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# Active Shooter Awareness and Preparation

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# Why Are We Presenting on This Topic?

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Tragedy after tragedy has occurred involving mass shootings of innocents. We hope that by having an understanding of what has led us to today will better prepare you and your loved ones.

*"By failing to prepare, you are preparing to fail."*

- Benjamin Franklin

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# Objectives

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- Define Active Shooter vs. Mass Killing
- Recall the historical overview of mass shooting events
- Identify characteristics of the “active shooter”
- Discuss the implementation of protective measures
- Importance of an Emergency Action Plan
- Discuss incident recovery
- Training and outreach materials
- Discuss personal response and planning
- Prepare for law enforcement response

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# What is an Active Shooter situation?

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## ***“Active shooter situations”***

- Are defined as those where an individual is “actively engaged in killing or attempting to kill people in a confined and populated area.” Unfortunately, schools face *active shooter situations* as well.

## ***“Mass Killings”***

- Are defined by federal status to be “three or more killings in a single incident”
  - Investigative Assistance to Violent Crimes Act of 2012

## ***“Workplace Violence”***

- .....

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# Fateful Day...

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# Targeted Violence Against Innocents...

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# Mass Shooting Events

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## McDonald's Restaurant

San Ysidro,  
California

July 18, 1984

21 Killed

Several Injured



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# Mass Shooting Events

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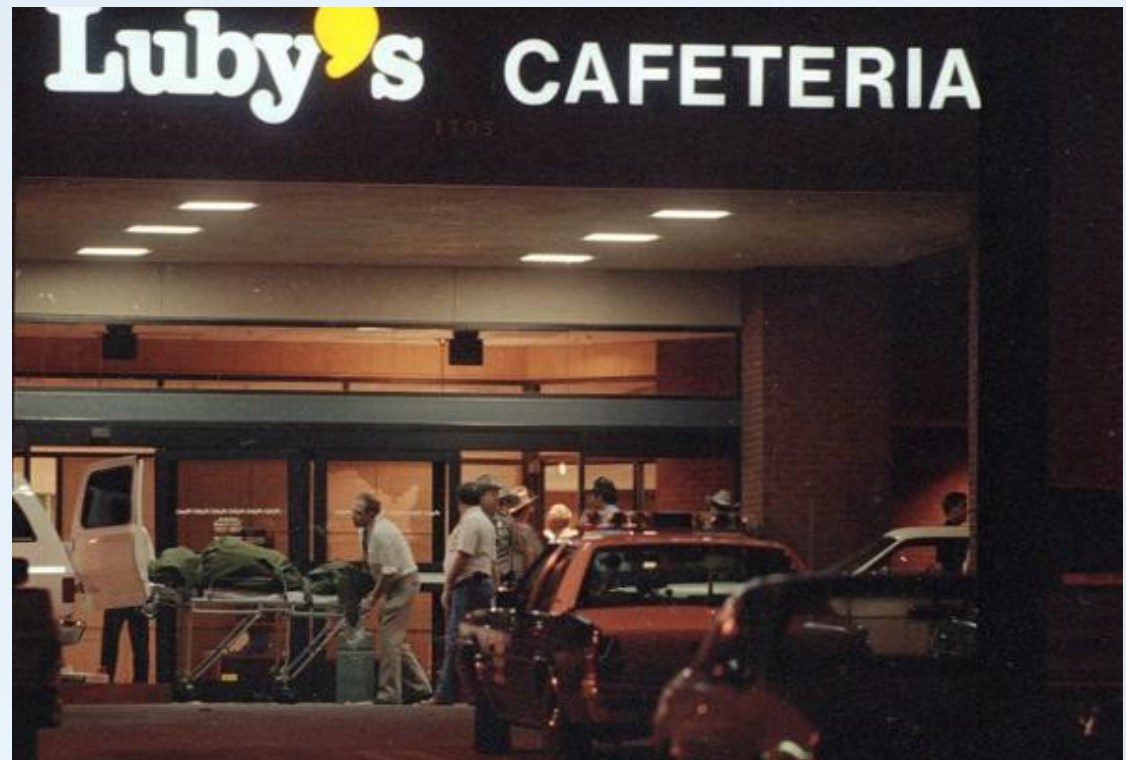
## Luby's Cafeteria

Killeen, Texas

October 16,  
1991

23 Killed

20 Injured



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# Mass Shooting Events

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## Fort Hood

Killeen,  
Texas

November 9,  
2009

13 Killed

30 Injured



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# Mass Shooting Events

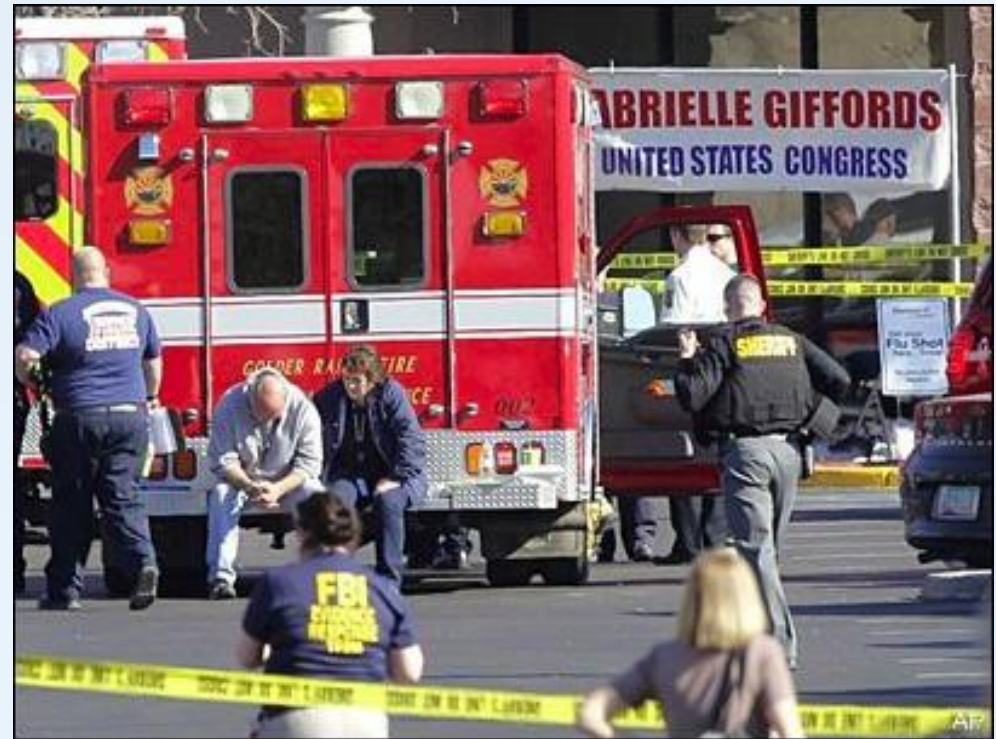
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## Safeway Grocery Store

Tucson, Arizona

January 8, 2011

Gabrielle Giffords,  
from U.S. Congress  
severely wounded.  
5 killed; 19 injured



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# Mass Shooting Events

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## Century 16 Movie Theater

Aurora,  
Colorado

July 20, 2012

12 Killed

58 Injured



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# Mass Shooting Events

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## Sandy Hook Elementary

Newtown,  
Connecticut

December 14,  
2012

27 Killed

Several Injured



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# Lafayette Movie Theater





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# Who is the Active Shooter?





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# There is no one “profile” of an active shooter





# Warning Signs

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In approximately 80% of school shootings, at least one person had information that the attacker was thinking about or planning the school attack.

**If you see/hear something...say something!**





# Pre-Attack Indicators

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Many offenders who engage in targeted violence may display certain behaviors during pre-attack planning. These predatory **behaviors** may be observable to persons familiar with the offender.





# Pre-Attack Indicators

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Some of these behaviors may include:

- Development of a personal grievance
- Contextually inappropriate and recent acquisition of multiple weapons
- Contextually inappropriate and recent escalation in target practice and weapons training





# Pre-Attack Indicators

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While motivations for active shooter incidents are difficult to fully determine, some common “triggers” may include:

- Loss of significant relationships
- Feelings of humiliation/rejection
- Changes in financial status
- Major adverse changes to life circumstances
- Loss of job
- Changes in living arrangements





# Pre-Attack Indicators

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- Many active shooters were described as “social isolates,” harbored feelings of hate or anger, and/or had some reported contact with mental health professionals
- Few had previous arrests for violent crimes

**Columbine Killers Now Icons**  
Experts say extensive publicity contributes to copycat crimes

By Dan Elliott  
ASSOCIATED PRESS

DENVER — When Al DeGuzman was charged with stockpiling 60 homemade bombs to assault DeAnza College in San Jose, police said his Web site listed one of his hobbies as “worshipping Eric Harris and Dylan Klebold, as well as other mass murderers.”

