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Establishing Workplace Violence Policies

Regrettably, the number of incidents of workplace violence continues to make news headlines.

Acts of violence in the workplace can result in a myriad of legal issues in the courts and with government agencies. As a result, many employers are adopting workplace violence policies. These policies are often implemented to protect the employer against liability from victims of workplace violence. However, as the case below illustrates, an employee terminated from his employment as a result of such a policy may sue if the procedures set out in the policy are not followed. Consequently, an employer needs to be aware that if they create such a policy, it must be carefully followed.

Summary of the Case

In July of this year, the Idaho Supreme Court reviewed a lawsuit brought by Jonathan Cantwell against the City of Boise in which he claimed he was wrongfully terminated from his employment in the City's Public Works Department. The City of Boise has a workplace violence policy setting out procedures that must be followed prior to dismissal. Although the City's decision to terminate Cantwell was ultimately upheld on appeal, the case may never have been filed if the City had followed the procedures set out in its workplace violence policy.

Background

Jonathan Cantwell began working for the City of Boise as a maintenance worker in the Public Works Department in February 1994. At the time of Cantwell's hiring, he acknowledged in writing the receipt of a copy of the Boise City Employee Policy Handbook; he also agreed that the policies contained therein would be used to govern his employment with the City. Years later, in 2003, Cantwell acknowledged receipt of certain policy changes by the City, including revisions to its Harassment Policy, Due Process Procedure, and Problem Solving Procedure. These revisions included a workplace violence provision.

Subsequently, in March, 2004, Cantwell's supervisor informed management that Cantwell had acted inappropriately toward a co-worker. According to the supervisor, Cantwell "cussed profusely" at a co-worker in response to her request that he complete his timesheet. The supervisor prepared a written reprimand, which included the word "violence." Upon receiving a copy of the reprimand, management contacted the supervisor and some of Cantwell's co-workers to question them about Cantwell's recent behavior. The City's human resources manager was also informed of the situation.

Cantwell was placed on administrative leave and a workplace violence assessment team was assembled to conduct an investigation. The assessment team interviewed many of Cantwell's co-workers. The co-workers confirmed Cantwell had "ranted" about his timesheets. They also detailed incidents in

which Cantwell threatened people both inside and outside the City, including statements made by Cantwell during which he described how he might shoot someone and then “watch the blood spill out of their body.” One co-worker claimed to have heard Cantwell say he was going to blow up City Hall.

Cantwell was also interviewed. He admitted getting “pretty bent out of shape” about the timesheet situation, but he did not recall saying anything threatening. He denied making a comment about blowing up City Hall. When asked if he ever stated he was “going to come to work and annihilate everyone,” Cantwell claimed he “would never say he was going to do anything.” Rather, he may have said, “I wish, or it wouldn’t be bad if somebody did, or if this happened I wouldn’t lose any sleep.”

The City terminated Cantwell’s employment based on the results of its investigation into his workplace conduct. Cantwell appealed his termination, requesting a grievance hearing, which was held before a hearing officer. The hearing officer determined Cantwell violated the City’s general workplace harassment policy in connection with the timesheet incident, but that termination was unduly harsh. He concluded Cantwell should be suspended for 30 days.

As to Cantwell’s threats, the hearing officer determined that this was more appropriately analyzed under the City’s workplace violence policy. The hearing officer noted, however, the City failed to follow its own policy because it did not address any of the alleged danger signals presented by Cantwell’s statements and because the City’s workplace violence assessment team was not properly constituted, had changed over time, and did not include an EAP representative. The hearing officer thus concluded that the City could not terminate Cantwell as a result of his violation of the workplace violence policy.

In an effort to comply with the hearing officer’s decision, the City prepared a letter to Cantwell outlining certain requirements Cantwell would have to satisfy in order to return to work following his 30 day suspension. The City warned Cantwell it would not tolerate further inappropriate behaviors or retaliation of any kind. The letter also listed several conditions for his return to work – including obtaining a psychological fitness-for-duty evaluation.

Cantwell did not return to work and was fired for job abandonment. He sued the City, stating it did not have the right to impose conditions upon his reinstatement. The trial court granted the City’s motion to dismiss and threw out the case. Cantwell then appealed to the Idaho Supreme Court. On appeal, the Court held the City had the right to set out conditions for Cantwell’s reinstatement, and since Cantwell refused to return to work under those restrictions, the City had the right to end his employment.

Practice Pointers

The above case involves a government entity and, therefore, a grievance process. However, private employers can learn several things from the above situation:

1. Workplace violence policies are legal and will be enforced by the courts.
2. A well-drafted policy will help employers deal with difficult situations by establishing procedures to be followed and avoiding having to “re-invent the wheel” each time an employee incident occurs.
3. If you already have a workplace violence policy, it should be reviewed to ensure it is uniform, fair, practical and capable of being followed.

4. Supervisors should receive training in addressing workplace violence issues and in how to implement the procedures set out in the policy.
5. Implementing and following a well prepared workplace violence policy can protect employers from liability to the potential perpetrator of violence; it can also prevent the employer's liability to co-workers who could have been harmed by the perpetrator, and then sue the employer.