

What Retailers Can Do to Protect Employees From Workplace Violence During the Holiday Season

By Laura A. Pierson-Scheinberg &

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Meet the Authors



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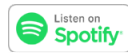
Workplace Safety and Health

Details

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Jackson Lewis P.C. · What Retailers Can Do to Protect Employees From Workplace Violence During the Holiday Season



Transcript

Alitia Faccone:

Welcome to Jackson Lewis's podcast, We get work, focused solely on workplace issues. It is our job to help employers develop proactive strategies, strong policies, and business-oriented solutions to cultivate an engaged, stable and inclusive workforce. Our podcast identifies issues that influence and impact the workplace, and its continuing evolution and helps answer the question on every employer's mind. How will my business be impacted?

Alitia Faccone:

During the busy holiday season, retailers work harder than any other time of the year, and consequently, an experience and uptick in workplace incidents involving customer and coworker misbehavior. On this episode of We get Work and in preparation for the holiday rush, we discuss the importance of retailers establishing a workplace violence prevention plan, identifying and evaluating environmental risk factors, and implementing corrective measures. Our host today are Laura Pierson-Scheinberg, a principal in Jackson Lewis's San Francisco, and Baltimore offices, a member of the firm's labor group and leader of the retail industry group. Laura also spearheads the Caffeinated Organizing Service team, which

addresses the recent uptick of union activity in the retail and restaurant industries. She has spoken in front of numerous professional associations, including the Retail Industry Leadership Association's, Retail Law Conference, the National Retail Federation, and the National Restaurant Association's Sixth Annual Law Summit.

Our co-host, Christina Brooks of counsel in the Albuquerque office is a veteran of the Department of Labor. She focuses her practice on occupational safety and health issues in the workplace. Christina is an avid believer in the saying, "an ounce of prevention is worth a pound of cure." Laura and Christina, the question on everyone's mind today is how do I protect my employees and shoppers against workplace violence this holiday season, and how will this impact my business?

Laura A. Pierson-Scheinberg:

Kristina, I was in Union Square in San Francisco this week, and the tree is up, the ice rink is there, it's getting into the holiday season. And one of the things that I have been hearing a trend really before Covid, but now rising and really, really at a fever pitch already is not only the smash and grabs height in that, but just general decorum from customers, from coworkers. And so as we go into the holiday season when tensions are going to be high for that anyway, I think we should talk about what we can prepare our clients for in being ready for that experience.

Kristina T. Brooks:

Laura, I 100% agree with you. I think we go into the holiday seasons with an open heart and expectations and this joyousness, and then we walk into our mall or an establishment to buy the perfect gift for our loved ones, and pandemonium seems to be on the rise.

Laura A. Pierson-Scheinberg:

Well Kristina, "the customer's always right". I think that's baked into the American shopping experience, and I think out of it, especially people who are dying to get out from home after the pandemic and finally get into malls and not necessarily online shopping. Do people know how to act anymore?

Kristina T. Brooks:

Well not only my personal experience, but also the statistics show that people have kind of, they're exhibiting bad behavior and a sense of entitlement that I think comes out of that true American saying that you said that, "the customer's always right". And that is something that our retail clients are going to have to deal with this holiday season. So for example, when we talk about violence, it can deal with intimidation, harassment, it encompasses all sorts of different type of conduct, not only by your customers, but also by other employees working at the store. And we have seen a rise in those types of complaints, both for interactions with customers and the person that they're working side by side every day.

Laura A. Pierson-Scheinberg:

So what safeguards do you think that our clients should be thinking about as retailers to be ready for those incidents when they occur?

Kristina T. Brooks:

Sure. So one of the main things that retailers should be looking at is whether or not they have a written emergency response plan. And to some this might seem very over the top, "are we really going to get hit by workplace violence?" And the answer really is yes. So Laura, if you don't mind to share a couple statistics from the last several years about the rise of workplace violence in retail establishments in particular.

