



# Liability & Property Pool Workers' Compensation Fund

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## RISK CONTROL SOLUTIONS

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A Service of the Michigan Municipal League Liability and Property Pool and  
the Michigan Municipal League Workers' Compensation Fund

### REDUCING EXPOSURES FROM WORKPLACE VIOLENCE

The Center for Disease Control, National Institute for Occupational Safety and Health (NIOSH), in its 2014 report, cites there were 409 workplace homicide victims in 2014. The report went on to say that 15,980 people received workplace violence related injuries that year.

These statistics indicate that employers need to be conscious of the potential for problems and take steps to reduce the likelihood they or their employees may become a victim.

#### INTRODUCTION

This document focuses on violence committed by coworkers, bosses, clients, and domestic partners within a common work site. Employers should remember that other types of acts might also occur and take action to minimize the hazards stemming from them.

You can use these guidelines as benchmarks to help you assess your organization's current policies and practices. Not every recommendation may be appropriate for your organization. If you have not already implemented a suggestion, you should first consider whether that recommendation (or some variation of it) would be appropriate for your organization.

#### Reasons for Establishing a Program

Some organizations may not see the need for creating a program to reduce the hazards of violence in the workplace, especially if they have never experienced an incident of violence. The following are reasons why it is important for you to consider the recommendations included in this document.

- Recent reports and surveys suggest that workplace violence affects large numbers of employers and employees
- Just one violent incident can be costly for an organization. The costs can include:
  - Medical and psychiatric care as well as potential liability suits,
  - Disruption of services,
  - Loss of productivity,
  - Repairs and clean-up,
  - Higher insurance costs,
  - Consultants' fees,
  - Increased security measures and, most important of all,
  - The death or injury of valued employees and coworkers.
- Organizations have become increasingly intolerant of threats and other violent, abusive behaviors in the workplace.
- Executives, professionals and administrative personnel are no longer immune to acts of violence in the workplace.
- Unpopular changes in today's workplace such as layoffs, increased workload, and having to do more with less may contribute to an increased risk for violence.

- It is the right thing to do. Employers have a moral and legal obligation to provide a safe workplace for their employees, clients and visitors.

For these reasons, many organizations are developing plans for addressing workplace violence. When compared to the potential costs of an incident, these plans are a relatively inexpensive way to reduce the risk of violence and to minimize its impact.

## **GUIDELINES FOR EMPLOYERS**

After reading these guidelines, you should have a better understanding of the most important steps you can take to minimize the impact of workplace violence and threats. This section ends with a discussion of your legal obligations as an employer and potential liabilities regarding workplace violence issues.

### **Pre-Incident Violence Prevention and Preparation**

#### **Screen Candidates for Employment**

Employers who conduct effective background checks can often improve productivity and reduce the number of personnel prone to exhibiting violent behaviors.

- Use a job application form that includes an appropriate waiver and release (permitting the employer to verify the information reported on the application). Before hiring an applicant, check references and inquire about any prior incidents of violence involving the candidate.
- Conduct thorough background checks and use drug screening to the extent the law allows. The check should include obtaining references and verifying both work history and education. If job-related and allowable by state and federal law, the background investigation should also include a motor vehicle record check and a medical history check.
- Evaluate the need for screening contract personnel who work at your facility. Vendors and service organizations whose personnel make frequent visits or spend long periods of time working at your facility should certify that those individuals meet or exceed your organization's safety and security requirements.

#### **Take Advantage of Community Resources**

There are many programs and resources in the community that can help you develop your workplace violence plans. Some examples follow.

- Use law enforcement and security experts to educate employees on how to obtain prevention information, conduct building security inspections, and teach employees how to avoid being a victim.
- Consider using local associations and community organizations, such as the Chamber of Commerce, security organizations, and law enforcement groups, as a resource in order to stay abreast of crime trends and prevention techniques. Communicate to your employees those issues and trends that pose a significant threat.

#### **Institute and Review Security Procedures**

Periodically reviewing security policies and procedures will help minimize your organization's vulnerability to violence and other forms of crime.

