

CUT AND PASTE POST JUNE, 2019

Workplace Safety’s Role in Preventing Workplace Violence

In 2019:

- May 31: 12 people were murdered and several others injured in a mass shooting at the municipal building in Virginia Beach, Virginia.
- May 29: In Cleveland, TX, a man shot three employees at a local plumbing company, killing one before exchanging gunfire with a sheriff's deputy, also injuring him before committing suicide.
- April 1: Four individuals were shot and killed in a property management business in Mandan, ND.
- March 14: One person was fatally shot and two others, including a Montana Highway Patrol Trooper, were wounded following a road rage incident outside of Missoula, MT. (All first responders can frequently face workplace violence.)
- February 15: In Aurora, IL, a man opened fire in his workplace, killing five employees, and injuring five police officers and a civilian before being killed by police.



In March, 2019, the Society for Human Resource Management released its [Workplace Violence 2019 Report](#), in which it reports an average of 400 annual workplace homicides in the United States.

The OSHA General Duty Clause, at 29 U.S.C. § 654, 51, states: “Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” This includes the recognized hazard of workplace violence.

The SHRM Report considered whether workplace violence was growing in frequency, or growing in awareness, and concluded: “While there is no way to prevent all workplace violence, there are several things that organizations can do to increase employee preparedness and feelings of security.

- Make sure you have a workplace violence prevention program in place
- Establish an emergency response plan
- Provide trainings to all employees on how to respond to incidents
- Communicate with workers about what resources are available”

Professional Pointer: If your organization hasn’t had the workplace violence prevention discussion, here are a couple resources to get you started:

- SHRM [Workplace Violence Prevention and Response Toolkit](#)
- OSHA [Workplace Violence](#) Website

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EEOC: No Industry is Exempt from Anti-Discrimination Laws



In a disparate treatment case, the Equal Employment Opportunity Commission sued Danny's Downtown Cabaret of Jackson, MS, for the mistreatment of 5 African American strippers. Among other charges, the EEOC said Caucasian strippers had flexible schedules at the club, while African American strippers were fined for missing work. The Commission also alleged that the club limited when African American women could work, but did not place similar restrictions on Caucasian women.

On May 18, 2019, a jury awarded \$3.3 million to the 5 employees after a federal judge found the women worked under worse conditions than their Caucasian counterparts.

This was the latest in a long line of actions taken to cure longstanding discrimination at Danny's. According to Marsha Rucker, the EEOC's regional attorney in Birmingham, Alabama, "This case shows the EEOC will sue any employer, operating any type of business, who violates federal anti-discrimination laws, especially those who will not stop discriminating even after being given repeated chances to do so,"

Montana Supreme Court Update

- **KB Enterprises v. Montana Human Rights Commission:** The Montana Supreme Court upheld a Human Rights Hearing Officer's award of \$20,000 to James Bright, a former employee of KB Enterprises, who was subjected to multiple incidents of racial abuse by one of KB's supervisors.
- **Jergens v. Marias Medical Center et al** – In this Memorandum Opinion, the Court considered defamation and invasion of privacy claims related to a wrongful discharge suit and a related investigation conducted by an outside party. This is an interesting case which reminds us to be careful how and under what circumstances people share employee information. (A Memorandum Opinion is non citable and does not serve as precedent, but can be instructive nonetheless.)
- **Flashback to the November, 2016 Cut N Paste Post:** Lisa Warrington brought an action against the Great Falls Clinic for breach of contract, promissory estoppel, and breach of the covenant of good faith and fair dealing resulting from a rescinded employment offer. In a case with a lot of twists and turns, in 2016, the Supreme Court affirmed a District Court's order granting Warrington summary judgment on a breach of contract claim, ordered that the Clinic be assessed court costs, and remanded the case back to the District Court for "further proceedings consistent with this Opinion and Order". (See *Great Falls Clinic LLP v. Mont. Eighth Judicial Dist. Ct.*, 2016 MT 245, ¶¶ 4, 13-15, 17, 385 Mont. 95, 381 P.3d 550.)

Update: In April, 2018, during the "further proceedings consistent with this Opinion and Order," a jury awarded Warrington \$220,000 in contract damages. In 2019, in what appears to have been an effort to further penalize the Clinic for its decision to withdraw its employment offer, Warrington appealed several of the District Court's rulings made during the 2018 jury trial. In a recent decision, the Supreme Court upheld all the questioned District Court's rulings so, in the end, Ms. Warrington received "only" the contract damages awarded by the jury in this case.

To read these cases, go to [this link](#) and select "Recent Decision (Past 30 days)" or enter the party names in the Search function.