

Should You Be Worried About Domestic Violence in the Workplace?

Details

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Domestic violence that carries over to the workplace is a nationally recognized problem. According to some surveys, approximately 20% of employed adults have been a victim of domestic violence and 96% of domestic violence victims have experienced trouble relating to domestic violence at their workplace. Should employers be taking some action concerning this unfortunate phenomenon?

Is there Potential Liability for Acts of Domestic Violence in the Workplace?

Although there has been movement in other states to expand the liability of employers for third party crimes committed against employees at the workplace, New Hampshire courts are unlikely to follow that trend. The courts have yet to decide a case in a domestic violence context but, in 2002, the New Hampshire Supreme Court declined to impose liability on an employer who knew of the violent tendencies of an employee who had seriously injured the plaintiff, another employee of the same company. In that case, the court held that the employment relationship does not give rise to a duty on the part of the employer to protect its employees against foreseeable criminal attacks by one employee against another. The conclusion in that case makes it unlikely that the court would impose a duty on the part of an employer to protect employees from criminal acts of third parties wholly unrelated to the employer.

Should Employers Act to Protect Employees?

Although there may not be a legal duty to act, it may nonetheless be in the employer's best interest to seek to have an abuser legally restrained from contacting the victim at the workplace. Generally, abusers will seek out their victims in the workplace because the abuser knows that is where he or she can find the victim and the victim's independence through work presents a threat to the abuser's control. Currently, ten states have enacted laws that allow employers to seek protective orders to prevent violence toward their employees. Other state legislatures (not including New Hampshire's) are considering proposed laws that have yet to be acted upon. Since New Hampshire's domestic violence and stalking statutes are very strict in their requirements concerning the specific conduct that must be found to issue protective orders, it may be necessary to seek out other ways to protect a victim of domestic violence in the workplace.

We have had experience on at least one occasion in seeking a petition on behalf of an employee to keep a potential abuser away from the workplace. In that particular matter, the court determined that an individual was, in fact, sufficiently abusive toward the victim that it was appropriate to issue a restraining order. To do so, the court had to conclude that the victim would suffer irreparable harm without the restraining order and that the harm she would suffer would have no adequate remedy at law.

Employers Beware

Domestic abuse can expose companies to increasingly complicated federal, state and local laws designed to protect the victims. As I noted above, many states have some kind of legislation designed to give victims workplace protection. Other states (and cities) have instituted regulations that make it illegal to punish a victim for the consequences of the actions of her abuser. In some situations this will allow a marginal worker victim to take advantage of the situation and avoid consequences of his or her poor performance.

Liz Clairborne was an early pioneer in this area. She developed a three word call to action: “Recognize. Respond. Refer.” “Recognize” means noticing if a colleague wears turtlenecks in the summer, shrugs unenthusiastically at the arrival of flowers, is secretive about home and is absent a lot. “Respond” means inquiring and sharing your concerns. “Refer” means acting as a conduit to resources and agencies that may be available in your area to help.

Bottom Line

Employers should be aware of this unfortunate situation and consider what actions might be helpful to an employee who may be the victim of domestic violence. Be cautious in your approach and supportive in your efforts. Consider the possibility of court intervention on behalf of your employee if your observations and their comments lead you to conclude the employer is in need of some help and protection.

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