

## Laws & Legal Issues

Employers' Legal Responsibility

Federal & State Laws

Liability

## Federal & State Laws

### State & Local Laws

The Legal Momentum Web site offers a remarkable amount of information on state and county laws and legislation regarding the issue of domestic violence in the workplace. Go to [www.legalmomentum.org](http://www.legalmomentum.org) for specific information on your area.

### Federal Laws

Although there are no national laws that explicitly address domestic violence at work, a variety of legal issues are raised when it does enter the workplace. Federal statutes such as the Occupational Safety and Health Act (OSHA) may have some relation to incidents of domestic violence. In addition, there may be common law theories that could be used by both victims and perpetrators. The following list provides an overview of potential legal issues:

- **OSHA:** Employers may be cited for violating the general duty clause of OSHA "if there is a recognized hazard of workplace violence in their establishment and they do nothing to prevent or abate it." Given this pronouncement, it is conceivable that where an employer ignores a known hazard, e.g., continuing to employ an individual with a known history of domestic violence when the person's spouse also works there, and violence occurs, the employer may be cited for violating the general duty clause.
- **Workers' Compensation:** Typically, employees injured in the workplace are limited to recovery under their state's workers' compensation system. Many states have established exceptions to the exclusivity rule for conduct that is intentional rather than negligent, such as assault and battery. An employer who has prior knowledge of an employee's propensity for domestic violence could be accused of committing an intentional tort if it does not act to protect the victim of domestic violence who is also employed by the company.
- **Harassment:** Violence between co-workers who are dating may result in a sexual harassment claim, particularly if the bad behavior occurs in the workplace.
- **Americans with Disabilities Act:** Perpetrators of violent behavior may claim the behavior is a result of an ADA covered disability; however, courts have consistently rejected ADA claims where the employee seeks to excuse conduct that otherwise would be subject to discipline or discharge. Employees are permitted to make employment decisions regardless of ADA claims if the employee poses a "direct threat" to others. An employee who is the victim of domestic violence may, under certain circumstances, be deemed disabled and entitled to protection under ADA and similar state and local statutes.
- **Family and Medical Leave:** An employee who is the victim of domestic violence may be entitled to take leave for a serious health condition resulting from the abuse.
- **Negligence:** Where an employer knows of an employee's prior history of violent behavior or fails to take steps to find out about an individual's background, claims may be made against the employer for negligent hiring, negligent retention, or negligent supervision depending on the circumstances at issue.
- **Privacy Rights:** Employers should make it absolutely clear that their electronic information systems, including e-mail, voice-mail, and computers belong to the company and there is no expectation of privacy in the use of the equipment by its employees. Even so, privacy interest should be weighed in the balance when determining safety and security measures.