

Addressing Domestic Violence in the Workplace

By Alex H. Sitz III

Although domestic violence can be perpetrated against both men and women alike, studies have reported that one in four women will be a victim of domestic violence at some point in her life. Reports from the U.S. Department of Labor have suggested that 96% of working domestic violence victims believe that domestic violence has affected their jobs. Each year, it is reported that domestic violence causes victims to miss more than 170,000 days of work.

With the serious impact that domestic violence can have on the workplace, what can we do as advocates for our clients, or simply as employers of these victims? In Wyoming, there are several avenues to help us address the problem and keep perpetrators at bay. The first is likely the simplest. In Wyoming, an owner or occupant, or his agent, or a peace officer can provide notice to a perpetrator that he is not authorized to enter the workplace premises. This is tricky because most victims don't own or lease the workplace property upon which they are trying to prevent entry. This scenario is when having an understanding employer is beneficial. With an understanding employer it is a simple procedure to put a perpetrator on notice either verbally, in writing, or with a formal notice through the local law enforcement center that they are not welcome to enter the property where the victim is employed. And when the day comes that the perpetrator enters the property in opposition to a proper trespass notice then most law enforcement officers will have little to no tolerance for the same, and most likely it will result in a formal arrest of the perpetrator. For a refresher of the notification requirements see Wyoming Statute § 6-3-303.

Another avenue to assist a victim is to seek a formal domestic violence protection order from your local circuit court judge. The procedure for this can be found in Wyoming Statutes §§ 35-21-101 through 111. This is a much more formal process and involves filing a petition with the local circuit court, and if the perpetrator contests the entry of an order then a court hearing is required to get the pro-

tection order. The general requirements of this statute require that the victim and perpetrator be married, formally married, living together as if married, or formally living together as if married. There also has to be "domestic abuse" which encompasses physical abuse, attempting to cause physical abuse, unreasonably restraining the liberty of the victim, placing the victim in reasonable fear of physical harm, or causing a victim to engage involuntarily in a sexual act. Note that verbal abuse (no matter how vile it may be) does not qualify for a domestic violence protection order. Once established by a preponderance of the evidence a domestic violence protection order can do a multitude of things, including but not limited to, refraining the perpetrator from further abusing or contacting the victim (including at the workplace) for up to a one (1) year period, it may also award possession of a residence to a victim, grant temporary custody of children to the victim, set forth a visitation schedule between the perpetrator and the children, grant temporary child and spousal support to the victim, place a restraining order on property, order the perpetrator to counseling, order medical costs from the physical abuse, and award attorney fees for prosecuting the matter. Once again, violation of a protection order generally receives good attention from your local law enforcement office and will most often result in a formal arrest and charge under Wyoming Statute § 6-4-404.

What happens when a perpetrator does not commit nor threaten physical abuse, but simply engages in some manner of conduct that is meant to harass? This could be placing a victim under surveillance while at work, or making obscene phone calls to the victim at her workplace, or calling the victim's employer to tell them mean and terrible things about the victim. In these situations a victim can also seek assistance in the form of a stalking protection order. The stalking protection order procedure can be found in Wyoming Statutes §§ 7-3-507 through 511, and generally allows a protection order due to some form of harassment by the perpetrator.



The harassing behavior generally has to be more than one isolated incident, and this process is similar to the domestic violence protection order in that a formal petition must be filed with the circuit court and if contested then a court hearing is held. If granted the stalking protection order can order the perpetrator from having further contact with the victim, refrain the perpetrator from further acts of stalking, and can make them stay away from the victim's home, school, and place of employment. These orders can also be made effective for up to a one (1) year period, and violation of them will typically receive a good response from local law enforcement with a formal arrest and charge under Wyoming Statute § 7-3-510(c), or potentially even a felony level stalking charge under Wyoming Statute § 6-2-506(e).

If your client or employee is going through a divorce proceeding then remember that Wyoming district court judges are vested with a wide range of discretion in these types of cases and may even be willing to grant some sort of no-contact order by and through the divorce proceeding itself. Although these orders do not get as much attention from your local law enforcement officer if violated they can result in a contempt finding with sanctions by the district court judge to include a monetary fine or jail sentence.

Some other helpful information to know is that since July 1, 2011 residents of Wyoming who meet the six (6) month residency requirements can carry a concealed handgun anywhere legally permitted within Wyoming *without* a Wyoming Concealed Firearms Permit. They do not have to obtain any type of permit/license from the

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Brown and Greear and Senators Burns, Christensen, Driskill, Geis, Hicks and Kinskey. This legislation has been considered for a number of years but never passed. HB 108 codifies current case law regarding trespass and retains the protections for children. The bill passed the House with no amendments. Efforts to amend HB 108 failed in the Senate and the bill passed. WTLA monitored.

