

2016 HOSPITALITY LAW CONFERENCE

FEBRUARY 22-24, 2016,

**WORKPLACE VIOLENCE: PREPARING,
RECOGNIZING, TRAINING, AND RESPONDING
TO AN ACTIVE SHOOTER**

Presented by:

JAMES M. DEDMAN, IV

&

ROBERT D. CORNEY



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PRESENTERS



James M. Dedman, IV.

Attorney, Gallivan, White, & Boyd, P.A.

Charlotte, North Carolina

- ❖ Jim Dedman is an experienced litigator with extensive experience in handling complex personal injury and business litigation. He focuses his practice on products liability, hospitality, commercial, and transportation litigation. He regularly speaks on topics such as the use of social media in litigation and, of all things, the McDonald's hot coffee case. He is licensed to practice law in Texas, South Carolina, and North Carolina. He is also the founder and editor of *Abnormal Use*, a popular products liability blog named by the *ABA Journal* as one of the top 100 legal blogs in the country for five years in a row.



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ACTIVE SHOOTING IN THE NEWS

1 Dead, 4 Hurt in SoCal Dental Office Shooting

Suspect barricaded himself inside building

NIGHTCLUB EMPLOYEE KILLED IN SHOOTING

Jason Rodriguez : Shooting at downtown Orlando office building leaves 5 hurt, 1 dead

Oregon police: 2 dead, 2 wounded in office shooting

Unhappy AT&T Customer Shoots AT&T Employee

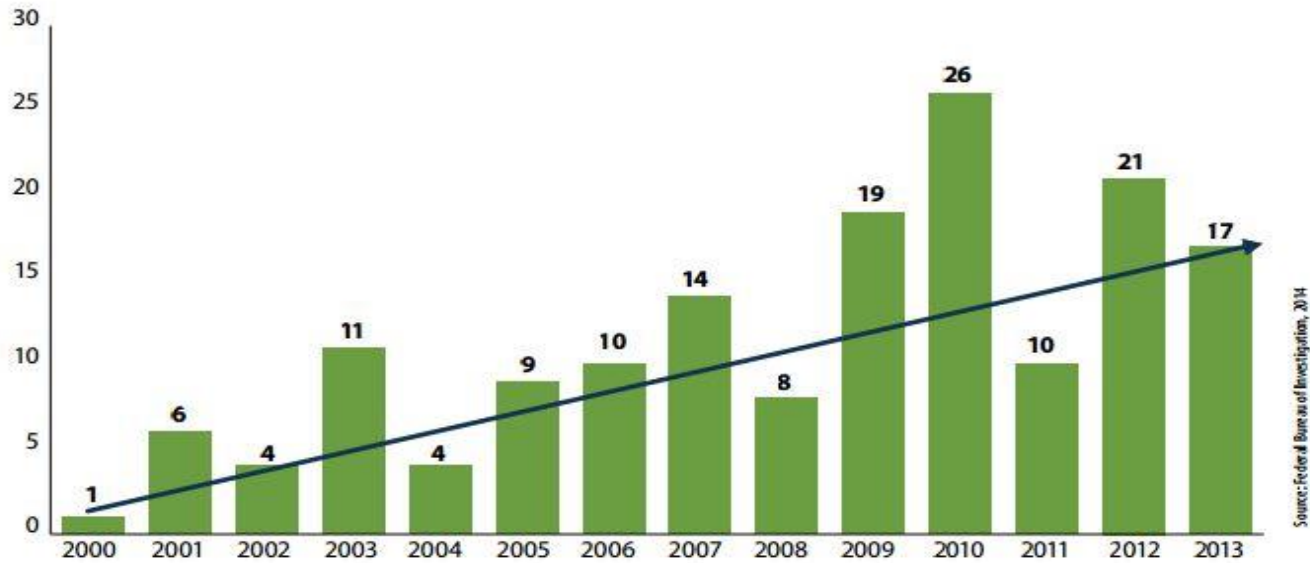
Official: Ex-employee kills two in Baton Rouge shooting

