

Workplace Violence: New Jersey Employers Have Cause for Concern in Difficult Economic Times

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HOMICIDES ACCOUNT FOR 12 PERCENT OF ALL workplace deaths and, statistically, violence is the number two cause of death on the job in the nation. Recent examples of workplace violence at Johns Hopkins University Hospital, the Discovery Channel headquarters, and at a Kraft Foods facility are just snapshots of a frightening trend. New Jersey employers have cause to worry in a time of economic strife and increasingly common workplace violence. To avoid becoming the latest headline, employers must be aware of their legal obligations and be increasingly focused on detecting and preventing incidences of workplace violence.

The Employer's Duty. The Occupational Safety and Health Act of 1970 (OSHA) requires that employers provide and maintain a healthy and safe work environment. While OSHA does not have a specific regulation addressing workplace violence, it does have a recommended workplace violence prevention program, which can be reviewed at www.osha.gov. New Jersey courts are also increasingly holding employers liable for their employees' violent acts under common agency theories.

Under the doctrine of "respondeat superior," an employer may be liable for an employee's actions committed when acting "in the course of his or her employment" (*Glenn v. Scott Paper Co.*, 1993). Courts have also used common law claims like negligent hiring, negligent retention, negligent supervision and failure to warn/misrepresentation to hold an employer responsible for failing to take appropriate action to prevent violence in the workplace.

Negligent hiring involves a claim that an employer, at the time of hiring the employee, had reason to believe, or could have determined by reasonable investigation, that the employee was dangerous and hired him or her anyway, which proximately caused injury to another (*DiCosala v. Kay*, 1982). Negligent retention/supervision imposes liability where an employer learns of an employee's dangerous propensities after the employee is hired and does not take appropriate action to prevent harm to others. All of the above claims require a showing that the risk of harm by the employee was "foreseeable."

After employment ends, employers may be liable



From terrorists looking for a stage for their cause to disgruntled ex-employees, the potential for workplace violence is very real.

where they have reason to know the employee is dangerous but fail to warn others. On the other hand, many employers are reluctant to provide detailed reference information about former employees because they fear being sued for defamation. To avoid liability, many employers implement policies that provide minimal information about former employees. Forty states have recognized the detrimental effect such policies can have on employers and have passed statutes granting immunity to employers who provide truthful, relevant information about a former employee. New Jersey has not enacted such legislation.

An Employer's Best Defense: Before Hire. Pre-employment screening, including a thorough criminal background check, provides an employer with the best defense against workplace violence. A background check that searches criminal records, motor vehicle records, and a credit check, where appropriate, is an excellent way to detect employees who may have violent tendencies before they are brought into the workplace.

An Employer's Best Defense: During and After Employment. Employers should establish and distribute a comprehensive workplace violence policy that makes the employer's commitment to a safe environment clear. The policy should explain what conduct is prohibited and provide a procedure for reporting suspected acts or threats of violence, as well as the consequences of violating the policy.

Employers must clearly communicate a zero-tolerance policy for any acts or threats of violence and encourage employees to report issues by promising to maintain the confidentiality of all such reports. Employers must be mindful of restrictions imposed by state and federal anti-discrimination laws when inquiring into an employee's health condition. As noted above, after employment ends, employers are well-advised to adopt a neutral, "name rank and serial number" reference policy. ■

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