Laura A. Pierson-Scheinberg:

So this customer isn't always right mindset. Let's look at what we're seeing in workplace violence. So I've pulled some statistics. So from 2018 to 2020, assaults reported to the FBI, law enforcement agencies rose over 42%. They increased 63% in grocery stores and 75% in convenience stores. One of more than 2 million assaults across the country in 2020, more than 82,000, about 4% were at shopping malls, convenience stores, and other retail locations. So when we think about these statistics Kristina, what are you thinking about as far as how does the rubber meet the road in the actual retail space out there?

Kristina T. Brooks:

Laura, the way that it meets is that when you have agencies like OSHA or state agencies looking at what industries. Where are we seeing violence, how best to protect employees. They're going to start looking at areas of, if we're seeing this, are the parking lots safe. At shopping malls, people coming and going, can they restrict them bringing in weapons? How does that interact with our security guards that we're hiring? OSHA just had an inspection in Idaho that dealt with a security company and how they handled repeat offenders coming into the mall space with guns, because that is going to impact the retail establishments within that mall of how the security agencies are able to address violence. So these statistics are extremely important when targeting effective mediation strategies. So as an employer, you're not going to just throw everything at the wall for security measures. You really need to start thinking strategically of what abatement's going to work? Do we restrict how we have people go to the parking lot? Do we restrict hours of operation in the evenings? Do we ensure that there's more than one person on site working so somebody can call for help? So those are the types of things why I think statistics become important, is really looking at how then do we prevent and control workplace violence from happening in the first place. And when it does what's effective?

Laura A. Pierson-Scheinberg:

And the other piece of that is if you're going to outsource it to an asset

protection company or a security company, make sure that they're properly vetted and that they're doing the requirements, meeting the requirements there to ensure that your retail space is safe.

Kristina T. Brooks:

Exactly. I think a lot of times employers forget that when you hire third party contractors, that there is still a duty there to ensure that their folks are trained and that they really receive the same training on your safety and health programs. So here it would be what is your workplace violence policies and procedures and to make sure that everybody's on the same page, a third party contractor and your first line employees. And honestly, during the holiday season, when we have an influx of seasonal workers, are they trained and do they know how to interact with those third party contractors?

So starting with customers bad behavior. There was a situation just recently in California, may of this year, customer drove up through a drive through, placed an order, and it was wrong. And the employee did what they were supposed to do, they refunded the money, they apologized, they made it right, and in response, the customer threw a drink all over the employee. And so people might not think of that as workplace violence, but that is, that's a workplace violence. They were covered in a drink and it was really unnecessary. The employee took those steps. But it's important for an employer to say in those types of situations, we can't just let it go unaddressed. We actually have to have a plan in place of how that employee's going to address it and their managers and supervisors. Not only for that employee, so they're not filing a complaint, so they feel safe, so they really know what to do in those situations.

Laura A. Pierson-Scheinberg:

So let's take that vignette for a second, where the customer has behaved badly, the employee did everything right. What do you recommend that the retailer do?

Kristina T. Brooks:

Well, there's a couple things. Number one, they should have a plan in place already. So the manager should approach that employee, talk to them about the situation, ask them what they can do to help them, and really make them know that this type of conduct is not okay. Now on the other hand, you have an irate customer. And many times, and this I think goes into where another problem arises, is what do you do with the customer? Many times retailers want to make the problem go away. So they hand them a gift card, they say, "we're so sorry for the mistake", and employees are left feeling that it's their fault. That they did something wrong, and that the customer is always right. So it's important for a plan to have training where they proactively talk to their employees. If we encounter this situation, this is how we as a company want to handle it.

And it's not because we think they're right and you're wrong. It's because this is what's going to deescalate the situation. This is what's going to be the most protective of our employees, and this really is the way that we would like to handle this. It's like with kids, you tell them up front, right. If you do X, this is going to be the consequence. And then when it happens, they're prepared for it. They know what's coming. And I think that's really important in a workplace, is that it's important to have policies and procedures upfront in place. You hope you never have to implement them. But when you do, then your folks know how it's going to be handled, and they know the expectations so they're not confused or upset about it on the back end.

