

PBPA Podcast Transcript
Legal Insights & Expert Strategies for Effective Workplace Violence Prevention
(13:45 minutes)



Sireesha (00:00):

Ranging from physical altercations to verbal harassment, workplace violence can disrupt the harmony of a nonprofit's workplace impacting productivity, morale, and most importantly, the safety of employees or clients. In this episode of the PBPA Podcast, we'll delve into the legal framework surrounding workplace violence prevention. As our guest, Adam Young with Seyfarth Shaw answers questions about risk assessment, policy development, and employee training. So, join me in this conversation! With proactive consideration, your nonprofit will be in a better position to protect its employees and participants.

Sireesha (00:50):

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at pbpatl.org. Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel, contact your attorney for guidance on your nonprofits' specific situation.

Sireesha (02:00):

Adam Young is a labor and employment partner with Seyfarth Shaw. He advises employers on a variety of workplace safety issues, including workplace violence. I already learned a lot in my conversations with Adam leading up to this recording, and I look forward to learning even more during our conversation today. Thanks for joining me on this episode, Adam.

Adam (02:24):

Thank you very much for having me.

Sireesha (02:26):

Generally, nonprofit employers want to have safe, peaceful, drama-free workplaces, but let's set the framework for our conversation today by outlining the legal obligations of employers to help minimize workplace violence.

Adam (02:42):

Georgia is a federal OSHA state, meaning that the federal agency enforces occupational safety and health in the state. And the federal OSHA addresses workplace violence through its general duty clause. The general duty clause says if you have a recognized hazard that could cause substantial injury or death, employers have to address that. OSHA has investigated employers for workplace violence issues and has cited employers. Um, so we really looked at their guidance as to how to set up workplace violence programs and things of that nature. Obviously, every employer could potentially face workplace violence as long as you have, you know, employees, um, who are working. OSHA looks at the issue more broadly, right? It's not just the active shooter, that's just the tip of the iceberg. Um, it's also physical violence, harassment, intimidation, threatening behavior, disruptive behavior. So it's quite a range of activities.

Adam (03:37):

And in terms of employers legal obligations, right, is typically we're gonna look through a lens of whether we're being proactive to address the issues or not. And once we learn about issues, are we being reactive and addressing them? So no specific regulations out there that say what you have to do about workplace violence in the state of Georgia, but it is helpful to have a workplace violence program in place. It's helpful, um, to be proactively addressing the issue as you can. I'll give you one example. You know, OSHA has addressed situations where employers did not have programs and, and in OSHA's opinion weren't effective enough. The, the most famous case is from a few years ago, it's Integra Health Systems. Um, that was a home healthcare provider. An employee went out to a client's house and complained to an employer multiple times. "He makes me uncomfortable. I don't like going there. I don't want to go there any longer." And the employer in OSHA's mind didn't do enough to address that issue. And on the fifth time, she went out to the person's house, um, he chased her down the street with a butcher knife and killed her. And if you look up Integra Health Systems, unfortunately for them, this is one of the first big hits you see. So yeah, I wouldn't want this to happen to any employee working anywhere. Um, and I don't want, you know, this reputational issue to, to happen to any employer as well, that this is what they're associated with.

Adam (04:55):

Other thing employers have to consider of how many different acts can result in in workplace violence. There's also a range of different types of violent actors, right? That could be individuals with no connection to the workplace. That's the random shooter type scenarios. It could be an individual, um, who is a customer or client, could be a, a current employee. And then finally, it could be someone who has a relationship with an employee. And we see a lot of, you know, domestic violence kind of coming into the workplace estranged boyfriends and things of that nature.

Sireesha (05:24):

So, Adam, given the legal obligations that you covered and this variety of angles that these situations can arise from, what policies do you think an employer should consider?

Adam (05:39):

So in, in terms of, you know, what, what types of, of policies employers should consider? Yeah, so I, I'd recommend a written workplace violence prevention program, you know, and it has certain key elements, you know, management commitments, very important. Um, worker involvement, speaking with our employees. Um, do an analysis of our work sites, seeing if there's any hazard prevention and control tips we can do. Um, and then training. How, how are we gonna train people for an emergency situation? For an active shooter situation, periodically looking at your program could be helpful too. So you adopt a program, but if it just kind of a written program and a handbook somewhere, you might not be being as proactive as you could. So being period, periodically evaluating that program, um, I, I think is important as well.

Sireesha (06:25):

And Adam, how should a nonprofit evaluate the potential risks for their workplace?

Adam (06:31):

Yeah, so there's two components to that potential risks, um, from the workplace itself. I think that would be through the hazard analysis. Um, through speaking with employees, what are they concerned about? Um, when there's actually a workplace incident, that's a whole other risk evaluation process. Um, you know, we recommend using kind of a level one through four analysis chart that was developed in coordination with, with experts from, uh, former FBI agents and things of that nature.