Before 13-year-old Seth Trickey shot and wounded five classmates at an Oklahoma middle school, a psychiatrist testified, he wondered what it was like to be in the shoes of the Columbine killers.

On Friday, it will be two years since Harris and Klebold, heavily armed with weapons and explosives, stormed Columbine, killing 12 classmates and a teacher and wounding 26. They then commit-

role of the perpetrators that were previously depicted on the TV and media,” Vinekar said.

Trickey also was obsessed with military tactics and wondered how he would react in combat, Vinekar testified.

DeGuzman has pleaded not guilty to possession of weapons and explosives. Although the Web site attributed to him referred to “Purification in the form of carnage,” his attorney dismisses the idea that he was planning a Columbine-style attack on DeAnza College.

Columbine 4/17/01



Eric Harris      Dylan Klebold



# Pre-Attack Indicators

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- Contextually inappropriate and recent interest in explosives and IEDs
- Contextually inappropriate and intense interest or fascination with previous active shootings or mass attacks
- Many offenders experienced a significant real or perceived personal loss in the weeks and/or months leading up to the attack, such as a death, breakup, divorce, or loss of a job



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6. **Attack**
5. **Breach**
4. **Preparation**
3. **Research & Planning**
2. **Ideation**
1. **Grievance**

Calhoun and Weston, "Contemporary Threat Management" (2003)



# Active Shooter Data

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- Nearly every active shooter event in the United States has been criminal in nature, and involved state and local violations of the law.
- No standardized crime statistics related to active shooter events are currently collected, leaving LE to rely on the evolving standards set by researchers.
- Though research methods and results vary, each study assists LE to frame areas of concern.

In a study of 35 active shooter events during 2012 \*

- 57% of the attackers were insiders (known)
- 37% of attacks were over in under 5 minutes while the average attack was 12 minutes
- 71% of the victims initially targeted were the focus of the perceived injustice
- 74% of the attackers entered through the main entrance
- 51% of attacks occurred in the workplace

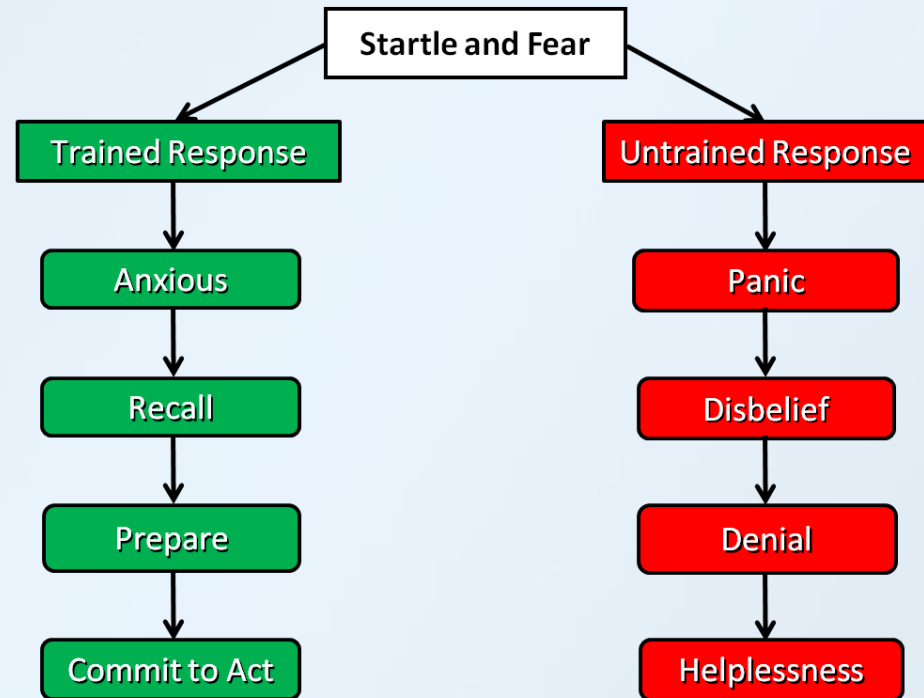
\*per John Nicoletti, Ph.D. (Nicoletti-Flater Associates)



# How to Survive

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- Having a plan and understanding your surroundings and environment **before** an emergency occurs is paramount



S.J. Romano and .A. Rugala, Workplace Violence: Mind-Set of Awareness (Spokane, WA: Center for Personal Protection & Safety, 2008).





# Have a Plan, Train the Plan

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- **Have a Survival Mindset** – train on response options
- Conduct a realistic security assessment to determine the facility's vulnerability to an active shooter attack
- Identify multiple evacuation routes and practice evacuations
- Designate shelter locations
- Designate a point-of-contact with knowledge of the facility and the security procedures
- Conduct evacuation drills

# Preparation



**Homeland  
Security**

# Protective Measures

- Ensure you are familiar with current active shooter and other emergency response plans
- Establish safe rooms within the confines of facilities
- Establish communication protocols and means to instruct personnel on immediate personal protective actions (e.g. evacuation, shelter-in-place)
- During times of heightened threat, maintain awareness of travel patterns and, if possible, vary times and routes to avoid predictability
- Exercise caution when discussing travel or personal matters on social media, unsecured networks, and in public settings.

# Protective Measures

- Raise awareness among employees by conducting “all hazards” awareness training
- Ensure that emergency communications equipment is present and operable
- Reports missing or stolen equipment, including weapons, to the proper authorities
- Be familiar with the “See Something, Say Something” campaign and appropriately report all odd or suspicious activity to agency security officers, Federal Protective Service, or local law enforcement
- Increase visibility of armed security and law enforcement personnel in areas adjacent to and in front of security checkpoints to deter unwanted activity.

# Long-Term Protective Measures

- Protective measures in the long-term should emphasize physical safeguards, including building enhancements that present a more robust deterrent and provide a more survivable environment. Officials should consider the following measures:
  - Install secure locks on all external and internal doors and windows with quick-release capability from within for emergency escape
  - Consider establishing safe areas within the facility for assembly and refuge during crises
  - Consider establishing/implementing an emergency communications system such as phone trees or text messages for personnel

