

Workplace and Domestic Violence

State Human Resources Advisory Update

July 29, 2015

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NEXT CHALLENGE. NEXT LEVEL.

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Why Discuss Domestic Violence and the Workplace?

Workplace violence endangers all employees and domestic violence is a leading cause of violence in the workplace.

During this Advisory Update, we will discuss:

1. The link between workplace and domestic violence;
2. Civil liability of government entities as employers for workplace violence;
3. Mitigating the risk of workplace violence;
4. When an employee is a victim: restraining orders, unemployment compensation, and FMLA coverage for domestic violence victims.

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1. The Link between Domestic Violence and the Workplace

- ❑ Domestic violence spilled into the workplace at the University of South Carolina this year and shook the campus and surrounding community.
- ❑ The ex-wife of Professor Raja Fayad, a popular public health professor, shot and killed him in his campus office.



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The Link between Domestic Violence and the Workplace

- ❑ The ex-wife, Sunghee Kwan, then turned the gun on herself and died from the gunshot to her stomach.
- ❑ This was not the first workplace dispute between the two.
- ❑ A USC police incident report from the month before the shooting shows that Kwon was asked by police to leave Fayad's laboratory at the health school after the professor called for help, asking officers to evict her.

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The Link between Domestic Violence and the Workplace

A staggering number of employed adults have been the victims of domestic violence and the pain and suffering that come with it. The abuse often follows them to work. According to reports:

- ❑ One in five employed adults is a domestic violence victim;
- ❑ 64 percent of employed victims say their ability to work is affected by the violence; and
- ❑ 75 percent of employed victims say they have been harassed by an abusive partner while at work.

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The Link: Financial Consequences for Victims

Economic Hardship

Along with the obvious physical and emotional suffering, domestic violence also results in:

- ❑ Nearly eight million days of missed paid work each year in the United States;
- ❑ Lower productivity and absenteeism, which prohibit victims from receiving raises and pay increases; and
- ❑ Up to 30 percent of abused working female victims losing their jobs as a result of the domestic violence situation.

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The Link: Domestic Violence Costs to Employers

Lower Productivity Overall and Health-related Costs

According to the CDC, domestic violence also affects employers' bottom line:

- ❑ Abuse 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.

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2. Liability for Workplace Violence

Workplace violence comes in many forms and often leads to legal consequences for the perpetrator, but also for governmental agencies as employers in some circumstances. The South Carolina Tort Claims Act addresses the situations in which government entities, its employees and agents may be held liable for their actions when an individual is injured.

Liability of Employers: Negligent Hiring and Retention

Under the South Carolina Tort Claims Act, a governmental entity may be subject to liability for hiring or retaining an employee who commits a violent act against a person if the entity:

- (1) Owed a duty of care to the victim;
- (2) Exercised that duty in a grossly negligent manner, meaning it failed to exercise even a slight degree of care in hiring or retaining the employee who committed the violent act; and
- (3) The victim suffered damages proximately resulting from the governmental entity's breach.

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Liability of Employers: Examples of Cases

- ❑ A female minor, who worked as a hospital candy striper, sued the hospital for the negligent hiring and negligent supervision of a male employee, alleging that the employee sexually assaulted her while she was at the hospital.
- ❑ A jury awarded her \$250,000.
- ❑ The court held that the employer's notice of the employee's prior sexual assaultive conduct was sufficient to impose liability on the employer.

Doe by Doe v. Greenville Hosp. Sys., 323 S.C. 33 (Ct. App. 1994)

Liability of Employers: Examples of Cases

- ❑ A middle school student sued a school district for negligent supervision, alleging that his summer school teacher engaged in sexual activity with him at her home.
- ❑ The court entered judgment for the school district.
- ❑ The court determined that no evidence demonstrated that the school district knew or should have known of the necessity to exercise preventative control over the teacher.

Moore v. Berkeley County School District, 326 S.C. 584 (Ct. App. 1997)

3. Mitigating the Risks of Violence in the Workplace

A. DEVELOP A WORKPLACE VIOLENCE POLICY

Every governmental agency in South Carolina must develop and implement a “workplace domestic violence policy which must include, but is not limited to, a zero tolerance policy statement regarding acts or threats of domestic violence in the workplace and safety and security procedures.” S.C. Code § 1-1-1410.

Mitigating the Risks: Putting a Safety Plan in Writing

B. DEVELOP A WRITTEN PROGRAM

Any safety plan should include a written workplace program to:

- (1) Communicate a zero tolerance for workplace violence;
- (2) Encourage employees to report incidents quickly and suggest ways to reduce or eliminate risks;
- (3) Assign responsibility for the plan to trained individuals;
- (4) Compile incident records to assess risks and progress; and
- (5) Prohibit reprisals against workers who report violence.

Mitigating the Risks: Identifying Hazards

C. CONDUCT A WORK PLACE ANALYSIS

- (1) Review safety, workers' compensation and insurance records to identify instances of workplace violence;
- (2) Conduct a survey of employees; and
- (3) Inspect the workplace and employees' job duties to identify hazards and conditions that could lead to violence.

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Mitigating the Risks: Making Changes, Adjustments

D. IMPLEMENT PRACTICES TO PREVENT AND CONTROL HAZARDS

- (1) Create work practices and structures that alleviate violent incidents once hazards and conditions that could lead to violence have been identified; and
- (2) Develop a training program for employees that reinforces escape routes (if possible).

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Mitigating the Risks: Connecting the Dots

E. MAINTAIN RECORDS OF INCIDENTS

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

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Mitigating the Risks: Offering Assistance

F. DIRECT WORKERS TO AN EMPLOYEE ASSISTANCE PROGRAM

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

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Mitigating the Risks: Having a Response Plan if Violence Erupts

G. INFORM EMPLOYEES OF EMERGENCY PLAN

- (1) Make sure all employees know what action to take if a violent incident occurs.
- (2) Consider safety measures such as locks on office doors.
- (3) Conduct drills on a regular basis.

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4. When Employees are Domestic Violence Victims

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

Time for Court Proceedings

- (1) Domestic violence victims and witnesses are entitled to take unpaid time off to comply with a subpoena, to testify, or to go to court to obtain restraining order;
- (2) Employers may require proof that the employee is a domestic violence victim or a witness.

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When Employees are Domestic Violence Victims

❑ FMLA and ADA Coverage

- (1) South Carolina is not among the states that provide leave or job protection for victims of domestic violence.
- (2) Still, victims or their families may sustain physical or psychological injury that qualifies for protection, leave, or accommodation under the Americans with Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA).
- (3) Also, preexisting medical conditions or disabilities that already qualify for ADA or FMLA protection may be aggravated by abuse.

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When Employees are Domestic Violence Victims

❑ Unemployment Compensation

- (1) When employees who are victims of domestic violence quit to protect themselves and their families from abuse,
- (2) They might be entitled to receive unemployment benefits.

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5. In the News: Domestic Violence Taskforce

South Carolina has been ranked top in the nation for women killed by men in domestic-violence related incidents.

- ❑ Earlier this year, the governor created a South Carolina Domestic Violence Task Force.
- ❑ Gov. Haley chairs the task force and its goals include collecting data from counties around the state, identifying specific problems causing domestic violence, and implementing approved solutions for combating and preventing domestic violence.

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Workplace and Domestic Violence

Questions?

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