Laura A. Pierson-Scheinberg:

So Kristina, as we think about making it practical for our clients and the retailers, how would you communicate? What do you think is a best practice in how to communicate this policy that's sort on a shelf or on the internet?

Kristina T. Brooks:

Laura, there's several ways that an employer can approach their employees and train them about what exactly it is that they expect and how they're going to handle any kind of workplace violence situation. I think the best place to start with is the Occupational Safety and Health Administration actually put out guidance. Now while it pertains mostly to late night retail establishments, I think the basic principles really are a great starting point for retail establishments in general. So for example, they say, "let's start with a work site analysis. Talk to your employees, find out when they may or have concerns". It could be out in a parking lot, walking to and from maybe in the evening. They may have security concerns dealing with customers, especially during the holiday seasons where people might be arguing over the last doll on the shelf or that special body spray that they only have one left in stock.

So talk to your employees and then tell them either in a formal training. Now many employers can't do this, but the best practice is to have a formal sit down training. It could be a PowerPoint, it could be a slide presentation that you watch online through a company, to explain what the policies and procedures are. If you have a customer who's rude, this is the expectations. If you have a coworker come into the store and you're working with them and they become rude, disruptive, they start harassing you, this is what we expect you to do. Short of that daily reminders by a manager, "Hey, today's looking to be a really busy day. This weekend's going to heat up. We just want to remind you of best practices and how we expect to handle this and what we're going to do in response". And just to remind them that you're there for them.

Laura A. Pierson-Scheinberg:

That's really important, that human touch makes all the difference. And to

feel like the manager's talking to me about things that really are occurring around. I think that element of support makes all the difference. One of the things that I'm seeing myself as you know I primarily work in the labor space, and I've seen both an uptick in cases where the employees are so frustrated about theft. So they end up, like I had a case in a supermarket where they ended up chasing the person out with the supermarket full of steaks because they were so frustrated that this person comes in time and time again and goes out with the steaks. Where I've actually had other clients in a retail store where they actually engage with the customer and get into a physical fight or tackle them to the ground.

I have dozens of cases this year that I've seen since the pandemic and reopening, and frankly during the pandemic for some of those essential providers. And as we come out of it, I'm really seeing that. So the policies that we always have, that I see clients have is, let it go. Just if it's happening, let it go. How do you deal with this sort of conflict between trying to keep the workplace safe, but at the same time the frustration of the employee, of the fact that de escalation is being completely taken advantage of?

Kristina T. Brooks:

Well Laura, I think that's where that human contact and training really becomes essential with their employees. So I just want to highlight in case people don't know, some of the really shocking statistics over the last couple of years that have happened in those types of situations that you just mentioned. So in 2019 in El Paso, Texas, there was the big box retailer shooting, which resulted in 22 fatalities. One injured for a total of 48 individuals harmed in that incident. And sometimes you look back and say, was that just somebody who walks into your store upset about something, just targeting somebody? Or maybe they don't, right? But these are the kind of situations where when you escalate by running out with someone with the steaks, or you want to confront somebody over this, to be mindful that in 2021 in Atlanta, Georgia, they had the massage parlor shootings and someone was there just performing their job, someone was upset.

And this time it was, I believe it was a domestic dispute, came in, open fired, and eight people lost their lives that day. I mean, most recently in Buffalo, New York, there was a supermarket massacre where 10 people were killed and three people were injured. And so while this is maybe not the most uplifting topic to talk about right before the holidays, I think it's a very important reminder that we want to go home and spend the holidays with our loved ones. We want to be there to enjoy this time of year, but we've got to be smart about this. Employees cannot be told money's more important than their lives. You never want to get that message across to them. So that's why training starts with a good plan of how you're going to handle this, the expectations, and then doing the follow through and making sure that actually they are implementing the policies and procedures and people know what they're doing.

Laura A. Pierson-Scheinberg:

And when it gets heated and the employee messes up, how do you address that?

