

Security 101: Workplace Safety

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By: James Mottola and Eric L. Probst

The United States Secret Service frequently responds to and investigates "threats against the president" to determine the true intent of a person's statement and ability to commit harm to the commander in chief. For the Secret Service, these priority investigations are closely scrutinized by headquarters division personnel, who work with behavioral experts to determine how best to evaluate the threat and, if necessary, to monitor the individual through an appropriate course of action until it is determined the threat is not an immediate concern. As history has demonstrated, even Secret Service threat assessments are not always accurate. In training, agents often are reminded that Sara Jane Moore, who had been identified and interviewed by agents, later attempted to assassinate President Ford. Over time, the Secret Service developed its ability to better assess threats through a multi-disciplinary approach, enlisting behavioral specialists more experienced in assessing mental health issues. The Secret Service also changed the way it did business by employing a risk-based approach to security, which included improved measures to control the physical environment around the president.

Since the early 1990s, the Secret Service, assisted by the Federal Bureau of Investigation ("FBI"), have shared their risk-based studies and threat assessment experience with schools to better prepare them for potential active shooter events. Their work has focused on identifying pre-attack behaviors in order to provide recommendations for proactive measures such as enhanced physical security practices and incident response plans. At Porzio Compliance Services, we follow these recommendations to better assess and mitigate risk for our education clients. Increasingly, with the rise in workplace violence threats and incidents, we also have been asked to respond to our business clients' immediate concerns about potential workplace threats and violence to employees.

School and workplace violence seem to have moved to the forefront of the public's mindset as never before. Perhaps for good reason. Recent FBI findings reveal that between 2000-2013 almost twice as many active shooter events occurred in commercial settings, which included businesses open and closed to pedestrian traffic and malls. The FBI recently found this trend has continued over the last two years. Given these statistics and acts of workplace violence over the last few months, more employees are concerned about their safety. How should employers react—by asking themselves what they can do to make their workplaces safer and how to better respond to employee-voiced safety concerns.

In our experience as risk professionals and attorneys, we agree that doing nothing is not the right answer. Very few businesses have experience addressing these issues, so generally, a good first step is to not ignore the alleged threat but to quickly involve human resources and the General Counsel to start an internal conversation about the circumstances surrounding the threat. If the employer does not have either, the employer should immediately reach out to an outside law firm with experience handling human resources-related issues such as workplace violence or employee threats. There are many steps to take but outside counsel should first meet with the employer to better understand the facts. Thereafter the services of a security professional should be enlisted to investigate the threat and assess the employer's physical security to better protect the safety of the employees. The latter is especially significant if a third party (significant other, customer, vendor, contractor) poses the threat. While the investigative phase continues, a security assessment can be conducted at

the place of business to identify gaps where policies and procedures create vulnerabilities that can be exploited by those wishing to harass or cause physical harm to employees or damage to the employer's intellectual and physical property, such as hard-copy and digitally-stored information. In our experience, these investigative first steps are critical to determining if the threat is real.

Legal plays an important role because the in-house and/or outside lawyer can evaluate the situation from the liability perspective to determine what reasonable steps the employer should take to investigate, respond to, and handle the threat. Our experience as outside general counsels for companies has taught us that workplace threats and violence often develop over time—many have no immediate precipitating event and often result from a history of workplace performance and relationship issues. Investigation and documentation of the preceding events can help the employer identify employee pairings that are "not working" to prevent an issue from rising to the level of a threat or violence. Documenting discussions with employees allows the employer to build a timeline it can monitor and rely on when a decision must be made to terminate an employee. While we have learned that many situations can be defused with dialogue, outside experts such as security firms or law enforcement must be advised or placed on standby if the situation warrants.

Workplace safety is important to eliminate the escalation of workplace stress and pressures to threats and violence. In a series of articles, we will develop and expound on these critical issues for employers.