

**Workplace Violence: Preparing,
Recognizing, Training and Responding to
an Active Shooter**



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Workplace Violence at a Glance

Active Shooter: *“A term used by law enforcement to describe a situation in which a shooting is in progress and an aspect of the crime may affect the protocols used in responding to and reacting at the scene of the incident. Unlike a defined crime, such as a murder or mass killing, the ‘active’ aspect inherently implies that both law enforcement personnel and citizens have the potential to affect the outcome of the event based upon their response.”¹*

- Nearly two million (2,000,000) American workers report having been victims of workplace violence each year, with many more cases going unreported.
- In 2014, there were 4,679 fatal work injuries in the United States, of which 749 were the result of violence and **271** were homicides.
 - **Eleven (11)** of the workplace homicides in 2014 were in the Leisure and Hospitality industries, while another **fourteen (14)** were in the Accommodation/Food Services industries.
 - **Sixty-Six (66)** of the fatalities in Texas in 2014 were the result of violence in the workplace.
- Among workplace homicides in which women were the victims, the greatest share of assailants were relatives or domestic partners (32 percent), while the most common type of assailant for homicides involving men were robbers (33 percent).
- Factors that increase the risk of violence in the workplace include positions which require the exchange of money; working alone or in isolated areas; and working with volatile or unstable customers. Providing services or care, and working where alcohol is served may also impact the likelihood of violence. Time of day and location of work, such as working late at night or in areas with high crimes rates, are also risk factors to consider.²
- However, the risk of being killed by mass shooting is very low. Mass shootings make up less than 1 percent of deaths caused by firearms in the United States each year. Of the 12,000 gun-related deaths sustained in the United States in 2015, only 39 were related to “mass-shootings,” defined as a shooting in which four (4) or more persons were killed by a lone shooter.³

¹ Blair, J. Pete, and Schweit, Katherine W. “A Study of Active Shooter Incidents in the United States Between 2000 and 2013.” Texas State University and Federal Bureau of Investigation, U.S. Department of Justice, Washington D.C. 2014.

² Sources: OSHA “Safety and Health Topics.” www.osha.gov/SLTC/workplaceviolence. 18 Jan. 2016; “National Census of Fatal Occupational Injuries in 2014 (Preliminary Results).” Bureau of Labor Statistics, U.S. Department of Labor, Washington D.C. 17 Sept. 2015.

³ Berkowitz, Bonnie; Gamio, Lazaro; Lu, Denise; Lindeman, Todd; and Uhrmacher, Kevin. “The Math of Mass Shootings.” *The Washington Post Online*. 4 Dec. 2015. https://www.washingtonpost.com/graphics/national/mass-shootings-in-america/?tid=a_inl.

Standards of Care Owed to Employees by Employers to Prevent Workplace Violence

• Occupational Safety and Health Act (“OSHA”):

- While there is no federal law establishing a duty to prevent workplace violence against employees, an employer has an affirmative duty to provide a safe working environment under OSHA’s “General Duty Clause.”
 - 29 U.S.C. § 654(a)(1): “Duties of Employers and Employees”
 - *“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.”*
- Employers are not held strictly liable for workplace violence if it results from a violation of the General Duty Clause; however, most states allow such a violation to serve as evidence of negligence in subsequent civil proceedings. Further, OSHA can issue citations to employers when violations are identified.

• States’ Adoption of OSHA General Duty Clause or Similar Duty of Care:

- Some states have adopted the specific language of OSHA’s General Duty Clause into their statutory scheme; others have implemented their own statutory language imposing a duty of care on employers.
- For Example:
 - **South Carolina:** S.C. Code Ann. §41-15-80: *Identical Language to OSHA’s General Duty Clause*
 - **Texas:** Tex. Lab. Code Ann. § 411.103: “Duty of Employer to Provide Safe Workplace”
 - *“Each employer shall provide and maintain a place of employment that is reasonably safe and healthful for employees; install, maintain and use methods, processes, devices and safeguards, including methods of sanitation and hygiene, that are reasonably necessary to protect the life, health and safety of the employer’s employees; and take all other actions reasonably necessary to make the employment and place of employment safe.”*

• State Laws Addressing Workplace Violence:

- Several states have passed statutes requiring all qualified employers address potential workplace violence through the implementation of company policies and/or procedures. For example:
 - **New York** – 12 N.Y.C.R.R. Part 800.6: “Every employer shall evaluate its workplace or workplaces to determine the presence of factors or situations in such workplace or workplaces that might place employees at risk of occupational assaults and homicides...Every employer with at least twenty full time permanent employees shall develop and implement a

written workplace violence prevention program for its workplace or workplaces.”

