

CRISIS MANAGEMENT FOR COVID 19

Phase 54: COVID-19 Update Preventing & Addressing Workplace Violence Legal Updates!

*Presented by:
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and
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INTRODUCTIONS



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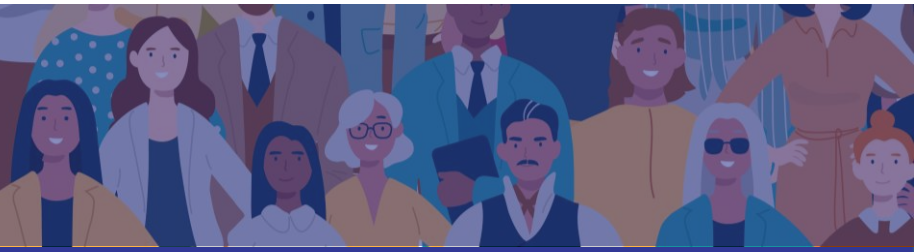
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WHAT WE'LL COVER

- 1 Workplace Violence Statistics and Planning/Prevention
- 2 Recognizing and Addressing Domestic Violence in the Workplace
- 3 COVID Update and Supreme Court Rulings
- 4 Legal and Regulatory Changes



1 Workplace Violence Statistics and Planning/ Prevention



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ACTIVE SHOOTER: PREPARATION AND RESPONSE

- JASON ROTHERMUND



OVERVIEW

- ❖ What is an active shooter?
- ❖ What qualifies as a mass shooting event?
- ❖ Why is this important?
- ❖ Considerations for companies and organizations

ACTIVE SHOOTER

- ❖ What is an active shooter?

- ❖ According to the FBI, an active shooter is classified as one or more individuals actively engaged in killing or attempting to kill people in a confined and populated area.

- ❖ What qualifies as a mass shooting?

- ❖ An event in which four or more people not including the shooter are injured or killed

STATISTICS

❖ According to the "Gun Violence Archive" there has been more than 250 mass shootings in 2022.

❖ Mass Shootings by the year:

❖ 2021- 61

❖ 2020- 40

❖ 2019- 30

❖ 2018-30

❖ 2017- 31

STATISTICS CONTINUED

- ❖ 52.5% increase from 2020-2021
- ❖ 96.8% increase from 2017
- ❖ Casualty rate rose from 164 in 2020 to 243 in 2021
- ❖ According to the FBI, “areas of commerce” were the most targeted locations in 2021.

CONSIDERATIONS FOR COMPANIES AND ORGANIZATIONS

- ❖ OSHA

- ❖ General duty clause

- ❖ Internal policies

 - ❖ Visitor policies

 - ❖ Reporting procedures and mechanisms

 - ❖ Active aggressor response procedures/known plan. (Do you have one?)

CONSIDERATIONS CONTINUED

❖ Training

- ❖ Run, Hide, Fight
- ❖ Online or in person
- ❖ Include relevant technologies
- ❖ By far the most important key to survival for you and your staff

CONSIDERATIONS CONTINUED

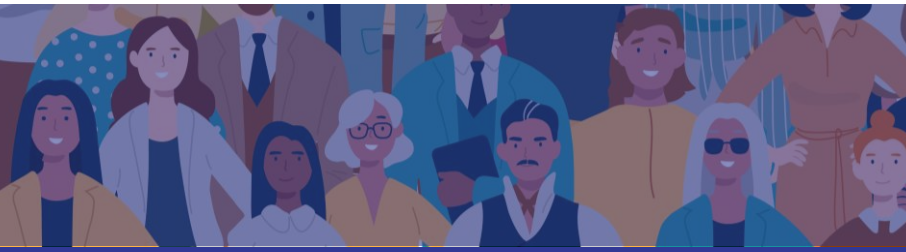
❖ Prevention and preparation

- ❖ Does your company have an emergency action plan?
- ❖ Do you have mass notification technologies?
- ❖ Gun shot trauma kits?
- ❖ Have you had a threat assessment?

WHAT TO EXPECT IN RESPONSE TO AN ACTIVE SHOOTER

- ❖ Chaos
- ❖ LE officers will possibly be responding from multiple agencies, some in uniform, some in plain clothes
- ❖ Law enforcement officers' goal is to stop the threat


FAILURE TO PLAN, IS PLANNING TO FAIL!