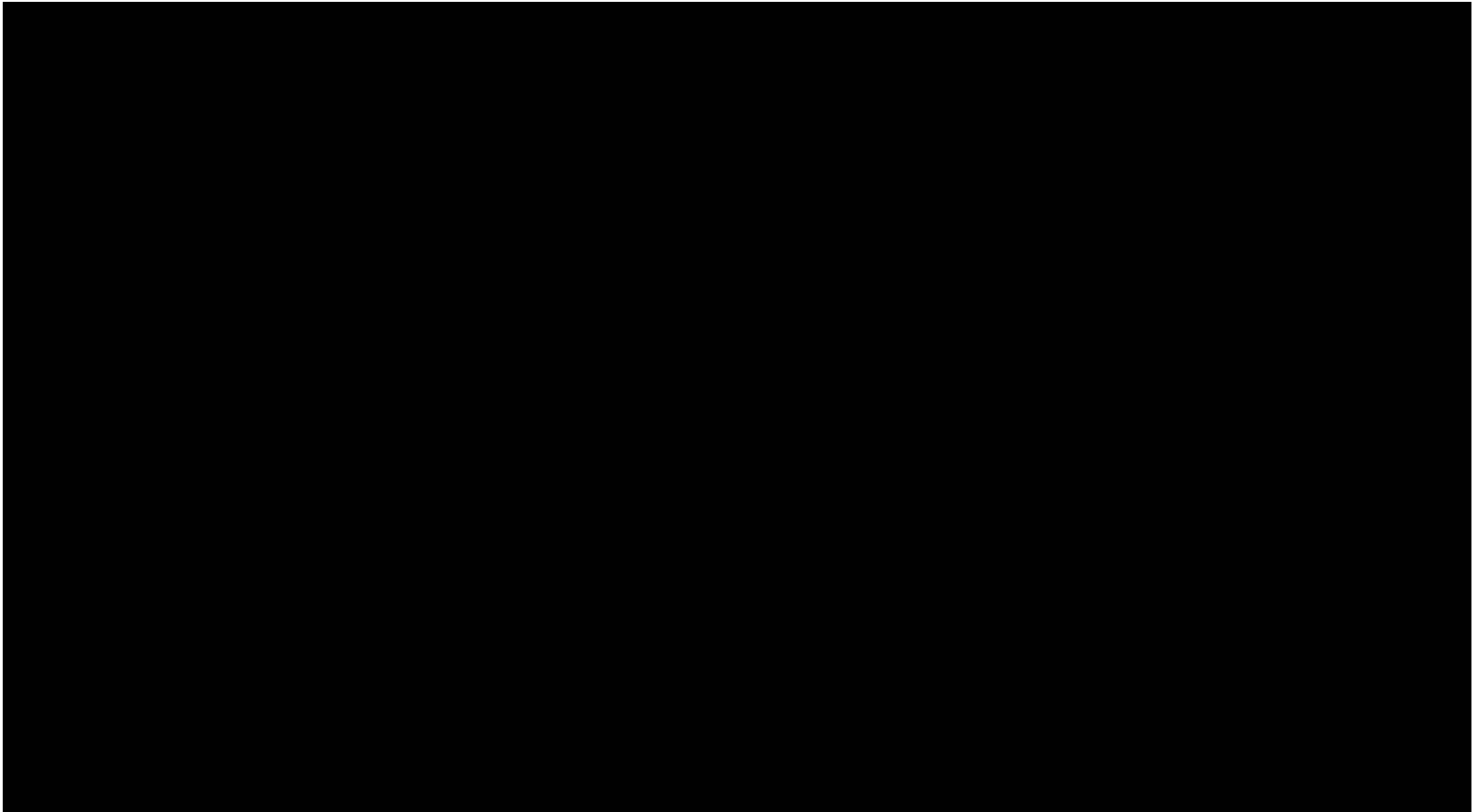


# Creating an Emergency Action Plan

- To best prepare your staff for an active shooter situation, create an Emergency Action Plan (EAP), and conduct training exercises. Together, the EAP and training exercises will prepare your staff to effectively respond and help minimize loss of life
- Components of an Emergency Action Plan:
  - Method for reporting fires and other emergencies
  - Evacuation policy and procedure
  - Emergency escape procedures and route assignments (i.e., floor plans, safe areas)
  - Contact information for, and responsibilities of, individuals to be contacted under the EAP
  - Information concerning local area hospitals (i.e., name, telephone number, distance from your location)
  - An emergency notification system to alert various parties of an emergency including: individuals at remote locations within premises, local law enforcement, and local area hospitals



# Workplace Violence Video



# San Bernandino





# Preparation and Management (TAT)

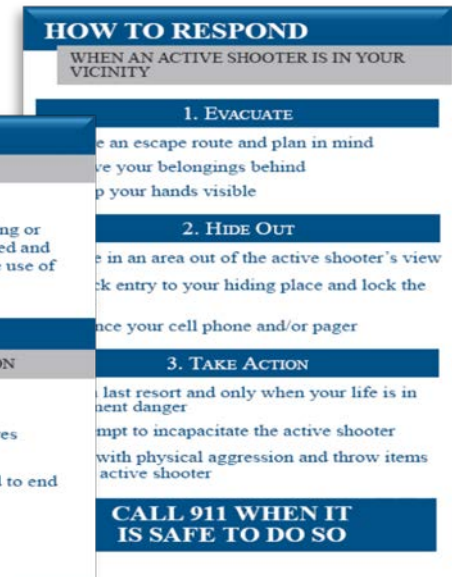
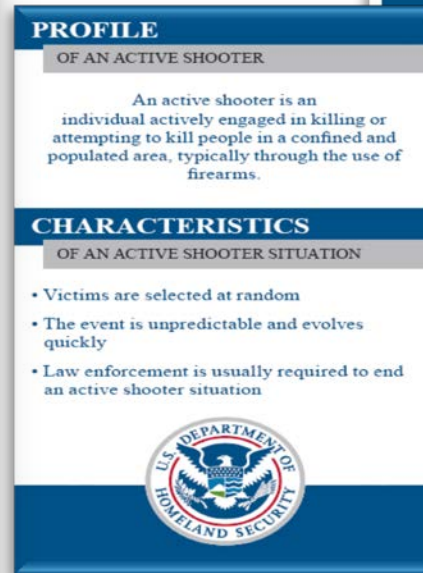
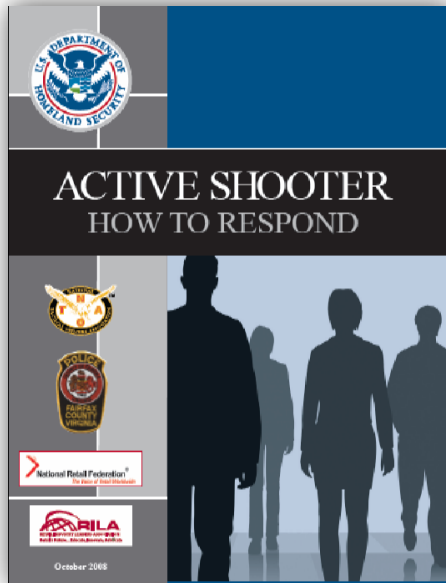
- Human Resources Department Responsibilities
  - Conduct effective employee screening and background checks
  - Create a system for reporting signs of potentially violent behavior
  - Make counseling services available to employees
  - Develop an EAP, which includes policies and procedures for dealing with an active shooter situation as well as after action plan
- Facility Manager Responsibilities
  - Institute access controls (i.e., keys, security system pass codes)
  - Distribute critical items to appropriate managers/employees, including: floor plans, keys, facility personnel lists, and telephone numbers
  - Coordinate with the facility's security department to ensure security of the location
  - Assemble crisis kits containing: radios, floor plans, staff roster/staff emergency contact numbers, first aid kits, flashlights
  - Place removable floor plans near entrances and exits for emergency responders
  - Activate the emergency notification system during an emergency situation



# Training and Outreach Materials

- Materials consist of three products:
  - Basic Guide Book
  - Break Room Poster
  - Pocket Emergency Measures Guide

To download these materials visit [www.dhs.gov/active-shooter](http://www.dhs.gov/active-shooter)



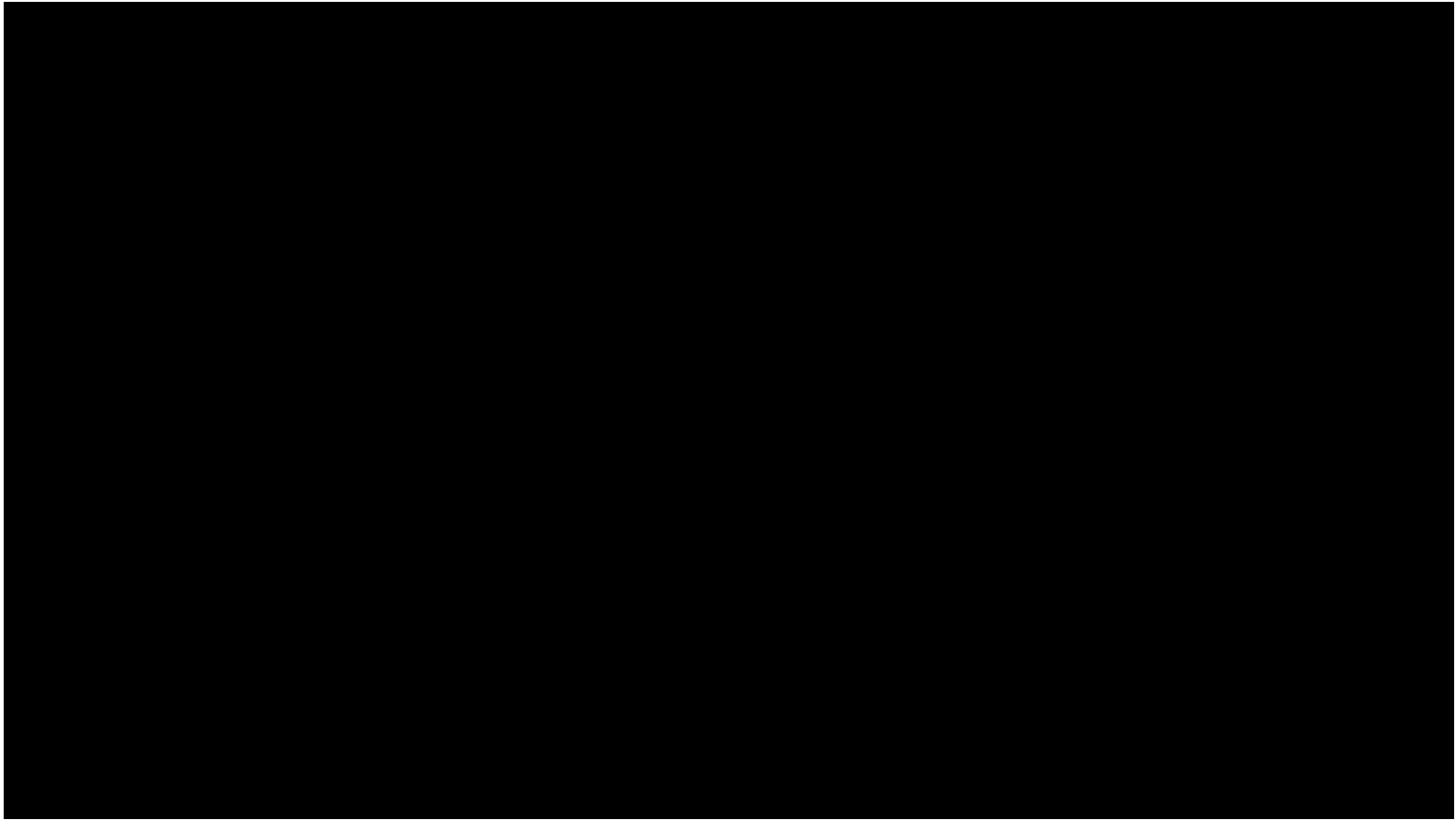
# Online Training

- DHS has released Active Shooter, What You Can Do (IS-907), a new online training course available through the Federal Emergency Management Agency Emergency Management Institute at <http://training.fema.gov/EMIWeb/IS/IS907.asp>
- The course is self-paced and takes about 45 minutes to complete.
- Upon completion, participants can take a short online "final exam" that is instantly scored. A certificate is given to participants who finish the entire course and pass the final exam