- Other states have passed similar statutes applicable only to what are considered ‘high risk industries.’ For example:
 - **South Carolina** – S.C. Code Ann. §1-1-1410: “Every state agency...shall develop and implement an agency workplace domestic violence policy that must include, but is not limited to, a zero tolerance policy statement regarding acts or threats of domestic violence in the workplace and safety and security procedures.”
 - **Illinois** – 405 ILCS 90/1: “Every health care workplace must adopt and implement a plan to reasonably prevent and protect employees from violence at that setting.”
- **OSHA’s “Guidelines and Recommendations for Workplace Violence Prevention” & “Directive on Investigating or Inspecting Workplace Violence Incidents”**
 - While no express standards have been issued by OSHA to help avoid instances of workplace violence, non-binding guidelines and directives have been provided for preventing and investigating incidents of workplace violence. While not mandatory, these guidelines can serve as an invaluable resource for employers.
 - **OSHA Guidelines and Recommendations for Workplace Violence Prevention:** “An employer is on notice of the risk of violence and may be required to implement a workplace violence prevention program if the employer experienced acts of workplace violence, or becomes aware of threats, intimidation, or other potential indicators that show the potential for violence in the workplace exists or has the potential to exist.”
 - There is no requirement an employer comply with the OSHA guidelines and directives, but employers that choose to follow the guidelines may be able to use their compliance as a defense to claims that they breached their duty of care to the employee.
- **Common-Law Duty to Provide a Safe Work Environment:**
 - **Texas:**
 - “An employer is not an insurer of its employees’ safety at work; however, an employer does have a duty to use ordinary care in providing a safe work place.” Leitch v. Hornsby, 935 S.W.2d 114, 117 (Tex. 1996).
 - “In the employment context, the Texas Supreme Court has repeatedly held that an employer owes a continuous, non-delegable duty to provide its employees with a safe workplace.” Austin v. Kroger Texas, L.P., 731 F.3d 418, 419 (5th Cir. 2013).
 - “The Texas Supreme Court has emphasized that an employer’s duty to his employees may be identical ‘in all material respects’ to a landowner’s duty ‘to use reasonable care to make his premises reasonable safe for the use of his invitees.’ Thus, the Texas

Supreme Court has repeatedly held that an employer owes a continuous, non-delegable duty to provide its employees with a safe workplace.” Austin v Kroger Texas, L.P., 731 F.3d 419, 424 (5th Cir. 2013).

- **South Carolina:**
 - “It is the duty of the master to furnish the servant a reasonably safe place to work and reasonably safe and suitable tools and appliances. These duties are positive, absolute and personal. They are termed non-delegable duties, and the master cannot evade liability by delegating their performance to another.” Nuckolls v. Great Atlantic & Pacific Tea Co., 192 S.C. 156, 162 (1939).
- **Employer Liability to Third Parties:**
 - **Negligent Hiring/Retention of Employees**
 - **Texas:**
 - “An employer who negligently hires, retains or supervises an incompetent or unfit individual may be directly liable to a third party whose injury was proximately caused by the employee’s negligent or intentional act.” Soon Phat, L.P. v. Alvarado, 396 S.W.3d 78, 101 – 102 (Tex. App. – Houston [14th Dist.] 2013)
 - “In a negligent-hiring or negligent-entrustment claim, a plaintiff must show that the risk that caused the entrustment or hiring to be negligent also proximately caused plaintiff’s injuries.” Soon Phat, L.P., 396 S.W.3d at 102.
 - **South Carolina:**
 - “In circumstances where an employer knew of or should have known that its employment of a specific person created an undue risk of harm to the public, a plaintiff may claim that the employer was itself negligent in hiring...the employee...” James v. Kelly Trucking Co., 377 S.C. 628, 631 (2008).
 - “Negligent hiring cases ‘generally turn on two fundamental elements – knowledge of the employer and foreseeability of harm to third parties.’” Kase v. Ebert, 392 S.C. 57, 63 (Ct. App. 2011), quoting Doe v. ATC, 367 S.C. 199, 206 (Ct. App. 2005).
 - “There may be circumstances in which the only effective control the master can exercise over the conduct of his servant is to discharge the servant. Therefore the master may subject himself to liability...by retaining in his employment servants who, to his knowledge, are in the habit of misconducting themselves in a manner dangerous to others.” Restatement (Second) of Torts § 317 (1965); see also Degenhart v. Knights of Columbus, 309 S.C. 114, 116 – 117 (1992).
 - **Premises Liability**
 - **Texas:**

