
LABOR AND EMPLOYMENT LAW UPDATE



VIOLENCE IN THE WORKPLACE

Even before the recent massacre at Virginia Tech, workplace tragedies had already marred a young year. A disgruntled former employee walked into an accounting firm in suburban Detroit on April 9, 2007 and shot three workers killing two. A University of Washington researcher was shot and killed in her office on April 2, 2007 by a former boyfriend. On March 5, 2007, an employee upset about reduced work hours shot and wounded three workers before killing himself at a menu printing plant in Long Beach.

Statistics published by the Bureau of Labor Statistics are just as sobering. Homicide is listed as the fourth-leading cause of fatal occupational injury in the United States. 80% of these deaths are attributable to a firearm.

Not all incidents of workplace violence are preventable by an employer. Still, employers have certain legal responsibilities for protecting the safety of their employees. These responsibilities are greater for employees who face an increased risk of exposure to violence. Attention to these responsibilities can help minimize the risk of workplace violence and avoid potentially significant civil liability.

OSH ACT: The Occupational Safety & Health Act ("OSH Act") requires employers to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees." If exposure to potential violence is a recognized hazard, an employer must take appropriate steps, including training and security, to safeguard its employees.

STATE STATUTES: Some states have enacted legislation which mandates that employers provide a safe workplace for their employees. A few states have also undertaken to regulate retail establishments where the risk of violence is high.

NEGLIGENCE: The common law of nearly every state, including Texas, imposes certain specific duties upon employers to exercise reasonable care to protect the safety of their employees.

NEGLIGENT HIRING: An employer may be liable for negligence in hiring an employee whom the employer knows, or by the exercise of reasonable care, should have known, was potentially violent, thereby creating an unreasonable risk of harm to others. The failure to conduct a criminal background check of an employee who subsequently engages in workplace violence can be a basis for liability.

NEGLIGENT SUPERVISION/RETENTION: An employer may also be liable if it negligently retains an employee whom it knows or should know presents an unreasonable risk of harm to others. The failure to supervise or train an employee who becomes violent can be regarded as negligence.

SAFE WORKPLACE: An employer may have a duty to exercise reasonable care in providing a safe workplace for its employees. The failure to provide adequate security or training in the face of foreseeable violence may breach this duty.

WARN: The failure to warn employees of known dangers of violence can also be a ground for legal action by an employee.

INTENTIONAL TORT: An employer's knowing act or omission with respect to a violent employee can also be the basis of liability. For example, where an employer (1) knows about the employee's acts, (2) recognizes that the employee's acts will continue if he is retained, (3) does nothing to prevent the ongoing acts, and (4) chooses to retain the employee, the employer may be liable for ratification and, under some circumstances, exemplary damages.

WORKER'S COMPENSATION LAWS: An employer may not always be covered by worker's compensation for the death or serious injury of an employee who is a victim of workplace violence. Under the laws of many states, an injury must be work-related to be compensable. An act of violence which is personal and unrelated to employment may not meet this threshold. Some states, including Texas, allow a worker to pursue a claim for intentional misconduct against an employer.

In Texas, many employers have elected to forego the protections of worker's compensation insurance. Texas law precludes such employers from relying upon certain defenses in response to an employee injury or wrongful death action.

RECOMMENDATIONS FOR EMPLOYERS: The Occupational Safety and Health Administration ("OSHA") as well as OSHA's California counterpart, CAL/OSHA, have published guidelines for workplace security. In general terms, these publications recommend the following:

- Background checks should be performed before hiring any new employee.
- A workplace violence prevention program should be established for each workforce which includes procedures for analyzing and correcting dangerous working conditions.
- Safety education should be provided to employees so they know how to protect themselves and what to do if they witness or are subjected to workplace violence.
- Protocols for securing and monitoring the workplace should be adopted and enforced. Such protocols should be mindful of privacy laws.
- Safety rules which minimize potential exposure to violence should be implemented and enforced.

- Disciplinary rules which prohibit weapons at work and which prohibit violence and threats of violence at or away from the workplace should be implemented and enforced.
- Employees should be aware of the procedures for reporting policy violations and potential threats.

QUESTIONS: Questions regarding workplace violence or any other labor and employment issues can be directed to Robert G. Chadwick, Jr. at Campbell & LeBoeuf, P.C.

DISCLAIMER

This paper is not intended to provide legal advice in general or with respect to any particular factual scenario. Any such advice should be obtained directly from retained legal counsel.

CAMPBELL & LEBOEUF

A PROFESSIONAL CORPORATION

BRUCE A. CAMPBELL
 NICOLE T. LEBOEUF
 ROBERT G. CHADWICK, JR.*
 SHELLY L. SKEEN
 NATHAN J. SCHWARTZ
 ALEXANDER G. BLUE

4201 SPRING VALLEY ROAD, SUITE 1250
 DALLAS, TEXAS 75244
 TELEPHONE: 972.277.8585
 FACSIMILE: 972.277.8586
 WWW.CAMPBELLLEBOEUF.COM

* BOARD CERTIFIED, LABOR AND EMPLOYMENT LAW
 TEXAS BOARD OF LEGAL SPECIALIZATION

Campbell & LeBoeuf, P.C. has a substantial expertise in the area of labor and employment law representing management. Whether you are in need of advice regarding an employment decision, assistance in drafting a policy or agreement, representation in a contract or settlement negotiation, or representation in a legal proceeding, our attorneys can provide the highest quality counsel and representation. For employers concerned with the bottom line, we have competitive hourly rates which are substantially less than those charged by many larger firms for legal work of comparable quality.
