Legal Updates:

Workplace Violence

October 19, 2007

I. What is workplace violence?

II. Preventing Workplace Violence: A Legal & Human Resources Perspective

III. Preventing Workplace Violence: A Psychological / Behavioral Perspective

IV. Review of Case Studies

I. What is Workplace Violence?

- NIOSH* definition: any physical assault, threatening behavior, or verbal abuse occurring in the work setting

    - Work setting: For Lehigh, anywhere on campus or off-campus if employee is performing a work-related duty

    *National Institute for Occupational Safety and Health

Workplace Violence Includes (but is not limited to):

- Murder
- Rape
- Suicide (attempted suicide)
- Physical Assault
- Robbery (attempted robbery); Mugging
- Bringing weapons into the workplace
- Threats in person, by telephone or by written communication (letter or electronic mail)
- Intimidation
- Harassment (including sexual harassment)
- Being followed, sworn or shouted at
- Obscene phone calls

Forms of Workplace Violence

Workplace violence can be threats or violence …

Category "A"	Category "B"	Category "C"
… by an employee directed at another employee	… by a non-employee directed at the employer, workplace, or an employee for impersonal reasons	… by a non-employee directed at an employee for personal reasons

[Note: All forms of workplace violence, including threats of such violence, are unacceptable and not tolerated by the University. The designations of categories "A", "B", & "C" are only for ease of reference in this presentation and are not intended to imply judgments about the severity or risk level of the categories.]

Workplace Violence Statistics

- About 2 million American workers are victims of workplace violence each year

- Workers at increased risk include: those who exchange money with the public; deliver passengers, goods or services; or work alone or in small groups, during late night or early morning hours

  - Examples include: health care and social service workers; letter carriers; retail workers; phone installers; taxi drivers

[OSHA Fact Sheet, 2002]

Workplace Violence Statistics (cont.)

- Workplace homicides decreased 9% to 516 in 2006, the lowest annual total ever reported by the fatality census. Overall, workplace homicides have decreased more than 50% from the series high in 1994.

[USDOL, Census of Fatal Occupational Injuries Summary, 2006]

Workplace Violence in the News

- April 16, 2007: Blacksburg, VA (VA Tech): student gunman (Cho) kills 32 people (27 students; 5 faculty) and wounds 26 before committing suicide

- May 6, 1993: Dearborn, MI postal mechanic shot and killed co-worker, wounded 2 others and then killed himself ($4.25M awarded to injured employee)

Workplace Violence in the News

- October 10, 2007: Gunman kills woman outside of a Los Angeles tire store, critically injures 2 others and kills himself (police believe personal motive)

- October 4, 2007: Disgruntled employee shoots and kills 2 men in North Carolina restaurant

- April 30, 2007: Former Target employee who was turned down for a private security license kills 2 in crowded mall parking lot before being shot by police

II. Preventing Workplace Violence: A Legal & Human Resources Perspective

Responding to Threats of Workplace Violence

Responding to threats of workplace violence often involve a balancing of risks and rights to avoid "under-reacting" and "over-reacting"

"Under-Reacting"

I.   Negligent Hiring

Negligent Supervision ⎫ Category A

Negligent Retention

II.   Inadequate Security - Categories A, B, C

III. Duty to Warn - Categories A, B, C

"Over-Reacting"

I. Discrimination – Category A primarily

II. Defamation – Categories A, B, C

III. Breach of privacy – Category A primarily

University Policies

1. Workplace Violence
2. Weapons
3. Suspension / termination of employees
4. Emergency suspension of students / Student disciplinary system
5. Harassment
6. Equal Opp. / Non-Discrimination / AA

Policies: Focus on Prevention

- Pre- Hire:
  - Employment Policies
  - Background Checks
  - Reference Checks
- Active Employees:
  - Provisional Period
  - Standards of Performance and Conduct
  - Conflict Resolution
  - Problem Solving Process
  - Employee Assistance Program
  - Workforce Reduction and Position Elimination
  - Involuntary Discharge

Category A:
Threat or violence by an employee directed at another employee

- Prevention at the hiring stage

- Prevention through supervision

- Avoiding negligent retention

- Prevention at termination of employment

Category A:
Prevention at the Hiring Stage

Pre-employment Screening:

   A. Application with a waiver and release for screening

   B. Interview

   C. References

   D. Criminal Background Check

Category A:
Prevention through Supervision

A. Clarity on expectations and standards of behavior and conduct in the workplace

B. On-going coaching and feedback

C. Progressive discipline

D. Seek advice and support:

    1. Human Resources

    2. University Police

    3. General Counsel's Office

    4. Employee Assistance Program – Integrated Behavioral Health

Category A:
Avoiding Negligent Retention
& Prevention during a Termination of Employment

Avoiding negligent retention:

When do you say: "enough is enough" ?