4 dead, including gunman, in St. Louis factory shooting, police say



STATISTICS OF ACTIVE SHOOTINGS

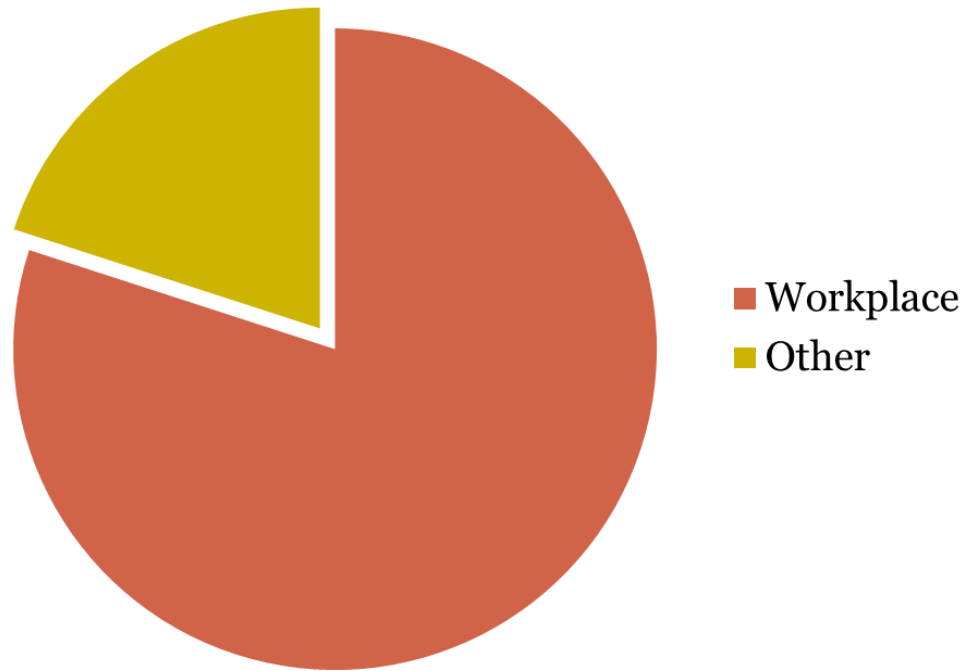
A Study of 160 Active Shooter Incidents in the United States Between 2000 - 2013:
Incidents Annually



17 In 6 incidents (and, in addition, at least 4 schools), officers were on the scene when the shooting began.

STATISTICS OF ACTIVE SHOOTINGS

Active Shooting 2000-2013



Source: <http://www.shrm.org/hrdisciplines/safetysecurity/articles/pages/fbi-active-shooter-work.aspx#sthash.IZvDZ7JC.dpuf>

