

## **The Impact of Domestic Violence in the Workplace: Why Employers Should Pay Attention to the Ray Rice-NFL Controversy**

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Domestic violence in the world of sports reared its ugly head when a video of former Baltimore Ravens running back Ray Rice was released to the public. The video showed Rice knocking his then fiancée and now wife Janay Palmer unconscious with a single punch in an Atlantic City hotel elevator. The video is both shocking and disturbing. For many people, seeing the video was the first time they fully appreciated that domestic violence is a heinous act of violence.

Rice's assault and the National Football League's (NFL) handling of the matter have sparked a media firestorm. Rice was initially suspended by the NFL for only two games for conduct detrimental to the league. On September 8, 2014, in the wake of additional information arising in the months following the incident, including the release of the video of Rice punching Janay Palmer, Rice was indefinitely suspended by the NFL and released by the Baltimore Ravens.<sup>1</sup>

Rice has filed an appeal of his suspension claiming that he should not have been punished twice. The hearing for the appeal will take place November 5 and 6, 2014. Goodell has been ordered to testify at the hearing. Much of the focus will be on whether Goodell knew Rice punched Janay Palmer and whether Goodell saw the video tape or knew of its contents prior to issuing a suspension of only two games. Goodell insists that he only was privy to a video showing Rice dragging an unconscious Janay Palmer from the hotel elevator in February 2014.

Regardless of the outcome of the appeal, some good has resulted from the controversy. Goodell has admitted that he "didn't get it right" when he issued only a 2-game suspension to Rice, and as a further attempt to remedy this misstep, Goodell strengthened the current NFL domestic violence policy.<sup>2</sup> For example, in the new NFL domestic violence policy, first offenses will be disciplined with an unpaid six-game suspension, whereas second offenses will warrant lifetime bans.<sup>3</sup> Further, under the new policy, all players as well as league and team personnel will be required to undergo educational seminars about domestic violence and sexual assault during the next 30 day period.<sup>4</sup> The NFL also began airing a series of public service announcements in which NFL players urge the public to say "No more" to domestic violence.

The national attention on the Rice-NFL controversy and domestic violence is warranted. Studies show that more than 1 in 3 women (35.6%) and more than 1 in 4 men (28.5%) in the United States have experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime and about 1 in 4 women (24.3%) and 1 in 7 men (13.8%) have experienced severe physical violence by an intimate partner (e.g., hit with a fist or something hard, beaten, slammed against something) at some point in their lifetime.<sup>5</sup>

While recent headlines have focused on domestic violence in sports, these statistics show that it is a societal problem that far transcends sports. Employers of all sizes and in all industries should pay attention to the Ray Rice controversy, because domestic violence has a major

impact on the workplace. It can endanger the safety of workers, impact productivity, and expose an employer to liability.

### **Domestic Violence Can Lead To Violence and Abuse In The Workplace**

Domestic violence does not stay at the home. It often follows the victims to their place of work. It is not uncommon for perpetrators to pursue their intended targets at work, because the workplace is a location where they know they can find their victims and at certain hours. Once at the worksite, violence can occur. Even if there is no physical violence, the workplace can still be a source of serious emotional abuse.

In July 2014, a man entered a medical center complex in Spokane, Washington, and fatally shot his wife, before turning the gun on himself. The medical center was the wife's place of employment. There were apparently warning signs of domestic violence prior to the shooting. Reports confirmed that law enforcement officers had responded to the couple's home on a domestic service call in the past.

In 2007, Clara Riddles was murdered by her ex-boyfriend at the CNN complex. The shooting occurred at about 1:30 p.m. near the Omni Hotel, which is where Riddles had worked for about a year.

Dr. Marc McElhaney of Critical Response Associates, an international team of experienced psychologists and behavioral specialists who specialize in assessing and resolving threats of violence, conflict, and high-risk behavior, reports that, "Many people assume that all of our work is focused on employee-on-employee violence, but in actuality, domestic violence constitutes about 30% of our casework for our corporate clients. The reason for this is actually quite simple, when one thinks about it. An enraged husband or boyfriend (or wife/girlfriend) may not know where your employee is currently living, but he very clearly knows the details of her life for at least 8 hours of the day. He knows when she arrives at work, where she parks, when she leaves, the location of her office, etc. Based on my experience, I can almost guarantee that an abusive situation at home will eventually find its way into the workplace."

