

Tempering the Tempest of Workplace Violence

The Legal Intelligencer

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By Michele R. Punturi

Violence in our world today is a never-ending threat and the workplace is no exception. Verbal abuse, physical assaults, harassment, and intimidation at work are on the rise and supported by staggering statistics. According to the Bureau of Labor Statistics and the National Center for Victims of Crime, two million American workers will experience at least one incident of workplace violence in the next two months, with nearly half occurring in public settings. Even with the increasing awareness of the issue, and with incidents making national headlines nearly every day, employers have been surprisingly slow to respond. The National Institute for Occupational Safety and Health Statistics indicates that 70% of businesses do not have a formal workplace violence program or policy.

Workplace violence has been defined by the Occupational Safety and Health Administration (OSHA) as: "Any act or threat of physical violence, harassment, intimidation, or other disruptive behavior, including from verbal and written threats, stalking, threatening bodily language and physical assaults directed toward a person at work or on duty."

While the workers' compensation system in each state varies, there is a commonality in providing a safe working environment for employees. OSHA specifically mandates that employers have a duty to provide a workplace free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to its employees. To understand the sources of workplace violence, the National Institute for Occupational Safety and Health

(NIOSH), has established four major categories of workplace violence:

- Worker-on-worker-The perpetrator is an employee or past employee of the business who attacks or threatens other employees or past employees in the workplace.
- Customer/Client-The perpetrator has a legitimate relationship with the business (e.g., customer, client, patient, student, inmate), and becomes violent while being served.
- Criminal Intent-The perpetrator has no legitimate relationship to the business or its employee(s).
- Personal Relationship-The perpetrator is not an employee or former employee of the affected workplace but has a personal relationship with the intended employee victim.

According to OSHA, there are certain situations where employees are at greater risk of workplace violence, including when dealing with the public, delivering goods or services, working alone or in an isolated area, exchanging money, working in high crime areas, places where alcohol is served, transporting passengers, and working late at night. Certain industries with a higher risk of workplace violence include healthcare, social services, transportation, (taxi drivers, delivery drivers), retail, public sector, teachers and correctional officers.

Workplace violence is an issue that comes at a high cost. In addition to a victim's suffering (ranging from tragic loss of life or serious bodily injury to varying degrees of physical and psychological impacts), overall impacts to a business may result in interrupted operations, diversion of management resources, the need for increased security personnel, legal liability for acts or admissions and associated negative publicity.

While the consequences can seem overwhelming, there are proactive steps that employers can take to decrease the impact and effects of workplace violence. First and foremost, employee training and education is the key. Beginning with human resources personnel, then supervisors and managers, and eventually employees, training should focus on violence prevention, intervention, reporting and diffusion. Worksite safety assessments such as inspections and testing, surveys, and review of injury and illness records, can also help identify workplace risk and vulnerability issues.

Strong communication, commitment and coordination between senior leadership and employees are essential to the success of any workplace violence prevention initiative. Creating written policies outlining clear objectives and expectations, identifying key individuals responsible for implementing the program and maintaining accountability at all levels to ensure a shared commitment can go a long way toward creating a shared and caring environment where employees feel safe.

Workers' Compensation Benefits for Workplace Violence Claims

We all know that even the most rigorous workplace violence prevention programs cannot prevent all incidents and claims. When

incidents do arise, are claimants entitled to workers' compensation benefits? In Pennsylvania, employees can typically receive workers' compensation benefits for injuries arising out of and in the course and scope of employment. Therefore, an employee injured at work in a workplace violence incident would likely be eligible for workers' compensation benefits. However, determining whether an incident arises out of employment is fact specific and the mere fact that an injury occurs in the workplace does not establish that it is compensable. Section 301(c)(i) of the Pennsylvania Workers' Compensation Act defines injury as "an injury to an employee regardless of his/her previous physical condition arising in the course of employment and related thereto and includes aggravation, reactivation, acceleration or death resulting from injury." The Commonwealth Court in *Workers' Compensation Appeal Board (Slaughaupt) v. U.S. Steel*, 376 A.2d 271 (Pa. Cmwlth. 1977), further summarized the statutory requirement as:

Injuries may be sustained in the course of employment in two distinct situations: where the employee, whether on or off the employer's premises, is injured while actually engaged in the furtherance of the employer's business or affairs, or where the employee, although not actually engaged in the furtherance of the employer's business or affairs is on the premises occupied or under the control of the employer, or upon which the employer's business or affairs are being carried on; is required by the nature of his employment to be present on his employer's premises, and; sustained injuries caused by the condition of the premises or by operation of the

employer's business or affairs thereon, see, *Kmart v. Workers' Compensation Appeal Board (Fitzsimmons)*, 748 A.2d 660 (Pa. 2000).

While the exclusivity provision of the act precludes an employee from filing other actions against the employer, there are exceptions to the exclusivity rule if the injury is self-inflicted, arises out of personal animosity or occurs as a result of a violation of the law. See *Halvorsen v. Workers' Compensation Appeal Board (Congoleum)*, 632 A.2d 973 (Pa. Cmwlth. 1993); *Kandra v. Workers' Compensation Appeal Board (Hills Department Store)*, 632 A.2d 1069 (Pa. Cmwlth. 1993); *Burns v. Workers' Compensation Appeal Board (State Pipe Services)*, 654 A.2d 81 (Pa. Cmwlth. 1995). For these reasons, it is paramount in any workplace violence situation to conduct a prompt, diligent and thorough investigation. The focus of the investigation should be to identify the causal origin of the incident in relation to the employment and determine if the activity involved is one that the employee would be reasonably expected to do. The time, place and circumstances of the incident in relation to the employment, and whether the incident is a result of natural conditions, obligations or incidents of employment, should also be determined. Gathering information in the aftermath of a workplace violence incident is critical to preserving all necessary evidence while still maintaining a safe environment.

There are a few best practices in conducting an investigation. Recommended steps include identifying all individuals directly involved in and/or witnessing the incident; securing all surveillance footage and cellphone videos; investigating the time, location, nature and mechanism of injury; and determining any past incidences and any actions leading up to the violence. It is also important to secure any crime-related reports associated with the property. Working with legal counsel, you may also want to reach out to the local police to obtain all prior police contact for the location and the surrounding area.

Workplace violence may happen despite an employer's best efforts to prevent it; however, having an effective prevention program in place will cut down on injuries caused by such acts and foster a safe working environment. Just as the workers' compensation laws were established to protect both the employee and the employer, creating and maintaining workplace violence protocols will do the same.



Michele R. Punturi is a shareholder in the workers' compensation department at Marshall Dennehey Warner Coleman & Goggin. She devotes the entirety of her practice to workers' compensation defense, representing self-insureds, insurance companies and employers. She may be reached at mrpunturi@mdwccg.com.