



Family Violence **The role of employers in curbing domestic violence**

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All employers, from large and small businesses to prosecutor offices and abuse shelters, should implement guidelines addressing domestic violence in the workplace.¹ A Tulsa study found that 70 percent of battered women were employed during the course of the abuse, and that 96 percent had work-related problems, such as missing work, incessant phone calls, stalking, etc. Chances are quite high that we have both victims and offenders employed in our prosecutor offices. We have a responsibility to extend our public safety efforts to our own offices, as well as other employers in our communities.

Domestic violence impacts the workplace by increasing the safety risks for all employees, not just the victim. The Office of Management and Budget estimates that family violence costs American businesses from \$4 to 6 billion per year in increased sick leave, medical expenses, employee turnover, and reduced productivity and staff morale. Victims may present warning signs such as change in attitude or performance, depression, heightened anxiety, lack of concentration, increased absences, receipt of harassing phone calls, disruptive personal visits from the abuser to the workplace, and hypervigilance.

Under the leadership of Dr. Jim Hardeman, himself a child abuse survivor, the Polaroid Corporation developed "Guidelines for Managing Violence and Threats of Violence" to formalize its procedures

for handling workplace violence. Dr. Hardeman points out that employers often "force employees to live a schizophrenic existence. Victims cannot reveal the secrets of family violence for fear of termination and being labeled as a detriment to management." All employers would do well to replicate

the cutting edge company practices established by Polaroid. These guidelines can be adapted for smaller employers or those unable to fully implement all of its provisions at one time. Inspired by the success of Polaroid's Guidelines, TDCAA

has made available a simplified version, easily adaptable for any workplace.

The purposes of employer domestic violence guidelines are three-fold:

- 1 To increase victim safety;
- 2 To hold the batterer accountable; and
- 3 To protect the employer from possible liability,² costly litigation, and judgments.³

The cornerstones of the Polaroid Corporation's program are flexible to accommodate the specific needs of each victim and offender with whom the company is dealing. For victims, Polaroid allows up to three weeks paid leave, allowing the victim to re-

late, obtain a protective order, attend various court proceedings (*arraignment, pre-trial conference, etc.*), begin counseling, etc. The victim can also choose the option of taking a one-year unpaid leave, without losing position or status within the organization and with the full assurance of being able to resume

the job. This provision is particularly important for those victims in the greatest danger who must get out of the area for safety reasons. Employee victims are also allowed to attend counseling or support group sessions during the work

day, without any loss of pay or other negative repercussions. Supervisors are trained to be as accommodating as possible to ensure victim safety. Here the onus is on the supervisor to suggest that the victim be allowed flex-time, accompaniment to and from the parking areas, etc. Polaroid provides domestic violence training to every employee, along with a copy of the company guidelines and a list of local community resources.

For the batterer, Polaroid makes clear that their continued employment is contingent upon three conditions:

- 1 Completion of a one-year certified batterer's intervention program (*not anger management!*);

"We have a responsibility to extend our public safety efforts to our own offices, as well as other employers in our communities."

② Not committing any new offenses; and

③ Abiding by all conditions of all court orders (including child support).

Dr. Hardeman reports that adherence to personnel policies and grievance procedures can help keep an employer out of court, noting that since the adoption of guidelines, Polaroid has won every court case and the incidence of employee suits has dramatically decreased. In the four cases in which batterers sued the company after being fired for violating the above provisions, the courts ruled in favor of Polaroid. The decisions cited Polaroid's policy of giving every employee a copy of the guidelines and the mandated domestic violence trainings as evidence of the batterers' receipt of due process and full notice of the conditions of their employment. Dr. Hardeman cites these lawsuits as further demonstration that acting effectively as early as possible can save the employer a good deal of money. It is the employer's failure to act that can result in liability, not the good-faith effort to intervene appropriately.

