



## **WORKPLACE VIOLENCE ISSUES AFFECTING ILLINOIS SCHOOL DISTRICTS**

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### **A. Introduction**

Workplace violence presents many issues for Illinois school districts, including prevention, responding to acts or threats of violence, and potential liability for the school district. This material is designed to provide a general overview of Illinois laws regarding workplace violence applicable to school districts, areas of potential concerns and liability, and recommendations for drafting effective workplace violence prevention policies.

### **B. Relevant Laws Regarding Workplace Violence**

#### ***1. Occupational Safety and Health Act***

The *Occupational Safety and Health Act*, 820 ILCS 219/1, *et seq.*, requires a public employer to “provide reasonable protection to the lives, health, and safety of its employees” and “furnish 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.” 820 ILCS 219/20. Employers who do not take reasonable steps to prevent or address potential hazards in the workplace can be cited and charged civil penalties.

On July 9, 2019, the Illinois Department of Labor issued guidance regarding the rising concern of workplace violence, including workplace violence in public schools. The guidance cites to the U.S. Occupational Safety and Health Administration’s definition of workplace violence, which includes “any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site.” The guidance recommends establishing a zero-tolerance policy toward workplace violence, as well as providing safety education for employees and encouraging employees to alert supervisors to any concerns about coworkers’ erratic or potentially dangerous behavior.

#### ***2. Illinois Workplace Violence Prevention Act***

In 2014, the Illinois State Legislature enacted the *Illinois Workplace Violence Prevention Act*, 820 ILCS § 275/1, *et seq.*, with the intention of “assist[ing] employers in protecting their workforces, customers, guests, and property by limiting access to workplace venues by potentially violent individuals.” 820 ILCS § 275/5. Under this Act, an employer may seek a workplace protection restraining order if:

Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

- (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.

820 ILCS § 275/15. A "credible threat of violence" is defined as "a statement or course of conduct that causes a reasonable person to fear for the person's safety at his or her workplace or for the safety of others at his or her workplace." 820 ILCS 275/10.

### **3. *Illinois School Safety Drill Act***

Most recently, the Illinois Legislature enacted new safety and threat assessment requirements for Illinois school districts. Public Act 101-0455 amends a variety of statutes, including the *Illinois School Safety Drill Act*, 105 ILCS § 128/1, *et seq.* Under this 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.

### **C. Potential Liability for Workplace Violence**

In formulating policies and procedures addressing workplace violence, school districts should consider potential liability to employees, students, and third parties should workplace violence occur. The list below is not exhaustive or necessarily comprehensive of all possible liability claims for workplace violence.

#### **1. *Failure to Respond to Threats of Violence***

A school district can be held liable for failing to effectively respond to threats of violence in the workplace. It is important that school officials take swift and consistent action when addressing personnel who threaten or engage in violent actions. A plaintiff could allege, for example, that a school district violated his or her Fourteenth Amendment right to substantive due process under the "state-created danger" theory. However, to succeed on this theory, a plaintiff must show: (1) the district, by its affirmative acts, created or increased a danger that the plaintiff faced; (2) the district's failure to protect the plaintiff from danger was the proximate cause of the injuries; and (3) the district's failure to protect the plaintiff "shocks the conscience" and "evinces a deliberate indifference to the rights of the individual." *King ex rel. King v. East St. Louis School Dist.* 189, 496 F.3d 812, 817–19 (7th Cir. 2007). Therefore, a plaintiff must meet a high burden to succeed on such a claim. School districts should nonetheless be sure to immediately respond to any known or reported acts or threats of workplace violence.

##### *a. 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. See *Wright v. City of Danville*, 174 Ill. 2d 391, 405 (Ill. 1996). An employee's actions fall within the scope of employment if: "(a) it is the kind he is employed to perform; (b) it occurs substantially within the authorized time and space limits; and (c) it is actuated, at least in part, by a purpose to serve the master." *Pyne v. Witmer*, 129 Ill. 2d 351, 359 (Ill. 1989).

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.

## **2. 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 is the clearest claim of liability for an incident of workplace violence. Such a failure can undermine a school district's tort immunity under the *Illinois Tort Immunity Act*, 745 ILCS 10/1-101, *et seq.*, and result in state or federal claims. For example, in *Mueller by Math v. Community Consolidated School District 54*, 678 N.E. 2d 660, 666-67 (Ill. App. Ct. 1997), the court held that a school district was not immune from liability against the plaintiff's negligent hiring claim because it failed to comply with mandatory background check requirements before hiring the employee at issue. Therefore, it is essential for Illinois school districts to comply with the *Illinois School Code's* background check requirements when hiring new employees.

## **3. Negligent Hiring and Supervision**

Liability can be grounded on allegations that an employer failed 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 and train employees in recognizing warning signs for violent behavior. The *Illinois Tort Immunity Act*, 745 ILCS 10/1-101, *et seq.*, may provide some protections for school districts in this area.

## **D. Drafting Workplace Violence Prevention and Threat Assessment Policies**

### **1. Workplace Violence Prevention Policies**

In addition to regular training and dissemination of a school district's clear message of zero tolerance for violence, a school district should include the following provisions in its Workplace Violence Prevention Policies:

- 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 employees may be removed from the premises and subjected to disciplinary action up to and including discharge.
- A requirement that each employee must 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.
- Threat assessment procedures as required by the recent amendments to the *Illinois School Safety Drill Act*, 105 ILCS § 128/1, *et seq.*

## **2. Development of a Threat Assessment Team**

The recent amendments to the *School Safety Drill Act* require school districts to implement a threat assessment procedure that includes a threat assessment team. 105 ILCS 128/45. The team must include an administrator, teacher, school counselor, school psychologist, and school social worker who are employed by the school district and available to serve. In addition, the threat assessment team must include at least one 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.” 105 ILCS 128/45 (a).