- Conduct security surveys at scheduled intervals to help determine whether you need to make modifications. Four examples of improvements that you might consider during a security survey are:
  1. Improved lighting in and around the place of work (including parking lots);
  2. Arranging escorts for employees who are concerned about walking to and from the parking lot;
  3. Having reception areas that you can lock to prevent outsiders from going into the offices when no receptionist is on duty; and
  4. When appropriate, having more than one employee on the premises.
- Use, maintain, and regularly review appropriate physical security measures, such as electronic access control systems, silent alarms, metal detectors, and video cameras in a manner consistent with applicable state and federal laws.
- Limit former employees' access to the workplace as appropriate.
- Develop policies regarding visitor access within facilities. For example, if warranted, require visitors to sign in and out at reception, wear an identification badge while on the business premises, and/or have an escort.

### **Use a Common Sense approach To Risk Management**

Base your organization's program to reduce the hazards of violence in the workplace on common sense. Consider the following:

- 1) The potential impact of one or more violent incidents,
- 2) The likelihood of violent incidents occurring, and
- 3) The cost and effectiveness of the different measures you could take to reduce your risk.

Your risk assessment should consider the likelihood of incidents occurring given the individuals, community, and type of organization involved.

### **Improve Internal and/or External Communications**

Employees should have a means to alert others in the workplace to a dangerous situation and to provide information requested by emergency responders.

- Provide and post crisis management plans, building plans, and lists of contact persons.

### **Establish Ground Rules for Behavior**

Organizations that do not tolerate drug abuse or aggressive interaction lower the risk of workplace violence.

- You should inform employees about policies concerning drugs, violent acts, and possession of weapons so that your employees know exactly what you expect of them.
- Implement procedures for your organization to become a drug-free workplace. This includes prohibiting unauthorized use or possession, or being under the influence of alcohol at work.
- Disseminate to all employees a policy of zero tolerance to threats or actual violence at the workplace.
- Establish a policy regarding weapons that applies to all municipal employees and to everyone on municipal property (including the municipal parking lot). The policy should prohibit the possession of weapons that your organization has not authorized. A sample policy follows on page 9.

## **Provide Training for Employees and Managers**

To increase the likelihood that your policies and procedures concerning workplace violence will be effective, you should implement them in conjunction with appropriate training.

- Train managers and other selected individuals in appropriate ways to handle employee terminations, layoffs, and discipline. Examples include appropriate use of Employee Assistance Program (EAP) counselors and out placement services; providing managers with sensitivity and aggression management training; and, when possible, assessing violence potential of individuals prior to termination and taking appropriate measures such as hiring additional security.
- Suggest local police encourage victims of threats and violence outside the workplace to notify their employers about the incident when warranted. Upon notification, employers should provide receptionists and other front-line personnel having a need to know a description or picture of the alleged offender and inform them what actions they should take in the event that individual seeks entry or contact.
- Provide your employees with information about the potential for violence in the workplace, about how to recognize the early warning signs of a troubled or potentially violent person, about how to respond to those individuals, and how to report such incidents.

## **Know the Warning Signs of Potentially Violent Individuals**

There is no exact method of predicting when a person will become violent. However, there are some behaviors and warning signs that are characteristic of people who are having problems. A person may display one or more of these warning signs before he or she becomes violent. However, an individual may display one or more of the signs and never become violent. A display of these signs should trigger concern because people who are experiencing problems frequently exhibit them:

- Irrational beliefs and ideas
- Verbal, nonverbal or written threats or intimidation
- Fascination with weaponry and/or acts of violence
- Expressions of a plan to hurt himself or others
- Externalization of blame
- Unrequited romantic obsession
- Taking up much of supervisor's time with behavior or performance problems
- Fear reaction among coworkers and/or clients
- Drastic change in belief systems
- Displays of unwarranted anger
- New or increased source of stress at home or work
- Inability to take criticism
- Feelings of being victimized
- Intoxication from alcohol or other substances
- Expressions of hopelessness or heightened anxiety
- Productivity and/or attendance problems
- Violence towards inanimate objects
- Steals or sabotages projects or equipment
- Lack of concern for the safety of others

## **Establish a Prevention Program**

Organizations need to have programs in place to assist troubled employees and to address managerial concerns before violence or threats arise.

- Consider providing confidential Employee Assistance Programs (EAP) to deal with emotional, substance abuse, marital, and financial problems. As an alternative, provide employees with a list of relevant community resources. Actively encourage employees, supervisors, and managers to use these services.
- Conduct exit interviews when employees retire, quit, or when you transfer or terminate them to identify potential violence related security or management problems. Always conduct exit interviews with another individual, such as a Human Resources Assistant, present.

