

EMPLOYMENT LAW
INSTRUCTOR'S MANUAL



Health, Safety, & Security Learning Module

By Paige Wolf, Ph.D.

PROJECT TEAM

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Note to HR faculty and instructors: SHRM cases and modules are intended for use in HR classrooms at universities. Teaching notes are included with each. *While our current intent is to make the materials available without charge, we reserve the right to impose charges should we deem it necessary to support the program.* Please duplicate only the number of copies needed, one for each student in the class.

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Overview

This module consists of three sub-modules—health, safety and security—and was designed to be delivered in a two-and-a-half-hour class period. As such, the sub-modules are not of equal length. Introductory and summary slides are provided. Instructors are welcome to adapt these sub-modules to fit alternative time periods. The health sub-module focuses on the increased interest in employee wellness due to rising health care costs. The business case for employee health promotion programs is discussed. The safety sub-module includes a discussion of the Occupational Safety and Health Act (OSHA), developing a safety culture, identifying unsafe employees, and substance abuse in the workplace. Finally, the security sub-module focuses on workplace aggression and violence, preventive measures and effective responses. The intended audience for this module is undergraduate students; information is based on the U.S. health care and legal systems.

Slides for this module could be posted on the course website for download. Instructors may want to post the questions for the video as well, or reproduce and distribute during class. Given the sequential nature of the case study, case study pages should be handouts distributed in class.

HEALTH SUB-MODULE

The emphasis of this sub-module is on the importance of employee health for employers. Information about the rising cost of health care and strategies employers can use to mitigate the direct and indirect costs is provided, as well as a discussion of a *Harvard Business Review* article on presenteeism. The sub-module ends with corporate examples of best practices in employee health promotion from Pepsi Bottling Group and Caterpillar.

Reading Materials:

- Any HR textbook chapter on health, safety and security.
- Hemp, P. (October, 2004). Presenteeism: At Work but Out of It. *Harvard Business Review*.
 - <http://harvardbusinessonline.hbsp.harvard.edu/relay.jhtml?name=itemdetail&id=R0410B> OR
 - <http://harvardbusinessonline.org>, search for keyword “Presenteeism”, \$6.50 to download pdf.

PowerPoint Slides: Eleven (11) slides with instructor's notes are provided.

Length: Approximately 30 minutes.

SAFETY SUB-MODULE

This sub-module discusses the importance of workplace safety and the history and role of the Occupational Safety and Health Administration. Threats to workplace safety in the form of employee substance abuse are also discussed. The module concludes with a corporate example of best practices in safety from Caterpillar.

Reading Materials:

- Any HR textbook chapter on health, safety and security.

PowerPoint Slides: Fifteen (15) slides with instructor's notes are provided.

Length: Approximately 50 minutes.

SECURITY SUB-MODULE

This sub-module provides a background on workplace violence and aggression. Two interactive exercises are included for optional use with this module: 1) a video from NIOSH on workplace violence and how to protect employees, and 2) an interactive three-part case on workplace violence.

Reading Materials:

- Any HR textbook chapter on health, safety and security.

PowerPoint Slides: Eight (8) slides with instructor's notes are provided.

Estimated Length: 50-90 minutes, depending on the exercise(s) selected.

- Background on workplace aggression and violence: 10-15 minutes.
- NIOSH video and debrief: Approximately 35 minutes (21 minutes for video, 14 minutes for discussion).
- Debra Taylor Case: Approximately 40 minutes depending on duration of case discussion.

VIDEO

“Violence on the Job”: Video created by the National Institute for Occupational Safety and Health: NIOSH Publication No. 2004-100d – publicly available on the NIOSH website (21 minutes). This video highlights the concerns faced by organizations that deal with the public in keeping their employees safe. Environmental, administrative and behavioral precautions are discussed with regard to their effectiveness and applicability in different workplace situations. A worksheet for students to complete while watching the video is provided to help focus on key points. Worksheet answers are provided for instructors. To view the video go to: www.cdc.gov/niosh/docs/video/violence.html and click on Program 1: Violence on the Job.

Note: To save time, this video could be viewed prior to class and then discussed in class.