Prevention at termination of employment

- Managing the separation process
  (maintaining dignity)

- University Police standby

- Exit interview

Categories B & C:
Threats of Violence from Non-Employees

> Threats or violence by a non-employee directed at the employer, workplace, or an employee for impersonal reasons (Category "B") :

>> Person with intention to commit crimes (e.g., robbery)
>> Contractor / Vendor personnel
>> Former Employee
>> Student – Current or Former

Options :

- Arrest

- Removal from contractor / vendor list

- No Trespass / Persona Non Grata Letter

- Current Students – student discipline (up to suspension, expulsion)

Categories B & C:
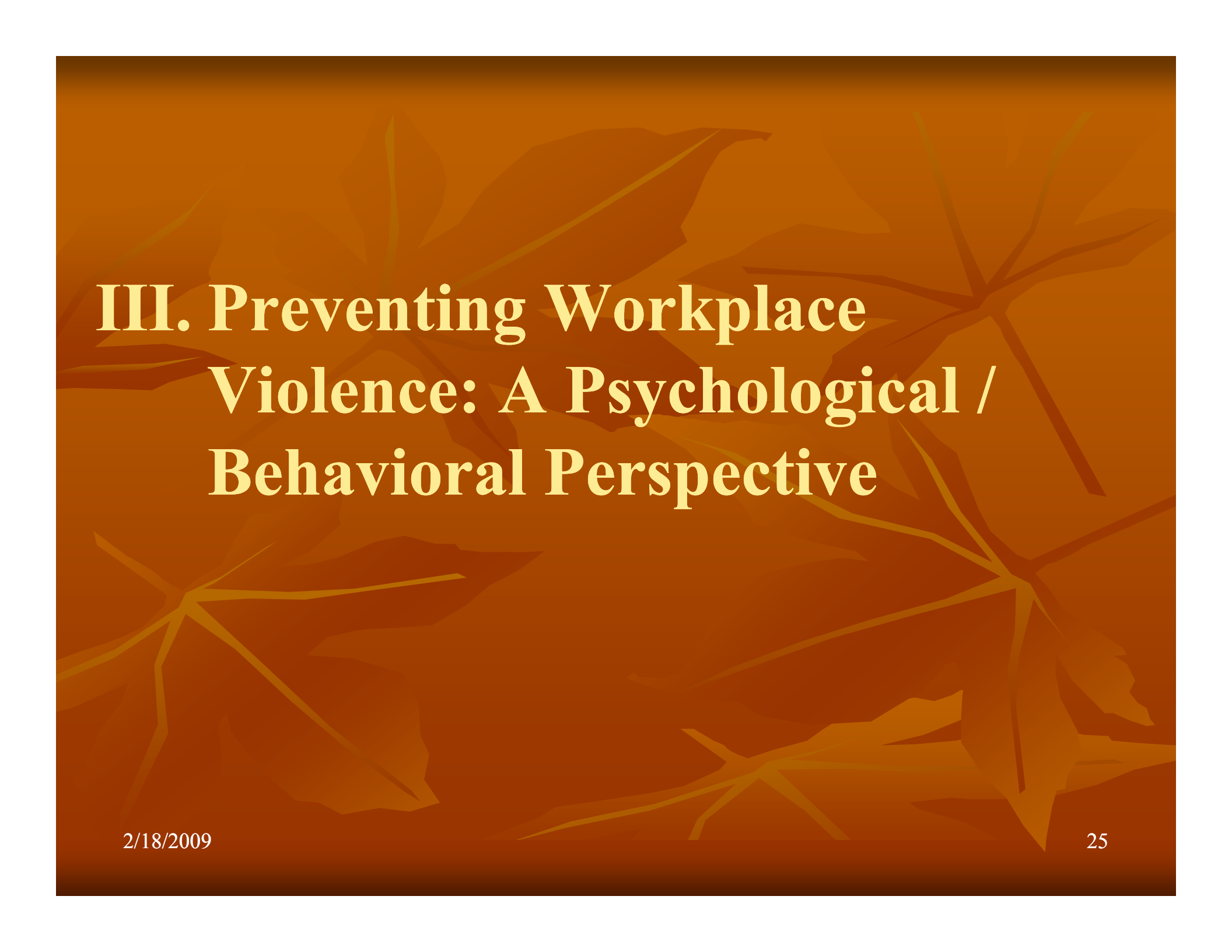# Threats of Violence from Non-Employees

- Threats of violence by a non-employee directed at an employee for personal reasons (Category "C")

    - Employee's spouse - domestic violence
    - Contractor / Vendor personnel
    - Former Employee
    - Student – Current or Former

Options :

➢ Arrest

➢ Domestic violence – Protection from Abuse Order

➢ Removal from contractor / vendor list

➢ No Trespass / Persona Non Grata Letter

➢ Current Students – student discipline (up to suspension, expulsion)

Preventing Workplace Violence :

Individual Responsibility

III. Preventing Workplace Violence: A Psychological / Behavioral Perspective

Workplace Violence

An EAP Presentation

by

Integrated Behavioral Health

Workplace Violence Definition

National Institute for Occupational Safety and Health (NIOSH)

"Any threatening behavior, verbal abuse or physical assault occurring in the work setting.