STATISTICS OF ACTIVE SHOOTINGS

Businesses



Schools



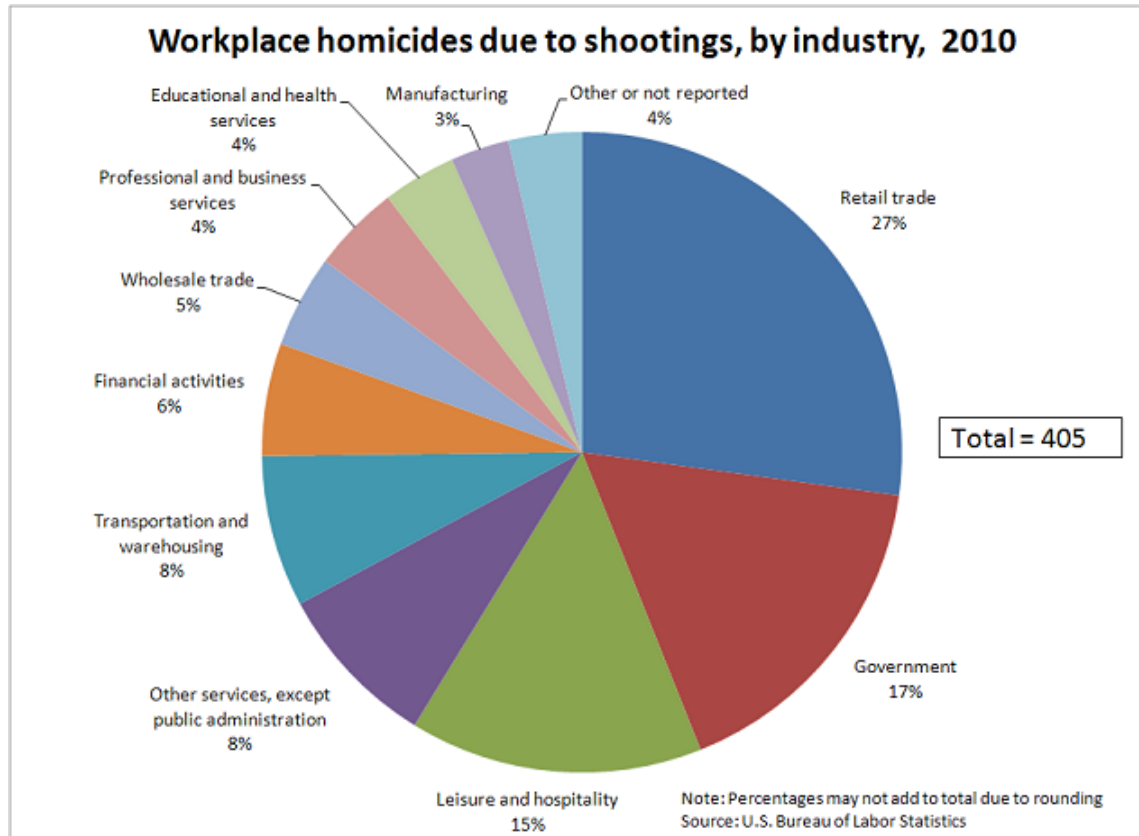
Government Sites



Healthcare Facilities



WORKPLACE SHOOTING HOMICIDES BY INDUSTRY



STATISTICS OF ACTIVE SHOOTING

Of those incidents in business environments

210 people killed


- 12 company owners, supervisors or managers

272 people wounded


- 6 owners, supervisors or managers



IMPLEMENTING POLICIES & PROCEDURES

- **Time is of the Essence**
 - **Goal:** minimize time between detection of threat and initiation of internal protective measures/public safety responders/engagement of the shooter
 - **Early Detection**
 - Everything prior to the shooter's arrival at the site
 - Offers the opportunity to interdict an event before it happens.
 - Apply traditional HR skills to identify and de-escalate potentially violent situations that might otherwise result in an active-shooter scenario
 - **When Early Detection Fails**
 - First line of defense
 - Technology
 - **Treating this like a fire, earthquake or other safety drill**
- 

DRAFTING POLICIES & PROCEDURES

- **Worksite analysis**
 - Take into account size and type of company
 - Physical security
 - **Hazard prevention and control**
 - **Management and employee involvement:**
 - Resources to violence prevention
 - Accountability for program implementation
 - Provide counseling
 - Zero-tolerance policy
 - Studies to identify trends and appropriate security measures
 - Barrier between employees and potential perpetrators
 - **Safety and health training**
- 

POTENTIAL EMPLOYER LIABILITY

Penske Shooting Victim Files \$20 Million Lawsuit

"When you have notice that a former disgruntled employee has been making threats that they are going to come on to the property and do harm to other employees then you have an obligation in our opinion to protect your employees from those types of people," said Federal.



POTENTIAL EMPLOYER LIABILITY

OSHA

- “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.” 29 U.S.C. § 654(a)(1)
- No specific standard for workplace violence
- Civil fines
- Criminal prosecution



POTENTIAL EMPLOYER LIABILITY

State Adoption of OSHA's General Duty of Care

- S.C. Code Ann. § 41-15-80
- Tex. Lab. Code Ann. § 411.103

State Laws Addressing Workplace Violence

- New York (12 N.Y.C.R.R. Part 800.6)
- “High Risk” Industries
 - S.C. Code Ann. § 1-1-1410 - State Agencies
 - 405 ILCS 90/1 - Healthcare Providers

OSHA Guidelines/Directives

- Non-binding, but may be able to use compliance as a defense



POTENTIAL EMPLOYER LIABILITY

- **Negligence**

- General Rule

- Employers not vicariously liable for violent acts of employees.

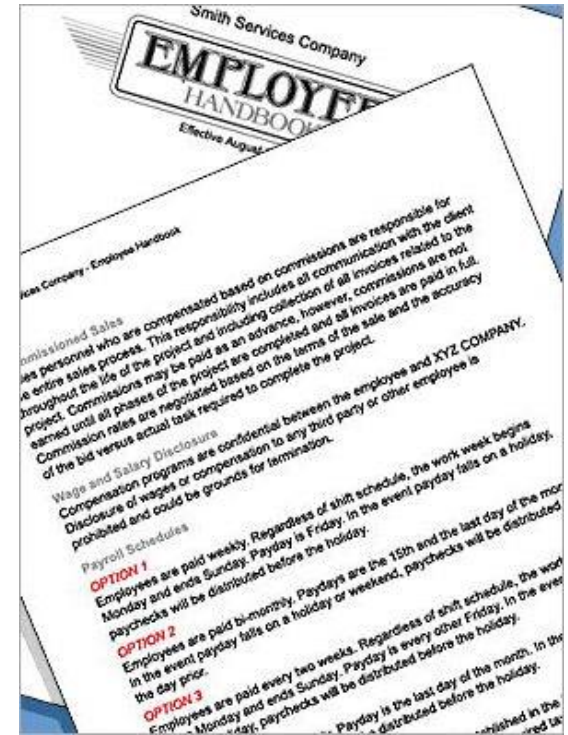
- But...

- ✦ Duty to Warn
- ✦ Negligent Hiring
- ✦ Negligent retention
- ✦ Negligent supervision
- ✦ Negligent training

- **Contractual Liability**

- Company policies

- Employee handbooks



QUESTIONS?



Gallivan, White & Boyd, P.A.

ATTORNEYS AT LAW

Charlotte, NC



Greenville, SC



Columbia, SC

www.GWBlawfirm.com