# Response



# Options for Consideration Video



# Responding to an Active Shooter Situation

- In an active shooter situation, you should quickly determine the most reasonable way to protect your own life. You should:
  1. **Run:** If there is an accessible escape path, attempt to evacuate the premises
  2. **Hide:** If evacuation is not possible, find a place to hide where the active shooter is less likely to find you
  3. **Fight:** As a last resort, and only when your life is in imminent danger, attempt to disrupt and/or incapacitate the active shooter
- It is important for employees to be trained so that they can react if they are ever confronted with an active shooter situation
- These situations evolve quickly, therefore, quick decisions could mean the difference between life and death
- If you are in harm's way, you will need to decide rapidly what the safest course of action is based on the scenario that is unfolding before you



# Run

- If you suspect a potential active shooter situation, you must quickly determine the most reasonable way to protect your own life; if there is an accessible escape path, attempt to evacuate the premises
- Always have an escape route and plan in mind even if you are just visiting
- Make sure to leave your belongings behind
- Be sure to:
  - Warn others not to enter an area where the active shooter may be
  - Help others escape, if possible
  - Evacuate regardless of whether others agree to follow
  - Do not attempt to move wounded people
  - Keep your hands visible
  - Follow the instructions of any police officers



Call 911 when it is safe to do so.

# Hide

- If safe evacuation is not possible, find a place to hide where the active shooter is less likely to find you. Your hiding place should:
  - Be out of the active shooter's view
  - Provide protection if shots are fired in your direction (i.e., an office with a closed and locked door)
  - Not be a trap or restrictive of your options for movement
- To prevent an active shooter from entering your hiding place:
  - Lock the door
  - Blockade the door with heavy furniture
  - Close, cover, and move away from the door





# Fight

- As a last resort, and only when your life is in imminent danger, should you attempt to incapacitate the shooter by acting with physical aggression
  - Act as aggressively as possible against him/her
  - Throw items and improvise weapons
  - Yell
  - Commit to your actions



# Assisting Emergency Responders

- When possible, provide the following information to law enforcement officers or 911 operators:
  - Location of the active shooter
  - Number of shooters, if more than one
  - Physical description of the shooter(s)
  - Number and type of weapons held by the shooter(s)
  - Number of potential victims at the location
- The primary goal of law enforcement is to eliminate the threat and stop the active shooter as soon as possible
  - Primary responsibility is to eliminate the threat; they will not be able to stop to help injured persons until the environment is safe
  - Officers may arrive in teams with tactical equipment such as vests, helmets, and rifles
  - Officers will need to take command of the situation; expect to experience officers shouting orders and even pushing individuals to the ground for their safety



# Reactions of Managers

- Employees and customers are likely to follow the lead of managers during an emergency situation. During an emergency, managers should be familiar with their EAP, and be prepared to:
  - Remain calm
  - Take immediate action
  - Lock and barricade doors if appropriate
  - Evacuate staff and customers to a safe area via preplanned evacuation route



# Recovery

- After an incident occurs, it is important to manage the consequences, and analyze the lessons learned
- Post-event activities includes accounting for missing persons, determining a method for notifying families of victims, and referring individuals at the scene for follow-up care, including grief counseling
- To facilitate effective planning for future emergencies, analyze the recent active shooter situation for lessons learned, create an after action report, refine the EAP, and conduct training



End Presentation

# OSHA Considerations Regarding Workplace Violence

Dorinda Folse

OSHA

Baton Rouge Area Office

# What is Workplace Violence?



Any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs @ the work site.



# How Big Is the Risk?

- 4<sup>th</sup> Leading Cause of Fatal Occupational Injuries (2014 BLS)
- 2 Million Workers Report being Victims EACH Year



# Who Are the Most Vulnerable?

- Exchange Money with Public
- Deliver passengers, goods, or services
- Work alone or in small groups
- Work late night or early morning hours
- Work in high-crime areas
- Work in community settings and homes where they have extensive contact with the public.

# Examples

- Health-care and social service workers
- Visiting nurses
- Psychiatric evaluators
- Probation officers
- Community workers (utility, phone, cable)
- Taxi Drivers
- Retail Workers

So....Does OSHA hold Employers  
Accountable for Workplace Violence that  
Occurs to their Workers?



Occupational Safety & Health Administration

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For Workers For Employers Law & Regulations Data & Statistics Enforcement Training & Education News & Pu

OSHA News Release - Table of Contents

# OSHA Regional News Release

U.S. Department of Labor  
Office of Public Affairs

Region 7

May 2, 2016

## OSHA cites residential facility for exposing employees to workplace violence

**Employer name:** Integrated Life Choices Inc.  
Lincoln, Nebraska

**Citations issued:** April 29, 2016

**Investigation findings:** The U.S. Department of Labor's [Occupational Safety and Health Administration](#) issued one serious and one other than serious violations to for exposing employees to hazards related to [workplace violence](#).

The citations follow an October 2015 OSHA investigation by the agency's Omaha Area Office that found agitated clients have bitten, scratched, kicked and thrown ob client's aggression exceeded the threshold of training workers had received to deal with potential violent clients and compromised their personal safety and ability to

A review of injury logs from January 2012 through November 2015, recorded 105 incidents of workplace violence at the facility.

OSHA has guidelines for preventing workplace violence for [health care and social workers](#).

Workplace violence is any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. It ranges physical assaults and even homicide.

## OSHA Regional News Release

**U.S. Department of Labor  
Office of Public Affairs**

**Region 6**

Region 6 News Release: 12-2295-DAL

Nov. 19, 2012

Contact: Elizabeth Todd    Juan Rodriguez

Phone: 972-850-4710    972-850-4709

Email: [todd.elizabeth@dol.gov](mailto:todd.elizabeth@dol.gov)    [rodriguez.juan@dol.gov](mailto:rodriguez.juan@dol.gov)

**US Department of Labor's OSHA cites TMT in Dallas, Texas,  
following robbery, death of worker at Garland Whip In store**  
*Safety violations found at convenience stores in Garland, Dallas and Mesquite*

**DALLAS** – The U.S. Department of Labor's Occupational Safety and Health Administration has cited TMT Inc. with four serious safety violations following an aggravated death of an employee at the company's Whip In convenience store in Garland.

OSHA's Dallas Area Office opened an investigation at the Garland store in May after an employee working at the checkout counter was seriously assaulted during a robbery, resulting in second- and third-degree burns. OSHA also investigated the company's three other stores in Dallas and Mesquite, and found that workers at those locations were exposed to workplace violence hazards.

"Handling money, working alone and standing behind open counters leaves employees vulnerable to violent crimes," said Stephen Boyd, OSHA's area director in Dallas. "The company conducted an analysis to identify risk for violence, implemented appropriate control measures and provided training to ensure awareness of potential violence, which could have been avoided."

Each store was cited with violating OSHA's "general duty clause" for failing to provide a workplace free from recognized hazards likely to cause serious injury or death. There is a substantial probability that death or serious physical harm could result from a hazard about which the employer knew or should have known. The citation

# Administrative Law Judge Ruling

- Secretary of Labor vs. Integra Health Management, Inc.  
(OSHA RC No. 13-1124)
- 1 Serious & 1 Other than Serious Violation
- Judge Dennis L. Phillips Affirmed
- Case now on appeal with OSH Review Commission

# OSHA's Approach

General Duty of OSH Act 5(a)(1) applies:  
“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.”

- If the risk of violence and serious personal injury is significant enough to be recognized
- Expectation that the employer will take feasible steps to minimize those risks.



# Workplace Violence



# OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

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DIRECTIVE NUMBER: CPL 02-01-052

EFFECTIVE DATE: September 8, 2011

SUBJECT: Enforcement Procedures for Investigating or Inspecting Workplace Violence Incidents

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# Workplace Violence

- Worksites in industries with a high incidence of workplace violence
  - Healthcare
  - Social service settings
  - Late-night retail establishments
- Not intended to exclude other programmed inspections when workplace violence well-documented.

