

Pelican Chapter

August 2016

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It is not a matter of if, but when an employer will be confronted with a challenging domestic violence-related issue in the workplace. Domestic violence not only causes lost productivity and increased costs for employers, but also raises a host of potential legal obligations and liabilities that employers cannot afford to overlook.

Domestic violence is absolutely an employment law issue. Not only is Louisiana one of the states with the highest prevalence of domestic violence in the nation, but this type of violence comes in many forms and cuts across many employment laws. Despite the breadth and prevalence of domestic violence, very few employers are aware of its significant impacts in the workplace, from the Americans with Disabilities Act to workplace violence prevention policies. Even fewer employers have plans in place to reduce legal risk.

Domestic violence is not just confined to the home, and is not just between spouses. Louisiana domestic abuse laws protect victims (both male and female) who are spouses, dating partners (including heterosexual, gay, and lesbian couples), family members (including stepparents, stepchildren, foster parents and foster children), and household members. Domestic violence is much more than just physical violence: it is a system of power and control over the victim that can manifest in many ways. Victims may experience mental, psychological and sexual abuse; extreme control over the finances, whereabouts, and day-to-day activities; threats and intimidation; custody battles; physical stalking and cyberstalking; and career and interpersonal relationship sabotage—just to name a few.

Louisiana has one of the highest rates of domestic violence in the country. In 2014 alone, over 8,000 Louisianans received help from domestic violence shelters and Louisiana courts issued over 3,000 protective orders. The Louisiana Coalition Against Domestic Violence estimates that approximately 20,000 people receive assistance from domestic violence programs in Louisiana each year. Some of these victims may be your employee.

The cost of domestic violence adds up quickly and dramatically impacts productivity and bottom lines. The Department of Labor estimates that 8 million work days are lost each year as a result of domestic violence, including time lost to diminished performance as a result of abuse, the abuser's harassing communications and visits at the victim's place of work, time spent preparing for and attending court, and health reasons. Forbes recently calculated that employers pay \$8.3 billion annually to cover the healthcare costs, absenteeism, reduced productivity, and security costs directly attributable to domestic violence.

Domestic violence can and will spill over into the Louisiana workplace and expose employers to legal risks. This monthly series will discuss the various ways in which domestic violence enters the workplace, including employment discrimination, workplace violence, stalking, victim protection laws, insurance portability, leave policies, and considerations in hiring aggressors.

EMPLOYMENT DISCRIMINATION

Unlike some states, Louisiana does not currently have an employment discrimination law that deems domestic violence victims as a protected class. However, current State and Federal laws that prohibit discrimination based on sex provide a framework for levying an employment discrimination claim against an employer. These scenarios are not far-fetched—in fact, the EEOC specifically warns that the circumstances surrounding domestic violence can give rise to a Title VII or ADA claim against an employer.

First, an employee's treatment or an employer's actions based on the employee's status as a domestic abuse victim could give rise to a claim of discrimination based on sex. Even though both men and women suffer from domestic violence, most victims are female. As such, the EEOC explains that an employer's actions toward a victim of domestic violence could arguably constitute discrimination based on sex. For example, the EEOC suggests that refusing to hire a domestic violence victim for "fear of the potential drama battered women bring to the workplace" or permitting male employees to take unpaid leave for criminal court appearances but refusing to give female domestic violence abuse victims unpaid leave for their court appearances could be discriminatory. Offhand comments about domestic violence and treating domestic violence victims differently than co-workers in analogous situations can give rise to an actionable Title VII claim against an employer. Moreover, sex discrimination based on gender stereotyping could be implicated if an employer does not provide equal treatment to a male employee who is a victim of domestic violence.

Second, disability discrimination can arise in the context of domestic violence. The Americans with Disabilities Act ("ADA") and Louisiana's employment discrimination law define a person with a "disability" as one with a "physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such impairment, or a person who is perceived by others as having such impairment." Employers are obligated to provide reasonable accommodations to disabled employees that would not impose an undue hardship on the employer. Domestic violence can afflict victims with many potentially disabling physical and mental conditions—from bodily injury to post traumatic stress disorder—that can require the employer to engage in the interactive process to determine a reasonable accommodation. Depending on the disability and feasibility of the accommodation, employers may need to provide accommodations to the employees who experience domestic violence, such as transferring the employee to another office, providing leave for treatment, or changing the employee's work schedule. Reasonable accommodations under the ADA are very fact-specific and will vary greatly depending on the circumstances. Regardless, employers must be aware that domestic violence can result in what relevant laws define as a disability, for which the employer could be legally bound to accommodate.