2 Recognizing and Addressing Domestic Violence in the Workplace



Lisa Gabbard, M.Ed.
Leadership – Training and Prevention
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Recognizing and Addressing Domestic Violence among Employees

PRESENTED BY THE KENTUCKY COALITION AGAINST DOMESTIC VIOLENCE

Mandatory Education and Referral

- ▶ Changed in 2017
- ▶ Provide information about DV programs that can help, protective orders
- ▶ Only report abuse if the person requests you do so
- ▶ Professionals required: medical; school and child care personnel; minister/equivalent; victim advocate; agency employing any such professional

Kentucky's state shelter system

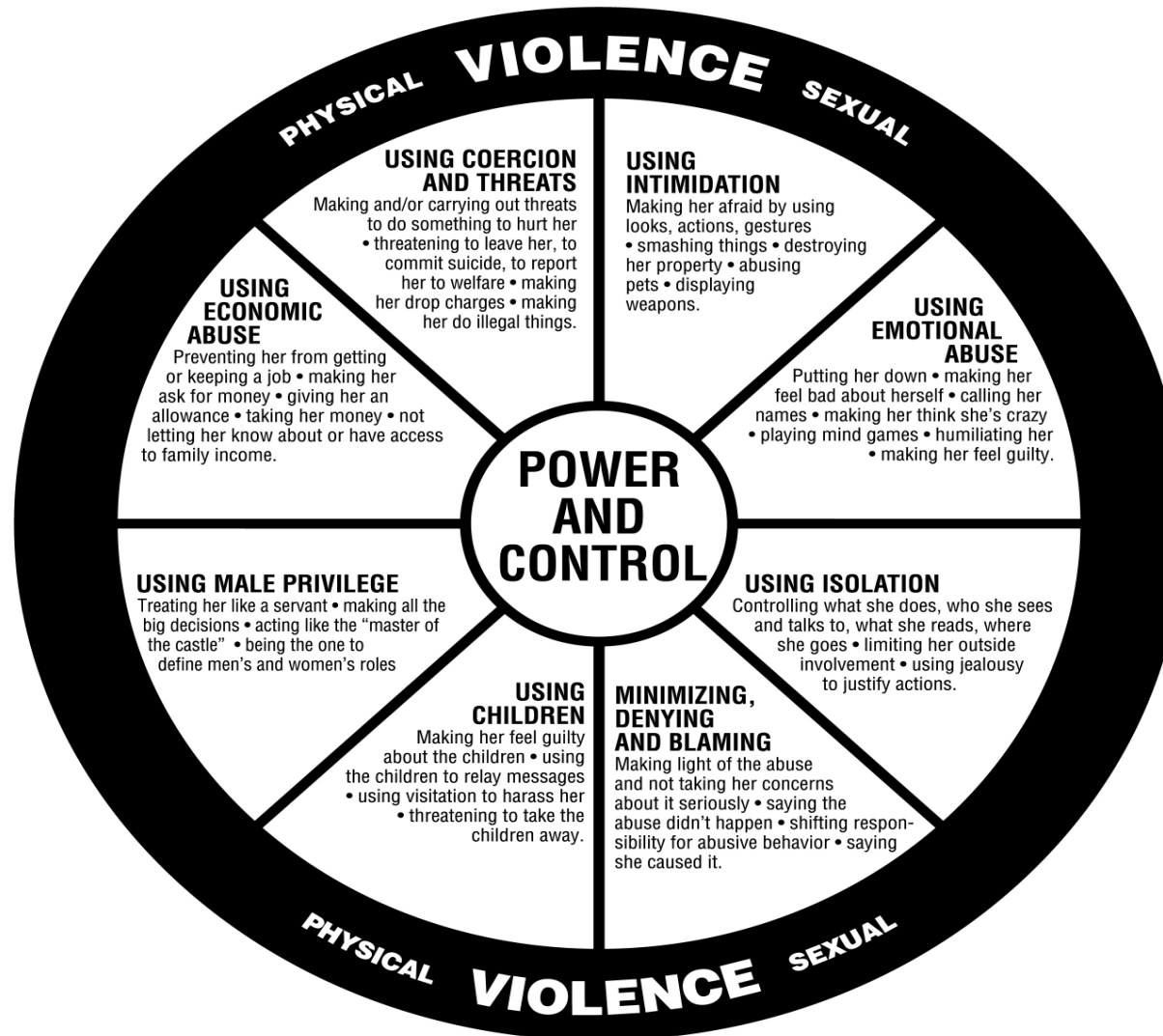
- ▶ 15 shelters that serve all 120 counties
- ▶ Work with anyone needing services
- ▶ Services include:
 - ▶ Legal/court advocacy
 - ▶ Case Management
 - ▶ Safety Planning
 - ▶ Support Groups and Counseling
 - ▶ Housing Assistance
 - ▶ Job Search Assistance
 - ▶ Flex Funding