# Workplace Violence

- Employers may be found in violation of the general duty clause if they fail to:
  - reduce or eliminate serious recognized hazards.
  - focus on the availability of feasible means of preventing or minimizing such hazards.

# Workplace Violence

- Factors that may increase the risk of violence at worksites include
  - working with the public or volatile, unstable people.
  - Working alone or in isolated areas violence.
  - Handling money and valuables, providing services and care, and working where alcohol is served.

# Workplace Violence

- Additionally, time of day and location of work
  - working late at night
  - areas with high crime rates

# Classifications

- Type 1—Criminal Intent
  - Violent acts by people who enter the workplace to commit a robbery or other crime
  - or current or former employees who enter the workplace with the intent to commit a crime.

# Classifications

- Type 2—Customer/Client/Patients
  - Violence directed at employees by customers, clients, patients, students, inmates or any others to whom the employer provides a service.

# Classifications

- Type 3—Co-worker
  - Violence against co-workers, supervisors, or managers by a current or former employee, supervisor, or manager.



# Classifications

- Type 4—Personal
  - Violence in the workplace by someone who does not work there
  - Has a personal relationship with employee

- OSHA-Identified High-Risk Industries
  - Healthcare and Social Service Settings
  - Late-Night Retail Settings

- An inspection shall be considered where there is a complaint, referral, or fatality and/or catastrophic event involving an incident of workplace violence, particularly when it stems from a workplace in industries identified by OSHA as having a potential for workplace violence.

- These industries include, among others,
- healthcare and social service settings and late-night retail establishments.

- An inspection generally shall not be considered in response to
  - coworker or personal threats of violence
  - intimidation or bullying
    - referring to the appropriate government entity
    - local police department,
    - Equal Employment Opportunity Commission,
    - National Labor Relations Board
    - OSHA’s Office of Whistleblower Protection.

# workplace violence

[Prevention Programs](#)[Training & Other Resources](#)[Enforcement](#)[Safety and Health Topics ▾](#)

ite provides information on the extent of violence in the workplace, assessing the hazards in  
ing workplace violence prevention plans for individual worksites.

nce?

or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior  
it ranges from threats and verbal abuse to physical assaults and even homicide. It can affect and  
customers and visitors. Homicide is currently the fourth-leading cause of fatal occupational injuries  
g to the Bureau of Labor Statistics Census of Fatal Occupational Injuries (CFOI), of the 4,679  
occurred in the United States in 2014, 403 were workplace homicides. [\[More...\]](#) However it  
olence is a major concern for employers and employees nationwide.

ace violence?

orkers report having been victims of workplace violence each year. Unfortunately, many more  
h has identified factors that may increase the risk of violence for some workers at certain  
e exchanging money with the public and working with volatile, unstable people. Working alone  
contribute to the potential for violence. Providing services and care, and working where alcohol is  
likelihood of violence. Additionally, time of day and location of work, such as working late at night  
te, are also risk factors that should be considered when addressing issues of workplace

## Highlights

- **Updated** [Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers\\*](#) (EPUB\*\* | MOBI\*\*). OSHA Publication 3148, (2015).
- **New** [Worker Safety in Hospitals: Caring for our Caregivers, Preventing Workplace Violence in Healthcare](#). OSHA, (2015).
- [Enforcement Procedures for Investigating or Inspecting Workplace Violence Incidents](#). OSHA Directive CPL 02-01-052, (September 8, 2011).
- [Preventing Violence Against Taxi and For-Hire Drivers\\*](#). OSHA Fact Sheet, (April 2010).
- [Recommendations for Workplace Violence Prevention Programs in Late-Night Retail](#)

# Steps Employers Can Take

- Establish a zero-tolerance policy toward WPV
- Establish a WPV prevention program
- Train / Educate Workers on the program
- Secure the Workplace
- Provide Drop Safes -- limit cash on hand
- Equip Field Staff with communication devices

- Consider a “buddy system”
- Address conduct of home visits.



Preventing Workplace Violence:  
A Road Map for Healthcare Facilities



# What Employees Can Do

- Learn to recognize, avoid or diffuse potentially violent situations
- Alert supervisors about concerns
- Carry only minimal money in community settings

# Wrapping it All Up

- 4<sup>th</sup> Leading Cause of Occupational Fatalities
- OSHA DOES expect Employers to address the potential for WPV risks and
- Implement steps to minimize the risks
- OSHA has and does address WPV through enforcement, outreach and guidance documents.

# Legal & HR Implications in Workplace Violence Prevention

Andy Impastato, Esq.  
Vice President, Legal and Compliance

Julia Kramer, SPHR, SCP  
Executive Vice President and  
Chief Organizational Performance Officer



**BancorpSouth**<sup>®</sup>

Insurance Services, Inc.

# Agenda

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- Employer Legal Implications
  - Background
  - Federal Laws
  - State Laws
- HR and Management Implications
  - Hiring
  - Orientation & Training
  - Disciplinary Action
  - Observation

# Employer Legal Implications

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- Background
  - Workplace violence (OSHA definition)
    - Any action or threat of;
    - Physical violence, harassment, intimidation or other threatening disruptive behavior;
    - That occurs at the work site
    - Verbal abuse – physical assaults (including homicide)
    - Can affect & involve ERs, EEs, customers and visitors

# Employer Legal Implications

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- Federal Laws
  - No federal law establishing a duty on ER
  - **However**, Section 5(a)(1) of OSH Act includes:
    - General Duty Clause
      - ERs are required to provide their EEs with a place of employment that is free from recognizable hazards that are causing or likely to cause death or serious harm to EEs
    - Applies to ERs directly through OSHA or approved state program
    - **What does this mean for ERs?**

# Employer Legal Implications

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- Federal Laws
  - OSHA's General Duty Clause
    - Courts have interpreted clause to mean ER has legal obligation to provide workplace free of conditions or activities that either the ER or industry recognizes as hazardous and that cause, or are likely to cause, death or serious physical harm to EEs when there is a feasible method to abate the hazard

# Employer Legal Implications

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- Federal Laws
  - OSHA's General Duty Clause
    - Formal standards?
      - Non-binding guidelines and recommendations for prevention
      - Directive on enforcement procedures for OSHA field offices to follow when conducting investigations
    - Enforcement
      - Conducting compliance inspections
      - Issuing citations or violations
      - OSHA violations could serve as proof for state-law tort claims



# Employer Legal Implications

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- Federal Laws
  - OSHA's General Duty Clause
    - ER that has experienced acts of workplace violence, or becomes aware of threats, intimidation, or other indicators showing that the potential for workplace violence exists, would be on notice and **should** implement a workplace violence prevention program
      - Engineering controls
      - Administrative controls
      - Training

# Employer Legal Implications

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- Federal Laws
  - OSHA's General Duty Clause
    - Enforcement (cont'd)
      - Citing requirements
        - » ER failed to keep the workplace free from hazard to EEs
        - » Hazard was recognized
        - » Hazard was likely to cause death or serious physical harm
        - » There was a feasible and economical way to correct
    - EE Claims
      - Generally, EE injured by workplace violence cannot bring a claim against the ER for violation of OSHA's general duty clause

# Employer Legal Implications

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- Federal Laws

- ADA

- ER may refuse to hire an applicant that poses a **direct threat** to the health or safety of himself, other people in the workplace or third parties.
- ER can take advantage of this defense **only** if the individual poses a **significant risk** that cannot be reduced or eliminated by **reasonable accommodation**

# Employer Legal Implications

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- Federal Laws

- ADA

- Direct threat assessment based on reasonable medical judgment
- ER should consider:
  - Duration of risk
  - Nature and severity of the potential harm
  - Likelihood potential harm will occur
  - How soon the potential harm may occur
- EE Discipline per ER's workplace violence policy?

