



Provided By Mulling Insurance Agency Inc.

Workplace Violence Prevention

Workplace violence is a serious safety and health issue. While no federal law specifically addresses violence in the workplace, several laws impose a duty on employers to maintain a safe workplace.

For example, the Occupational Safety and Health Act (OSH Act) imposes a general duty on all employers to provide employees with a workplace that is free from hazards. Federal civil rights laws also require employers to keep the workplace free from threats of violence, and state workers' compensation laws hold employers responsible for injuries sustained by employees while performing job-related duties. In addition to these requirements, Florida law also places a duty on employers to provide employees with a safe workplace.

WORKPLACE VIOLENCE DEFINED

The National Institute for Occupational Safety and Health (NIOSH) defines workplace violence as "violent acts (including physical assaults and threats of assaults) directed toward persons at work or on duty." The Occupational Safety and Health Administration (OSHA) recognizes four different types of workplace violence:

- **Criminal Acts:** Violent acts by people, employees or former employees who enter the workplace with the intention to commit a crime;
- **Customers/Clients/Patients:** Violent acts directed at employees by individuals who enter the employer's premises to obtain some type of service;
- **Co-Worker Conflict:** Violence directed at co-workers, supervisors, or managers by a current or former employee, supervisor, or manager; and
- **Personal:** Violence in the workplace by someone who does not work there, but who is known to, or has a personal relationship with, an employee.

Workplace violence is a particularly prevalent issue in healthcare and social service settings as well as late-night retail establishments.

EMPLOYER LIABILITY IN LAWSUITS FOR INTENTIONAL INJURY

An injured employee, or a deceased employee's survivors, may sue an employer for damages if the employee's injury was caused by an act or omission of the employer that was either intended to injure the employee or that involved the employer's substantial certainty that the injury would occur.

For example, an employer might deliberately remove an equipment safety guard or deliberately misrepresent a toxic or hazardous substance. In these situations, if an employee is injured as a direct result of the removal or misrepresentation, the law presumes that the injury was caused intentionally.

Florida courts impose further obligations on employers to provide employees with a safe work environment by requiring employers to hire, train and supervise their employees properly. If an employer does not adequately hire, train or supervise its employees, the employer may be sued for negligence if the employer knew or should have known the employee would subject a coworker, customer or other third party to an unreasonable risk of harm.

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. It broadly summarizes state statutes and regulations generally applicable to private employers, but does not include references to other legal resources unless specifically noted. Readers should contact legal counsel for legal advice.

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FLORIDA CONCEAL AND CARRY LAW

State law allows Florida residents and some residents of other states to obtain a license to carry concealed weapons in the state of Florida. An employer may prohibit properly licensed employees, customers or invitees from carrying a concealed weapon on the premises of the employer's business.

However, an employer may not prohibit an employee, customer or invitee who lawfully possesses firearms or ammunition from transporting or storing them in their privately-owned, locked car that is legally on the employer's premises. Employers may not even asking employees, customers or invitees whether they have firearms in their vehicles. The law also specifically prohibits employers from searching any vehicle for weapons and from taking any action against an employee, customer or invitee based upon their possession of a firearm inside a private motor vehicle in a parking lot for lawful purposes.

In addition, employers may not condition employment upon:

- The fact that an employee or prospective employee holds or does not hold a concealed weapon license; or
- Any agreement that prohibits an employee from keeping a legal firearm locked inside a private motor vehicle in a parking lot for lawful purposes.

Statutorily Prohibited Locations

Florida law explicitly prohibits carrying concealed weapons in the following locations:

- Schools;
- Correctional facilities;
- Nuclear-powered electricity generation facilities;
- Properties where substantial activities involving national defense, aerospace or homeland security are conducted;
- Properties used in the manufacture, use, storage, or transportation of combustible or explosive materials, including properties owned by employers who are licensed to engage in the business of importing, manufacturing, or dealing in explosive materials on that property;
- Motor vehicles owned, leased or rented by any employer; and
- Where otherwise prohibited by state or federal law.

Immunity

As long as an employer complies with Florida law, it will generally be immune from civil liability based on any action or inaction with respect to concealed weapons or concealed firearms.

Regardless of whether an employer decides to allow or prohibit weapons on their premises, however, the employer should revise all company policies and its employee handbook to ensure the employer's concealed weapons policy is properly conveyed to employees.

WORKPLACE VIOLENCE PLAN IMPLEMENTATION FOR EMPLOYERS

Although Florida does not have a statute or a regulation specifically governing workplace violence, employers in the state are still required to keep employees free from harm in the workplace. Employers may be liable for incidents of workplace violence under both federal and state law for failure to provide employees with a safe workplace.

Employers can create a workplace violence plan to outline policies and processes that can help prevent workplace violence. If an employer elects to have a workplace violence plan, the plan will be most effective if it is tailored to the individual needs and circumstances of the employer. It should take into account the resources available to the employer to enact and maintain the program.

A workplace violence policy may include the following items:

- A statement summarizing the employer's workplace violence policy and its relation to other policies the employer has enacted;
- Standard practices to address workplace violence or threats of violence;
- Designation and training of an incident response team;

- Clearly stated disciplinary procedures designed to prevent violent behavior in the workplace;
- Procedures for workplace violence that will handle all levels of violence;
- Reference to sources outside of the workplace that employees may consult to deal with workplace violence; and
- An effective training program to inform employees of the workplace violence policy.

The Florida Office of Safety & Loss Control provides a [poster](#) that employers may use to provide guidance for dealing with workplace violence.

MORE INFORMATION

For more information on workplace violence prevention in Florida, please contact Mulling Insurance Agency Inc. or visit the Florida Safety & Loss Control Program's [website](#).