

## Laws & Legal Issues

Employers' Legal Responsibility

Federal & State Laws

Liability

### Liability

**When employees report threats, harassment or other potentially violent conduct in the workplace, employers have a legal obligation to act.** The best way to avoid legal liability resulting from domestic violence brought into the workplace is to establish and enforce a workplace violence policy.

A policy against violence must not only exist, it must also be enforced. If an employee complains of another employee's violent behavior, the employer must conduct an investigation and take preventative steps to remedy the situation. Furthermore, if there are threats made by a domestic partner to hurt an employee at work, employers should take action to protect the employee and others by increasing security as necessary.

Whether an employer is liable for any given incident of domestic violence at work will depend on the facts of the case. Generally, employers will be liable if an employee's immediate (or successively higher) supervisor harasses her and, as part of that harassment, takes action against her, such as discharging, demoting, or giving her undesirable assignments.<sup>i</sup> If there was no tangible job action, the employer will still be liable for sexual harassment unless it establishes a two-part affirmative defense:

- a. That the employer exercised reasonable care to prevent and correct the harassment, and
- b. That the victimized employee unreasonably failed to take advantage of any preventive or corrective opportunities.<sup>ii</sup>

An employer is much more likely to establish this affirmative defense if it has a written, clear, and effectively enforced anti-harassment/domestic violence policy, as well as an effectively implemented complaint procedure.<sup>iii</sup>

Companies may also be liable for sexual assaults or harassment by co-workers or customers if a supervisor knew about assaults, potential assaults, or harassment and failed to take appropriate action.<sup>iv</sup> Even a single instance of rape or sexual assault on the job could be enough to hold an employer liable for the resulting damages.<sup>v</sup>

Even if a woman's abusive partner does not work at her company, her employer may be liable if the abusive partner creates a hostile environment at her workplace. For example, liability could result if a harasser shows up at the workplace and harasses a woman or her co-workers in a way that creates a sexually hostile work environment, and the company knowingly fails to take reasonable corrective action, such as informing security personnel of the problem and instructing them to take appropriate steps.

Employers' obligations under anti-discrimination laws apply regardless of any relationship that might exist outside the workplace between the perpetrator and the victim.

- i. See *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 765 (1998) ("An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee."); *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998)
- ii. See *Burlington Industries*, 524 U.S. at 765; *Faragher*, 524 U.S. at 807
- iii. *Id.*
- iv. See, e.g., *Burns v. McGregor Elec. Indus., Inc.*, 989 F.2d 959, 961, 966 (8th Cir. 1993) (employer liable because it knew of co-worker harassment and used it to further his own harassment rather than stopping it); *Hall v. Gus Constr. Co.*, 842 F.2d 1010, 1016 (8th Cir. 1988) (unwanted touching and offensive comments by co-workers); *Menchaca v. Rose Records, Inc.*, 67 Fair Empl. Prac. Cas. (BNA) 1334, 1337-38 (N.D. Ill. 1995) (employee harassed by employer's customer); see also 29 C.F.R. § 1604.11(d)-(e) (2000) (EEOC guidelines addressing employers' liability for sexual harassment by co-workers and customers, respectively)
- v. See, e.g., *Al-Dabbagh v. Greenpeace, Inc.*, 873 F. Supp. 1105, 1111-12 (N.D. Ill. 1994); *Radtke v. Everett*, 501 N.W.2d 155, 168 (Mich. 1993) (single incidents of rape and sexual assault may be sufficiently traumatic to violate Michigan Civil Rights Act); cf. *Brock v. United States*, 64 F.3d 1421, 1423 (9th Cir. 1995); *Simon v. Morehouse Sch. of Medicine*, 908 F. Supp. 959, 969-70 (N.D. Ga. 1995)