Sometimes the consequences are tragic. A Bureau of Labor Statistics report revealed that homicide is the second leading cause of death for women in the workplace. Approximately 15% of those deaths were caused by a current or former intimate partner. Dr. McElhaney offers the following explanation as to why domestic violence in the workplace is often serious: "Domestic-related incidents of violence in the workplace are among the more dangerous cases that we deal with. By the time that the perpetrator has decided to seek out his (or her) partner at her workplace, it has escalated to a dangerous and unpredictable level. He is enraged, irrational and is usually there to hurt someone - and it catches most of us by surprise. Other employees are often hurt or killed in the process, and the subsequent impact on the organization is enormous. When we conduct our "Workplace Violence Awareness" programs for employees, this is the issue that the employees themselves are most concerned about, because many of

them are acutely aware of other employees who have a potentially dangerous partner or spouse in the home.”

### **Domestic Violence Decreases Productivity and Increases Costs**

It is generally accepted that an employee’s personal problems can affect job performance. Certainly, domestic violence affects productivity. Battered women are often harassed at work causing them to arrive late, leave early, or not show up at all. According to the National Coalition Against Domestic Violence, domestic violence victims in the U.S. lose a shocking cumulative total of nearly 8 million days of paid work as a result of violence against them.<sup>6</sup> The total health care costs of family violence are estimated at hundreds of millions of dollars. Employers that provide health insurance for their employees are financially impacted by the medical costs associated with domestic violence.

### **Employers Have Legal Duties to Maintain Safe Workplaces**

In addition to the humanitarian concerns about the impact domestic violence has on its victims, domestic violence can create liability for the employer when it spills into the workplace. Workplace violence is a significant occupational health problem. Under OSHA’s “general duty” clause, employers have the obligation to maintain a safe work environment. Although there is no specific OSHA standard dealing with workplace violence, this general duty may include workplace violence.

In situations where workers’ compensation laws do not apply, a number tort claims could create potential liability including claims of negligence, negligent retention and supervision, and intentional infliction of emotional distress.<sup>7</sup>

Employers are experiencing increasing pressure from other sources to address the issue of workplace violence - to establish programs that will effectively identify and address the antecedents of violence before it escalates to a violent act, and to respond to those antecedents in a safe and effective manner. For example, the Society of Human Resources Managers (SHRM) and ASIS International (a professional security organization) have recently produced an American National Standard on “Workplace Violence Prevention and Intervention (2013),” which includes “intimate partner violence” as a critical workplace violence concern.

### **Employers May Have Legal Obligations to Provide Leave for Victims of Domestic Violence**

The Family and Medical Leave Act of 1993 (“FMLA”) may require employers with 50 or more employees to allow employees time off for reasons related to domestic violence, either because of the employee’s own serious health condition or to care for a qualifying family member with a serious health condition that resulted from domestic violence.<sup>8</sup> Under FMLA, eligible employees are entitled to take twelve workweeks of unpaid leave in a 12-month period for, among other things, “a serious health condition that makes the employee unable to perform the essential functions of his or her job,” or “to care for the employee’s spouse, child,

or parent who has a serious health condition.”<sup>9</sup> A “serious health condition” is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.<sup>10</sup> Serious health conditions under the FMLA may arise as a result of domestic violence to employees or their family members and as a result may be covered under the Act. For example, if an employee subject to domestic violence is required to undergo hospitalization overnight as a result of such domestic violence, the employee may be entitled to take FMLA leave.

