

## **JULY 2012 BUSINESS COUNSELOR UPDATE**

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### **Workplace Violence Policies**

Workplace safety is a major concern for all companies, not only because of potential legal liability but also because of the disruption caused by the inability of trained and skilled workers to be available to do their jobs. The policies in this area begin at the time that a new employee is hired and companies must carefully consider the circumstances under which medical examinations will be required as a condition of employment. During the term of employment attention turns to making sure employees are trained to act safely and that procedures are in place for quickly responding to accidents involving employees and/or visitors to the workplace. Finally, workplace violence is, unfortunately, a not uncommon experience and companies need to have procedures in place to screen for potential problems with new employees and monitor situations in the workplace that might escalate to the point where someone is in danger. For an example, see Specialty Form at §100:184.50, which is reproduced below. For further discussion of the laws and regulation pertaining to the employment relationship and practice tools to assist client in complying those laws and regulations, see Gutterman, Business Transactions Solutions § 100:1.

#### **§100:184.50 Workplace violence policy [New]**

##### **WORKPLACE VIOLENCE POLICY**

##### **POLICY STATEMENT**

[name of company] (“Company”) is dedicated to providing safe, dependable working conditions and services to its customers and employees. In order to achieve this goal, it is our policy to provide a workplace free from violence and violent acts. In conjunction with this policy, the Company has adopted a “zero-tolerance” for workplace violence.

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Therefore, all acts or threats of physical violence, including intimidation, harassment, and/or coercion between employees in the workplace or job related contacts with customers or persons outside Company employment will not be tolerated.

### **DEFINITION OF WORKPLACE VIOLENCE**

Workplace violence includes, but is not limited to, the following:

- Threat: The expression of an intention to cause mental or physical harm to persons or property.
- Physical Attack: The unwanted or hostile physical contact such as, but not limited to, hitting, fighting, pushing, shoving or throwing objects.
- Intimidation: Includes, but not limited to, stalking or engaging in actions intended to frighten, coerce, or induce duress.
- Property Damage: The intentional damage to property which includes property owned by the Company, employees, visitors or vendors.
- Zero Tolerance: Violations will not be tolerated and will result in severe disciplinary action up to and including termination of employment.

### **THREATS OR ACTS OF VIOLENCE DEFINED**

"Threats or acts of violence" include conduct against persons or property that is sufficiently severe, offensive, or intimidating to alter the conditions of state employment, or to create a hostile, abusive, or intimidating work environment for one or more Company employees.

### **EXAMPLES OF PROHIBITED CONDUCT**

Specific examples of conduct that may be considered "threats or acts of violence" prohibited under this policy include, but are not limited to, the following:

- Hitting or shoving an individual.
- Threatening to harm an individual or his/her family, friends, associates, or their property.
- The intentional destruction or threat of destruction of personal property of others or property owned, operated, or controlled by the state.
- Making harassing or threatening telephone calls, or sending harassing or threatening letters or other forms of written or electronic communications.
- The willful, malicious and repeated following of another person, also known as "stalking," and making of a credible threat with intent to place the other person in reasonable fear for his or her safety.
- Intimidating or attempting to coerce an employee to do wrongful acts, as defined by applicable law, administrative rule, policy, or work rule that would affect the business interests of the state.

- Making a suggestion or otherwise intimating that an act to injure persons or property is "appropriate," without regard to the location where such suggestion or intimidation occurs.
- Unauthorized possession or inappropriate use of firearms, weapons, or any other dangerous devices.
- Conduct that includes repeated verbal abuse and intimidation, profanity, or unwanted sexual comments or overtures directed at subordinates, supervisors, co-workers, or customers, while not overtly physical or violent, may be prohibited under this policy.

### **APPLICATION OF PROHIBITION**

The Company's prohibition against threats and acts of violence applies to all persons involved in Company operations, including, but not limited to, Company personnel, contract and temporary workers, and anyone else on Company property. Violations of this policy by any individual will be subject to legal action, as appropriate. Violation of this policy by a Company employee may lead to disciplinary action up to and including removal in accordance with the applicable law, rule or collective bargaining agreement.

### **WARNING SIGNS, SYMPTOMS AND RISK FACTORS**

- Supervisors should be alerted to and aware of inappropriate conduct that may constitute indicators or warning signs of an individual's potential for violence. Such behavior should be monitored and documented.
- Hinting about knowledge of weaponry, marshal arts, or other means and manner of causing physical harm.
- Verbalizing violent fantasies or identifying, literally or metaphorically, with violent individuals or events.
- Possessing/displaying books, games or other media with themes of violence, revenge and harassment.
- Exhibiting, verbally or physically, excessive bitterness, intense anger, lack of empathy, social dysfunction, romantic obsession, morose depression or emotional isolation, including inappropriate physical manifestations such as hard breathing, flushed complexion, menacing expressions, or rapid, profane speech.

