

NAR INSURANCE PROGRAM

QUARTERLY RISK REPORT

Q3 2022

IN THE SPOTLIGHT:

WORKPLACE SAFETY

A safe workplace is sound business. By keeping staff safe, associations and MLSs can reduce the risk of worker compensation claims and foster a positive and safe work environment.

Employers have a legal responsibility to provide a workplace that is safe and free from serious, recognized hazards that are likely to cause serious physical harm. Workplaces must comply with the standards, rules and regulations issued by [OSHA](#) and applicable state agencies.

To ensure OSHA compliance, a good first step is engaging in a [risk assessment](#) to identify any known or serious hazards in the workplace. Working with a local expert can help identify hazards, and provide vulnerability assessments and risk mitigation strategies. Human-caused hazards like crime and workplace violence can be more difficult to predict.

The National Institute for Occupational Safety and Health (NIOSH) defines workplace violence as the act or threat of violence, ranging from verbal abuse to physical assaults, directed toward people at work or on duty.

In 2017, OSHA concluded that failure to recognize workplace violence hazards could violate the general duty clause. Therefore, in addition to the physical safety of the conditions an employee works in, associations should also think about what measures they can take to be proactive about the potential for other threats to employees' safety, including workplace violence.

CLAIMS REPORTED: 8

7 active demands/lawsuits and 1 potential claims)

- 3 Employment
- 1 Professional Standards
- 1 Antitrust
- 1 MLS
- 1 Defamation
- 1 Crime Loss

OSHA has determined that threats of workplace violence arise from crime; individuals served by the business, such as members; current and former employees; and individuals connected with employees.

Additionally, according to [OSHA guidance](#), these employment situations may pose higher risks of workplace violence:

- Duties that involve the exchange of money.
- Working alone or in small numbers.
- Working late at night or during early morning hours.
- Working in high-crime areas.
- Working in a location with uncontrolled public access to the workplace.

By being proactive, employers can mitigate the risk of workplace violence. Some states even require employers to create a workplace violence prevention plan, and to train their employees on the plan.

The NAR Insurance Program provides professional liability and limited patent coverage to all eligible associations, affiliates, and MLSs.

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BEST PRACTICES FOR WORKPLACE SAFETY

- Take threats seriously and encourage staff to speak up about perceived threats.
- Install cameras around the parking lot and the building to assist law enforcement if a crime takes place outside your building. Post signage that people are being videotaped, which can be a deterrent.
- Invite local law enforcement or a local security expert to speak with staff about safety and security overall. This can help them understand what they need to do personally and how to spot and respond to red flags.
- Review the association's current safety policies and consider creating a workplace violence prevention plan. If needed, consult a local security expert to develop the plan.
- Know your state's weapon laws and consider adding a weapon policy to association policies. Post signs at all building entrances that weapons are not allowed in the building.
- If any individual threatens violence against an employee, a director or officer, or another member, contact local law enforcement and local legal counsel for guidance.
- Consider disciplining or terminating members or employees who threaten violence, in accordance with the [association's bylaws and policies](#).

NAR RESOURCES

The [REALTOR® Safety Program](#) provides these resources for associations and MLSs:

[Crisis Communication Checklist](#)

[REALTOR® Safety Toolkit for Associations and Brokerages](#)

[REALTOR Safety MLS Fields](#)

[REALTOR® Safety Reimbursement Grant for State and Local Associations](#)

Share these valuable resources with your members, and be sure to access all of the REALTOR® safety resources on the [REALTOR® Safety Program webpage](#).

[REALTOR® Safety Pledge](#)

[Putting REALTOR® Safety First Course](#)

DID YOU KNOW?



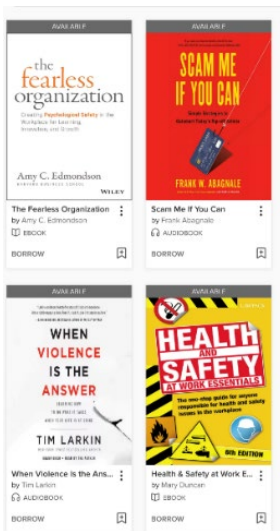
Recent [updates to the mandatory bylaws](#) permit associations to take action where a member commits “any violent act or threat of violence to person or property, hateful conduct, or acts of moral turpitude impacting the public.”

