

September 2013

Reporter

Employment Law

by Kelly O. Scott, Esq.

Workplace Violence Examined (Part I)

What can employers do to prevent workplace violence? Unfortunately, we have learned a lot about violence, but we can use that knowledge to our advantage. In order for an employer to implement preventative measures, it must first understand workplace violence itself, both in terms of the types of violent acts that can occur as well as the risk factors associated with the various types of workplace violence. According to the federal Occupational Safety and Health Administration ("OSHA"), there are four types of workplace violence. The categories are as follows:

Type I: Criminal Intent. Violent acts committed by people who have entered the workplace to commit a robbery or other crime. Although these acts can be committed by current or former employees, the acting agent typically has no legitimate business relationship with the workplace and enters the affected workplace specifically to commit a criminal act;

Type II: Customer/Client/Patients. Violence directed at employees by customers, clients, patients, students, passengers,

inmates, prisoners and others to whom the employer provides a service;

Type III: Co-Worker. Violence against co-workers, supervisors or managers committed by a current or former employee, manager or supervisor; and

Type IV: Personal. Violence in the workplace committed by a non-employee who has a relationship with an employee. This usually involves an assault of a current employee, supervisor or manager by a current or former spouse, lover, relative or friend or some other person who has a dispute with an employee of the affected workplace.

OSHA can also tell us who is at risk. High-risk industries include healthcare and social services settings, such as hospitals, clinics, pharmacies, home health agencies, alcohol and drug treatment providers and social welfare service providers. In addition, small, late-night retail establishments are considered to be high-risk establishments. Schools where students have a history of violent behavior and certain other types of service providers such as justice

Upcoming 2013 Seminars at ECJ

Thursday, November 7, 2013 - 8:30 a.m.-9:30 a.m.

New Laws for 2014: Just When You Thought it was Safe to Get Back in the Water (on-line option available)
by Kelly O. Scott, Esq.

Thursday, November 7, 2013 - 10:00 a.m.-12:00 p.m.

Sexual Harassment Prevention Training (must attend in person)
by Kelly O. Scott, Esq.

Please note: Accountants requesting CPE credit must attend in person at ECJ to receive credit.

Please contact Brandi Franzman at bfranzman@ecjlaw.com for registration information.

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system personnel, customer service representatives and delivery personnel are also frequently at risk.

Type I events often occur during the commission of a robbery when an employee or proprietor is killed or injured. These events typically occur at small, late-night retail venues, but no retail store is immune from the possibility of a robbery. Retail robberies usually occur between the hours of 11:00 p.m. and 6:00 a.m. and are most often carried out by persons armed with a gun or knife. Additional factors that put retail employees at risk include the exchange of money and availability of valued items such as jewelry, 24-hour operation, solo or isolated work sites, the sale of alcohol and poorly lit stores and parking areas. Among small, late-night retail establishments, liquor stores, gas stations and convenience stores are common targets.

Type I events represent the most common type of fatal workplace violence event, but Type II events involving victims who provide services to the public are increasing. In addition, non-fatal Type II events involving assaults to service providers, particularly within the healthcare industry, may represent the most prevalent category of workplace violence resulting in physical injury. However, any business working with patients, clients, passengers, customers or students known or suspected to have a history of violence is at risk.

More common Type II assaults are inflicted upon public safety and correctional personnel, transportation providers, teachers, sales personnel and others who work in the public or private service sector who provide professional, public safety, administrative

or business services to the public. According to Cal/OSHA, Type I events represent irregular occurrences in the life of any particular at-risk establishment, while Type II events can occur on a more regular basis in many service establishments and therefore represent a more pervasive risk for such service providers.

Type III and Type IV events are often more difficult to understand and may, at first, defy reasonable explanation. While these type of events attract significant media attention, they are actually less common in occurrence than Type I or Type II events. Type III or Type IV events usually involve a single employee, supervisor or manager as the primary target of the assailant. The individual is often seeking revenge for what he or she perceives as unfair treatment by such person or persons. Employees with a history of assault or who have exhibited belligerent, intimidating or threatening behavior to others are among the risk factors for a Type III event. Although Type III and Type IV events can lead to fatalities, the most prevalent type of event usually involves threats or other types of verbal harassment.

Every employer should perform an initial assessment to identify workplace security factors that might contribute to violence in the workplace. Once an employer understands the types of violence that can occur and the risk factors involved, the next step is to consider preventative measures.

