

# Litigation Cases Involving Violence in Restaurants

Did you know that restaurants are more likely to experience workplace violence than any other industry in America? In this article we will help you find out why restaurants are so prone to violence, what leads to violence, the practical steps to help make restaurants safe, and the insider information that you need when dealing with one of these legal matters.

Workplace violence can be exhibited in a variety of ways, from verbal threats to violent criminal acts such as physical or sexual assault, rape, murder, and robbery. The workplace may be any location, either permanent or temporary, where an employee performs any work-related duty, including, but not limited to, the restaurant, the surrounding perimeters, the parking lots, field locations, and traveling on work assignments.

According to the Bureau of Labor Statistics (BLS),<sup>105</sup> retail establishments <sup>106</sup> are almost twice as likely as other private industry establishments to experience workplace violence each year (at least 20 out of every 1,000 workers); they have the third highest victimization rate after law enforcement and mental health professionals; and they experience 21 percent of all workplace robberies.

Forms of workplace violence include, but are not limited to:

- Beatings
- Stabbings
- Suicides
- Shootings
- Physical harm (i.e., striking, pushing, or other aggressive behavior against another)
- Rapes
- Attempted suicides
- Psychological traumas
- Threats (i.e., verbal threats to inflict bodily harm)
- Obscene phone calls
- Intimidation
- Harassment of any nature, including, but not limited to:
  - verbal harassment, abusive or offensive language, gestures, or other discourteous conduct

- making false, malicious, or unfounded statements which tend to damage another's reputation or undermine their authority
  - inappropriate remarks, such as making delusional
  - statements
  - bringing weapons into the workplace and displaying
  - fascination with guns or other weapons
- Disorderly conduct (i.e., shouting, throwing or pushing objects, punching walls, slamming doors, etc.)
  - Being followed
  - Being sworn at or shouted at

These types of workplace violent behaviors may be experienced and/ or exhibited by management, supervisors, customers, co-workers, vendors, strangers, and others.

## **Why Are Restaurants More Likely to Experience Violence?**

Workplace violence has long been prevalent in the restaurant industry due to several high-risk factors, such as the exchange of cash with the public; working alone, locations that are isolated or in high-crime areas; delivering of food products; the sale of alcoholic beverages; poorly lit areas and parking lots; working during late night or early morning hours; and/or failure to train employees to recognize and manage hostile and aggressive behavior among not only customers and other members of the public, but each other (fellow coworkers).

Quite surprisingly, while more than 28 percent of employers report that these types of incidents negatively impacted their employees, only 1.9 percent of them make an effort to create or enhance a workplace prevention program. Although it cannot prevent every incident from happening, implementing prevention and control measures will help reduce the severity and frequency of such incidents and will improve the morale, safety, health, security, and welfare of the employees.

By dealing with workplace violence just as they would any other preventable hazard, restaurant employers can develop effective strategies (policies, practices, procedures, training, etc.) to protect their employees, customers, and visitors from possible injury, risk, or harm. It will also go a long way in fulfilling their duty to provide a safe and healthful workplace, and it will allow them to operate to *Restaurant OSHA Safety and Security* and restaurant industry standard.

## **Stress Can Lead to Violence**

Over recent years, a brand new type of reality star has been born called, the “celebrity chef,” and with that has been brought a whole new awareness to the restaurant industry. Television has created a montage of cable and network shows; such as *Hell's Kitchen*, *Chopped*, *Top Chef*, *Cake Boss*, *Cupcake Wars*, *The Pioneer Woman*, *The Next Food Network Star*, *Barefoot Contessa*, . . . the list goes on and on.

Because of this, we are now all too familiar with names, such as Chefs Gordon Ramsay, Bobby Flay, Rachel Ray, Buddy Valastro, Ree Drummond, Giada De Laurentiis, Alex Guarnaschelli, Ina Garten, Guy Fieri, Anne Burrell, and many others. Americans have witnessed these stars rise to the top along with the fame and fortune that seems to accompany them—sparking new interest in the industry and inspiring others to dream that it could possibly happen to them as well.

On the flip side, unfortunately, the stress, unrealistic expectations, demanding customers, and long hours of the restaurant industry have also been “brought to light” with the recent deaths/suicides of Chefs Benoit Violier, Homaru Cantu, and Bernardi Loiseau. Just like some of the intense behaviors shown on television, if you have much experience at all in the trenches of the restaurant industry, then you’ve most likely come across a belligerent chef or two or a manager that prides himself on yelling, screaming, and berating the employees (and, on occasion, even the customers).