CASE EXERCISE

Debra Taylor. After a discussion of workplace violence causes and preventive measures, students should analyze a situation based on the 2005 case, *Midgette v. Wal-Mart Stores, Inc.* This case involves an incident of workplace violence due to a domestic dispute. Students are given background and facts of the case up to a point in time and then asked to explore what should happen from that point on. Additional information about the case in Parts B and C are presented for student reaction. The focus of the case is on the managerial implications of this workplace violence incident, rather than on the legal merits of the particular case. Complete instructor’s notes including discussion questions and potential answers are provided. Part A of this case and the associated discussion questions can be assigned as pre-class coursework.

HEALTH, SAFETY, AND SECURITY LEARNING MODULE RESOURCES AND REFERENCE LIST

Aronsson et al. (2000). Sick but yet at work: An empirical study of sickness presenteeism. *Journal of Epidemiologic Community Health*. 54, 502-509.

Caverley, N., Cunningham, J.B., and MacGregor, J.N. (2007). Sickness Absenteeism and Health Following Restructuring in a Public Service Organization. *Journal of Management Studies*. 44(2), 304-319.

Hewitt (April 3, 2008). *Survey Findings: Two Roads Diverged: Hewitt's Annual Health Care Survey 2008*. Hewitt.com. Retrieved April 29, 2008.

Capwell, R. (March 2008). Drug and Alcohol Testing – Adding Value to Your Bottom Line. www.shrm.org/ema/library_published/nonIC/CMS_025132.asp.

Conference Board (April 2008). Weights and Measures: What Employers Should Know about Obesity. www.conference-board.org/utilities/pressDetail.cfm?press_ID=3365.

Corporate Health Achievement Award (2007). Lessons and Best Practices from the CHAA. www.chaa.org.

Fletcher, M. A. (2008). Rising Health Costs Cut Into Wages. *Washington Post*, 3/24/08, A01.

Gurchiek, K. (April 15, 2008). Obesity Becomes Supersized Issue for Employers. Society for Human Resource Management. www.SHRM.org.

Ewan, T. A. and Plump, C. M. (2008). Commentary: Corporate Wellness Programs May Be Bad Investments. *The Legal Intelligencer*. April 2, 2008.

Hemp, P. (October, 2004). Presenteeism: At Work But Out of It. *Harvard Business Review*.

LeBlanc, M. M., and Kelloway, E. K. (2002). Predictors and outcomes of workplace violence and aggression. *Journal of Applied Psychology*. 87(3), 444-453.

Lockwood, N. (February, 2005). Safety Training in the Workplace, Occupational Health and Safety Series Part 1. *Briefly Stated Series*. Society for Human Resource Management. www.SHRM.org.

Mathis, R. L. & Jackson, J. H. (2008). *Human Resource Management*, 12th Edition, Thomson-Southwestern Publishing.

National Institute for Occupational Safety and Health, Department of Health and Human Services, Centers for Disease Control, www.cdc.gov/niosh.

Neuman, J. H., and Baron, R. A. (1998). Workplace Violence and Workplace Aggression: Evidence Concerning Specific Forms, Potential Causes, and Preferred Targets. *Journal of Management*, 24, 391-419.

Occupational Safety and Health Administration, U.S. Department of Labor, www.osha.gov.

Shelly, J. (2008). Incentivizing Healthcare. *Human Resource Executive Online*. Retrieved 4/21/08. www.hreonline.com/HRE/story.jsp?storyId=87715531.

Workplace Violence Prevention Strategies and Research Needs (September 2006). NIOSH Publication No. 2006-144, www.cdc.gov/niosh/docs/2006-144.

SHRM RESOURCES ON HEALTH, SAFETY, AND SECURITY

Beware the Ill Effects of Sick Employees at Work

www.shrm.org/rewards/library_published/benefits/nonIC/CMS_024192.asp.

The Lights are On but Nobody's Home: Preventing Presenteeism

www.ceridian.com/myceridian/connection/content/1,4268,13896-61949,00.html.

Sick and Tired at Work

www.boston.com/news/globe/health_science/articles/2005/12/19/sick_and_tired_at_work.

The Hidden Costs of Presenteeism

www.businessknowhow.com/manage/presenteeism.htm.