### **CRISIS MANAGEMENT RESPONSIBILITIES**

In all situations, if violence appears to be imminent, employees should take the precautions necessary to assure their own safety and the safety of others. Following are critical telephone numbers that may be necessary to carry out the procedures outlined in this section: [phone numbers of emergency service providers such as police, fire and rescue]

The following procedures shall apply in the event of a crisis situation:

1. If the crisis situation involves an injury that requires immediate medical attention, the employee discovering the crisis should alert the appropriate medical professional by calling “911” and then notify a supervisor. The supervisor should contact the Crisis Response Center.
2. The primary contact person shall be the Crisis Response Center at [phone number]. He/she has authority to assume or delegate the duties required of this policy.
3. In the event of all other crisis situations, Company employees should notify their supervisor of the situation. The supervisor should contact the Crisis Response Center.
4. If no supervisor is available, the employee should contact the Crisis Response Center.
5. Immediate action will be taken by the Law Enforcement Administrator to ensure the safety of those involved in the crisis situation or affected by the crisis.
6. The Law Enforcement Administrator will notify the Chief Executive Officer of the Company of the facts of the crisis situation as soon as possible. The Law Enforcement Administrator will assume or assign the responsibilities of acting as the Company’s liaison with the law enforcement, fire, medical and other community resources offering assistance, as necessary; and acting as spokesperson to monitor incoming calls, and document in detail everything done in response to the crisis situation.
7. All communication with the immediate relative(s) and other employees shall be handled by the Office of Human Resources, Health and Safety Coordinator.
8. All communications with the media shall be directed to and handled by the Office of Communications.
9. In the event of threats of violence to person(s) or property by means of firearms, fire, explosions, bombs, etc., the Law Enforcement Administrator shall be notified. The Law Enforcement Administrator shall contact the State Highway Patrol. If law enforcement authorities determine that an evacuation is necessary, personnel of the affected area will be evacuated from the threatened area and employees will be directed to the appropriate site.
10. If a building evacuation is necessary, it will be conducted in a safe and orderly manner. The Law Enforcement Administrator will insure that staff from each evacuated facility accounts for its personnel and all persons are evacuated from the building. Until otherwise directed, employees must report to and remain at the evacuation site so that they may be accounted for. Responding emergency service personnel will be notified of persons not accounted for to aid in determining whether the evacuation is complete
11. Re-entry into the building will be restricted to emergency service and/or authorized personnel until law enforcement authorities determine the crisis is resolved and a safe re-entry can be made.
12. In the event a person causing a crisis situation leaves the building, responsibility for preventing that person from re-entry shall be left to law enforcement

authorities.

## **REPORTING THREATS OR ACTS OF VIOLENCE**

Each Company employee and every person on Company property is required to report incidents of threats or acts of physical violence of which he or she is aware. In cases where the reporting individual is not a Company employee, the report should be made to the Office of Human Resources, Health and Safety Coordinator or Labor Relations Office who will notify the Law Enforcement Administrator.

In cases where the reporting individual is a Company employee, the report should be made to the reporting individual's immediate supervisor or a management level supervisory employee if the immediate supervisor is not available or if the immediate supervisor is a party to the incident. The supervisor/management employee shall contact the Office of Human Resources, Health and Safety Coordinator or Labor Relations Office. Any such incident shall be promptly referred by the Law Enforcement Administrator to the appropriate management level supervisor, who shall take corrective action in accordance with the applicable law, rule or collective bargaining agreement. Concurrently with the initiation of any investigation leading to a proposed disciplinary action, the Law Enforcement Administrator shall report any incidents of threats or acts of physical violence to the [name of law enforcement agency]. Additionally, employees may make an anonymous report of violence.

## **FITNESS-FOR-DUTY EVALUATION**

At the discretion of [identification of appropriate officer], an employee showing symptoms of potentially violent behavior may be ordered to submit to a psychological evaluation to determine the employee's fitness for duty. Such an evaluation shall be conducted pursuant to all applicable state and federal laws and regulations.

## **TRAINING**

The Company shall provide opportunities for employees to be trained in the risk factors associated with workplace violence and proper handling of emergency situations in order to minimize the risks of violent incidents occurring in the workplace.

## **REFERRAL TO EMPLOYEE ASSISTANCE PROGRAM**

Where an employee suspects that another employee has work-related and/or personal problems, which create a workplace violence issue, the employee may recommend or request that the employee contact the Company's Employee Assistance Program (EAP) for counseling and support ([phone number]). In the alternative, the employee may contact Human Resources personnel to consider an EAP referral.

EAP should be consulted (within 24 hours of the incident) for purposes of conducting a critical incident stress debriefing, should a critical incident occur. Examples of critical incidents include:

- hostage or riot situations
- serious injury or death of a coworker
- incidents involving use of force
- resident suicide or death
- catastrophic accidents
- negative publicity

EAP should be consulted when developing employee and supervisor training programs. EAP also provides the EAP Transition Intervention Services, which should be utilized in the event of a layoff.

## **DISCIPLINE**

Violation of this policy by any employee may lead to disciplinary action up to and including termination of employment with the Company. Additionally, violations of the policy by anyone may result in legal action, as appropriate.

## **Notes**

*Use of form:* This form is an example of a comprehensive workplace violence policy that includes instructions to be followed in the event that a crisis situation arises. This policy is based on the premise that the company has adopted a “zero-tolerance” for workplace violence and the policy includes a definition of workplace violence and additional information on what constitutes threats or acts of violence. Examples of prohibited conduct should also be included in this type of policy and companies should provide training to employees to recognize warning signs, symptoms and risk factors. The discussion of crisis management responsibilities assumes that a crisis response team has been designated to receive reports of crisis situations and handle communications with law enforcement authorities to ensure the safety of company employees and other involved in the crisis. Training for various aspects of crisis response, such as building evacuations should be conducted regularly and in advance of any actual need. Other issues covered by this type of policy should include referral to employee assistance programs and the consequences of failing to abide the terms and provisions of the policy.