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VIOLENCE IN THE WORKPLACE

As companies continue to cut their labor forces and reduce wages and benefits for current employees in an effort to survive the economic recession, they should be aware of the increased threat of workplace violence. A grim reminder of this reality occurred on the morning of August 3, 2010 when Omar Thornton, an employee at a beer distribution company, allegedly killed eight co-workers before killing himself. Mr. Thornton, a member of the International Brotherhood of Teamsters Local 1035 in South Windsor, Connecticut, was scheduled to attend a meeting that morning with union representatives and management regarding potential disciplinary issue. He arrived at the meeting allegedly armed with a gun and proceeded to kill eight people, including the Local 1035 president.

Unfortunately, this story is not unique. In fact, according to the United States Occupational Safety and Health Administration ("OSHA"), approximately two million workers are victims of workplace violence each year and homicide is the fourth-leading cause of fatal occupational injury in the United States. The incidence of non-fatal workplace violence is even more alarming. According to the Bureau of Labor Statistics Census of Fatal Occupational Injuries, in 2007 there were 16,840 non-fatal assaults and violent acts in the workplace.

This article outlines typical causes of workplace violence, an employer's duty to prevent workplace violence, an employer's potential liability for workplace violence and preventative measures employers can implement.

What is Workplace Violence?

The National Institute for Occupational Safety and Health defines workplace violence as physical assaults and threats of assaults, including bullying, of other persons at work. The New York State Department of Labor defines workplace violence as "any physical assault, threatening behavior or verbal abuse occurring in the work setting."

What Causes Workplace Violence?

The Society for Human Resource Management conducted three different surveys to determine the primary cause of workplace violence. All three surveys indicated that personality conflict was the number one motivating factor for workplace violence (51 % in 2003; 55% in 1999 and 61% in 1996). Personal relationship problems were tied with emotional or mental illness as the next highest cause.

Does an Employer Have a Legal Obligation to Prevent Workplace Violence?

Currently, there is no federal or state law that expressly prohibits workplace violence for private sector employees. However, under OSHA's general duty clause, employers are required to provide a work environment that is "free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees." Arguably this covers workplace violence, although there are no OSHA regulations specifically dealing with workplace violence. Nonetheless, OSHA has publicly recognized that workplace violence is a serious safety

concern and has dedicated a substantial portion of its website to addressing the issue. The same general duty to protect the health and safety of employees is contained in New York Labor Law § 200.

Additionally, New York Labor Law § 27-a(3) requires certain public employers to “furnish to each of its employees, employment and a place of employment ... which will provide reasonable and adequate protection to the lives, safety or health of its employees.” This law, however, applies only to “the state, any political subdivision of the state, a public authority or any other governmental agency or instrumentality thereof.” To comply with the law, affected public employers with at least 20 full time permanent employees must develop and implement a written workplace violence prevention program.

Are Employers Liable for Violence in the Workplace?

They could be. Public employers may be liable under New York Labor Law § 27-a(3) as outlined above. Liability for private sector employers is less clear. This is because although an employer could be subject to OSHA fines under the general duty clause, no single federal law holds private employers liable for workplace violence. Of course, a creative plaintiff’s attorney could always assert various legal theories to support such a claim. For example, employers may be held vicariously liable under the legal doctrines of vicarious liability, respondeat superior or negligent hiring.

Additionally, state legislatures have attempted to pass the New York Health Workplace Bill, a law that, if enacted,

would prohibit not only workplace violence, but bullying as well. Should the Bill become law in its current form, workers who can show they were subjected to workplace violence, including verbal abuse, threats or even work sabotage, can seek damages for lost wages, medical expenses, emotional distress and punitive damages. On May 12, 2010 the New York State Senate passed its version of the Bill, S1823B, by a non-partisan majority vote of 45-16. However, on June 8, 2010 the New York State Assembly placed the Bill on hold. Thus, for now, employers remain insulated from such liability but should remain watchful of this Bill as the 2011-2012 state legislative session begins.

What Can Employers do to Help Prevent Workplace Violence?

Obviously there is no foolproof way for employers to prevent workplace violence. They can however, take certain preventative measures to help reduce the risk. Training is critical. Train supervisors and employees how to recognize signs that an employee might be on the verge of violence. Train employees on how to avoid or defuse potentially violent situations and to alert supervisors or security if there is an incident, no matter how minor. Educate employees regarding what conduct is not acceptable at work and what to do if they witness or are the victim of workplace violence.

Develop a zero-tolerance policy against workplace violence. Such a policy should be incorporated into the employee handbook and should include reporting procedures for personnel who witness and are subjected to workplace violence.



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