Presenteeism: The Hidden Costs of Business

<http://ezinearticles.com/?Presenteeism:-The-Hidden-Costs-of-Business&id=40408>.

Presenteeism a Problem in the Workplace

http://cbs3.com/topstories/local_story_361180811.html.

Presenteeism Hurts Employees and Employers

www.webmd.com/content/article/86/98895.htm?action=related_link.

Presenteeism Plagues Firms

www.cbsnews.com/stories/2004/04/22/health/main613228.shtml.

Presenteeism and Paid Sick Days

www.clasp.org/publications/presenteeism.pdf.

Presenteeism

www.nytimes.com/2004/12/12/magazine/12PRES.html.

GUIDANCE FOR EMPLOYEES

Avoid the Trap of Presenteeism

http://hotjobs.yahoo.com/findingajob/Avoid_the_Trap_of_Presenteeism_20051020-011324.html?subtopic=Other+Job+Search+Topics.

Sick with the flu? Employers say 'stay home'

www.ajc.com/health/content/health/stories/2008/02/26/fluwork_0226_web.html.

EMPLOYEE WELLNESS – ARTICLES AND RESEARCH

Tobacco-Cessation Programs: Healthier Lives—and Bottom Lines - March 2008

www.shrm.org/rewards/library_published/benefits/nonIC/XMS_024641.asp.

Video: Smoking Cessation Programs

www.shrm.org/video/08videos/022708smoking.asp.

Helping Workers Kick the Habit

www.shrm.org/hrmagazine/articles/0907/0907agenda_compben.asp.

Employers Want To Help Employees Quit Smoking, But How?

www.shrm.org/rewards/library_published/benefits/nonIC/CMS_019756.asp.

Employer-based Smoking Cessation Programs Give Smokers Extra Power to Kick the Habit

www.freeclear.com/~content/~articles/EBN_Jan06.pdf

Investing in Smoking Cessation Pays Dividends for Employers and Employees Alike

www.shrm.org/rewards/library_published/benefits/nonIC/CMS_014462.asp

A High-Tech Approach for Quitting Smoking

www.shrm.org/hrtx/library_published/nonIC/CMS_013491.asp

Workplace Wellness Toolkit

www.shrm.org/hrtools/toolkits_published/CMS_013837.asp#TopOfPage

SHRM WORKPLACE VIOLENCE RESOURCES

Prevention

In Case of Emergency

www.shrm.org/hrmagazine/articles/1107/1107agenda_training.asp

Workplace Violence Prevention

www.shrm.org/research/briefly_published/Occupational%20Health%20and%20Safety%20Series%20Part%20II_%20Workplace%20Violence%20Prevention.asp#TopOfPage

Workplace Violence Programs: An Organizational Development Approach

www.shrm.org/hrresources/whitepapers_published/CMS_000183.asp

Trends and Strategic Tools for Mitigating Risk

www.shrm.org/hrresources/whitepapers_published/CMS_000184.asp

Steps Suggested to Minimize Risks of Violence

www.shrm.org/hrnews_published/archives/CMS_022062.asp

Premises Security Liability

www.shrm.org/hrresources/whitepapers_published/CMS_009205.asp

Criminal Background Checks

www.shrm.org/hrresources/whitepapers_published/CMS_000379.asp#P-4_0.

Shootings Underscore Need for Aggressive Focus on Prevention

www.shrm.org/hrnews_published/archives/CMS_021130.asp.

HR Professionals Back Workplace Firearm Restrictions

www.shrm.org/hrnews_published/CMS_019280.asp#P-11_0.

OSHA's Workplace Violence Resources

www.osha.gov/SLTC/workplaceviolence.

Workplace Security Toolkit

www.shrm.org/hrtools/toolkits_published/CMS_010219.asp#TopOfPage.

Anger Management

When It's Time for Anger Management

www.shrm.org/hrmagazine/articles/0605/0605andrews.asp.

Angry Workers Pose Distinct Management Challenges

www.shrm.org/kc/solutions/articles/archives/CMS_016598.asp.

When Employees Have a "Tude"

www.shrm.org/hrmagazine/articles/0601tools.asp.

Breaking Point

www.shrm.org/hrmagazine/articles/1001/1001agn-health.asp.

