



The Noble Group



The "Forseeability" of Workplace Threats & Violence

Can an employer know who may commit an act of workplace violence prior to the incident occurring?

Most often, that answer is **YES!**

Are employers liable for knowing a specific harm might occur?

Increasingly, that answer is **YES!**

The significant escalation of drug use, violence, threats, and behavioral concerns in the workplace is reflective of what is being experienced at all levels in our society. The overwhelming majority of workplace-related incidents, including mass shootings, are detectable and preventable. An FBI study on pre-attack behaviors indicated, "On average, each active shooter displayed 4 to 5 concerning behaviors over time that were observable to others around the shooter. The most frequently occurring concerning behaviors were related to the active shooter's mental health, problematic interpersonal interactions, and leakage of violent intent." Furthermore, "We found evidence that 62% (n = 39) of the active shooters had a history of acting in an abusive, harassing, or oppressive way (e.g., excessive bullying, workplace intimidation); 16% (n = 10) had engaged in intimate partner violence; and 11% (n = 7) had engaged in stalking-related conduct." There is often an identifiable grievance, "In those cases where the active shooter's primary grievance could be identified, the most common grievances were related to an adverse interpersonal or employment action against the shooter (49%). <https://www.fbi.gov/file-repository/pre-attack-behaviors-of-active-shooters-in-us-2000-2013.pdf/view>

Employers are often fully aware of the person or persons who cause or may cause violence in the workplace and many times, employers have already taken punitive action against that employee stemming from a previous behavioral concern.

Courts have determined liability stemming from the lack of due diligence on the part of an employer is fundamentally linked to negligence as plainly spelled out by the 2020 American Bar Association, "Liability for Mass Shootings: Are we at a Turning Point?" https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/the_brief/2019-20/winter/liability-mass-shootings-are-we-a-turning-point/

The overwhelming determination is that employees who have a history of violence and drug use, who are known to have problematic behavioral problems in the workplace and/or outside the workplace (continuous monitoring is now commonly utilized to detect arrests and incidents outside the workplace), are the responsibility of employers. These employees pose a greater probability of specific harm to others which is FORESEEABLE, and it is the duty of the employer to create a safe workplace environment for all employees through background checks, post-hire monitoring, drug testing, threat assessment, and intervention.

FORESEEABILITY (when a reasonable person in a given situation should know that specific harm might occur) is determined by courts as a precondition in a finding of negligent hiring and negligent retention. The frequency of negligent hiring and negligent retention lawsuits resulting from workplace violence incidents and the amount awarded from these lawsuits are increasing:

- 10/01/17 MGM, Mandalay Bay Shooting - [MGM Shooting \\$751 Million Negligence Judgement](#)
 - NEGLIGENCE
- December 2019 Killing by Spectrum Employee - [Spectrum ordered to pay \\$1.1 Billion to family](#)
 - NEGLIGENCE with numerous red flags – removed employee screening program in 2016 – hired Holden w/o verifying his employment history – employee lied on the application.
- 9/23/21 Kroger Shooting - [Kroger Shooting \\$10 Million Negligence Lawsuit](#)
 - NEGLIGENCE (multiple lawsuits filed)
- 05/24/22 Uvalde School Shooting - [Uvalde School Shooting \\$27 Billion Negligence Lawsuit](#)
 - NEGLIGENCE
- 11/22/22 – Walmart Shooting - [2nd \\$50 Million Lawsuit against Walmart filed](#)
 - NEGLIGENCE

It is indisputable that violence is often directly linked to substance abuse. Furthermore, substance abuse is a significant red flag that is discernable, detectable, and thus, FORESEEABLE. An effective drug testing program provides due diligence in employers creating and maintaining a safe workplace environment for all employees.

As courts increasingly determine employers are responsible for FORESEEABILITY in negligent hiring and negligent retention and multi-million (and multi-billion) judgments become more frequent the landscape of employer due diligence is being redefined.

The NOBLE GROUP understands the difficulties facing employers in all industries in today's workplace environment and we are committed to assisting employers in mitigating FORESEEABLE RISK through:

- Rapid Drug Testing Products – reliable, immediate results
- Drug Testing Program and Policy Management – Lab Confirmations & Medical Review
- Comprehensive Background Checks (not a limited review of online state court records)
- Post-Hire Monitoring
- Vulnerability Assessments and Target Hardening Recommendations

- Workplace Violence/Active Assailant Training and Drills
- Response Protocol, Critical Incident Management, Threat Assessment Training, and Policy Review

Do not let the failure to protect your employees impact your business.

The Noble Group offers cost-effective and common-sense steps to establish due diligence and more importantly, significantly enhance workplace safety for all employees.

The NOBLE GROUP assists businesses of all sizes in all industries and welcomes the opportunity to bring true SAFETY into your workplace!

Contact:

Daniel M. Hanlon

Director of Training

National Account Development

dhanlon@noblemedical.com

414-207-0441



The Noble Group