# Employer Legal Implications

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- State Laws
  - Workers' compensation laws (EE)
    - Overview
      - EE injured by workplace violence
      - Remedy will most likely be under WC law
        - » Exclusivity provision
        - » Exceptions?
          - Intentional tort theory
          - Dual capacity theory

# Employer Legal Implications

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- State Laws
  - Negligence claims (third-parties)
    - Existence of a duty
    - Breach of duty
    - Causation
    - Harm
    - Defenses?
      - Unforeseeable event
      - Superceding cause

# Employer Legal Implications

---

- State Laws
  - Negligence claims (third-parties)
    - Negligent hiring (elements)
      - Existence of an employment relationship
      - EE is incompetent or unfit to perform the job
      - ER had actual or constructive knowledge of EE's incompetence
      - ER's act or failure to act cause the plaintiff's injury
      - Actual damage or harm resulted from the ER's act or failure

# Employer Legal Implications

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- State Laws
  - Negligence claims (third-parties)
    - Negligent supervisions and retention (overview)
      - Selecting EEs
      - Supervising EEs
      - Retaining EEs
    - Example
      - EE commits an act against another EE after ER was aware of the risk of the danger
      - Injured EE alleges ER did not exercise proper care in supervising other EE
    - ER should maintain workplace violence policy



# Employer Legal Implications

---

- State Laws
  - Negligence claims (third-parties)
    - Voluntary assumption of duty to protect
      - If ER contracts to provide security at the workplace; or
      - If ER implements security measures
      - ER may have **assumed a duty** to protect EEs from criminal acts by third parties
        - » Once duty assumed, ER must exercise it with reasonable care

# Employer Legal Implications

---

- State Laws
  - Negligence claims (third-parties)
    - Voluntary assumption of duty to protect
      - ER's failure to exercise reasonable care increases the risk of harm
      - ER has assumed a duty to perform that is owed by another party
      - Harm is suffered because a person relied on ER assuming the duty
    - EE handbook language?

# Employer Legal Implications

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- State Laws

- Defamation

- **Can** arise when ER provides reference for EE with known violent tendencies
  - ER warns prospective ER about an EE with violent tendencies
  - ER was mistaken about the individual (truth is a defense)
  - Former EE did not receive job
- Can ER be liable for failure to warn or negligent representation by simply providing neutral reference?

# Questions & Answers

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# Workplace Violence Prevention: HR & Management Implications



Employers are responsible for doing their best to ensure a violence-free workplace.

Reasonably foreseeable violence creates potential liability for negligent hiring, retention or supervision.

# Recruitment & Hiring

## Screening and selection

- Resume / application review
- Interviews

## Pre-hire background checks

- Employment history
- Criminal record check
- Drug testing
- Sex Offender Registry

Screening and background checks may uncover false information and/or negative past behaviors that increase an individual's risk of committing violent acts.



# Employee Orientation

Include employees in violence prevention programs from day one:

- Company Culture & Code of Conduct
- Definitions: Physical Violence and Non-Physical Acts
- Policy
  - Violence-Free Workplace / Zero Tolerance Policy
  - Weapons at Work
- Procedure
  - Reporting process
  - Active incident procedures
- Self-Reporting
  - Identified risks (restraining orders, domestic violence)





# Training

An aware and educated workforce lowers the risk of violence.

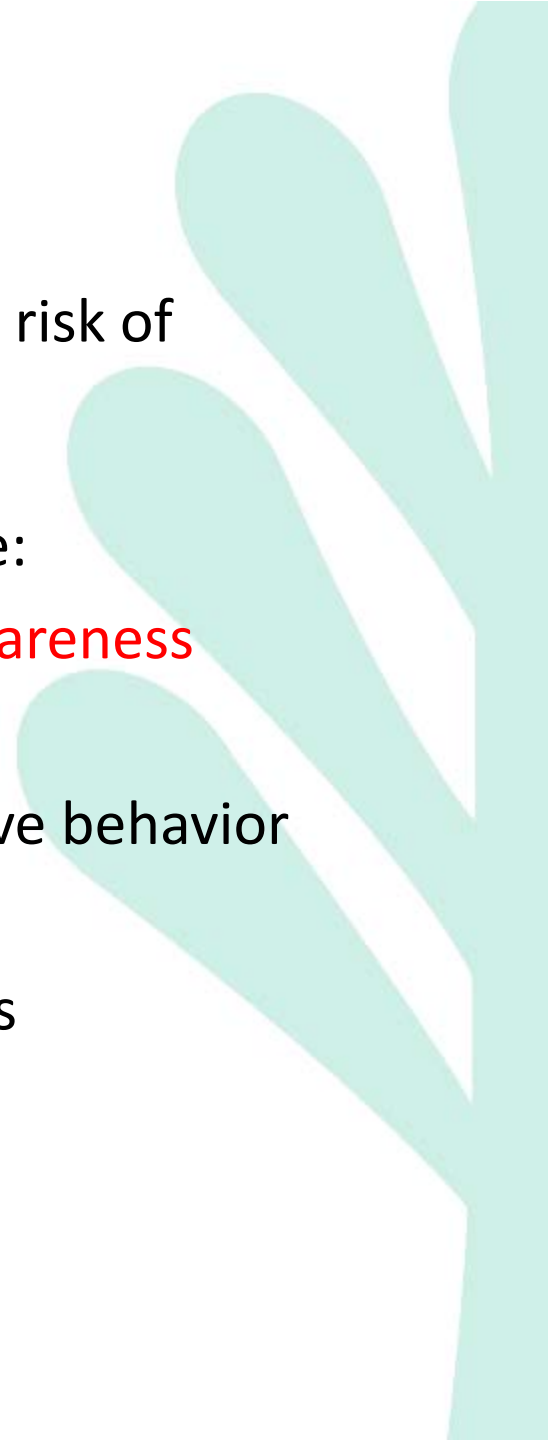
- Ongoing training for all staff should include:
  - The importance of observation and awareness
  - Reporting procedures
  - Diffusing volatile situations or aggressive behavior
  - What to do in a violent situation
  - Best ways to protect oneself and others



# Training

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- Ongoing training for all staff should include:
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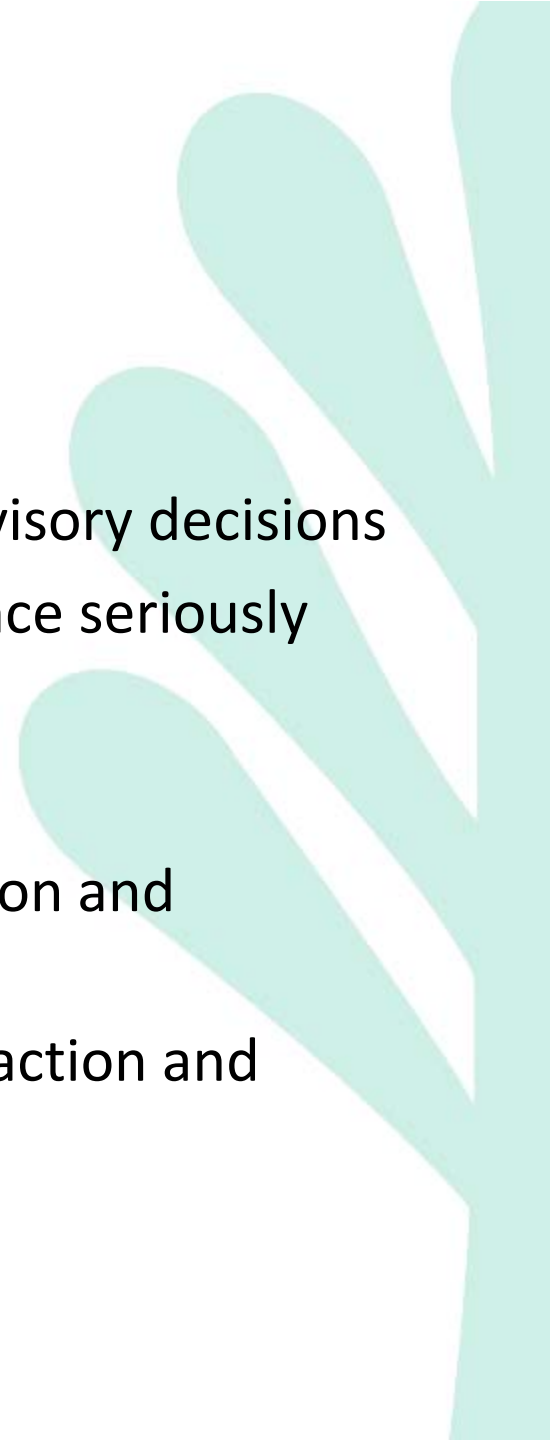
# Observation & Awareness

Specific behaviors should increase vigilance, particularly if occurring in clusters and associated with decreased productivity or absenteeism:

- sadness, depression
- threats, bullying, verbal abuse
- menacing or erratic behavior, aggressive outbursts
- references to weaponry
- inability to handle criticism, hypersensitivity to perceived slights, blaming others
- offensive commentary or jokes referring to violence