Mental Health & Employee Assistance Programs

Managing the Mental Wellness of Your Employees

www.shrm.org/hrresources/whitepapers_published/CMS_000177.asp.

Take Suicide Threat Seriously

www.shrm.org/hrnews_published/archives/CMS_004754.asp#P-8_0.

Employee Assistance Program Toolkit

www.shrm.org/hrtools/toolkits_published/CMS_011525.asp#TopOfPage.

Response

Workplace Violence: The Employer's Response

www.shrm.org/hrresources/lrpt_published/CMS_000962.asp.

Coping with Workplace Violence: A Checklist for Action

www.shrm.org/hrresources/whitepapers_published/CMS_000179.asp.

Conducting a Critical Incident Stress Debriefing

www.shrm.org/hrresources/whitepapers_published/CMS_000143.asp#P-4_0.

Leading Your Employees in Times of Crisis

www.shrm.org/hrresources/whitepapers_published/CMS_000147.asp#P-4_0.

Disaster Management Plan Toolkit

www.shrm.org/hrtools/toolkits_published/CMS_016206.asp#TopOfPage.

Emergency Response Toolkit

www.shrm.org/hrtools/toolkits_published/CMS_007351.asp#TopOfPage.

Death of a Co-Worker

Death in the Family: How to Deal with the Loss an Employee

www.shrm.org/hrmagazine/2001index/0501/0501cov.asp.

Recovering from the Death of a Co-Worker

www.opm.gov/Employment_and_Benefits/WorkLife/OfficialDocuments/handbooksguides/Trauma/Ch3.asp.

Domestic Violence in the Workplace

Employer Response to Domestic Violence Examined

www.shrm.org/kc/solutions/articles/archives/CMS_014653asp.

Early Intervention Key to Combating Workplace Incidents of Domestic Violence

www.shrm.org/hrnews_published/archives/CMS_006411.asp.

When Domestic Violence Comes to Work

www.shrm.org/law/states/CMS_016327.asp.

Domestic Abuse Policies in the Workplace

www.shrm.org/hrmagazine/articles/0598VIO.asp.

Use of Restraining Orders in the Workplace

www.shrm.org/hrmagazine/articles/0802/0802agn-security.asp.

Harassment Restraining Orders: A Tool for Employers To Prevent Workplace Violence

www.fredlaw.com/articles/employment/empl_0801_ecm_nob.html.

Stalking in the Workplace Sometimes Ignored by HR

www.hreonline.com/HRE/story.jsp?storyId=10814684.

10 Things A Security Director Needs to Know about Workplace Stalking

www.asisonline.org/foundation/noframe/TenThings.pdf.

Stalking in the Workplace: Prevention, Intervention and Threat Management

www.asisonline.org/foundation/stalking.ppt.

Legal and Government Resources

State Guidance on Workplace Stalking

www.legalmomentum.org/issues/vio/restraining.pdf.

DOJ Statistics on Stalking in the Workplace

www.ojp.usdoj.gov/ovc/assist/nvaa2002/chapter22_5sup.html.

Dealing with Stalking in the Workplace, OPM Case Study

www.opm.gov/Employment_and_Benefits/WorkLife/OfficialDocuments/handbooksguides/WorkplaceViolence/p2-c4.asp.

E-Book on Stalking and Related Resources

www.authorsden.com/visit/viewnews.asp?id=18914.

Stalking: How to Respond

www.authorhouse.com/BookStore/ItemDetail.aspx?bookid=25157.

“Violence at Work” Video Worksheet

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH (NIOSH)

Please answer these questions as you watch the video on workplace violence.

1. According to NIOSH, exposure to violence is part of the cost of doing business.

True False

2. The leading cause of death for convenience store workers is _____ .

3. Name two characteristics of dangerous a workplace.

4. Workplace violence should be viewed as a: (*circle one*)

Social issue OR Serious workplace hazard.

5. In a significant number of cases, the workplace attacker does not have a legitimate business relationship with the victim.

True False

6. Worker-on-worker violence accounts for _____ percent of workplace homicides.

7. There is no federal legislation regarding workplace violence that organizations must follow.

True False

8. There is conclusive, research-based guidance regarding which approaches to reduce workplace violence are most effective.

