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# Before and After a Violent Attack

## How to be prepared and respond accordingly

By Stacy D. Fulco, Lance Ewing

Preparation, preparation, preparation—that is the key to properly handling and responding to a violent attack and incidents of workplace violence. Businesses readily open to the public, such as retail and hospitality companies, must develop a plan to address these types of situations before they take place. We'll provide tips and recommendations on how to be prepared and what to do after an attack occurs.

### The Calm Before the Storm

The National Institute for Occupational Safety and Health (NIOSH) statistics indicate that 70 percent of businesses do not have a formal program or policy for workplace violence. This needs to change because being prepared is the best defense to civil liability following a violent event. The most important aspect of being prepared is having formal procedures and ensuring employees are trained on what to do in certain situations. Here are a few considerations.

**Procedure Development.** Every company should have a written procedure in place for how to respond to any type of workplace violence or attack on the property. This procedure can easily be kept with other emergency procedures. Note the term being used is procedure, not policy. Policies are directives, while procedures are helpful guidelines. A violent attack is unpredictable and typically calls for split-second reactions, so it is best to provide employees with useful guidelines, not strict rules. This also prevents rules from being "violated" if they are not specifically followed.

As for who should create the procedure, the same group that will respond to a violent attack typically provides the best input when developing the procedure, which we'll dub the emergency response team (ERT). This team should include operations, human resources, risk management, security, media relations, and legal (including outside defense counsel). Each group has a unique perspective and can provide thoughts on how employees can best react to situations and how training can best be implemented to ensure compliance.

While writing the procedures, keep them broad enough to provide guidance for many situations, since each situation will be unique. Procedures also need to be short, concise, and easy to understand. Simple makes it easier to train and ensures it will be remembered. The use of bullet points and scenarios assists greatly in the training.

**Gun/Weapon Possession Policy.** At the procedure development stage, a company must also have a clear policy on what types of guns or weapons, if any, are allowed on the property. Each state law differs as to what is defined as a "weapon," so companies should be careful to avoid being caught in the nuances of these details.

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## Before and After a Violent Attack

Every state has its own laws regarding open and concealed carry. Each state also has its own twist on how, when, where, and if no-gun signs can be posted and the impact of such a sign. This is one of the greatest challenges for a company because it must create policies and procedures for states across the country, but the laws change depending on the state. For this reason, broad policies and procedures are recommended when a company does business in many different states. Companies must also keep up to date on the changing laws around the country.

If a violent attack occurs, one of the first steps will be to look at the company policy to determine what weapons, if any, were allowed on the property, which means that this is an issue that cannot be ignored. It must be evaluated, discussed, and put into writing so it is clear and understood by employees.

*Procedure Implementation.* Once the procedure is developed, it is useless unless it is properly implemented and taught to employees. Failure to implement a policy or procedure can negatively impact a company if an event takes place. The security department will typically be involved with the training and it should be provided to anyone who is expected to act in a violent attack. The training should be provided regularly, and there should be documentation to show it was given.

*Ongoing Evaluation of Criminal Activity and Security.* One of the primary things reviewed after a violent attack is what the company was doing to evaluate criminal activity and security needs before the attack. There are many ways this can be done, but the important thing is that companies are evaluating criminal activity at their properties and using that information to determine what, if any, security is needed at the property. This is how the courts will determine if the property had proper security, so it should be a natural part of the security department's process.

### The Destruction After the Storm

The written procedure should advise the employees what to do after such an attack, including calling 911, securing the store, and notifying the corporate office. This discussion looks at what a company should do to prepare itself for impending civil litigation.

*Recommendations for After an Attack.* Once a violent attack has taken place, the following list provides recommendations that a company should follow to ensure it has fully investigated the incident and preserved all of the necessary evidence and materials in case a suit is filed in the future.

- Retain outside defense counsel as quickly as possible—the day of the attack, if possible—to ensure the investigation is done properly and it is potentially privileged.
- Complete incident reports and employee witness statements with direction of counsel.
- Every employee who was working at the time of the attack as well as all witnesses should be interviewed, but do not take recorded statements unless approved by counsel.
- Preserve all available surveillance footage at the property for at least two hours before the incident and until the scene is released.
- Obtain documentation showing the surveillance system's operability, and obtain reports for any cameras or devices not functioning at the time.
- Secure all employee schedules for the day of the incident and any documents regarding inspections, vendors on site, etc.
- Secure all security/crime-related reports for the property for a three-year period before the date of the incident.
- Secure a copy of all policies and procedures in effect at the property that could in any way be related and provide them to counsel.
- Photograph and videotape the scene and the security room to ensure documentation of how the areas appeared and equipment in place.
- Cooperate fully with the police and prosecutors.
- Speak with neighboring businesses regarding their understanding of the crime and to locate any additional surveillance footage.
- Evaluate if a security expert should be retained early.
- Obtain a history of all police calls and incidents for the property and potentially the surrounding area for three years before the incident.

The key is to retain counsel immediately and perform a full investigation, as this will help ensure a solid defense if civil litigation is filed. If a violent attack occurs, always assume civil litigation will follow and respond accordingly.

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*Stacy D. Fulco is a partner at CLM Member Firm Cremer, Spina, Shaughnessy, Jansen & Siegert LLC. She regularly represents companies within the retail, restaurant, hospitality, and property management industries and can be reached at [sfulco@cremerspina.com](mailto:sfulco@cremerspina.com), [www.cremerspina.com](http://www.cremerspina.com).*

*Lance Ewing is executive vice president of global risk management and client services for Cotton Holdings Inc. He can be reached at [lance.ewing@coltonteam.com](mailto:lance.ewing@coltonteam.com).*