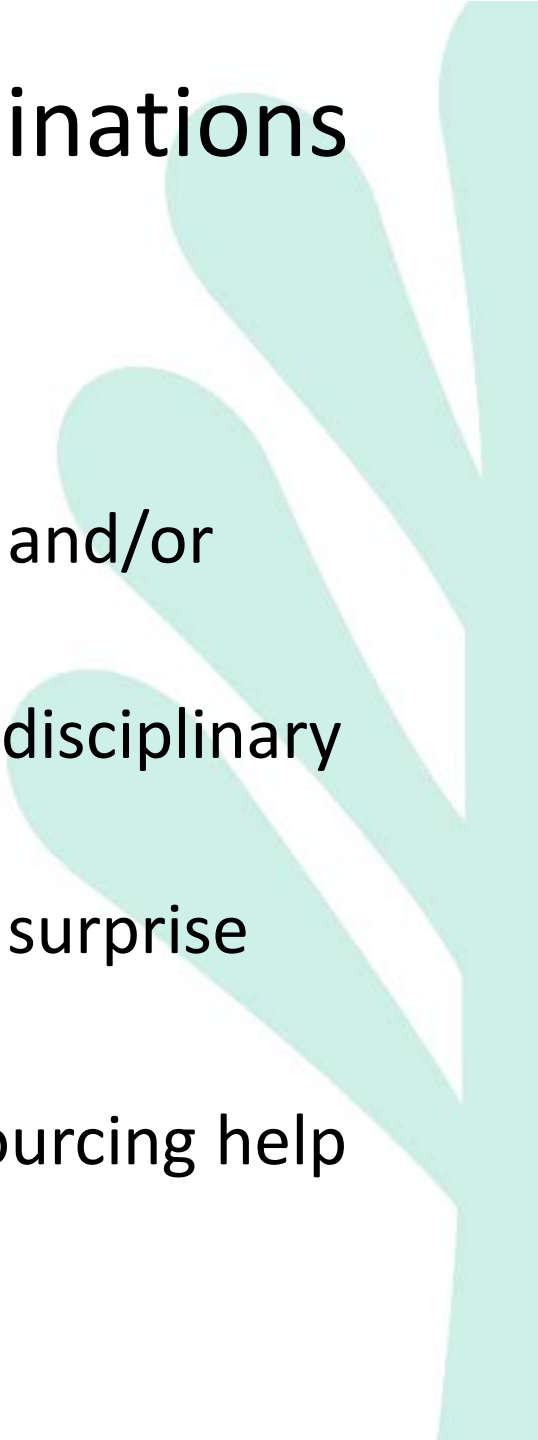
# Management Training

- Managers should be educated to:
  - Make informed and legal hiring and supervisory decisions
  - Take all reports of high risk or actual violence seriously
  - Quickly deal with and resolve conflict
  - Never retaliate if report was in good faith
  - Follow established reporting, documentation and investigation procedures
  - Effectively handle counseling, disciplinary action and terminations



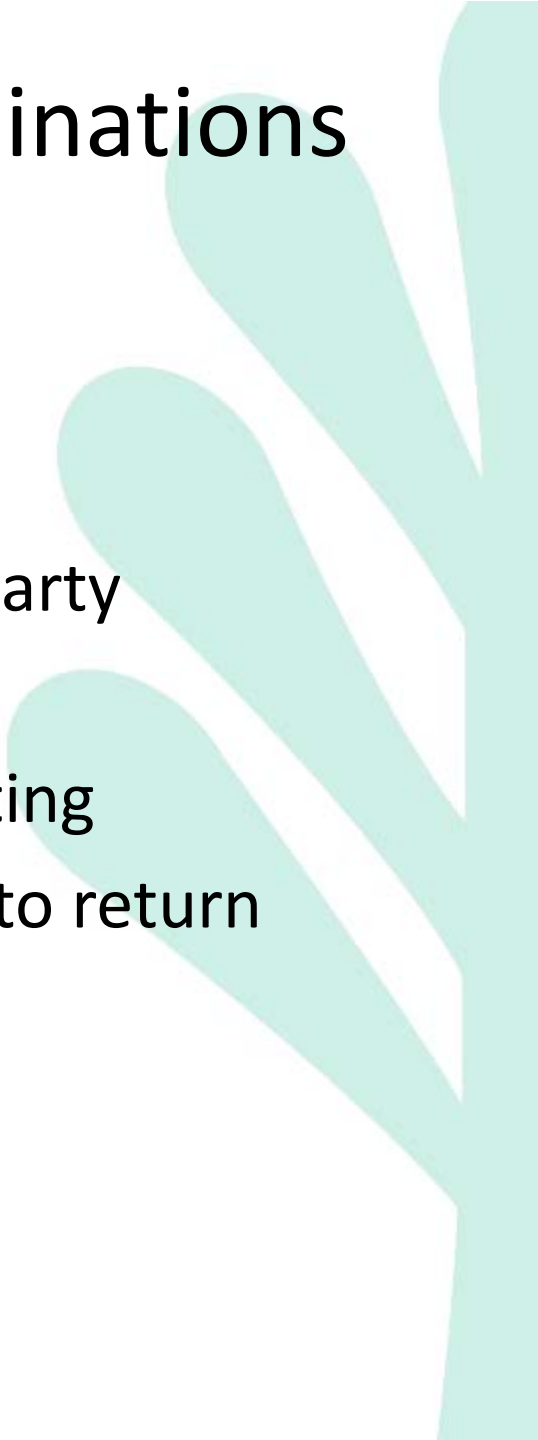
# Disciplinary Actions and Terminations

Little to no risk:

- Calm and respectful approach
  - A documented pattern of behavioral and/or performance issues
  - Coaching and counseling precedes a disciplinary action or termination
  - Termination is not a negotiation or a surprise
  - End of the day or shift is best
  - Review severance benefits and outsourcing help
- 

# Disciplinary Actions and Terminations

## Unknown or Suspected Risk

- Use the buddy system
  - Include a neutral manager or third party
  - Have security nearby and on alert
  - Do not take a break during the meeting
  - Minimize reasons for the employee to return
- 

# Questions & Answers



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# Business Continuity Planning Overview







# Discussion Topics

- What is Business Continuity
- Why is Business Continuity Important
- Developing a Continuity Program
- Business Continuity Resources



# Business Continuity – the Foundation for Resiliency

“the process of ensuring that your critical business functions are prepared to react to and recover from a business disruption with minimal impact to your business”

Iowa State University  
Center for Industrial Research and Service



# Why Continuity is Important

“**40%** of businesses affected by a natural or human-caused disaster **never reopen.**”

– Insurance Information Institute

“**75%** of businesses affected by disaster who do not have a continuity plan **fail within 3 years.**”

– FEMA, *Ready.gov*



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# WHAT ARE OUR RISKS?



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# There are many types of hazards that threaten organizations

- Natural hazards
- Man-made hazards
- Technology hazards



# Major hazards threaten Louisiana



FLOOD



HAILSTORM



HURRICANE



TORNADO



ICE STORM



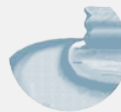
SUBSIDENCE



WILDFIRE



DAM FAILURE



LEVEE FAILURE



STORM SURGE



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# BUSINESS IMPACT OF A CRISIS



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# PREPARATION CAN SIGNIFICANTLY REDUCE THE IMPACT





# Why organizations don't prepare

60% of small businesses do not prepare for emergencies because

- Believe they do not have the financial resources
- Lack of knowledge for how to prepare
- Underestimate the impact incidents will have on their organization