Many jurisdictions have also passed legislation to increase protections for victims of domestic or sexual violence including permitting victims of domestic violence with time off from work or some type of leave for certain protected activities and prohibiting discrimination and retaliation against them.<sup>11</sup> See *e.g.*, Cal. Lab. Code §§ 230 and 230.1; Colo. Rev. Stat. § 24-34-402.7; D.C. Code §§ 32-131.01, 32-131.02; Fla. Sta. § 741.313; Haw. Rev. Stat. § 378-72; 820 Ill. Comp. Stat. §§ 180/20; K.S.A. §§ 44-1131, 44-1132; 26 Me. Rev. Stat. § 850; N.M. Stat. § 50-4A-1-8; N.C. Gen. Stat. § 50B-5.5, 95-270(a); N.J. Rev. Stat. § 34:11C-3; Or. Rev. Stat. § 659A.270-659A.285; and Wash. Rev. Code § 49.76, *et seq.*

For example, under California Labor Code section 230(c)<sup>12</sup>, an employer is prohibited from discharging or otherwise discriminating or retaliating against an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off from work in order to obtain, or attempt to obtain, any relief to help ensure the health safety, or welfare of the victim or his or her child, such as a temporary restraining order, a restraining order, or other injunctive relief.

Further, California Labor Code section 230.1(a) provides that an employer with 25 or more employees is prohibited from discharging or otherwise discriminating or retaliating against an employee who is the victim of domestic violence, sexual assault, or stalking for taking time off from work for any of the following reasons: (1) to seek medical attention for injuries caused by domestic violence, sexual assault, or stalking; (2) to obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking; (3) to obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking; or (4) to participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation. Under subsection (e) of the Code section, employees who are victims of domestic violence, sexual assault, or stalking are entitled to use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the terms of his or her employment, unless provided otherwise by a collective bargaining agreement. The Code also permits the employee to use unpaid leave, so long as it does not exceed the unpaid leave time allowed under the FMLA.<sup>13</sup>

Another recent example of a state taking steps toward increasing protections of domestic violence victims is Massachusetts. On August 8, 2014, Massachusetts passed “An Act Relative to Domestic Violence” into law. This legislation requires employers who employ 50 or more employees to allow an employee to take up to 15 days of leave<sup>14</sup> from work in any 12 month period if that employee, or his or her family member, is a victim of “abusive behavior”.<sup>15</sup> Such a

covered employer must also permit the employee leave if he or she is using the leave from work (1) to seek or obtain medical attention, counseling, victim services or legal assistance; (2) to secure housing; (3) to obtain a protective order from a court; (4) to appear in court or before a grand jury; (5) to meet with a district attorney or other law enforcement official; or (6) attend child custody proceedings or address other issues directly related to the abusive behavior against the employee or family member of the employee.<sup>16</sup> The Act also prohibits a covered employer from discharging or otherwise discriminating against an employee for taking such leave, and requires that the employee be restored to the employee's original job or an equivalent position upon return from leave.<sup>17</sup> Similarly, the Act states that an employee's accrued employment benefits prior to the date on which leave is taken cannot be lost as a result of taking leave under the Act.<sup>18</sup>

In view of the increased promulgation of laws mandating leave be provided to victims of domestic violence, employers should be aware of the potential duties they may have to provide unpaid or paid leave for employees who are victims of domestic violence based on the laws of their city and state to avoid potential liability. While there is no such legislation in the State of Georgia that requires employers to provide leave time for employees who are victims of domestic violence, considering the widespread threat of domestic violence and its spillover effects into the workplace, Georgia employers should consider providing a leave of absence for employees who are victims of domestic violence.

### **Employers May Have Legal Obligations to Provide Reasonable Accommodations for Victims of Domestic Violence**

Under the Americans with Disabilities Act ("ADA") and its 2008 Amendments, employers are prohibited from discriminating against or harassing employees based on an actual or perceived mental or physical impairment. The Equal Employment Opportunity Commission ("EEOC") has published guidance as to the application of the ADA to employees who are victims of domestic violence and has affirmatively found that the ADA may apply to impairments resulting from domestic violence, as well as dating violence, sexual assault, or stalking.<sup>19</sup> The EEOC Guidance provides a number of examples which may constitute unlawful discrimination under the ADA as a result of an employee's status as a victim of domestic violence, such as an employer searching an applicant's name online and learning she was a complaining witness in a rape prosecution and received counseling for depression and deciding not to hire the applicant on the concern that she may require future time off for continuing symptoms or further treatment of depression.<sup>20</sup>

Further, as a result of the ADA's broad view of what constitutes an "impairment," employers must be mindful of situations involving domestic violence that may create an affirmative obligation to provide reasonable accommodations for an actual disability.<sup>21</sup> For example, an employer may be required to accommodate an employee who develops major depression following abuse from a former partner, which is exacerbated by continuing to work in the same location as the former partner, by reassigning the employee to an available vacant position for which he is qualified at a different location.<sup>22</sup>

