and our recommendation that employers establish and implement a safety/anti-violence policy that is clearly communicated to employees (and where applicable, visitors), and in some cases this may include a training component, as well as a weapons policy (though the latter depends upon the applicable state's firearm regulations). While to our knowledge there is no federal law specifically mandating workplace violence policies in all cases (although this may be required in certain industries, such as healthcare for example), as noted, occupational safety and health laws do require employers to ensure that their workplaces are safe. Admittedly it may not be possible to eliminate all risk with 100% certainty, but employers must still ensure that they are proactive in both identifying potential risks in the workplace and seeking to implement preventative and corrective measures (which can, as noted, also include workplace violence training). Employers that do not take measures to protect the workplace against violence can be held liable for acts that occur there.

The Federal Occupational Safety and Health Administration's (OSHA) summarizes the concept of violence in the workplace as follows: "Workplace violence is violence or the threat of violence against workers. It can occur at or outside the workplace and can range from threats and verbal abuse to physical assaults and homicide, one of the leading causes of job-related deaths. However it manifests itself, workplace violence is a growing concern for employers and employees nationwide" (see <https://www.osha.gov/SLTC/workplaceviolence/>). As a general rule it is recommended that all employers include among their policies one addressing safety and violence in the workplace to ensure that all employees understand their rights and know what they can expect when they are at work. While weapons policies are subject to applicable gun regulations in each state or locale, private sector employers that are not otherwise statutorily prohibited have

discretion to decide whether to allow concealed or other weapons under the law on their premises or not. Although there never is a guaranteed way (through policy language and enforcement or otherwise) to avoid liability if an employee or third party is harmed by a violent act in the workplace (including use of a weapon or negligence in leaving an unsafe object unattended), an employer is in a better position to defend such a claim where it has clearly communicated and consistently enforced a policy prohibiting the conduct at issue.

Generally speaking, employer policies should, among other things, address visitors to the workplace, security measures for ingress/egress and other access to the premises, and should take care to empower all employees to contact 911 and law enforcement when imminently dangerous or emergent situations arise (rather than an obligation to report such matters to management first, for example). To assist employers in meeting these obligations, OSHA has published guidance for retail employers relative to preventing violence in the workplace, and the suggestions are equally applicable in other industries and employment settings. Specifically, OSHA asserts that "violence prevention programs should set clear goals and objectives to prevent workplace violence. The goals and objectives must be suitable for the size and complexity of workplace operations. In addition, the program should be adaptable to different situations at the worksite. Whatever format the program takes, it is critical that employers clearly explain the prevention program to all workers". At a minimum, workplace violence prevention programs should:

- Establish a clear policy for workplace violence, verbal and nonverbal threats and related actions. All personnel employed in the retail establishment should know the policy.
- Ensure that no worker who reports or experiences workplace violence faces reprisals.
- Encourage workers to promptly report incidents and suggest ways to reduce or eliminate risks. Require records of incidents to assess risk and measure progress.
- Outline a comprehensive plan for maintaining security in the workplace. The plan should include establishing a liaison with law enforcement representatives and others who can help identify ways to prevent and mitigate workplace violence.
- Assign responsibility and authority for the program to individuals or teams with appropriate training and skills. Ensure that adequate resources are available and that those responsible for the program develop expertise on workplace violence prevention in late-night retail settings." For more information, please see OSHA's **Recommendations for Workplace Violence Prevention Programs**.

Weapons policies are a subset of a comprehensive workplace safety/anti-violence approach but as noted, are subject to state-specific gun laws and weapons regulations that exist outside of applicable employment laws. Within our HELPLINE service we can advise that generally employers in states that vest private companies with discretion relative to weapons in the workplace would do well to keep in mind the potential risks associated with allowing them on company property in jurisdictions where they can be prohibited, not the least of which include greater risk of gun violence in the workplace. As well, a company culture that supports weapons in the workplace (again, where employers have legal discretion to allow them) can result in fear among employees who do not carry weapons and may be afraid of working alongside co-workers who do. This is true whether those who carry weapons make this fact known or not, and would be particularly true if those who carry weapons use such information to intimidate co-workers. Some of these issues can be managed through disciplinary action, but that may not be enough to quell employee concerns that their workplace is unsafe and dangerous.

Employers that permit weapons on their premises (again, in states where this is permissible at all) should also take care to confer with their landlords -- in the event their business premises are leased -- to discuss the employers' intentions regarding firearm permission or prohibitions. If an employer's lease agreement does not support an employer's proposed policy, the employer may wish to reconsider its proposal and in fact may be contractually required to do so. If there is no lease agreement or there is but it is not in conflict with a proposed policy, and so long as the employer's business is not in violation of applicable law, then to the extent a policy permitting weapons on workplace property is implemented, the employer may require that employees who seek to do so present a valid license and/or firearm owner's identification card (or similar documentation as prescribed in the relevant jurisdiction) prior to bringing a weapon onto company property and subsequently at regular intervals thereafter. That said, again this may not be enough to ameliorate some employee concerns that their workplace has become a more dangerous place after the implementation of such a policy (and some employees who are uncomfortable with such a policy may seek alternative employment).

We encourage employers to consider a strong and legally-compliant safety/anti-violence policy, which may include a weapons component consistent with applicable law in the employer's state, as well as applicable training. Such policy should expressly state the terms and conditions of the policy and, in particular, more narrowly define the circumstances under which weapons can be brought on the premises -- if they are allowed by law and policy at all. We make sample policies available on our website using the Handbook Builder tool and you may find additional resources there as well. OSHA publishes a **Fact Sheet** that provides additional guidance for employers relative to workplace violence -- we

invite employers to review it as well as the additional resources for **Workplace Violence Prevention Programs**. OSHA also offers a free **Consultation Service** to employers and employers can consider taking advantage of it in connection with an anti-violence policy and program (including a weapons policy) in the workplace.

Once established, any such policy should be clearly communicated to all employees in advance of its implementation, and periodically refreshed. As a best practice the employer should let visitors know the policy as well (including applicants or candidates for employment).

Want to know more? Listen to our podcast on **Workplace Safety/Weapons Policy**.



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