The Polaroid Corporation is not only taking care of business in its own backyard but has also launched an impressive "CEO Project" to partner 60 Massachusetts corporations with non-profit domestic violence programs (usually a shelter, but sometimes a visitation center or non-residential victim advocacy program). Beyond simply giving money to the cause,

the corporation and victim service program are encouraged to assist each other in on-going, creative ways. For example, Newton-Wellesley Hospital adopted its local shelter, the Battered Women's Support Committee, in Waltham, Massachusetts. After several meetings to discuss the shelter's needs and what the hospital could offer, Newton-Wellesley Hospital decided to provide:

① Free medical care to all shelter staff and guests;

② Financial planning and fund-raising assistance;

③ Help from the hospital's maintenance department with fixing up the shelter (painting, plastering, small carpentry jobs, etc.);

④ Medical training on such issues as identifying accidental vs. inflicted injuries, repercussions from head and strangulation injuries, etc. and

⑤ A commitment to address on-going issues as they arise.

In exchange, the shelter has agreed to provide training on the background dynamics of domestic violence and how to best intervene with all types of victims, (especially those not yet able to leave the batterer). Additionally, shelter staff are available to assist with domestic violence patients who may require additional help beyond their medical needs. This project could be replicated in each of our communities, perhaps on a smaller scale to start, but eventually with equally stunning results.

Prosecutor offices have the power to set a good example by adopting employer domestic violence guidelines, then encouraging as many employers in your community as possible to do likewise. Here is a summary of what an employer can do to help:

① Provide every employee with written guidelines;

② Train every employee in safety planning;

③ Train supervisors to ensure flexible policies to accommodate victims' needs;

④ Participate in (or help organize) a local domestic violence council;

⑤ Provide information and referrals, after establishing contacts with local domestic violence programs, law enforcement, and the courts; and

⑥ Hold the offender accountable.

In November, the Travis County Domestic Violence Task Force, along with many Central Texas public and private employers, will sponsor a day-long conference

DOMESTIC VIOLENCE IS A WORKPLACE ISSUE

- ✓ Nearly 4 million women are abused by their husbands or boyfriends every year, and 42 percent of murdered women are killed by their intimate male partners. (*First Comprehensive National Health Survey of American Women, The Commonwealth Fund, 1993; analysis of FBI Uniform Crime Reports from 1988-91, as conducted by the Center for the Study and Prevention of Violence, University of Colorado at Boulder.*)
- ✓ Sixty-six percent of Fortune 1000 senior executives surveyed say they believe their company's financial performance would benefit from addressing domestic violence among their employees. Forty-seven percent say domestic violence has a harmful effect on the company's productivity, and 44 percent say that it increases health care costs. (*Roper Starch Worldwide study for Liz Claiborne, Inc., 1994.*)
- ✓ Domestic violence results in hundreds of millions of dollars in health care costs in the U.S., much of which is paid for by employer benefits. (*Pennsylvania Blue Shield Institute, SOCIAL PROBLEMS AND RISING HEALTH CARE COSTS IN PENNSYLVANIA, 1992, pp. 3-5.*)
- ✓ American employees miss 175,000 days per year of paid work due to domestic violence. (*Richard Gelles in FAMILY VIOLENCE, Sage Publications, Newbury Park, 1987, p. 13.*)
- ✓ Ninety-four percent of corporate security directors surveyed rank domestic violence as a high security problem at their company. (*National Safe Workplace Institute survey, as cited in "Talking Frankly about Domestic Violence," PERSONNEL JOURNAL, April, 1995, p. 64.*)

From the FAMILY VIOLENCE PREVENTION FUND

Endnotes

- 1 The author recognizes that local rules in a number of judicial districts curtail the ability of plaintiffs to obtain an ex parte temporary restraining order. However, many counties and judicial districts, such as ours, have no such restriction.
- 2 The provision in question is a subpart of the definition of "gambling device" set forth in §47.01(4). The full definition reads as follows:

(4) "Gambling device" means any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. The term:

(A) includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits; and

(B) does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.