Kristina T. Brooks:

The best way really is through, let's take a deep breath. Maybe the plan is that there's going to be a timeout space, a break room somewhere for people just to calm down. I know that sounds very basic, but I think in the heat of the moment when humans are in fight or flight, everybody's going to react differently. And so the person who wants to fight, we need as employers to already have a plan in place on how to address that. So it might be talking very softly with them, calmly and practicing. Part of training could be that practice component part of, let me pretend to throw a drink in your face, and let's walk through the different ways that we can handle this, and what is the best one that protects you, but also protects the employees around you and the other customers. Because at the end of the day, we want to limit liability, and we also want to ensure that people are safe in the workplace. That is an employer's duty, is to ensure a safe and helpful workplace for all of their employees.

Laura A. Pierson-Scheinberg:

And so one of the couple things that I would think practically is intervention. So you would have management presence to intervene when at all possible, to sort step in and take that over that difficult situation over to as much possible. And then when you have a large enough retail establishment, a lot of them have AP on staff, so let AP do their jobs. And really just, I think you said something really important, which is we want you to go home for the holidays, we want you to go back to your families. And no amount of product, merchandise, et cetera, is more important than the employee. And I think as long as we reinforce that, then I think and reinforce that good behavior and the de escalation, that makes them feel supported.

Kristina T. Brooks:

And I 100% agree with that. And Laura states have actually taken that a step farther, where they actually have tools available to an employer that may run into a situation where you have a repeat customer, like you brought up with the steak example, or maybe it's a coworker who's upset because they didn't get a certain shift, and so they start harassing a coworker. States actually have, now not all states, but a majority of them have what are called workplace violence restraining orders. And so this allows the employer to apply for a temporary restraining order, which really sends a message to either this customer or this employee of, "we're not going to tolerate this behavior. The courts are not going to allow you to behave in this manner". And they can put restrictions on them coming to the workplace, from making phone calls to individuals. It can be a pretty effective tool in limiting this type of conduct, especially with repeat

offenders.

Laura A. Pierson-Scheinberg:

Absolutely, and I'm so glad that you brought that up because we are seeing a great uptick in request for those. And as you said, California is one of those states that has them, but there's various versions. There's peace and no trespass orders. Other states only give the right, not to the employer, but to the employee. And so one of the things that we've been doing in those markets is to provide assistance to the employee by helping them file that to the extent that it was a workplace incident. Obviously as employers, we don't want to get involved in domestic disputes, but we need to keep it safe and supportive. So we've been talking a lot about customer conduct. What about coworker conduct? What kind of safeguards and issues are you seeing in that regard?

Kristina T. Brooks:

Laura, with regards to employee conduct, it's going to be very similar to how you as an employer should handle customer complaints. I personally don't look at it any differently. Bad conduct is bad conduct. But because the employer has control over their employees, I believe it puts more of an onus on them to ensure that if they get complaints about another employee harassing them or intimidating another employee, they need to have a plan of action. Many times I think people hope, and maybe because it's more about emotions and behavior versus like, "I'm going to move a ladder and make sure we're using the correct one", or "I can just replace a pipe and it's safe". This is a little bit different of a safety and health issue. And so you have to look at the conduct and address the conduct and have procedures in place. Who can you complain to? Is it a safe person to lodge your complaint? And then how are we going to address their conduct? Are they going to be put on leave? Which can bring up for any employer other issues of am I being retaliated against? So there's some issues that we have to work through when the employer sits down to do their plan of how are we going to keep our employees safe from each other.

Laura A. Pierson-Scheinberg:

And I also see, as you know I'm a labor lawyer again, so as you see, I'm seeing unions trying to capitalize on tensions between protecting the employees and combating customer violence. So I see them, as you mentioned before, calling OSHA, lobbying for increased safety measures. And what I'm getting are these really robust, it used to be in a collective bargaining agreement, maybe you'd have a paragraph. People are coming forward with three and four page proposals with measures to protect it. And as you said, they get put on blast on social media of this incident happened and they gave him a gift card. And of course, that de escalation of trying to deal with both the customer to de escalate and for the employee in a compassionate way has a juxtaposition. But I think we have to be in a situation where we can all work together to protect the employee.