In our October Employment Law Reporter, we will discuss security measures employers should consider in light of the various risks outlined in this issue.

ACA Notice Must Be Provided By October 1, 2013

On October 1, 2013, every employer must provide employees with a Notice of the Affordable Care Act and the availability of health insurance through the health plan Marketplaces (the "Marketplaces"). There are two model notices that have been developed by the Department of Labor. Employers who do not offer health insurance should provide the notice which can be downloaded at www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf. Employers who do offer health insurance should provide the notice that can be downloaded at www.dol.gov/ebsa/pdf/FLSAwithplans.pdf.

In addition, a revised model COBRA Continuation Coverage Election Notice has been developed by the Department of Labor. The revised notice contains information on health plan availability through the available federal or state marketplaces mandated by the ACA beginning on January 1, 2014. The new model COBRA Notice can be downloaded at <http://www.dol.gov/ebsa/>.

Did you know...

That this is the last print issue of the Employment Law Reporter? The digital version of this September issue has also been distributed in its new format, so if it did not arrive in your e-mail in-box, please check your other e-mail folders. This is how you can expect to receive the Employment Law Reporter going forward.

Well, now you know!

If you have any questions regarding this bulletin, please contact Kelly O. Scott, Esq., Editor of this publication and Head of ECJ's Employment Law Department, at (310) 281-6348 or kscott@ecjlaw.com. If one of your colleagues would like to be a part of the Employment Law Reporter mailing list, or if you would like to receive copies electronically, please contact Brandi Franzman at (310) 281-6328 or bfranzman@ecjlaw.com.

■ **Registration Time:**

8:15 a.m.

■ **Seminar Time:**8:30 a.m. to 9:30 a.m.
(continental breakfast provided)■ **Cost:**

\$35 per person

*What attendees
are saying ...*

"Kelly Scott was fabulous. His good-natured presentation was both informative and entertaining. His presentation style enabled the attendees to participate and I believe retain the presentation materials."

■ **Registration Time:**

9:45 a.m.

■ **Seminar Time:**10:00 a.m. to 12:00 a.m.
(continental breakfast provided)■ **Cost:**

\$35 per person

■ **New Laws for 2014:
Just When You Thought it was Safe to
Get Back in the Water**Presented by *Kelly O. Scott, Esq.*

Thursday, November 7, 2013 at Ervin Cohen & Jessup LLP

Change is good... unless you are an employer in the State of California. Over the last year the legislature and the courts have been busy changing the landscape in which California employers do business and, contrary to what your mother may have told you, what you don't know CAN hurt you! We will review the most important developments that will have an immediate impact on the way you do business. Don't miss this opportunity to stay on top of the issues... before the sharks come after you!

Register by Monday, November 4th. Contact Brandi Franzman at bfranzman@ecjlaw.com or (310) 281-6328 for registration information. Space is limited. Parking validation will be provided.

This seminar qualifies for 1.0 hours of Continuing Professional Education credit for Accountants.



Kelly O. Scott, Esq. heads ECJ's Employment Law Department and has over 25 years of experience in wage and hour, wrongful termination, harassment, discrimination, retaliation, class action, disability, medical leave, investigation, compliance training and litigation matters. Mr. Scott was named Best Employment Lawyer in Southern California for 2010 by the 5W Report, and was selected for inclusion in Southern California SuperLawyers®, published in Los Angeles magazine, for 2012, 2011, 2010, 2009, 2008, 2007, 2006 and 2004. Mr. Scott maintains a Martindale-Hubbell peer rating of AV.

■ **Sexual Harassment Prevention Training**Presented by *Kelly O. Scott, Esq.*

Thursday, November 7, 2013 at Ervin Cohen & Jessup LLP

You know the drill: all managers and supervisors who are employed in California are required by law to complete at least two hours of interactive sexual harassment training. The training must take place every two years and within six months of promotion or hire. This workshop will not only meet these educational requirements, but exceed them. You will learn situation-specific techniques regarding the prevention and correction of sexual harassment under both federal and state law. In addition, you will walk away with a practical understanding of the remedies available to victims of sexual harassment as well as the defenses employers have at their disposal. Presented in a lively, entertaining and engaging format, what you learn in this workshop will stay with you for the next two years... and beyond.

Register by Monday, November 4th. Contact Brandi Franzman at bfranzman@ecjlaw.com or (310) 281-6328 for registration information. Space is limited. Parking validation will be provided.

This seminar qualifies for 2.0 hours of Continuing Professional Education credit for Accountants.