Similarly, there are a number of jurisdictions in the United States that also require employers to provide reasonable accommodations for victims of domestic violence.<sup>23</sup> For example, under Illinois' Victims' Economic Security and Safety Act, employers are prohibited from discriminating against an employee due to his or her status as a victim of domestic violence and are affirmatively required to make reasonable accommodations for the employee so long as they do not constitute undue hardship for the employer.<sup>24</sup> Such reasonable accommodations may include: transfer, reassignment, modified schedule, leave, a changed work telephone number, a changed work station, installation of a lock, or assistance in documenting domestic or sexual violence that occurs in the work place or work related settings.<sup>25</sup> *See also* Cal. Lab. Code §§ 230-230.1 (prohibiting employers from discriminating or retaliating against employees due to their status as a victim of domestic violence if employee provides notice or employer has actual knowledge).

## **Conclusion**

Domestic violence is a societal problem that has a significant impact on the workplace. Given the national attention to domestic violence it is likely that an employer's legal obligations to address domestic violence will increase. It is, therefore, incumbent that employers take measures to create a safe work environment for all workers, and become more aware of employees who may be the victims of domestic violence.

Consideration should be given to developing domestic violence policies that identify prohibited conduct and address how the company will assist employees who may need help and what discipline will be issued. Having a policy alone is not enough -- employers should further consider training supervisors about the policy and how to recognize and respond to potential incidents of domestic violence in the workplace. Because most employers do not have experience or expertise dealing with this issue, engaging an outside professional can be extremely helpful.

Dr. McElhaney, the author of "Aggression in the Workplace: Preventing and Managing High-Risk Behavior" writes that, "There has always been a belief among employees and managers that we should not discuss or inquire about personal issues while at work. However, the issue of domestic violence is so prevalent and such a critical and potentially lethal safety issue, we can no longer continue with that approach. In the prevention programs that we have developed, we specifically train employees to report any situation at work or outside of work that could lead to harm to those in the workplace, particularly those involving potential domestic violence."

Employers that are proactive and provide support to employees who are victims of domestic violence can make a difference in the lives of their employees, improve productivity and further protect the general public.

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<sup>1</sup> Louis Bien, “A complete timeline of the Ray Rice assault case,” SB Nation, available at <http://www.sbnation.com/nfl/2014/5/23/5744964/ray-rice-arrest-assault-statement-apology-ravens> (Sept. 15, 2014).

<sup>2</sup> Louis Bien, “A complete timeline of the Ray Rice assault case,” SB Nation, available at <http://www.sbnation.com/nfl/2014/5/23/5744964/ray-rice-arrest-assault-statement-apology-ravens> (Sept. 15, 2014).

<sup>3</sup> *Id.*

<sup>4</sup> Katie Sharp, “NFL announce new domestic violence policy,” SB Nation, available at <http://www.sbnation.com/nfl/2014/8/28/6079465/nfl-announces-new-domestic-violence-policy> (Aug. 28, 2014).

<sup>5</sup> CDC, “The National Intimate Partner and Sexual Violence Survey” available at [http://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>6</sup> CDC, “Intimate Partner Violence: Consequences,” available at <http://www.cdc.gov/violenceprevention/intimatepartnerviolence/consequences.html>; “Keeping America’s Women Moving Forward: The Key to an Economy Built to Last,” The White House Council on Women and Girls, available at [http://www.whitehouse.gov/sites/default/files/email-files/womens\\_report\\_final\\_for\\_print.pdf](http://www.whitehouse.gov/sites/default/files/email-files/womens_report_final_for_print.pdf) (Apr. 2012). The Centers for Disease Control also estimates that domestic violence costs the United States \$8 billion a year in lost productivity and health care costs. *Id.*

<sup>7</sup> ABA “Employment Law and Domestic Violence: A Practitioner’s Guide” available at [http://www.americanbar.org/content/dam/aba/migrated/domesticviolence/PublicDocuments/AB\\_A\\_CDV\\_Employ\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/domesticviolence/PublicDocuments/AB_A_CDV_Employ_authcheckdam.pdf).