The pressures and stress of the restaurant industry can lead to all kinds of violence and abuse in the workplace, ranging from outrageous verbal outbursts, substance abuse, and sexual assaults to suicide, physical assault, and so much more. Results from an ongoing survey being conducted online<sup>107</sup> seemingly bear to date that more than 90 percent of restaurant workers and others in the food industry say that their jobs are at least partly responsible for their mental health issues, and nearly 20 percent put the onus on their jobs completely.<sup>108</sup>

## **Harassment—Not All Violence Is Physical**

Workplace violence can consist of threatening behavior or verbal abuse (including profanity and lewd behavior) occurring in the work setting. It is unlawful to harass any person (restaurant applicant, employee, customer, etc.) because of that person’s sex.

Sexual harassment can include any form of unwelcome physical or verbal sexual advances, requests for sexual favors, and/or other verbal or physical harassment. However, harassment does not have to be of a sexual nature; it can include offensive remarks about a person’s sex. For example, it is illegal to harass a woman by making offensive comments about women in general. Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim’s supervisor, a supervisor in another area, a coworker, or someone who is not an employee of the employer, such as a restaurant customer or vendor.

## **Dealing with Employee Violence in Restaurants**

Sadly, violent and aggressive behavior may and often does come from within the restaurant establishment itself, such as from employers/management or coworkers. OSHA recommends that workplace violence prevention programs be established; and to be effective, they must contain the following components<sup>109</sup>:

- **Management Commitment**: provides the motivating force to deal effectively with workplace violence

- **Workers Involvement:** understanding and complying with the workplace violence prevention program enables workers to develop and express their commitment to safety and health
- **Worksite Analysis:** step-by-step look at the workplace to find existing or potential hazards for workplace violence
- **Hazard Prevention and Control:** engineering controls (alarms, metal detectors, and security devices, etc.) and administrative controls (workplace practices; i.e., zero-tolerance policies, reporting systems, emergency procedures, post-incident responses, etc.)
- **Safety and Health Training for All Personnel:** ensure that all staff is aware of potential security hazards and ways to protect themselves, such as avoiding and/or mitigating violence, limiting physical intervention, etc.
- **Recordkeeping and Program Evaluations:** maintaining an injury and illness log, incident reports, safety meetings, hazard analyses, corrective actions, training records, etc., necessary to determine overall effectiveness and identify deficiencies or changes that should be made.

## **Customers Are a Restaurant Industry Hazard, Too**

They received the wrong food order, their steak was overcooked, or they had a bad day at the office. The customer has too much frustration and stress, too much to drink, or they just don't like the color purple; it's difficult to determine exactly what will trigger violent or aggressive customer behavior against a restaurant employee. There was a particular instance at a quick-serve restaurant when a customer physically beat up a server because she didn't tell him to "have a nice day."

If a customer behaves in a threatening way, keep the following in mind:

- Try to remain calm and non-confrontational.
- Keep a relaxed posture (arms down to the side, open hands, avoid eye contact).
- If possible, try to get help (telephone, panic button, buzzer, etc.).
- Do not fight with the customer—allow him/her to speak.
- Make use of furniture, etc., as a shield or barrier between you and the aggravated customer, if necessary.
- If he/she has a weapon, step back but do not turn your back; do what you are told.
- Do not try to be brave—safety is most important at all times.

## **Practical Steps for Restaurant Employers**

Prevention is the best tool to eliminate harassment and workplace violence. It is *Restaurant OSHA Safety and Security* and restaurant industry standard for restaurant employers to establish, implement, and train (on a continual and ongoing basis) a workplace violence protection program that contains the following criteria<sup>110</sup>:

- Establish a clear, zero-tolerance policy for workplace violence, verbal and nonverbal threats, and related actions.
- Provide safety training and education to ALL employees; everyone should know the policies.
- Ensure that no worker who reports or experiences workplace violence faces reprisals. Encourage workers to promptly report incidents and suggest ways to reduce or eliminate risks. Inform them of their right to prosecute.
- Although sometimes this can be difficult, it is helpful for the victim to inform the harasser directly that his/her conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.
- Report violent incidents to the police promptly.
- Investigate all violent incidents and threats; require records of incidents to assess risk and measure progress.
- Outline a comprehensive plan for maintaining security in the workplace. (Secure the workplace (i.e., install video surveillance, proper lighting, alarm systems, guards, etc.), and provide drop safes to limit the amount of cash on hand and in the registers.) The plan should include establishing a good relationship with law enforcement representatives and others who can help identify ways to prevent and mitigate workplace violence.
- Assign responsibility and authority for the program to individuals or teams with appropriate training and skills. Ensure that adequate resources are available and that those responsible for the program develop expertise on workplace violence prevention in late-night retail settings.
- Affirm management commitment to an environment that places as much importance on worker safety, health, and security as on serving store patrons.