## **Documentation Procedures**

### Threat Incident Report

The organization's policy should require employees to report all threats or incidents of violent behavior that they observe or learn about to the designated Management Representative (DMR). The DMR should take the steps necessary to complete a threat incident report as quickly as possible, including private interviews of the victim(s) and witness(es). The Threat Management Team will use the report to assess the safety of the workplace and to decide upon a plan of action.

Elements of the threat incident report and any subsequent actions relating to the incident should be recorded in a tracking system for use by the Threat Management Team. Keep the tracking system, as well as all investigative files, secure and maintained separately from other records.

### Prepare a Threat Management Plan

It is important to prepare a threat management plan so that when a threat occurs everyone knows that you have a policy and everyone understands what to do. The plan might include:

- Designating a Threat Management Team
- Providing guidance concerning liaison with outside assistance
- Providing guidance developed in concert with local authorities for collecting and preserving evidence, including interview of involved parties
- Managing communications regarding the incident; for example, media relations, internal communications. Consider the use of a rumor control desk.
- Managing the release of sensitive information where appropriate
- Assigning responsibilities for contacting the families of victims
- Managing clean-up and repairs
- Notifying customers and suppliers about changes in orders
- Providing employees and their families with information about their benefits
- Managing operations and trauma care after the crisis

## **Threat Management Team**

The Threat Management Team consists of representatives from security, human resources, legal, medical services or EAP and safety. It may include external professionals such as psychologists, psychiatrists or threat assessment experts. The primary responsibility of this team is to develop a plan of action to resolve bona fide threats or acts of violence. Team members provide liaison with outside resources such as police, threat assessment professionals, and trauma teams. In addition, team members may be responsible for managing programs, including needs assessment and awareness training.

## **Evaluate Security after a Threat**

The Threat Management Team should review risks and determine what additional security measures, if any, the organization should put in place after an incident.

- If warranted, provide increased work-site protection when serious threats of violence have occurred. Such protection might include requesting additional police patrols, hiring security guards, and/or alerting organizations or people who might be affected.
- Consider the costs and benefits of providing increased protection to threatened employees. This could include changing their phone numbers, relocating them, loaning them a cellular phone, or providing them with a quick response distress button or information about where they can obtain this device.
- Seek guidance and training on what procedures you should take to screen mail and packages after you receive a threat or after a large-scale layoff. Contact the U.S. Postal Service or local police for guidance.

## **Managing the Aftermath of an Incident**

### **Trauma Plan**

Helping employees with the psychological consequences of workplace violence is the humane thing to do. It also greatly helps to reduce the financial losses that absences, loss of productivity among employees, and workers' compensation claims can cause.

After a violent incident, provide information and offer counseling services to employees and their families. Contact a local health professional to provide this service for you. Components of a trauma plan may include:

- A debriefing 24 to 72 hours after a serious incident of violence to include all affected employees.
- Providing a group debriefing after a serious incident of violence for immediate coworkers in how to communicate with the victim and/or coworker who is re-entering the job after absence; and
- Providing ongoing follow-up treatment, as needed.

## **LEGAL OBLIGATIONS AND DUTIES OF EMPLOYERS**

The duty of an employer to provide a reasonably safe workplace may arise from variety of federal or state statutes, regulations, or judicial decisions. Employers seeking to avoid liability for acts of workplace violence should become familiar with the legal requirements. The following highlights provide a foundation for the legal audit of your current policies and practices for reducing workplace violence.

### **Workplace Safety**

- Compliance with the Occupational Safety and Health Act, and similar state laws, may contribute to reducing of the risk of workplace violence.
- Many state courts have ruled that an employer is liable for the dangerous acts of employees if such harm was foreseeable. The employer must use reasonable care in hiring, training, supervising and retaining employees.

- Case law in some jurisdictions suggests that the employer may be liable for the negligent acts of independent contractors, where such contractors are incompetent, negligently selected, or engaged in abnormally dangerous activities.
- Under both federal and state statutes, the employer may be liable for failure to intervene in situations of harassment of employees by supervisors or management, and in situations involving coworkers where the employer was aware of the harassment.
- The employer may be liable for the acts of an employee who is intoxicated or otherwise a risk to others, if the employer exercises control over the employee and is negligent in exercising that control
- Employers are expected to use reasonable security precautions and other measures to minimize the risk of foreseeable criminal intrusion (based upon the prior experience of the employer, its location in a dangerous area, or industry victimization base rates).

Employers should be cautious about reducing the level of security because of financial pressures. To avoid or reduce liability the employer should first assess whether the level of security risk justifies reducing security measures.