True False

9. Name two environmental controls to reduce workplace violence and give an example of each.

10. Provide an example of an administrative control to reduce workplace violence.

11. Provide an example of a behavioral control to reduce workplace violence.

“Violence at Work” Video Worksheet

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH (NIOSH)

Answer Sheet

1. False.
2. Homicide.
3. Exchanging money; working alone or in small numbers; delivering passengers, goods, or services; high-crime areas; late-night or early-morning hours.
4. Serious workplace hazard.
5. False.
6. 8.
7. True.
8. False.
9. Environmental controls include:
 - a. Reduce accessible cash; use credit cards; require safes be emptied.
 - b. Separate workers from others; use partitions, bulletproof glass.
 - c. Increase visibility; have well-lighted areas.
 - d. Control access; ensure only people who need to be in certain places have access to them. Have multiple doors.
10. Revise staffing patterns. Make sure the number of employees is greater at more dangerous periods of time. Revise work practice; carrying money or depositing materials in outlying areas of workplace (trash bins).
11. Provide training in nonviolent response and conflict resolution, hazard awareness, proper use of safety devices.

Case Exercise with Teaching Notes

Debra Taylor

PART A

Tom Brown, general manager of BigBox, Inc., sat in the corporate office headquarters, waiting to meet with Vice President of Human Resources Sheila Rutherford. He was there to report on events that took place in his store only days ago. As Sheila invites him into the office, Tom walks in anxiously. She asks Tom to sit down and describe what happened.

The Recount

On Thursday, August 26, Debra Taylor, a BigBox store employee, informed her direct supervisor, Joe Ramirez, that she was the victim of a domestic dispute and had hurt her back. She reported that her husband, Gary, pushed her off of a barstool and that she had gone to the hospital for treatment. She asked that for this shift she not be required to perform tasks that would further strain her back. Joe agreed to her request.

During her shift, Debra took a break and sat in co-worker Sabrina Gilroy's car to rest her back. Shortly after, Sabrina came out to the car and told Debra that her husband had just entered the store and that Ramirez had suggested that Sabrina take Debra to a nearby diner until her husband left. When they arrived at the diner, Sabrina called Ramirez. Ramirez told them that Gary had left the store and to come back in through the store's back entrance. Gary had not been disruptive while in the store.

PART B

Debra was surprised by this act of violence. She had been married to Gary for 26 years without an incident like this one. However, earlier in the summer Gary had suffered from depression and was committed to a mental health treatment center. He checked himself out of the treatment center against the advice of his doctors.

Shortly after the incident, Debra charged her husband with assault. Gary was ordered by a district judge to stay away from Debra until the hearing was held in a few days. The bail conditions did not explicitly state that Gary had to stay away from Debra's place of employment, BigBox.

During her Thursday overnight shift, Debra told two other BigBox employees, a front-line supervisor and a store manager, about the barstool incident and that she was having serious marital difficulties. The manager, Brett Jennings, told her he was sorry but to "keep it out of the store." Debra worked her next shift, Friday night, August 27, through Saturday morning, August 28, without incident.

During her Saturday night/Sunday morning shift, Gary called the store; when Debra refused to speak with him, he hung up. Later, a co-worker noticed Gary sitting in his car in the store's parking lot. Debra approached him, and he said that he was there to buy socks and left. As Debra was ending her shift that day, she saw Gary entering the store again.

On Sunday, August 29, during her time off, Debra spent time with her daughters and grandchildren. When entering her daughter's home, she noticed Gary sitting in his car across from the house. Her son-in-law and Gary began to argue. The police were called, but could not legally take any action because no physical harm was done.

What Debra didn't know was that earlier the same day, Gary had bought ammunition for a hunting rifle from the BigBox store. The sales clerk did not know him or have any reason to question his purchase. While there, Gary had asked Tom if Debra was scheduled to work that evening. Tom replied that he did not know. As general manager of Big Box, Inc., Tom knew the couple were having marital problems, but was unaware of the domestic violence that had recently occurred.

PART C

Sunday night, August 29, Debra reported to BigBox an hour before her 10:00 p.m. shift was to start. When she arrived, Tom told Debra that her husband had been in and had asked about her.

