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DOMESTIC VIOLENCE AND THE WORKPLACE: MITIGATING THE RISKS

On February 5, just after the lunch hour at the University of South Carolina in Columbia, the ex-wife of a popular public health professor entered the campus office where the professor conducted cancer research and shot him to death before she turned the gun on herself.

The tragic culmination of what appeared to have been his attempts to end the relationship with his former spouse, the deaths of Professor Raja Fayad and his ex-wife, Sunghee Kwan, shook the university's campus and the surrounding community. The tragedy also served as a reminder of how domestic violence may spill into the workplace.

While domestic violence affects workplaces across the nation, the attack on Professor Fayad hit close to home for employers in South Carolina and North Carolina, two states with high rates of domestic violence. And the stakes are high—when an abuser tracks down his or her victim at work, everyone is at risk. Victims, families of victims, and coworkers face the threat of physical, emotional, and financial harm, while employers also face the risk of having to bear the cost of civil liability. To protect employees who are victims of domestic violence, coworkers of victims, and also themselves, employers should take steps to mitigate the threats of all violence in the workplace and must be prepared to respond quickly and appropriately if violence strikes.

LINK BETWEEN DOMESTIC VIOLENCE AND THE WORKPLACE

Domestic violence is a leading cause of violence in the workplace nationally. At least one in five employed adults has been the victim of domestic violence and the physical and emotional injuries that result. Domestic violence comes in many forms but is described as a pattern of behavior in which one intimate partner uses physical violence or threats, intimidation, isolation, and other coercive and abusive behavior to control the other partner in the relationship. On top of the devastating physical and emotional costs, domestic violence affects the workplace in several other ways.

Victims of domestic violence often struggle to maintain employment: (1) About half of employed victims surveyed in various reports have stated that they lost their jobs at least in part because of domestic violence; (2) up to two-thirds of employed victims have reported that their abusers harassed them at work; (3) more than half of employed victims have reported that they missed work because of the abuse; and (4) almost half of employed victims have reported that they were prevented from working by the abuser.

Domestic violence also affects the workplace economically: According to the U.S. Centers for Disease Control and Prevention, domestic violence costs employers at least \$2 billion in lost productivity each year; and health care related to domestic violence, often paid for through employer-funded health insurance, costs another \$4.1 billion a year.

Employers may face civil liability depending on their response to domestic violence in the workplace: Employers may violate federal discrimination laws if they take adverse actions against victims. For instance, an employer may face liability if a female victim of domestic violence is disciplined for being absent while another employee is not. Also, while the Occupational Safety and Health Administration (“OSHA”) does not have specific standards for domestic violence, OSHA can cite employers under its “general duty clause,” requiring employers to provide a safe and healthful workplace, and workplace hazards caused by domestic violence are not exceptions. Furthermore, under state law, if a victim, or a coworker of a victim, is hurt or killed by an abuser, and the employer knew or should have known about the situation, then that employer might be defending itself in court depending on the circumstances.

For all of these reasons and more, employers should take affirmative steps to develop a workplace violence safety plan that aims at addressing the possibility that domestic violence, and other violence, will impact their workplace. See the accompanying checklist for recommendations on what employers can do.

DOMESTIC VIOLENCE VICTIMS’ LEGAL RIGHTS

When employees have suffered domestic violence abuse, employers must take certain steps to accommodate the employees’ circumstances.

Domestic violence victims in South Carolina and North Carolina have statutory rights to take unpaid time off to comply with a subpoena, to testify, or to go to court to obtain a restraining order. Additionally, North Carolina has enacted a law that allows an employer to apply for a civil no-contact order on behalf of employees to prevent violence, harassment, or stalking of their employees at the workplace. N.C. Gen. Stat. 95-261. The law requires the employer to consult with the employee who is the target of the violence to determine if the employee’s safety would be jeopardized.

Victims also may have the right to job protection during an absence from work. In North Carolina,

MITIGATING THE RISKS OF WORKPLACE VIOLENCE: A Checklist

• DEVELOP A WRITTEN PROGRAM

- ✓ Communicate a zero tolerance for workplace violence;
- ✓ Encourage employees to report violence and threats of violence quickly and suggest ways to reduce or eliminate risks;
- ✓ Assign responsibility for the plan to trained individuals;
- ✓ Compile incident records to assess risks and progress; and
- ✓ Prohibit reprisals against workers who report violence.

• CONDUCT A WORK PLACE ANALYSIS

- ✓ Review safety, workers’ compensation and insurance records to identify instances of workplace violence;
- ✓ Conduct a survey of employees; and
- ✓ Inspect the workplace and employees’ job duties to identify hazards and conditions that could lead to violence.

• IMPLEMENT PRACTICES TO PREVENT AND CONTROL HAZARDS

- ✓ Create work practices and structures that alleviate violent incidents once hazards and conditions that could lead to violence have been identified.
- ✓ For example, if an employee suffers domestic violence abuse, an employer might move the victim’s parking

an employer with 15 or more employees may not discriminate against victims for taking reasonable domestic violence leave. South Carolina, however, does not provide specific leave or job protection for victims of domestic violence.

But in both states, victims or their families may sustain physical or emotional injury that qualifies for protection, leave, or accommodation under the Americans with Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA). Also, preexisting medical conditions or disabilities that already qualify for ADA or FMLA protection might be aggravated by abuse.

Domestic violence abuse causes devastating injuries. Victims often keep the abuse hidden from the workplace until one day they do not show up for work because of the physical or emotional harm caused by an intimate partner. Even then, an employer might never learn the true nature of the employee's absence. Sometimes, the abuse enters the workplace. When employers become aware that domestic violence, or other violence, might affect the workplace, they should develop a workplace violence safety plan to maximize the protection of the employee who is suffering the abuse and of the employee's coworkers, thereby also protecting themselves from liability.

spot to a well-lit area, provide an escort to the car after work shifts, or make other arrangements to alleviate the risks.

• MAINTAIN RECORDS OF INCIDENTS

- ✓ Keep medical reports, logs of work injuries, supervisors' reports and electronic messages substantiating incidents of abuse, verbal attacks, or other aggressive behavior; and
- ✓ Keep a running list of corrective actions that have been recommended.

• DIRECT WORKERS TO AN EMPLOYEE ASSISTANCE PROGRAM

- ✓ Develop an Employee Assistance Program that includes counseling for individuals who may be prone to violence; and
- ✓ Make sure employees who are victims will have somewhere to turn.

• INFORM EMPLOYEES OF EMERGENCY PLAN

- ✓ Make sure all employees know what action to take if a violent incident occurs;
- ✓ Consider safety measures such as locks on office doors; and
- ✓ Conduct drills on a regular basis.

• EDUCATE HR STAFF AND SUPERVISORS ON LEGAL OBLIGATIONS

- ✓ Make sure that human resources staff and supervisors know what duties employers have to accommodate victims of violence.

The Employment Law Alert is published as a service to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation.

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