– International Economic Development Council



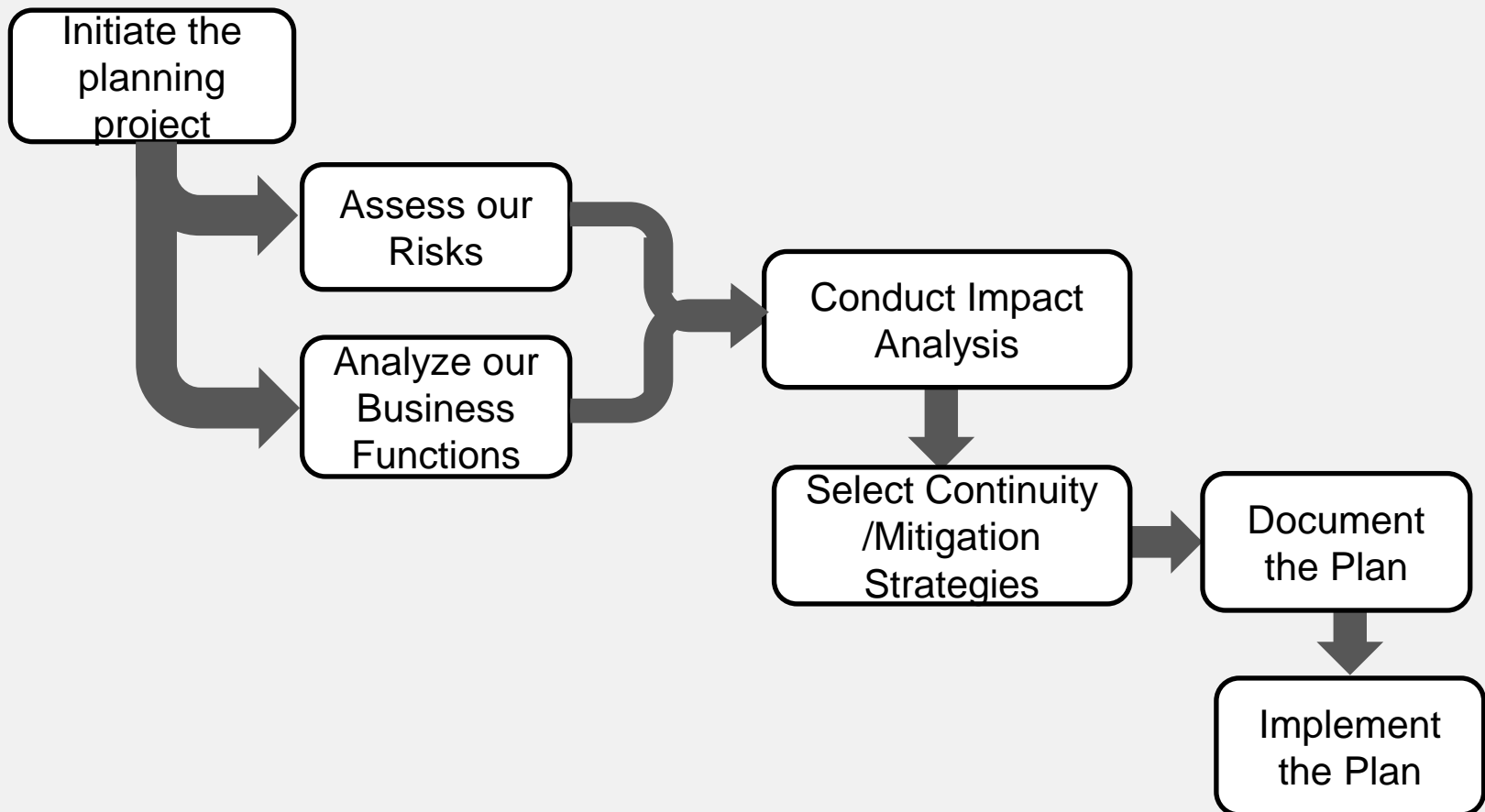
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# HOW CAN I PREPARE?



# Continuity planning process





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# Planning Worksheet Examples



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# Available Resources to Get Started



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# TBLLC

TBLLC can provide resources tailored to your specific requirements:

- Templates
- Workshops
- Preparedness Assessments
- Planning Support
- Table Top Exercises



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# SUMMARY



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# THANK YOU!



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# Questions?



***BancorpSouth***<sup>®</sup>

Insurance Services, Inc.

# Insurance Implications of Workplace Violence Incidents

Louis G Fey Jr. CPCU, CIC, CRM, AIC  
Vice President of Risk Management  
BancorpSouth Insurance Services



# Expertise

---

***Louis G. Fey Jr., CPCU, CIC, CRM, AIC***

*Vice President of Risk Management*

*BancorpSouth Insurance Services, Inc.*

- Over 35 years claims management experience
- Serving as Vice President of Risk Management
- Helping clients identify and manage risk
- Consultant and expert witness on litigated matters
- Claims Liaison





# Legal Disclaimer

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- This presentation is advisory in nature and necessarily general in content. No liability is assumed by reason of the information provided.
- Whether or not, or to what extent a particular loss is covered depends on the facts and circumstances of the loss and the terms and conditions of the policy.
- The precise coverage afforded is subject to the terms and conditions of the coverage selected.



# What are the exposures?

---

- Liability for injury or death of customers or business invitees
- Injury or death of employees
- Business Income and Extra Expense
- Loss of business reputation
- Emotional issues – PTSD of employees
- How do you deal with the overwhelming media attention



# Is My Business Covered?

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- The General Liability Policy
- Insuring agreement
- BI, PD, Personal Injury, Advertising Injury
- Exclusions
- Watch those endorsements
- No coverage under property insurance for first party loss other than direct damage to covered property (unless that's also excluded)
- Workers Compensation
- EPLI – Negligent hiring



# Will A Terrorism Exclusion Apply?

---

Usually \$5,000,000 threshold or 50 people  
however:

- *“any act of one or more persons, whether known or unknown and whether or not agents of a sovereign power, for Terrorist purposes”;*
- *“Terrorist purposes means the use or threatened use of any unlawful means, including the use of force or violence against any person(s) or property (ies), for the actual or apparent purpose of intimidating, coercing, punishing or affecting society or some portion of society or government.”*





# Insurance Solutions

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- Pre-Disaster planning and training (loss control services)
- Crisis Management coverage
- Legal liability coverage to address other uncovered lawsuits and regulatory proceedings that may result from a covered event
- Psychiatric care
- Medical or dental care
- Temporary security measures



# Other Insurance Solutions

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- Rehabilitation expenses
- Personal accident expense
- Business interruption expenses for an act of workplace violence or a stalking threat
- Consultant expenses
- “Off site incidents” coverage
- Funeral expense
- Life Insurance



# Other Insurance Issues

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- Are events broadly defined or narrow? – example: any event involving an Active Shooter(s) and the Named Insured where a Firearm(s) has been used or brandished
- Shooters, guns, knives, bombs
- Firearms – All? Military grade, or civilian only
- Are explosions before or after the event excluded?
- Are defense costs within the limit or supplemental?



# Exclusions

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- Business Income / consequential loss
- Confiscation or destruction of property by civil authority
- Criminal Acts of the Named Insured
- D&O errors and omissions
- Euthanasia
- **Explosive devices or bladed weapons unless used in conjunction with Firearms**
- **Military Hardware or Weapons not legally available to the general public**
- Employees or the **employees of any third party with whom the Named Insured has contracted for services**
- Cyber attacks
- Radioactive, Chemical, Biological, or Electromagnetic Weapons
- Mercy Killings
- Named Insured v Named Insured
- Nuclear attacks
- Pollution
- Loss or damage to goods or products
- **Punitive Damages**
- Strikes
- Suicide
- War



# Non Insurance Solutions?

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- Agility
- Physical Security – Building modifications or guards
- The FBI's Protocol
- Pre-Disaster planning and training (loss control services)
  - Seminars based upon assessments
  - Active Shooter and Security Vulnerability Assessment with a full risk analysis report
  - Active Shooter Safety Action Plan seminar on site
- Crisis Management coverage
  - Public relations
  - Reputational harm coverage
  - Employee counseling



## **BXSI Workplace Violence Prevention Symposium: Crisis Management**

Proactive Strategies for Effectively Communicating About &  
Managing the Aftermath of Violence in the Workplace

August 25, 2016



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## **BXSI Workplace Violence Prevention Symposium**

### **Insurance Implications and Crisis Management**

Louis G. Fey Jr., BancorpSouth Insurance Services  
Rhonda Barnat, Abernathy MacGregor  
Matthew J. Kelly Jr., AIG

August 25, 2016

# Insurance Implications & Crisis Management

## **Part I:** Insurance Implications of Workplace Violence Incidents

→ Lou Fey, BanCorpSouth

## **Part II:** Proactive Strategies for Effectively Communicating About & Managing the Aftermath of Violence in the Workplace

→ Rhonda Barnat, Abernathy MacGregor

→ Matt Kelly, AIG



# Insurance Implications & Crisis Management

## Part II: Crisis Management

Proactive Strategies for Effectively Communicating About & Managing the Aftermath of Violence in the Workplace

### Speakers:



Rhonda Barnat, Abernathy MacGregor  
*Managing Director*



Matthew J. Kelly Jr., JD, AIG  
*Risk Consultant*

# Crisis Management Overview

Helping companies return to normalcy

1. Establish business goal
  - Who is most important to reach? What do you want them to think/do?
2. Identify key constituencies
3. Determine overall approach and strategy that work
4. Assemble the right team, including external advisors
  - e.g. security, medical management, forensics, legal, technical advisors, etc.
5. Develop relevant tactics and messages
6. Manage the media
  - Handle reporter inquiries on the record, off the record and on background
  - Provide spokespeople as needed

*Crisis management, not just crisis communications*

# Crisis Management

Internal Support –

Understand needs of your workforce



Case Study

# Crisis Management

## Managing your Duty of Care



### Your “Duty of Care”

- The business’s duty to management, employees, and the public
- The policies, procedures and safeguards you put in place to prevent and react to an event.
- It also applies to what you put in place to recover.

Ask yourself:

Have I done what a reasonable business would do to prepare?

Am I prepared to do what a reasonable business would do under the circumstances?

## Answer the First Question

*When a crisis hits, who is your most important audience, and what do they really want to know?*

# Insurance Implications & Crisis Management

## QUESTIONS, COMMENTS?

*Thank you*



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- Additional information about AIG can be found at [www.aig.com](http://www.aig.com) | YouTube: [www.youtube.com/aig](http://www.youtube.com/aig) | Twitter: @AIGInsurance | LinkedIn: <http://www.linkedin.com/company/aig>
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