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WORKPLACE SAFETY EBOOK COLLECTION



The NAR Library & Archives has compiled a collection of both eBooks and audiobooks that deal with [workplace safety and personal self-defense](#). Be sure to remind your staff that they have access to these books, and many more.

To access these eBooks and the entire NAR library collection, log in to NAR's [eBooks site](#) using your NAR Member ID. Be sure to select "National Association of REALTORS®" as your primary library in the drop-down menu on the sign-in page.

SAFETY IN PROFESSIONAL STANDARDS HEARINGS

Statement of Policy 54 in [the Code of Ethics and Arbitration Manual](#) states that associations should "take reasonable steps to ensure the personal safety of parties, panelists, witnesses, staff, and others participating in professional standards proceedings." If Hearing Panel Chair believes there is an unacceptable risk to the safety of any participant, the chair should recess the hearing. The Chair may consult with staff, association elected leadership, or association counsel to identify and take steps to ensure the safety of all participants and to permit the hearing to resume. This could include hiring a security guard to be present in the hearing room.

EPL TIP

Can I fire an employee for disparaging me on social media?

In deciding whether to terminate an employee in this instance, consider these four points:

1. Look at the content of the post: is the language protected? Many employees believe the First Amendment protects their right of free speech. That's true, with respect to the government, but generally not to private employers. The bigger concern for private employers is the National Labor Relations Act. Termination of an employee for criticizing the terms of their employment, including pay or safety, on social media could violate this law.
2. If the content is not protected, take a step back. How did you get this post? Employers may violate federal law (and some state laws) by accessing an employee's private social media account.
3. Has the association treated other employees differently for similar comments? If so, terminating this employee could lead to a discrimination claim.
4. Consider public perception. Some employers have faced a media firestorm when terminating employees for criticizing the employer's stance on political or social issues.

Termination is not always the right answer. Consider counseling the employee, or respond directly to their concerns and remind the employee of the association's social media policy.

This employment practices tip, and dozens more, are available to you on the [EPL Assist™ website](#). Be sure to take advantage of this [valuable benefit](#), which provides policy templates, sample documents, risk management resources, and advice and counsel on common employment law issues facing associations.

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WORKPLACE VIOLENCE COVERAGE

The risk of violence in the workplace has risen, and violence directed at employers and their employees is all too common. According to a study conducted by the FBI, nearly 75% of assailants had a personal connection to the location chosen to attack.

Chubb offers a supplemental policy that specifically covers expenses related to workplace violence. Coverage highlights include:

- Coverage for expenses arising from post-incident crisis management services, including consulting and mental health specialists.
- Access to “Threat of Violence Management” consulting and other programs from [R3 Continuum](#).
- Offsite locations, such as a retreat, are included.
- Coverage extends to threats made anywhere, which are directed at an employee.

[Download the flyer](#) to learn more about this policy, and the available coverage. If you would like to apply for the workplace violence coverage, please contact NAR’s insurance broker, Aon Risk Solutions, directly at Gayle.Andrews@aon.com.

COVERAGE CORNER

ADDRESSING COMMON POLICY QUESTIONS

Q: *Does the policy cover the association for theft of money?*

A: Yes. The Crime Loss portion of the policy provides coverage for loss of money and securities resulting from theft, robbery, or a safe burglary. Damage to the premises resulting directly from an actual or attempted theft, robbery, or safe burglary (as defined in the policy) is also covered. The coverage limit for Crime Loss is \$10,000.

Have coverage questions?

Check out these [Professional Liability Policy FAQs](#).



RISK MANAGEMENT WEBINAR

TRENDING EMPLOYMENT LAW ISSUES

DECEMBER 6 | 2:00 PM CT

REGISTER NOW!