Guidelines

- ▶ Respect a person's choice to share or not
- ▶ If someone discloses, believe them
- ▶ Consider keeping a log of what you see or hear
- ▶ Follow the lead of the person

“Warning Signs”

- ▶ See the Power and Control Wheel(s)
- ▶ If someone is experiencing these things, they are a victim
- ▶ If someone is doing these things, they are a perpetrator



Resources

- ▶ www.KCADV.org – Kentucky Coalition Against Domestic Violence
- ▶ Members.kdva.org – Batterer Intervention Providers program information
- ▶ Lisa K. Gabbard, M.Ed.
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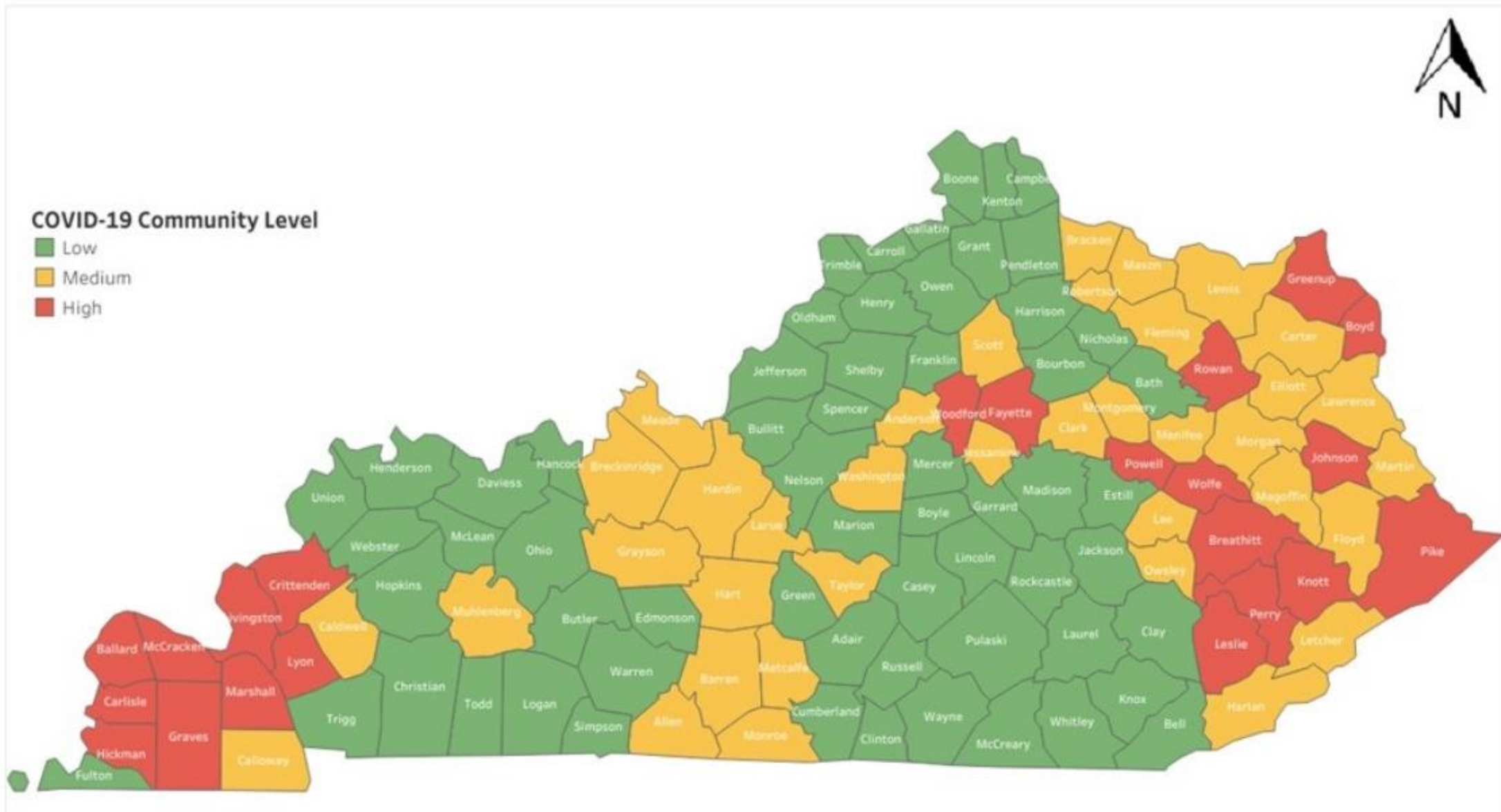
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COVID-19 Confusion & Gun/Workplace Violence Discussion



