

Today's GENERAL COUNSEL

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Workplace Shootings: The Three Ps

By Christopher J. Campbell

If recent history is any indication, the United States will endure more mass shootings in the near future. As these tragic events demonstrate, employers can no longer place the exclusive burden of employee safety for mass casualty events upon law enforcement. When one man with a gun can enter a workplace and shoot dozens of people in minutes, companies that do not adequately respond to the threat face significant risks and costs. It is impor-



Christopher J. Campbell is an attorney at Carothers DiSante & Freudenberg LLP. He defends California employers against allegations of wrongful termination, harassment, discrimination and retaliation, and helps institute effective workplace violence and harassment policies by obtaining restraining orders and other civil relief. He also provides employers with workforces in California with advice and counseling to ensure compliance with the state's employment laws. cjcampbell@cdflaborlaw.com

tant for in-house counsel to understand and implement workplace violence prevention measures that prioritize employee safety while respecting personal dignity and civil liberties.

Here is some general guidance. Think of it as the three Ps — preparation, prevention and protection.

Employers should prepare for mass casualty events by updating security protocols customized for their workplace. The Department of Homeland Security has issued guidelines for responding to active shooter events, generally referred to as “run-hide-fight.”

Human resources should collaborate with security professionals and legal counsel to integrate these guidelines into standardized policies. Employees should be trained and drilled (i.e., practice) on “run-hide-fight,” evacuation, lockdown and other safety techniques.

Apart from policies restricting the possession of firearms, weapons and dangerous substances while on company premises, employers can help prevent mass casualty events and workplace violence by addressing persons of interest. Human resources should work with security professionals to identify persons or applicants that exhibit at-risk personality traits (which may be as simple as asking employees to share information regarding restraining orders they have against others).

For example, some pre-attack traits identified by the FBI in a study of active shooters between 2000 and 2013 included mental health impairment, poor impulse control, interpersonal difficulties, poor work performance and suicidal ideation.

If an incident, threat or other concerning behavior occurs in the workplace, employers should immediately speak with counsel to discuss and/or coordinate a confidential safety assessment. The employee should be placed on administrative leave pending the outcome of a return-to-work interview and assessment. Counsel can then pair them with a third-party consultant to conduct the interview and to facilitate separation or re-integration.

Safety assessments provide an important buffer in states such as California that codify workplace protection. They provide both legitimate reasons for termination, and ready evidence to substantiate a potential workplace violence restraining order if needed.

Employers should actively address the fallout if the unthinkable occurs. Offer support and counseling programs to the extent practicable, and respect impacted employees' reasonable leave requests. Legal claims will follow. Inevitably, they will vary depending upon the circumstances. For example, employers might receive claims for disability-related liability from mental suffering associated with a workplace violence event. Develop an internal strategy to secure claim releases, and/or to address prospective litigation in a manner that facilities operational concerns. ■