Debra stood outside the store talking to a friend when she saw her husband drive into the parking lot. She went to the back of the store and stayed in the employee break room as advised by her co-worker, Sabrina.

A few moments later, Gary Taylor walked into BigBox, entered the employee break room and started to talk to her. He then took out his rifle, shot Debra in the head, and then shot himself in the head.

Gary did not survive his injuries. Debra did.

THE AFTERMATH

Sheila sat back in stunned silence after hearing the tragic story. There was a knock on the door; Sheila's assistant entered, saying, "I'm sorry to bother you, but we just received this fax from Debra Taylor's lawyer."

After reading the letter, Sheila said, "Looks like Ms. Taylor is suing BigBox for negligence for failing to protect her life and for negligent entrustment for selling the ammunition to Gary Taylor."



TEACHING NOTES

Debra Taylor – Parts A, B & C

The focus of this case, legal merits aside, is to discuss opportunities to improve workplace safety and security from a managerial perspective; to identify situations that require intervention; and to explore reasonable precautions to prevent a disturbance in the workplace.

Learning Objectives

At the completion of this case, students will be able to:

- Identify potential indicators of workplace aggression and violence.
- Analyze potentially threatening situations.
- Recommend actions to take to prevent workplace aggression and violence.

This case is to be distributed in parts, with opportunities for discussion between each part. Suggested questions for facilitating the discussion are provided.

Part A Discussion Questions

- What are your reactions to what transpired?
- Why did Joe suggest that Debra re-enter the store through the back door?
- If you were Joe, what concerns would you have about this situation?
- If you were Joe, what would you do next?

Part B Discussion Questions

- What are your reactions to what transpired?
- Why do you think Brett responded to Debra as he did?
- If you were Tom, what would you do in this situation?
- What would you do if you were Debra?

Part C Discussion Questions

- What are your reactions?
- Would you view this case differently if other employees had been injured or killed? How so?
- What is Debra's role in this situation? What could she have done differently?
- Discuss the balance between employee privacy and protection/security.
- Regardless of the legal merits of this case, what are the implications of this event for BigBox?

Discussion Points

■ Short-term issues

- Students may make several recommendations about the steps employees and managers could have taken to prevent this event from occurring.
- Questions may arise regarding the accessibility of the employee break room to non-employees.
- Security could have been made aware of the situation and advised to be on alert for Gary if he entered the store.
- Communication between the managers and employees throughout BigBox may be suggested as an opportunity to keep people informed. This is where a debate between disclosing an employee's private information versus protecting against a potential threat may come up. This issue transcends the workplace and has been a focus of discussion with regard to our national security.
- Debra's knowledge of her husband's depression might have made her more aware of potentially violent acts, and she could perhaps have taken more precautions.

■ Long-term issues

- Even if BigBox was not found legally liable, it would still be harmful to their public image.
- Offer support to employees suffering from domestic abuse. Even if the threat of danger in the workplace isn't imminent, it is still important for employee health and well-being.
- Train employees to notice customer behavior that is odd.
- Train employees on how to respond to customer (or employee) aggression and/or violence.



ADDITIONAL NOTES

This case is adapted from an actual case: *Midgette v. Wal-Mart Stores, Inc.*, 317 F. Supp. 2d 550 (E.D. Pa. 2004). Some facts were altered and all names were changed.

In the actual case, the Plaintiff sued Wal-Mart, suggesting that they should have done something more than they did to protect her life.

The court said that just being an employee is not enough to say that the employer has to protect her life. The employer did not have a special relationship or existing duty to protect her from third parties, and even if they did, there was not enough evidence in this case to predict what occurred.

The Defendant argued that even the Plaintiff was not aware of the extent of imminent danger, so a jury could not reasonably expect Wal-Mart to have foreseen it. There was no predictability in whether the husband would do anything.

To prove negligence, the Plaintiff must show that the act would not have occurred if the employer was not negligent. In this case, the Defendant's attorneys successfully argued that the Plaintiff's husband was going to shoot his wife anyway, be it in the store or after work; Wal-Mart, therefore, was not negligent.

SHRM members can download this case study and many others free of charge at
www.shrm.org/education/hreducation/pages/cases.aspx.

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