

LEGAL-EASE

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Workplace violence is more common than many employers realize: According to statistics released by the Department of Labor (“DOL”), approximately two million people throughout the country are victims of non-fatal violence at work. Violence can occur under many different circumstances, including dissatisfied clients, bullying by co-workers, and even domestic violence spilling over into the workplace. Unfortunately, no employer, no matter how careful, is impervious to workplace violence. Employers should be knowledgeable of the indicators of violence so that support services may be provided in a timely manner. In addition, employers should develop and implement policies and procedures to prevent and remedy workplace violence.

What should employers look for?

What comes to mind more often than not in terms of the common place perspective when it comes to bullying is – What is the line? We see it in our neighborhoods, offices, and sometimes in our significant others when dealing with our children, parent’s or even in marital relationships. Is second guessing merely that, or when done with a curt decisiveness and condescending tone, teetering on bullying? We may have a definition – however culture and environment change the lens.

While it may be difficult to come up with a definition that works in all cases, employers should be aware of the following warning signs, provided by the DOL, which may indicate that an employee may be a victim of violence, particularly where the behaviors occur in a pattern and are new for the employee.

1. Attendance problems. Is the employee excessively sick, late, leaving early, without a reasonable excuse?
2. Poor performance. Does the employee make excessive mistakes or miss deadlines? Does the employee engage inordinately in timewasting activities?
3. Concentration problems. Is the employee easily distracted by others? Does the employee have difficulty recalling instructions and deadlines?
4. Poor health or hygiene. Has the employee shown a marked change in personal grooming habits?
5. Unusual or changed behavior. Does the employee make inappropriate comments? Show physical displays of aggression?
6. Bruises, marks, or other physical signs.

The above list is not exhaustive. Also, the presence of one or more of the above does not necessarily mean that the employee is a victim of violence, just that the employer should be alert to a potential problem.

What should an employer do about workplace violence?

When an employer has a reasonable belief that an employee may be the victim of violence, the next steps depend on the circumstances. Where the employer has a hunch, based on, for example, the above factors, the employer may want to speak to the employee to check in and see if he or she is okay.

Where there is a report of violence in the workplace, the complaint should be fully investigated. Depending on the scope of the investigation, the employer may want to engage an independent investigator or legal counsel. While all complaints of violence should be investigated, certain complaints may lead to legal liability for the organization, including violence based on a legally protected classification or violence that violates federal or state occupational safety standards. For maximum effectiveness and legal defensibility, all investigations should be prompt, thorough, and well-documented.

Where an employee is showing signs of possible domestic violence, the employer may want to speak with the employee and, if necessary, encourage the employee to seek assistance, such as the Employee Assistance Program or the National Domestic Violence Hotline. A workplace safety plan should be developed in case an incident occurs in the workplace.

What about where the complaints are of simple bullying or antagonism, as opposed to actual violence? Even seemingly minor complaints should be addressed.

What policy/procedures should be in place to address bullying, harassment and violence?

Employers should develop and implement policies that promote timely reporting. Where employees do not feel that reports are welcome, employers will lose the opportunity to prevent hostility from escalating. Any effective policy should include examples of workplace bullying, harassment and violence, in addition to a clear reporting procedure.

What is the environmental or genetic makeup of the “bullying behavior”? We invest in finding cures or controlling the contagious nature of biologically based disease – perhaps refocusing and entertaining the concept of a preventative movement is in order. While we may not know all of the causes or signs of potential violence in the workplace, employers are best advised to take all good faith complaints seriously.