## **Employee Self-Preservation and Participation**

- Learn how to recognize, avoid, and diffuse potentially violent situations with co-workers and customers.
- Inform management of any concerns or safety and security issues—verbally and in writing.
- Avoid being alone when personal security may be an issue.
- Carry only small amounts of cash.

- Contribute to the development of procedures that address safety and security concerns.
- Comply with the workplace violence prevention program and safety and security measures established by your employers.
- Report violent incidents promptly and accurately.
- Participate in safety and health committees or teams that receive reports of violent incidents or security problems, participate in facility inspections, and respond with recommendations for corrective strategies.
- Take part in training programs and share on-the-job experiences that cover techniques to recognize escalating agitation and frustration.

It is clear that OSHA recognizes the restaurant employer's obligation to address workplace violence under the General Duty Clause—the duty to provide employees with a safe workplace free from recognized hazards, including workplace violence; and OSHA will use this Clause to cite employers for workplace violence hazards. The best protection an employer can offer to employees is to establish a zero-tolerance policy toward workplace violence against or by their employees and to train their employees on how to deal with violence, whether it comes from fellow employees or customers.

If you have a restaurant or bar industry workplace violence legal matter and need an experienced expert witness, give us a call at 800.300.5764 or find us online, [www.RestaurantExpertWitness.com](http://www.RestaurantExpertWitness.com).

Until next time. Kindest Regards and God Bless.

Howard Cannon—is the world's most sought-after forensic Restaurant Expert Witness, with 200+ cases and several hundred pre-litigation consulting matters to his credit. He is called on by judges, juries, plaintiffs and defense lawyers, members of the media, and industry executives to provide his unbiased opinions pertaining to an astonishing variety of incidents where employees, customers, and vendors become injured, harmed, sickened, maimed, or killed on the premises of restaurants and bars across the United States. To contact Restaurant Expert Witness – Howard Cannon, call 800.300.5764 or visit our website at [www.RestaurantExpertWitness.com](http://www.RestaurantExpertWitness.com)

105 United States Department of Labor, Occupational Safety and Health Administration, osha.gov, "Recommendations for Workplace Violence Prevention Programs in Late Night Retail Establishments," OSHA 3513-12R (2009), <https://www.osha.gov/Publications/osha3153.pdf>, Web. (4/2016).

106 United States Department of Labor, Wage and Hour Division, dol.gov, "Fact Sheet #6: The Retail Industry Under the Fair Labor Standards Act (FLSA)," (Rev. 2008), <http://www.dol.gov/whd/regs/compliance/whdfs6.htm>, Web. (4/2016). "A retail establishment is an establishment 75 percent of whose annual dollar volume of sales is not for resale and is recognized as retail in the particular industry. Some examples of establishments which may be retail are: automobile repair shops, bowling alleys, gasoline stations, appliance service and repair shops, department stores, and restaurants."

107 [chefswithissues.com](http://chefswithissues.com), Kat Kinsman (a writer and editor based in New York City; editor at large and former

editor-in-chief of Tasting Table, and former managing editor of CNN Eatocracy), "Food Professionals—A Mental Health Survey," (2006), <http://chefswithissues.com/2016/01/02/food-worker-survey/>, Web. (4/2016).

108 grubstreet.com, Keenan Steiner, "Meet the People Working to Improve the Lives of Restaurant Employees" (Rev. 2016), ©2016, New York Media, LLC, <http://www.grubstreet.com/2016/02/restaurantindustry-mental-wellness-awareness-campaigns.html>, Web. (4/2016).

109 United States Department of Labor, Occupational Safety and Health Administration, osha.gov, "Recommendations for Workplace Violence Prevention Programs in Late Night Retail Establishments," OSHA 3513-12R (2009), <https://www.osha.gov/Publications/osa3153.pdf>, Web. (4/2016).

110 United States Department of Labor, Occupational Safety and Health Administration, osha.gov, "Recommendations for Workplace Violence Prevention Programs in Late Night Retail Establishments," OSHA 3513-12R (2009), <https://www.osha.gov/Publications/osa3153.pdf>, Web. (4/2016).