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How the new Workplace Violence Prevention Act impacts local governments

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The Workplace Violence Prevention Act (WVPA or "Act"), Public Act 098-0430, became effective on January 1, 2014. The Act enables most employers, including local governments, to seek an order of protection (OP) on behalf of employees in certain situations. The WVPA can be utilized by the local government if one of its employees has already suffered violence (including harassment and stalking) or received a "credible threat of violence" at the place of work, and if the actual or threatened violence can be reasonably foreseen to occur at the place of work.

What the Act defines as a "credible threat of violence" is a "statement or course of conduct that does not serve a legitimate purpose and that causes a reasonable person to fear for the person's safety or for the safety of the person's immediate family." An obvious scenario would be if a public works employee strikes or threatens to strike another employee with a construction tool. The Act allows the government unit to obtain an OP against the offender, on behalf of its employee(s), because the threatened violence clearly pertains to the workplace.

The WVPA is particularly relevant to government employees, who are statistically more than three times as likely to be victims of workplace violence than private sector employees. According to Bureau of Justice workplace violence statistics, more than 1 of every 50 public sector employees will be a violent crime victim in a given year based on a ten year predictive analysis.¹

Law enforcement and security workers comprise more than half of the violent occurrences against government employees.²

Even factoring out law enforcement and security workers, however, the rate of violence against government employees is still nearly double that of private sector employees.³ Mental health workers have the next highest rate of workplace violence among government employees at just over 8.7 percent.⁴ Despite the seemingly high rate of violence against government employees, the rate has dropped precipitously since the mid-1990s when the Bureau of Justice reported a rate over 67.2 percent for law enforcement and security personnel.⁵

To obtain an order of protection, an employer must file an affidavit that articulates that violence or a credible threat of violence has occurred and that "great or irreparable harm" has or is likely to be suffered. There would still also be a hearing before a circuit court judge, but the OP can be sought on an emergency basis.

A few questions arise out of the WVPA and its applicability to certain situations. One issue is that "place of work" is not defined, and so it is not clear if a village could seek an OP for an employee who would likely be targeted while conducting business travel, commuting to/from work, or working from home. A code enforcement officer, for example, may face actual violence or threats of violence that are only likely to be committed at a private citizen's place of residence or business.

Another interesting dynamic for local governments is that the definition of "employee" is extremely broad. Not only are regular, salaried workers identified as employees, but so are elected and appointed officials, anyone working for remuneration

by the local government, and "a volunteer, independent contractor, agency worker, or any other person who performs services for an employer at the employer's place of work." The definition seemingly extends to almost every scenario in which an individual is doing work for or performing a service for the local government. A volunteer raising funds for a municipal fireworks display, a government unit's contracted architect, and the worker on the private waste disposal truck that serves a municipality would seemingly all be included in this definition of employee.

The expansive definition of employee segues into another issue for local governments: potential liability. All employers already have a general duty to protect employees from known dangerous situations, including those arising from an identified violent person: employee, resident or visitor. OSHA also provides requirements for ensuring a work environment free from identifiable dangers and penalties for failing to comply.⁶ Yet the language of the WVPA makes obtaining an OP permissive not mandatory: the employer "may" obtain an OP. To what extent does a local government obtaining an OP indicate the employer took reasonable measures to protect its employee if that employee suffers a violent act? Conversely, can failure to seek an OP for an employee be used as evidence against a municipality for failure to take available steps? Until courts have applied the WVPA to actual cases, some of these issues will remain unclear.

A best practice will be for a local government to seek an OP on behalf of employees in any situation that it can at least arguably obtain one. Because the Act includes an af-

fidavit requirement attesting to the fact that there is “reasonable proof” that violence or a threat of violence has occurred, however, it would be inappropriate to file an OP on a feeling or hunch without some actual evidence. Regardless, the assumption should be that the duty to protect employees from

foreseeable harm does not end by obtaining an OP, and that an order of protection is simply one of many available steps to prevent foreseeable harm to employees that should be integrated into a broader workplace violence prevention policy. ■

1. “Workplace Violence Against Government Employees, 1994-2011,” Erika Harrell, U.S. Dept. of Justice, Office of Justice Programs, April 2013.
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. 29 U.S.C.A. §654.

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