Question: What is an employer's liability for workplace violence?

This is actually a very broad question that it would take volumes to write about in specifics so I will give you a general overview to give you a basic understanding at a macro level.

At the federal level the **Occupational Safety and Health Act (OSHA)** – **General Duty Clause** establishes that "each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." In a workplace where the risk of violence and serious personal injury are significant enough to be "recognized hazards," the general duty clause would require the employer to take feasible steps to minimize those risks.

Based on several cases* Workplace violence prevention has generally been accepted as falling under the auspices of this "general duty clause" when hazards involved:

- create a 'significant risk' to employees in other than 'a freakish or utterly implausible concurrence of circumstances,,'
- are known to the employer and are considered hazards in the employer's business or industry and
- are ones which the employer can reasonably be expected to prevent.

OSHA has issued citations for gross violations or when serious incidents have occurred.

In addition, OSHA has issued several industry guidelines or recommendations to address workplace violence in high-risk occupations:

1. Health Care and Social Services
2. Late Night Retail Establishments
3. Taxi cab and Livery Drivers

Twenty-four states, Puerto Rico and the Virgin Islands have **OSHA-approved State Plans** and have adopted their own standards and enforcement policies. In addition, there are other laws that apply to workplace violence that exist at the state level. Some specifically deal with health care. Some of the states that have such laws include California, Illinois, Oregon and Washington State. Florida, Virginia and Washington State are examples of states with laws or regulations intending to prevent robbery–related homicides in late-night retail establishments like convenience stores.

There are also a myriad of federal, state and local laws that address threats, stalking and domestic violence that impact employers. In addition a number of states including California and North Carolina have laws that allow employers to get Protective Orders against individuals.

Beyond the written law employers can also be held liable for injuries that occur to employees and individuals on their premise or that occur because of the action of an employee that is on duty based on the concept of negligence. Negligence lawsuits have been filed that deal with hiring, retention, supervision, training, security services, etc. and it has been estimated that the average cost to employers who lose negligence suits exceeds $3 million, while those cases settled prior to a jury trial average $500,000.00.

You are wise to get educated about the liability that your firm may be subject to and to ensure you are in compliance with all appropriate laws for your specific jurisdiction and industry you should contact an experienced Labor attorney for detailed counsel.

Sources of Additional Information:

- AFSCME, *Preventing Workplace Violence*;
- Department of Justice/Bureau of Justice Statistic - [http://www.ojp.usdoj.gov/bjs/](http://www.ojp.usdoj.gov/bjs/)