It includes, beatings, stabbing, suicides, shootings, rapes, near suicides, psychological traumas such as threats, obscene phone calls, an intimidating presence and harassment of any nature, such as being followed, sworn at or shouted at."

Sample Employer Definition

A. Acts of violence include any physical action, whether *intentional or reckless*, that harms or threatens the safety of another person in the workplace.

B. A threat of violence includes any behavior that by its very nature *could be interpreted by a reasonable person* as an intent to cause physical or emotional harm to another individual.

Violence Continuum Indicators

- Low
  - Behaviors that raise awareness to others
  - Indicates problem developing…likely needs intervention

- Medium
  - Behaviors indicate an escalating situation
  - Intervention is needed

- High
  - Dangerous behaviors requiring immediate intervention and assistance

Responding to Escalating Levels of Anger

- Low Level ⟶ Proactive, Supervisor Intervention

- Medium Level ⟶ Time out, performance review, refe for help?

- High Level ⟶ Team approach, Formal Assessmen

  Emergency Action, Fitness for Dut Assessment

- Extreme Level ⟶

Responses to Behaviors Escalating to Violence

- General DO's and DON'Ts

- Avoid Communication that may Escalate the Problem

- Communicating to Manage the Threatening Employee

- Listen to What They Want

Responses to Behaviors Escalating to Violence

- Dealing with an Angry or Hostile Encounter

- Dealing with a Person Shouting, Swearing, and Threatening

- Dealing with Someone with a Weapon

- Response to Actual Danger

Development of a Threat Assessment Team (TAT)

- Rationale

- Team Members

- Threat Assessment Team Advantages

- Threat Assessment Team Initial Contact

Development of a Threat Assessment Team (TAT)

- Threat Assessment Team Investigation

- Threat Assessment Team Decisions

- Threat Assessment Team Follow up

- Documentation

Key Preventive Measures

- Create workplace violence committee

- Establish a 'zero tolerance' violence policy

- Conduct risk assessment & organizational preparedness surveys

- Audit & improve security measures

- Develop crisis response plan

Key Preventive Measures

- Form Threat Assessment Team and reporting procedures

- Review pre-employment practices

- Utilize Employee Assistance Program

- Training all company employees

- Conduct substance abuse testing

Key Preventive Measures

- Carefully manage grievances, employee discipline, layoffs, and firing.

- Immediately address conflicts/ signs of trouble

- Communicating to Other Employees about a Threatening Employee

- Continuous testing & improving of program

Individual Responsibility

- What steps can individuals take to help prevent violence in the workplace?

Questions?
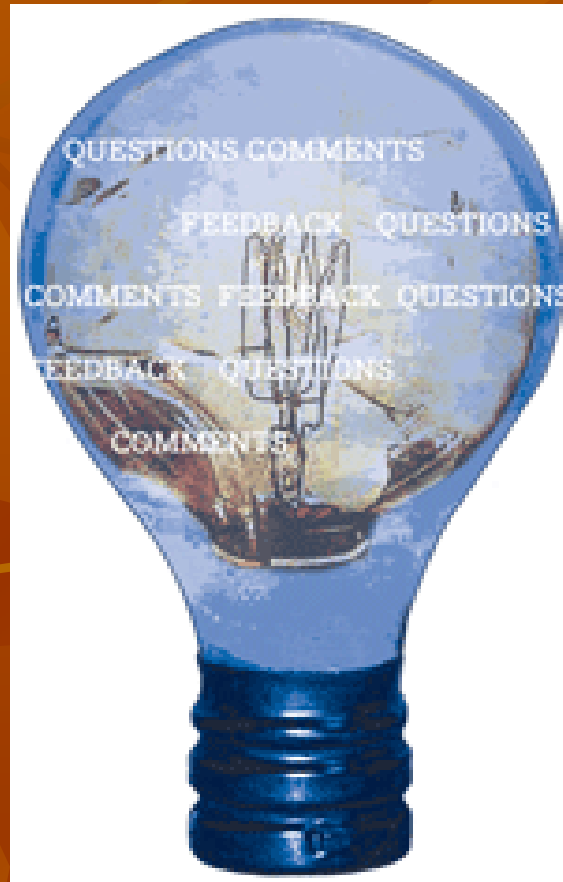
IV. Review of Case Studies

Individual Responsibility

- ## Supervisors:
  - Get to know your staff members and encourage conversation
  - Ask employees if they have any concerns
  - Put workplace safety on the agenda before it becomes an issue
    - Have a protocol in place for your office
    - Make sure staff are aware of LU safety resources
  - Observe unusual patterns of behavior
  - Share your concerns with someone who can help address the issue
  - Address signs of trouble immediately

Individual Responsibility

- ## All employees:
    - Know the rules and hold colleagues accountable
    - Know when to go to the next level for help
    - Apply conflict resolution skills
    - Refer a trouble colleague to the EAP
    - Learn more about the warning signs for potential violence