### **Training Issues**

- Various federal and state laws or case law may require the employer to establish written policy and procedures dealing with harassment, as well as the training of employees as to municipal policies prohibiting sexual or racial harassment, fighting, and the use of drugs or alcohol in the workplace.
- The organization may avoid or reduce liability for acts of violence in the workplace if the organization can show that it has trained its employees on how to recognize the warning signs of potentially violent behavior, and on precautions that may enhance the personal safety of the employee at work.

### **Duty to Warn**

In some jurisdictions, an employer, employment counselor, or therapist may have a duty to warn an identified employee, spouse, or third party of a threat made by another to do bodily harm to that person.

## **OTHER LEGAL OBLIGATIONS**

### **Nondiscrimination**

The Americans with Disabilities Act of 1990 (ADA) and related state statutes prohibit employers from discriminating against qualified individuals with physical or mental disabilities. An employee could claim that his violent or threatening behavior was the result of a disability and request reasonable accommodation from the employer. While federal law and judicial decisions provide that an employer may disqualify an employee who is a danger to self or others, the employer may have an obligation to investigate a claim of disability to determine whether dismissal is necessary for the protection of the employee or others in the workplace.

## Respecting Employee Rights

- Avoid claims of defamation. If an employer warns employees of an individual's threat of violence, he or she could be liable for defamation if the employer is subsequently proved to be mistaken. The employer can minimize this liability by conducting a prompt investigation of all allegations and by notifying only those individuals who have a need to know of the risk.
- Avoid claims of wrongful discharge. An employee terminated for having violent tendencies could file a wrongful discharge suit against the employer if the employee disputes his employer's characterization. Although employers should investigate complaints against an employee prior to termination, they should consider suspension of the employee with pay while the charges are being investigated. The employer might also consider offering the employee a chance to resign as an alternative to termination.
- Respect the privacy rights and confidentiality rights of employees during any investigation.

The above list of legal obligations is not meant to be comprehensive. To find out more about the requirements in your community, refer to state statutes or ask your legal counsel.

If you have any questions or if we can help you with other areas of risk management, please contact us.



### Important Telephone Numbers

MML Risk Management Services	734/662-3246 or 800/653-2483
Loss Control Services	800/482-2726

**Note:** This document is not intended to be legal advice. It does not identify all the issues surrounding the particular topic. Public agencies are encouraged to review their procedures with an expert or a competent attorney who is knowledgeable about the topic.

## MODEL POLICY FOR WORKPLACE THREATS AND VIOLENCE

Nothing is more important to (organization's name) than the safety and security of its employees. (Name of Organization) will not tolerate threats, threatening behavior, or acts of violence against employees, visitors, guests, or other individuals by anyone on (organization's name) property. Violations of this policy may lead to disciplinary action that may include dismissal, arrest, and prosecution.

Any person who makes substantial threats, exhibits threatening behavior, engages in violent acts on (Name of Organization's) property shall be removed from the premises as quickly as safety permits, and shall remain off (Name of Organization) premises pending the outcome of an investigation. (Name of Organization's) will initiate an appropriate response. This response may include, but is not limited to, suspension and/or termination of any business relationship, reassignment of job duties, suspension or termination of employment, and/or prosecution of the person or persons involved.

No existing (Name of Organization's) policy, practice, or procedure should be interpreted to prohibit decisions designed to prevent a threat from being carried out, a violent act from occurring or a life threatening situation from developing.

All (Name of Organization's) personnel are responsible for notifying the management representative designated below of any threats that they have witnessed, received, or have learned that another person has witnessed or received. Even without an actual threat, personnel should also report any behavior they have witnessed which they regard as threatening or violent, when that behavior is job related or might be carried out on a municipally controlled site, or is connected to municipal employment. Employees are responsible for making this report regardless of the relationship between the individual who initiated the threat or threatening behavior and the person or persons who were threatened or were the focus of the threatening behavior. If the designated management representative is not available, personnel should report the threat to their supervisor or another member of the management team.

All individuals who apply for or obtain a protective or restraining order which lists municipal locations as being protected areas, must provide to the designated management representative a copy of the petition and declarations used to seek the order, a copy of any temporary protective or restraining order which is granted, and a copy of any protective or restraining order which is permanent.

(Organization's name) understands the sensitivity of the information requested and has developed confidentiality procedures that recognize and respect the privacy of the reporting employee(s).

The designated management representative is:

Name: \_\_\_\_\_ Department: \_\_\_\_\_