<sup>8</sup> *See* “Frequently Asked Questions and Answers About the Revisions to the Family and Medical Leave Act,” Department of Labor, available at: <http://www.dol.gov/whd/fmla/finalrule/NonMilitaryFAQs.pdf>.

<sup>9</sup> 29 U.S.C. § 2612(a)(1).

<sup>10</sup> 29 U.S.C. § 2611(18).

<sup>11</sup> The following states require private employers to provide unpaid leave to victims of domestic or sexual violence: Arizona, Arkansas, Colorado, Connecticut, Florida, Hawaii, Illinois, Kansas, Maine, Massachusetts, New Jersey, New Mexico, North Carolina, Oregon, Virginia, and Washington. The following jurisdictions require covered employers to provide paid leave to such victims: California; Connecticut; Washington, D.C.; Jersey City, New Jersey; New York City, New York; Philadelphia, Pennsylvania; Portland, Oregon; and Seattle, Washington. *See* Joanne Deschenaux, “Domestic Violence Victims Granted Leave Rights Under State Law,” Society for Human Resource Management, available at <http://www.shrm.org/legalissues/stateandlocalresources/pages/domestic-violence-state-law.aspx> (October 1, 2014).

<sup>12</sup> California Labor Code sections 230(e)-(f) also provide increased protections to employees who are the victims of domestic violence by requiring reasonable accommodations for such victims upon request, including a transfer, reassignment, modified schedule, assistance in documenting domestic violence, sexual assault, or stalking that occurs in the workplace, an implemented safety procedure, or another adjustment to the job structure, workplace facility, or work requirement, for those employees who disclose their status as a victim of domestic violence, sexual assault, or stalking. Further, this section provides that an employer is prohibited from discharging or otherwise discriminating or retaliating against an employee who is the

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victim of domestic violence, sexual assault, or stalking, where the employee provides notice to the employer of his or her status as a victim, or the employer has actual knowledge of the status. *See* Cal. Lab. Code § 230(e).

<sup>13</sup> Similarly, the code does not provide a right for unpaid leave time in addition to the unpaid leave time permitted by FMLA. *See* Cal. Lab. Code section 230.1(f).

<sup>14</sup> The Massachusetts Act specifically requires that an employee seeking leave as a result of domestic violence must exhaust all annual or vacation leave, personal leave and sick leave available to the employee prior to requesting or taking leave available under the Act, unless the employer specifically waives the requirement. *See* Mass. Gen. Laws ch. 149, § 52E(g).

<sup>15</sup> Mass. Gen. Laws ch. 149, § 52E(b)(i). “Abusive behavior” is defined as “(i) any behavior constituting domestic violence, (ii) stalking in violation of section 43 of chapter 265, (iii) sexual assault, which shall include a violation of sections 13B, 13B1/2, 13B3/4, 13F, 13H, 22, 22A, 22B, 23, 23A, 23B, 24, 24B, 26D, 50 or 51 of chapter 265 or sections 3 or 35A of chapter 272 and (iv) kidnapping in violation of the third paragraph of section 26 of chapter 265.” Mass Gen. Laws ch. 149, §52E(a). This Act only applies where the employee seeking leave under the Act is not the perpetrator of the abusive behavior against the employee’s family member. *Id.* at § 52E(b)(iii).

<sup>16</sup> Mass. Gen. Laws. ch. 149, § 52E(b)(ii).

<sup>17</sup> Mass. Gen. Laws. ch. 149, § 52E(i).

<sup>18</sup> *Id.*

<sup>19</sup> *See* “Questions and Answers: The Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic or Dating Violence, Sexual Assault, or Stalking,” EEOC Publications, available at [http://www.eeoc.gov/eeoc/publications/qa\\_domestic\\_violence.cfm](http://www.eeoc.gov/eeoc/publications/qa_domestic_violence.cfm).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Examples of jurisdictions with such a requirement include, but are not limited to: California, Hawaii, Illinois, New York, Oregon, and Rhode Island.

<sup>24</sup> 820 Ill. Comp. Stat. §§ 180/30.

<sup>25</sup> *Id.* at §180/30(b)(3).