

August 2003 What Would You Do?

An employee asks to talk to you about a co-worker, Gary Guns, who has worked for your company since 1984. She tells you that Gary wears a black t-shirt and camouflage pants to work every day, gets mad easily and says that he thinks about shooting people. Although she doesn't think Gary would ever do anything violent, she wanted you to know what was going on.

“He talked about ‘I’ll kill someone.’ He talked about it, but I never did think he would do it,” explained a victim of the July 8, 2003 shooting at Lockheed Martin’s Meridian, Mississippi facility. The alleged shooter, Doug Williams, had worked for Lockheed Martin for over eighteen years and, during that time, had made statements and shown behaviors that could suggest a violent tendency. Would-be-violent employees, however, do not always sign-post their plans. When asked about Ron Thomas, who allegedly shot and killed two co-workers and seriously injured a third at a San Antonio Century 21 office on July 23, 2003, a co-worker explained, “The guy who is accused...was a person if you had put 500 people in front of me he is the last person I would have selected to be a serial killer.”

As an employer, what should you do to protect your workforce against violence and to respond to information about an employee like Gary Guns?

- Assembling a Team & Preparing a Plan

If the information that Gary Guns gets mad easily, talks about shooting people and dresses in what could be deemed an unusual manner is accurate, you may have a breakdown in your procedures for avoiding workplace violence. In addition to responding to this specific situation, you should, therefore, evaluate your overall violence-prevention systems.

If you do not have a plan for addressing workplace violence, now is a good time to implement one. If you have a plan, you should review and update it if necessary. Your first step in developing a plan is to identify a violence prevention team (also referred to as a crisis management team). This team administers, communicates and maintains the company’s policies, procedures and guidelines on responding to violence or threats of violence. The team generally assembles a list of contacts, including local law enforcement and medical facilities, home numbers of company decision-makers, and contact numbers for local EAP representatives or crisis centers. The team may also want to identify local therapists or psychologists who specialize in violence/abuse situations.

The size of the team will depend upon the size of your organization. In larger organizations, the team usually includes a team leader and representatives from human resources, legal, medical, security, and employee assistance. You may also want to include a representative of any unions or a psychologist who specializes in workplace violence issues.

After the team is assembled and familiarizes itself with existing policies, procedures and guidelines, it should perform a vulnerability audit to assess the company’s capacity for avoiding and responding to workplace violence. The audit usually consists not only of reviewing policies

and physical layouts, but also of talking to employees, managers, supervisors, vendors and customers about your company and their interactions.

The audit includes a review of human resource practices, especially policies on issuing discipline, and your procedure for following up on investigations. You should have a no tolerance policy against violent behavior in the workplace and it is generally recommended that you prohibit employees from bringing weapons to the workplace (including concealed handguns). The team should assess hiring mechanisms. For example, does the company check applicants' backgrounds for any convictions for violent crimes? The team should also evaluate procedures for responding to threats and acts of violence and consider what type of training and education on identifying and responding to workplace violence or threats is provided to employees and managers. Finally, the audit should include an evaluation of the physical security systems at your facility and whether there are any cost-efficient steps that you can take to make the facility more secure.

- Responding to threats of violence

In addition to ensuring that your company has an appropriate plan in place, you must respond to the specific information that you received about Gary Guns. By talking about "shooting people," particularly in light of his other behavior, you have information about a possible threat against your workforce and you need to respond accordingly.

You should promptly begin documenting and investigating the threat. Begin by obtaining more information about Gary's statements from both the employee who reported it and others who work closely with Gary. For example, has he ever referred to "shooting" or otherwise taking any action against any person in particular? If the investigation reveals that Gary has, in fact, made the comments and exhibited the behavior described to you, you will need to take action. The type of action, ranging from a disciplinary warning, to a medical evaluation, to termination, will depend on what your investigation reveals. No matter what action you take, you need to think about Gary's potential reaction. For example, if you terminate Gary because he has made threats of violence, you need to take steps to protect yourself and your workforce from violent retribution. You should also determine whether it is appropriate to notify outside authorities.

Employers can be placed in difficult situations if the employee's tendency towards violence is a result of a mental impairment that meets the disability test under the Americans with Disabilities Act ("ADA"). The ADA prohibits employers from discriminating against disabled employees and requires employers to accommodate employees' disabilities. Significantly, the ADA does not apply if medical information demonstrates that the employee poses a "direct threat" to the safety of himself or others. The EEOC has stated that an employee's recent overt acts and violent statements may be enough to show a direct threat. In Gary's case, you do not have information that indicates his actions resulted from a disability. If you did, however, you would need to consider the ADA implications and possibly consult with a medical professional to determine if he posed a direct threat that could not be reasonably accommodated.

Today, violence in the workplace is a problem that all employers must consider. Unfortunately, nothing that you do will insure that you are never faced with a violent employee. Still, it is

important to develop a plan for responding to workplace violence and to act swiftly if a threat is made.

The What Would You Do? is based on a fictional situation. The response is not intended to provide legal advice but only to provide a general discussion of potential issues. Individual situations may require different action.

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