- 3 Notably, §47.01(4)(B) does not bear the language: "It is an exception to the application of ..." or "it is an affirmative defense to prosecution" See Tex. Pen. Code §2.02(a) (exception), 2.04(a) (affirmative defense). Since §47.01(4)(B) does not contain these labels, then, it is invested with the procedural and evidentiary consequences of a defense.

Tex. Pen. Code §2.03(e). Clearly, then, it does not represent the comprehensive immunity from prosecution that 8-liner owners and operators contend it does.

- 4 An 8-liner records credits won by the player during his or her play of the machine for which he or she has paid consideration. These "credits" appear in actuality to be "bets," since a "bet" is an agreement to win or lose something of value solely or partially by chance,

Tex. Pen. Code §47.01(1). Because an 8-liner records these "bets," it also meets the definitional criteria of "gambling paraphernalia." Tex. Pen. Code §47.01(6).

5 Subsection (b) permits, under limited circumstances, the conduct of bingo games by a church, synagogue, religious society, volunteer fire department, nonprofit

veterans organization, fraternal organization or nonprofit organization supporting medical research or treatment programs.

- 6 Subsection (d) permits charitable raffles under certain, limited circumstances.
- 7 Subsection (e) authorizes the State lottery.
- 8 This characterization is consistent with the observations of the 14th District Court of Appeals in Houston. See *State v. Mendel*, 871 S.W.2d 906, 910 (Tex. App.—Houston [14th Dist.] 1994, no pet.); *State v. Fry*, 867 S.W.2d 398, 402 (Tex. App.—Houston [14th Dist.] 1993, no pet.).
- 9 This argument merits no further response than the commonly recognized precept that while attorney general opinions "can be persuasive, they are not binding authority on the courts." *Gonzales v. State*, 588 S.W.2d 355, 359 (Tex. Crim. App. 1979).
- 10 The author notes that, to his knowledge, he holds the dubious distinction of being the first lawyer in the state to lose a contested temporary injunction hearing to 8-liner owners and operators. On November 4, 1998, the Seventh Court of Appeals at Amarillo reversed and dissolved the temporary injunction in the case and remanded the cause to the trial court with instructions to dismiss for want of jurisdiction.

Employers and domestic violence...

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addressing domestic violence in the workplace. Dr. Jim Hardeman has agreed to present his highly successful Polaroid model, and other expert speakers will speak as well. Our goal is to publish a list of all Texas employers, including public sector — especially prosecutor offices — who have formally adopted domestic violence employer guidelines meeting the minimal standards set out in the TDCAA model. We would love to add your office's name and that of your local law enforcement agency, shelter, private employers, etc. to our growing list.

For a copy of the TDCAA's suggested employer guidelines for prosecutor offices, please call Joni Sager at 512/474-2436 or e-mail tdcaa@counsel.com. For more information about the November 1999 conference, please call me at 512/282-9688.

Endnotes

- 1 Deborah Goelman, et al., "The Role of Employers," *THE IMPACT OF DOMESTIC VIOLENCE ON YOUR LEGAL PRACTICE: A HANDBOOK FOR LAWYERS* (American Bar Association, 1997).
- 2 There exist many causes of action on which a victim could base a suit, ranging from negligent response to threats, negligent retention and supervision, negligent failure to warn, premises liability, Family and Medical Leave Act, Americans With Disabilities Act, Title VII Sex Discrimination (particularly for firing or demoting an employee solely by virtue of her status as an abuse victim), and various other creative strategies depending on the individual case.
- 3 Joseph Pereira, "Employers Confront Domestic Abuse," *THE WALL STREET JOURNAL*, March 2, 1995, page B1, column 1, citing cases in which Houston and San Francisco employers were found liable for their failure to intervene appropriately with battered employees. The Houston employer settled out of court for \$350,000 to the deceased victim's family, and the San Francisco jury awarded \$5 million to the families of two co-workers murdered by the batterer.

"Unless one of those laws that we must uphold is unconstitutional and its enforcement represents an immediate and irreparable threat to vested property rights, no injunction against the performance of your duties should stand. And, if all else goes wrong, call us in Potter County. We understand."