James M. Morris, Esq.
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Kentucky's State-Wide COVID-19 Status and Clarification/Explanation as of June 23, 2022:



Earlier this month, the Supreme Court issued Viking River Cruises v. Moriana

- The Viking ruling held that the Federal Arbitration Act preempts state laws that attempt to limit the use of Arbitration
 - The California court attempted to preclude arbitration agreements litigating "individual PAGA claims for Labor Code violations that an employee suffered"
- Supreme Court held that where the FAA applies, if the employee agreed to arbitrate claims against the employer on an individual basis, that agreement had to be honored.
- Viking is likely to result in a flurry of legislative activity – especially in California
- Employers with arbitration agreements already in place should consider revising their existing agreements to include class action and representative action waivers and severability clause
- In disputed matters covered by arbitration agreements (whether at the demand letter stage, upon receipt of a notice, or in the midst of a lawsuit), Viking River Cruises should be considered when developing litigation strategy and in valuing ongoing arbitration litigation

Finally, don't forget the **Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act**

On June 23, 2022, the Supreme Court ruled that New York's regulations that made it difficult to obtain a license to carry a concealed handgun were unconstitutionally restrictive

- The existing standard required an applicant to show "proper cause" for seeking a license
- State actors cannot interfere with a Constitutional Right granted by the Bill of Rights
- New York's law, as written, authorized the state actors to decide, on a case-by-case basis, who was "entitled" to conceal and carry, and who was not allowed.

With this ruling, employers have asked the "impact" on workplace rules/policies.

- The Court's Opinion addressed state action, **not private employer action**.
- Employers have a right (and responsibility) to control the workplace environment
- Employer Policies and Procedures can, and should, be established that define what is authorized, how it is implemented, and the consequences, in the event of a ban
- Policies should cover vehicles, person, conceal and carry, open carry
- Actions against employees for "violation" must be based upon well-defined policies
- Employers should consider liability issues, waivers, etc.

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SCOTUS Gun and Abortion Decision Impact on Employers

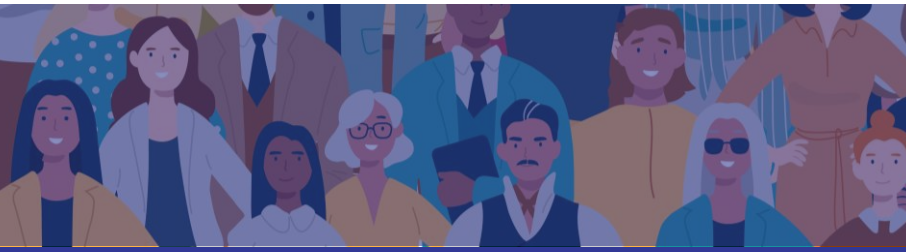
On June 24, 2022, the US Supreme Court Reverts Abortion Laws to the States. What does this mean for Employers?

- Employers with health plans that cover abortion services will have to determine whether or how to provide continued access to this relatively little-used benefit
- Adding medical travel expense reimbursement benefits to existing self-insured medical plans issues with ERISA, tax, and other federal law that employers need to carefully evaluate
 - Such a policy could cause potential issues under rapidly evolving aiding and abetting laws
 - State laws that relate to employee benefit plans are broadly preempted by ERISA, but ERISA preemption is limited, including, for example, state criminal laws
- Many employer health plans cover abortion services, as well as reimbursing for travel
- Federal law generally does not require health plans to cover abortion services.
- EEOC has interpreted PDA to require health plans to cover abortions in certain cases
- Health insurers are subject to state insurance laws, including laws governing whether policies may or must cover abortion services, so insured plans may have less discretion
- Telehealth providers may also be affected by new state restrictions on abortions
- Employers reimbursing for certain medical travel—but not for mental health/substance abuse travel may be in violation of the Mental Health Parity and Addiction Equity Act of 2008

On June 27, 2022, US Supreme Court Rules On Religious Discrimination. What does this mean for Employers?