- “Landowners owe varying duties of care to visitors on their land, depending on the legal status of the visitor.” Motel 6 G.P. v. Lopez, 929 S.W.2d 1, 3 (Tex. 1996).
- An invitee has been defined by Texas Courts as “one who enters on another’s land with the owner’s knowledge and for the mutual benefit of both.” Rosas v. Buddies Food Store, 518 S.W.2d 534 (Tex. 1975).
- “A landowner owes invitees a duty to exercise *ordinary care* to protect them from not only those risks of which the owner is actually aware, but also those risks of which the owner should be aware after reasonable inspection.” Further, “[a]n invitee must show that a landowner either knew, or after reasonable inspection should have known, of an unreasonably dangerous condition before arguing that the owner breached a duty by failing to take any one of several precautions.” Motel 6 G.P., 929 S.W.2d at 3 – 4, *emphasis added*.
- **South Carolina**
 - “South Carolina recognizes four general classifications of persons who come on premises: adult trespassers, invitees, licensees and children. Different standards apply depending on whether the visitor is considered an ‘invitee,’ i.e. an invited (express or implied) business guest; a ‘licensee,’ i.e. a person not invited, but whose presence is suffered; a ‘trespasser,’ i.e. a person whose presence is neither invited or suffered; or a child.” Sims v. Giles, 343 S.C. 708, 715 (Ct. App. 2001).
 - “In premises liability cases, the invitee is offered the utmost duty of care by the landowner and a trespasser is generally offered the least.” Id.
 - “Invitees include patrons of stores,...persons visiting a filling station to use the restroom of vending machine or to ask direction.” Id. at 717.
 - “The owner of property owes to an invitee or business visitor the duty of exercising *reasonable* or *ordinary care* for his safety, and is liable for injuries resulting from the breach of such duty.” Id. at 718.

Workplace Active Shooter Incidents In the News

- February 12, 2015: *Shock in Lennox: 2 Shot, 1 Assaulted*
 - “A gunman shot and killed an employee at a Lennox manufacturing plant Thursday sending co-workers and a community into lockdown, then mourning. A second victim was also shot and in critical condition, and a third person was assaulted before the gunman fled.”

Source: Staff. "Man Shot and Killed at ProTec; Woman in Critical Condition; Third Who Was Assaulted in Serious Condition." *Argus Leader Online*. 15 Feb. 2014. 17 Jan. 2016.