SF 12 Trespassing to Collect Data sponsored by the Joint Judiciary Interim Committee. The Committee studied this issue during the interim and moved SF 12 forward. The bill creates the crime of trespassing to unlawfully collect resource data punishable by imprisonment of up to six months and a fine up to \$5000 for a first offense and imprisonment of up to ten years and a fine up to \$5000 or both for subsequent violations. The bill also requires the resource data to be expunged and precludes the data from being admissible in any civil, criminal or administrative proceeding other than prosecution for violation of the act. While there were a number of amendments, the bill passed the House and Senate. WTLA monitored.

SF 80 Trespassing to Collect Data-Civil Cause of Action was sponsored by Senators Hicks, Christensen, Driskill and Kinskey and Representatives Baker, Halverson and Miller and was a companion bill to SF 12. The legislation provides for a civil cause of action for trespassing to unlawfully collect resource data. Under this bill, the person unlawfully trespassing to collect data will be liable for all consequential and economic damages caused by the trespass and litigation costs which include reasonable attorney fees. The bill passed the Senate and the House. WTLA monitored.

SF 98 School Athletic Safety was sponsored by Senators Landen, Anderson, Bebout and Coe and Representatives Greear and Harshman. The legislation initially amended the Recreation Safety Act adding wrestling, and cheerleading to the list of sporting activities listed in the act and the failure to implement or inadequacy of concussion related protocols to the definition of assumption of risk. The bill was amended in the Senate and passed but failed in a 4-4 vote in the House Education Committee. SF 98 was revived in the House and re-referred to the Appropriations Committee where it was amended again to include athletic organizations in the definition of provider. The House deleted the additional



language regarding protocols and added rodeo to the list of sporting activities. The final legislation expands the definition of provider and adds wrestling, cheerleading and rodeo to the list of activities. WTLA opposed the original version of the bill and monitored amendments and changes through the process.

HB 180 Child Interviews-Neglect and Abuse Cases was sponsored by Representatives Krone, Burkhart, Clem, Connolly, Hunt, Reeder and Walters and Senators Coe, Cooper, Landen, Peterson and Rothfuss. HB 180 provided that no information, including recorded interviews of a child in any civil proceeding would be disclosed except upon order of the court. Additionally the bill directed the court to consider alternatives to production of a copy of any interview including denying the request for production; requiring certification that no copies would be made available to the client; allowing a recording to be presented to counsel and their client without making a copy available. WTLA opposed the bill in its original form and worked with the sponsor on compromise language which was adopted in conference committee during the last week of the legislature.

A myriad of other issues were addressed, repeal of the death penalty, custody rights in sexual assault cases, parental rights, religious freedom, many wildlife and hunting bills and more. If you are interested in reviewing legislation that was filed this year and how legislators voted, *The Online Home of the Wyoming Legislature* is an excellent site for legislative information – <http://legisweb.state.wy.us/lisoweb/session/>

When we think of how far Wyoming has come since its capitol was first inaugurated, we should remember its territorial coat of arms and motto: "Let Arms Yield to the Gown." Our current wars of policy are not fought on battlefields, but in chambers and meeting rooms. It will be healthy progress and something to look forward to when those spaces are improved so that the people's business can be conducted with the people's full participation. 🍷

Tales from the Trenches

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as an odd ruling the Court decided that Mr. Smothers was too disabled or would become too disabled to work in the future, so it declined to award front pay. This decision was based in large part upon an isolated statement in a 2010 medical record that the doctor would support Mr. Smothers if he applied for disability. He never did and has been consistently working at another job since the fall of 2010. While we could have appealed that issue, we had had enough. When prejudgment interest and attorney fees and costs were also awarded the ultimate judgment was in excess of \$1,750,000.00. I am happy to say that judgment has been satisfied and the case is closed. It was a long and arduous battle, but aren't they all? 🍷

notes

- 1 Ironically Solvay was given bad advice as there is a provision in the FMLA regulations that allows an employer to transfer an employee to a different position if their intermittent FMLA leave causes an undue hardship. Nevertheless, this advice gave them motivation to find some other way to get rid of Mr. Smothers.

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state to exercise their 2nd Amendment rights. Just be sure the employee who wishes to exercise this right does not work in a courtroom, a bar, a bank, a school or other location where such concealed carry is prohibited.

There are also a number of civil tort actions available to victims of domestic violence which are often overlooked, but should not be forgotten. These include suits for civil assault, civil battery, false imprisonment, and intentional infliction of emotional distress, among others. Often times it sends an appropriate message to the perpetrator when they stand to lose financially for their actions, and may deter future conduct aimed at the victim both inside and outside of the workplace. 🍷