Adam (06:59):

Some incidents are level one, lower threats. These are things like insubordination or turmoil or disagreement and things that HR can typically, you know, address on its own. When, when it gets elevated to a moderate threat. Um, you know, that that's when we recommend having a team set up who's going to address potential workplace violence. That's things like, you know, significant verbal arguments, self victimization. One, one example. I'd say I had a client where an employee wrote a target on his back with a sharpie and then kept showing everyone, "there's a target on my back. They're out to get me. There's a target on my back." And that type of behavior is, I'd say, not a specifically common thing, but, um, behavior that makes people uncomfortable is out of the normal. Maybe that's more getting into the moderate threats.

Adam (07:48):

When you get higher threats. Um, you know, violent threats, uh, references to weapons, use of weapons. Um, I I to look at those more as high threat scenarios. And when you have an urgent high step threat scenario, we think there's a real risk here. We recommend getting law enforcement involved, um, to, to protect employees, um, from that individual. It's, it's a difficult issue, workplace violence, in that we're often trying to assess very complicated and diverse factual scenarios and trying to kind of work into our existing framework to address it in a very analytical way.

Adam (08:21):

Uh, I would say one of the biggest areas people fall down is having unnecessary in-person termination meetings. Not keeping someone away from the work site after, you know, you've split and gone separate ways. Those, a lot of the terrible scenarios that have happened have been, you know, after a person knows they're getting discharged and there's no reason to do it in person. There's no reason to exacerbate the situation. Makes a lot more sense to either send them a neutral letter or call the person and say, you know, you don't need to come to work anymore.

Sireesha (08:53):

Yeah. And I think it's important also for members of our nonprofit audience. The nature of so many of our clients is that they're, they want to help people, but always balancing that with the legal obligations that they have to the others on their premises.

Adam (09:09):

Yeah, I'm always going to recommend prioritizing occupational safety and health over any goal that you're trying to achieve. Um, cause that's the area I work in. You know, I, and I wanna make sure that that not, not just obviously your employees, but your volunteers, your participants, your clients are, go home every day saving healthy as well. So I think that's probably a hard, a hard choice to have to make sometimes to, to cut ties with someone. But you know, if there's risk coming from that person, um, you know, relating to violence, relating to threats, they, they really don't belong in that workforce.

Sireesha (09:42):

Can you speak briefly about developing and training employees on preventative workplace violence programs?

Adam (09:50):

Yeah, for sure. The, there's tons of free resources out there on how to do all of this. Um, the FBI has a great active shooter video, for example. Um, that could be part of training. I employees, um, should get a copy of your workplace violence written program. If you put that together, that that's a big part of your training, and then talk to them about it when you give 'em to it. Um, you know, are there specific concerns you have? You know, are there better ways that we, we could make a safer work site? Um, and

in, in terms of, of training employees, um, as I said, OSHA offers some guidance on that. The FBI website offers some guidance on that. If you want to do additional training on, you know, "run-hide" those sort of things that are part of the active shooter, uh, training, that, that can be helpful as well.

Sireesha (10:35):

And are there separate considerations if a nonprofit is assessing violence from an employee versus a other parties such as a client or participant or volunteer?

Adam (10:48):

Sure. Yeah. If other parties are involved with not the non-employees there, there's greater liabilities for sure. So there's separate concerns from a legal perspective, but, you know, workplace violence can come from any source. It can be, as I said before, you know, random. It could be someone with a business relationship, it could be a spouse. Where, you know, I, I think some nonprofits will have to more customize and tailor their policy is if they don't wanna just have a zero-tolerance program. A lot of employers will say zero tolerance. You know, if, if we hear concerning statements out of an employee, out of a customer, we're not gonna do business with them anymore. And for a lot of nonprofits who are helping, um, disadvantaged individuals, they may have to deal with some statements that, you know, taking in other contexts might be considered to be more threatening. So we recommend highly tailoring the policy, you know, to actually mean to be, do your functions as a nonprofit and to, to tailor the policy in a way that's effective for you. Concerns about clients, customers, patients, and healthcare are pretty common and, and need to be addressed. And I think Integra Health Systems is a great potential demonstration of, of a worst case scenario if they're not addressed.

Sireesha (11:59):

For example, if you're an organization that works with children and afterschool programming, you're gonna have a different policy in different tolerance level than if you're working in kind of unsheltered communities. Is that what you mean by tailoring it?

Adam (12:14):

For sure. And, and the risk to employees and volunteers can be different. You know, if you have, um, union carpenters volunteering for you in their free time versus 16-year-old girls, I, I'd have very different concerns, um, with the potential risks, you know, that could arise with regard to workplace violence. And you may want to take, you know, tailor your program and, and tailor your response based on, you know, who, who some of the people might be who are working as volunteers.

Sireesha (12:42):

So, Adam, that is it for my questions. Um, I appreciate all of this insight. With this information. I hope it helps our nonprofit listeners work towards creating safer, more secure environments for their employees and participants. Adam, thank you for sharing your time and expertise with us today.

Adam (13:01):

Thank you very much for having me.

Sireesha (13:03):

We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.