- February 23, 2015: Workplace Shooting Leaves 1 Dead in Moorestown
 - "One person is dead and another hospitalized after a shooting at a security company... An employee of the armed security company opened fire on co-workers inside the business before fatally shooting himself."
Source: Comegno, Carol. "Workplace Shooting Leaves 1 Dead in Moorestown." *USA Today Online*. The Courier-Post. 23 Feb. 2015. 17 Jan. 2016.
- June 23, 2015: Houston Man on the Run After Workplace Shooting
 - "A disgruntled Texas employee is accused of killing one of his co-workers after learning he was being laid off from his job."
Source: Reyes, Justin. "Houston Man on the Run After Workplace Shooting." *KGNS.TV Online*. 24 Jun. 2015. 17 Jan. 2016.
- September 7, 2015: Quarry Shooting: At Least 3 Dead, 7 Injured in Cupertino, California Attack
 - "[Shareef] Allman, a 47-year old heavy equipment operate at Lehigh Hanson's Permanente Cement Plant, had been in a safety meeting with more than a dozen co-workers when...he pulled a gun from his waistband and began shooting."
Source: Newman, Bruce; Fernandez, Lisa; Gomez, Mark; and Webby, Sean. "Cupertino Quarry Shooting Suspect Who Killed 3, Wounded 7 Still on Loose." *San Jose Mercury News Online*. 5 Oct. 2011. 17 Jan. 2016.
- October 26, 2015: Bolingbrook Shooting Kills 2
 - "Degang Zhang and Xingling Zhang were found dead at YCB International, an automotive parts company... Police said Degang Zhang, 42, shot and killed 39 year-old Xingling Zhang – who worked at the auto parts company – before taking his own life."
Source: Staff. "Bolingbrook Shooting Kills 2." *ABC 7 Eyewitness News Online*. 26 Oct. 2016. 17 Jan. 2016.
- November 4, 2015: Deadly Workplace Shooting in Downtown L.A. High Rise
 - "Police were searching for the gunman who shot and killed a coworker in a high rise in downtown L.A.'s garment district late Wednesday afternoon."
Source: Palmer, Melissa; McDade, Mary Beth. "Police Searching for Gunman After Deadly Workplace Shooting in Downtown L.A. High Rise." *KTLA 5 Online*. 4 Nov. 2015. 17 Jan. 2016.

Run. Hide. Fight.

- The U.S. Department of Homeland Security and FBI promote a three (3) tier approach for individuals involved in an active shooter situation. All persons involved should determine the most reasonable way to protect their own lives considering the following three options, set forth in order of preference:
 1. **RUN**
 - If there is an accessible escape path, it is recommended you attempt to evacuate the premises.
 - You should leave your belongings behind and evacuate, regardless of whether others involved agree to follow you or not.
 - If you are able to help others escape, try. However, you should not attempt to move or carry wounded victims to safety.
 - Keep your hands visible as you flee. Law enforcement may be on scene and will be attempting to determine who poses a threat to them and who is simply a victim fleeing danger.
 - If law enforcement is not yet on scene, call 911 once you have reached safety.
 2. **HIDE**
 - If evacuation is not possible, find a place to hide where the active shooter is less likely to find you. Attempt to locate a place out of the active shooter's view and where you will be protected if shots are fired.
 - Lock the door to the room or otherwise block entry to the area with heavy furniture.
 - Move away from any windows or doors, and hide behind a large item (for example, a desk or cabinet).
 - Silence your cell phone and remain quiet.
 3. **FIGHT**
 - As a last resort, and only if in imminent danger, attempt to disrupt or incapacitate the active shooter.
 - Work together with other victims to incapacitate the shooter by throwing items and using improvised weapons. Use the materials and objects readily available to you.
 - COMMIT TO YOUR ACTIONS.

Additional Planning and Preparedness Resources

- **“Ready” Public Service Advertising Campaign (FEMA/DHS): www.ready.gov**
 - “Ready” Public Service Advertising Campaign designed by the Federal Emergency Management Agency (FEMA) to educate and empower Americans to prepare for and respond to emergencies including natural and man-made disasters.
 - “Ready Business” extension to assist businesses with organizing, developing and implementing emergency preparedness program in the workplace.
- **Ready Houston: www.readyhouston.tx.gov**

- Localized version of FEMA’s Ready.gov Program. Provides emergency preparedness information and training for a five-county region in Southeast Texas including the cities of Galveston, Houston and Pasadena.
- Video Training: “*Run. Hide. Fight. Surviving an Active Shooter Event.*”
- **U.S. Department of Homeland Security: www.dhs.gov/active-shooter-preparedness**
 - Independent course study developed to provide public guidance on how to prepare for and respond to an active shooter crisis situation.
 - *Active Shooter: What Can You Do?*
 - “Active Shooter Awareness Virtual Roundtable” – 90-minute Active Shooter webinar detailing the development of an emergency response plan and the need to train employees on how to respond if confronted with an active shooter.
 - Available Online: <https://share.dhs.gov/asaware2011>
 - *Countering Violent Extremism (CVE) and Active Shooter Web Portal*: Developed by the Department of Homeland Security to provide video and training resources, as well as a document library, to the public covering a number of CVE and active shooter topics. The online portal hosts subject matter experts in the areas and provides open forums to provide feedback and answer questions.
 - Online: www.dhs.gov/cveas-portal