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**Labor & Employment Lightning Round**

**Workplace Violence in School Districts**

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## Introduction

- School districts are not immune from workplace violence in all circumstances. Similar to all other employers, school districts face the following workplace violence concerns:
  - Prevention;
  - Training of employees;
  - Responding to acts or threats of violence; and
  - Potential liability concerns when workplace violence occurs.

## Relevant Laws Regarding Workplace Violence



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## Occupational Safety and Health Act, 820 ILCS 219/1

- Requires public employers to:
  - “[P]rovide reasonable protection to the lives, health, and safety of its employees”; and
  - “[F]urnish to each of its employees employment and a workplace which are free from recognized hazards that cause or are likely to cause death or serious physical harm to its employees.”

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## Occupational Safety and Health Act, 820 ILCS 219/1

- The U.S. Occupational Safety and Health Administration defines “workplace violence” as:
  - “[A]ny act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site.”
- Employers who do not take reasonable steps to prevent or address potential hazards in the workplace can be cited and charged civil penalties.

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## Occupational Safety and Health Act, 820 ILCS 219/1

- The Illinois Department of Labor recommends:
  - Establishing a zero-tolerance policy toward workplace violence;
  - Providing safety education for employees; and
  - Encouraging employees to alert supervisors to any concerns about coworkers’ erratic or potentially dangerous behavior.

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## Workplace Violence Prevention Act, 820 ILCS 275/1

- The IWVPA is intended to “assist employers in protecting their workforces, customers, guests, and property by limiting access to workplace venues by potentially violent individuals.”
- An employer may seek a workplace protection restraining order if:
  1. An employee has suffered unlawful violence and the respondent has made a credible threat of violence to be carried out at the employee's workplace;
  2. An employee believes that the respondent has made a credible threat of violence to be carried out at the employee's workplace; or
  3. An unlawful act of violence has been carried out at the workplace or the respondent has made a credible threat of violence at the workplace.

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## School Safety Drill Act, 105 ILCS 128/1

- Public Act 101-0455 recently amended the *School Safety Drill Act*.
- School districts must:
  - Implement a threat assessment procedure no later than December 21, 2019; and
  - Form a “threat assessment team” no later than February 19, 2020.
- School boards must review their threat assessment procedures at least annually when reviewing the school buildings’ emergency and crisis response plans and the buildings’ compliance with the school safety drill programs.

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## Potential Liability for Workplace Violence



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## Failure to Respond to Threats of Violence

- When violence occurs, an employee may allege that the school district should be held liable because it failed to effectively respond to threats of violence, thus increasing a danger in the workplace.
- Although plaintiffs must generally meet a high burden to succeed on such a claim (e.g., the school district was “deliberately indifferent” to the rights of the individual), school districts should always immediately respond to any known or reported acts or threats of workplace violence.

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## Vicarious Liability

- A school district may be held vicariously liable for the tortious conduct of its employee if the act occurs within the employee's scope of employment.
- Although it is unlikely that workplace violence would be considered within an employee's scope of employment, school districts should be sure to include language in workplace prevention policies stating that any acts or threats of workplace violence will not be tolerated.

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## Failure to Follow Law or School District Policy

- A claim that a school district failed to comply with state or federal law or its own policies presents a significant liability concern for an incident of workplace violence.
- Such a failure may undermine a school district's immunity under the *Illinois Tort Immunity Act*. See *Mueller by Math v. Community Consolidated School District 54*, 678 N.E. 2d 660, 666-67 (Ill. App. Ct. 1997):
  - A school district was not immune from liability for the plaintiff's negligent hiring claim because it failed to comply with mandatory background check requirements before hiring the employee at issue.

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## Hiring, Training, and Supervision

- Workplace violence claims can arise when a school district fails to use reasonable care in the hiring, training, and supervision of personnel.
- It is critical that school districts have and use effective procedures to screen prospective employees, train employees in recognizing warning signs for violent behavior, and supervise employees at work.

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## Workplace Violence Prevention Policies



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## Workplace Violence Prevention Policies

- Policies should include:
  - A reference to the school district’s hiring policy and procedures, including criminal background checks as required by the *Illinois School Code* and reference checks.
  - A prohibition on violence, unauthorized weapons or firearms, and threats of violence in the workplace. Consider including specific examples of prohibited violent behavior, including threatening comments, gestures, or outbursts.
  - A statement that violent, abusive, or threatening behavior is grounds for discipline and any employee exhibiting this behavior may be immediately removed from the premises.

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## Workplace Violence Prevention Policies

- Policies should include:
  - A requirement that employees report any threat, instance of harassment or offensive conduct, or violent act observed or experienced at work.
  - Assurance that the school district will investigate all reports of workplace violence promptly and thoroughly.
  - Reference to the school district’s threat assessment procedures and team as required by the recent amendments to the *Illinois School Safety Drill Act*.

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## Threat Assessment Team, 105 ILCS 128/45

- The team must include an administrator, teacher, school counselor, school psychologist, school social worker, and law enforcement official.
- If a school district is unable to establish a threat assessment team with its own staff and resources, the school district may “utilize a regional behavioral threat assessment and intervention team that includes mental health professionals and representatives from the State, county, and local law enforcement agencies.”

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