One of the things that I've talked clients through that would be part of that plan, is following a customer violence incident. When an employer sees that employee assaulted or threatened, they should consider things like documenting the incident in a report, preserving that video footage, preparing and following those written emergency plans, and just kind of capturing the evidence as best you can. Because if we talk about that inevitable, if we have to go the peace order or that workplace violence restraining order route, we're going to need to prove what happened. And so it's really important from an evidentiary practical standpoint in protecting the employee. Not only from the OSHA side of having to document it, but just from having to be prepared on the responsive side. Do you have any further thoughts in that regard?

Kristina T. Brooks:

I do. And I think that comes down to what we, in the safety world would call hazard prevention and control. So when you actually look at what are all the different hazards that are in our workplace when it comes to workplace violence, you need to ask yourself, "what do we need to do to protect folks?" So one could be, do we need to make sure that we have security guards? Do we need to make sure that if we have video cameras that they're working? So it's great, right to say, "yes, we need to document this". But you actually need to ensure and go back and make sure that your systems are operational, that they're working. Things such as like right now during the holidays, I don't know about you, but I know a lot of families and a lot of businesses are thinking about doing holiday parties, and so there's an increase in liquor sales.

Liquor stores at the holidays, they really need to be thinking about things such as limiting cash on site. Do you have posters in your windows? Are there poorly lit areas? And you really have to look at the type of environment that your retail location sits in. Is it a high crime area? And to enable your folks to implement quick response procedures. What do we do if someone comes in with a gun and demands us to pay? How are we going to handle that? Those are things that need to be discussed beforehand rather than get into a situation like you brought up earlier where you're running out of the store and potentially putting yourself in harm's way.

Laura A. Pierson-Scheinberg:

So as we wrap up our conversation here, I just want to leave our retail clients with some nuggets of wisdom. If you had to boil it down to a few points, what would you say to our clients out there who want to be a topnotch employer ready for the holiday season?

Kristina T. Brooks:

The most important thing to keep your employees safe during the holiday season is strong internal policies that proactively have a plan of how you're going to do with workplace violence, both from your customers and your internal employees. Once you have that in place, then the second most

important thing is communication to your employees. They need to understand what those policies and procedures are, and they really need to have an understanding of how they're going to be implemented. Walk them through it, give some examples of, if this happens with a customer, this is how you handle it. If this is what happens with an employee, this is how we handle it. And tell them how you're as an employer are going to respond. It's going to limit the amount of calls to OSHA, it's going to limit the ability of the union to say that you don't put their employees safety first, and it's going to give them a sense of empowerment that when they're in that situation, they know what to do.

My example always is, when you get on an airplane, and even though we have maybe flown 1000 times for business, we watch the same safety demonstration at the beginning of every single flight. As an adult, I know how to put on my seatbelt, I can figure out where the exits are, but I always stop and remind myself, and I think it applies to the holiday season and our retailers, that this is critical for them to make sure that people understand how to handle these very intense situations that can arise and unfortunately have resulted in loss of life and injury. And really the third thing is, and the best nugget is support your folks. Support your employees and make sure that they go home, that is your duty as an employer. And while, yes, we've been talking about that the customer is always right. Your duty, first and foremost is to your employees. That is the mandate from OSHA and from other agencies that they need to be in a safe and helpful environment. And it is your responsibility to ensure that that occurs, it is not on the employee to ensure that occurs.

Laura A. Pierson-Scheinberg:

And it's just the right thing to do, right? It's the culture. You want to go back to your basic tenants and what your mission statement is, and just remember, we want to be an employer of choice. We want to be that for our customers. We want to be that, especially for our employees. And as you said, we want everyone to go home safe and enjoy a happy holiday. So thank you so much for your time, Kristina. I really enjoyed this chat and I look forward to talking next time.

Kristina T. Brooks:

Thank you, Laura. I've really enjoyed this. Have a happy holiday season.

Laura A. Pierson-Scheinberg:

Likewise.

Alitia Faccone:

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