At 10:00 a.m. SCOTUS ruled that a former high school football coach, who was terminated for reciting a prayer at the 50-yard line after a game, was improperly terminated

- The actual issue raised was whether a public school employee, who was praying alone, but in view of students, was engaging in unprotected “government speech” or improper speech:
 - SCOTUS: “[A] government entity sought to punish an individual for engaging in a brief, quiet, personal religious observance doubly protected by the Free Exercise and Free Speech Clauses of the First Amendments. And the only meaningful justification the government offered for its reprisal rested on a mistaken view that it had a duty to ferret out and suppress [] religious observances even as it allows comparable secular speech. The Constitution neither mandates nor tolerates that kind of discrimination”
- The impact upon private employers is not yet fully developed, but may impact policies prohibiting religious observances, and treat religious actions differently than secular
- Public employers will need to evaluate Policies & Procedures to determine compliance



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Employer Liability for Workplace Violence



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To understand employer liability for workplace violence, you need to have a general understanding of when an employer is liable for the actions of its employees.

- Liability depends on whether an employee's actions were a part of their occupation
 - Was the employee running to the store to pick up groceries for your restaurant, or did he/she get into a car accident attempting to drive while taking a zoom call?
 - Your business could be liable!
- Do you have an employment agreement that defines what the employee's job responsibilities are supposed to be? Where the employee is allowed to go while using a company vehicle? Where he or she is not allowed to go, or not allowed to do?
 - An employment agreement can provide for a direction to follow company policies, or to refrain from certain actions. It is recommended for all employers to have handbooks/policies in place, because without them, you have a much greater chance of being deemed negligent.

Businesses with employees regularly conducting business on the go and/or outside of the office

- For those of you who have delivery drivers, work from home, leave the office while still on the clock, etc., you are at a heightened risk for being liable.
- To understand liability away from the office but still on the clock, you need to determine whether the employee was acting in:
 - (1) Regular Course of Business – injured or caused injury during the regular course of the employee’s work/within scope of their duties.
 - (2) Detour from Regular Course of Business – still liable! A detour is when an employee is not necessarily acting within the SOW, but it is related enough that Courts still find employers liable.
 - (3) Frolic – not liable for employee frolics. A frolic is when an employee acts entirely on their own and outside their SOW.
 - However, without strict rules limiting “frolic” behavior, responsibility could occur

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Employer's Liability for Workplace Violence

So what about workplace violence? Are you liable?

The answer everyone hates – **IT DEPENDS!**

- **Courts will evaluate everything from your hiring process, to your handbooks, to your policies and procedures (and their enforcement, or lack thereof).**
- **Negligent Hiring:** Did you forget to perform a background check/drug test? To verify references and credentials. Did the employee have a prior violent criminal charge or have any history that you **could** have found but didn't?
 - You may be liable for an employee's act of workplace violence if you failed to do research prior to hiring.
 - However, you also must be mindful of anti-discrimination laws regarding background checks, etc.
- **Negligent Retention:** Maybe you didn't do your research at first but found out later. And maybe that employee is a great employee, so you decide to let it slide. Or maybe your great employee develops violent characteristics during employment that you fail to act upon.
 - You could be liable for not taking preventative measures and/or terminating that employee.
- **Harassment:** Every claim must be taken seriously. A proper policy must be established, followed, and completely documented, with every decision being properly supported by the evidence collected
- **Knew or Should Have Known:** If an employer knew that it had a violent employee or had reason to believe that there was a potential for violence, and either turned a "blind eye" or failed didn't know but have turned a blind eye (ordinary employer would have noticed), you can be liable.

The laws surrounding workplace violence and harassment are complex, and require a proper, well advertised approach by employers, so that employees understand the expectations and the procedures to follow

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Preventative Measures

What can you do to protect your business?

- Every Company needs a handbook with **correct** policies and procedures– and **enforce them!**
 - Lack of enforcement, lax policies, or unequal enforcement, can each be used against you.
 - Consult with your contract/business law attorney to properly draft these documents
 - Proper policies, and enforcement, are great tools in the event of litigation or inquiry
- Assure widespread distribution of violence, harassment, and workplace threat policies
- Take preventative measures to protect your employees and your business.
 - Proper hiring practices, hiring procedures, and vetting of candidates is critical
 - When an allegation is made, immediately consult counsel.
 - Involving counsel at an early stage can assure a proper investigation, prevent litigation, and ultimately saving resources and employee loss/distrust
- Act quickly!
 - Immediately launch a thorough investigation between HR and your legal counsel. Post-event conduct of all involved will be critical
- Invest in your company's policies and procedures **before** incidents arise.
 - An ounce of prevention Acting early, and properly, will drastically reduce costs later!

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HRCI CODE: 598565 **Code may not work for up
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