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## Addressing Domestic Violence in the Workplace: An Employer's Responsibility

Jill C. Robertson\*

*Amy's husband occasionally beat her so badly that she was unable to go to work. And when she was on the job, he harassed her with up to thirty telephone calls per day. Amy often wore long-sleeved clothing and dark glasses to conceal the bruises. She was afraid to get help because of what her husband might do to her or their three young children. Concerned that she missed several days of work in the past few months and that she seemed distracted at staff meetings, a manager fired Amy when she was reluctant to explain her work performance.*

*When Deann broke up with her abusive boyfriend, he followed her to and from work each day and sent her threatening letters. Deann obtained a restraining order, told her boss about the threats and asked for assistance. Though sympathetic, the employer said there was, unfortunately, nothing he could do to help because it was not the corporation's policy to be involved in family affairs. One evening after work, Deann's ex-boyfriend gunned her down in the building entryway.*

### Introduction

These fictitious examples illustrate what women<sup>1</sup> in abusive relationships might encounter in the workforce. Traditionally a private "family matter" to be handled behind closed doors, domestic violence<sup>2</sup> has recently become more publicly visible, striking

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\* J.D., University of Minnesota Law School, expected 1999; B.A., Iowa State University, 1996. I gratefully acknowledge Professor Stephen Befort and *Law & Inequality* editors Ethan Lauer, Shannon Berg and Bonnie Kim for their assistance. I especially thank Jason Schulte for his patience, encouragement and support.

1. Though rare, domestic violence may occur between same sex couples or by women toward men. See Joan Zorza, *Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women*, 29 FAM. L.Q. 273, 273 n.1 (1995). Because 95% of domestic violence victims are women and most perpetrators are men, this Article will refer to victims and abusers in a generalized, gender-specific manner. See Battered Women Employment Protection Act, S. 367, 105th Cong. § 2 (1997).

2. Domestic violence is "a pattern of behavior that includes the use or threat of violence for the purpose of gaining power and control over the victim." Birgit

beyond the confines of home.<sup>3</sup>

This Article explores the effects of and employers' interests in workplace domestic violence. Part I introduces the problem of abuse with emphasis on the causes and effects of workplace domestic abuse. Part II explains why workplace domestic abuse is so difficult to address, and why both employers and employees are hesitant to acknowledge it. Part III identifies legal and policy reasons why employers should respond to domestic violence in the workplace. Upon understanding the financial, legal and societal importance of addressing workplace domestic violence, employers can implement strategies to help combat the public epidemic. Finally, Part IV explores how employers can cope with and help prevent workplace domestic violence and its potentially devastating effects.

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Schmidt am Busch, *Domestic Violence and Title III of the Violence Against Women Act of 1993: A Feminist Critique*, 6 HASTINGS WOMEN'S L.J. 1, 19 (1995). In its broadest sense, domestic violence involves more than criminal acts of assault and battery. "Abuse includes physical, sexual, psychological and economic violence and violence toward objects or pets that belong to the abused person." *Id.*

Actual violent incidents are only part of a victim's trauma. The longer-lasting impact of domestic violence includes a higher risk of future rape, miscarriage, abortion, alcohol and drug abuse, attempted suicide and general mental illness. See EVE S. BUZAWA & CARL G. BUZAWA, *DOMESTIC VIOLENCE: THE CRIMINAL JUSTICE RESPONSE* 4 (2d ed. 1996).

The following excerpt from a letter written by a battered woman illustrates one victim's horrifying experience with domestic violence:

Beating should be distinguished from all other kinds of physical abuse—including being hit and shoved around. When I say my husband threatens me with abuse I do not mean he warns me that he may lose control. I mean that he shakes a fist against my face or nose, makes punching-bag jabs at my shoulder, or makes similar gestures which may quickly turn into a full-fledged beating.

I have had glasses thrown at me. I have been kicked in the abdomen when I was visibly pregnant. I have been kicked off the bed and hit while lying on the floor—again, while I was pregnant. I have been whipped, kicked and thrown, picked up again and thrown down again. I have been punched and kicked in the head, chest, face and abdomen more times than I can count.

I have been slapped for saying something about politics, for having a different view about religion, for swearing, for crying, for wanting to hav[e] intercourse.

I have been threatened when I wouldn't do something he told me to do. I have been threatened when he's had a bad day and when he's had a good day. . . .

Del Martin, *What Keeps a Woman Captive in a Violent Relationship? The Social Context of Battering*, in *BATTERED WOMEN* 33, 33-34 (Donna M. Moore ed., 1979).

3. "The cycle of violence that begins in the home is felt in every American community and every institution, in our schools, [and] more recently in our workplace . . ." *Combating Violence Against Women: Hearings on S. 1729 Before the Senate Comm. on the Judiciary*, 104th Cong. 6 (1996) [hereinafter *Hearings*] (statement of Janet Reno, U.S. Attorney General).

## I. Scope of the Problem

Since the 1970s, domestic abuse has become a widely recognized social ill,<sup>4</sup> but its effect on the workplace is a relatively new realization.<sup>5</sup> This section will present the problem of workplace domestic violence, examine why it occurs and discuss the effects of domestic violence on the job.

### A. Defining Workplace Domestic Violence

Acts of workplace violence fit into one of the following categories: "1) robbery, 2) *domestic or misdirected 'affection,'* 3) employer-directed violence and 4) terrorism and hate-crimes."<sup>6</sup> The violent acts are "domestic" when committed by a victim's intimate acquaintance, such as a present or former partner.<sup>7</sup> The phrase "workplace domestic violence" as used in this Article encompasses violent acts actually occurring on the job site, as well as the workplace effects of violence perpetrated outside of the employment sphere.

Acts of assault or battery do not have to occur on the employer's premises for domestic violence to affect the workplace.<sup>8</sup> For example, batterers often make working impossible for their victims by harassing them with telephone calls or electronic mail messages.<sup>9</sup> Abusers may also withhold money or transportation to render victims unable to get to work, or they may leave obvious facial bruises that make victims too embarrassed to be seen by co-workers.<sup>10</sup> In stalking<sup>11</sup> situations, the perpetrator may enter the

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4. See Edward S. Snyder, *Remedies for Domestic Violence: A Continuing Challenge*, 12 AM. ACAD. MATRIMONIAL LAW. 335, 337-38 (1994) (finding that feminist advocacy in the 1960s and 1970s first brought domestic violence to the public's attention and forced legislative change).

5. See Simon J. Nadel, *Employers Reluctantly Confront Taboo Subject and Workplace Repercussions*, 13 BUREAU OF NAT'L AFF. EMPLOYEE REL. WKLY. 983, 983 (1995).

6. Susan L. Pollet, *Violence in the Workplace: Are Employers Legally Responsible?* 22 WESTCHESTER B.J. 133, 134 (1995) (quoting Richard Blow, *Stamped Out*, THE NEW REPUBLIC, Jan. 10-17, 1994, at 12) (emphasis added).

7. See BUZAWA & BUZAWA, *supra* note 2, at 4.

8. See generally Nadel, *supra* note 5 (describing the effects of domestic violence at work).

9. See Ida L. Castro, *Domestic Abuse: A Workplace Hazard*, VIOLENCE AGAINST WOMEN ACT NEWS (U.S. Dep't of Justice Violence Against Women Office, Wash., D.C.), June/July 1997, at 3.

10. See *id.*

11. Stalking generally has the following three components: "(1) a course of conduct in which there is a repeated pattern of following or harassing another person; (2) making a threat to harm or acting in a threatening manner; and, (3) intent to cause harm or distress." Connie L. Michaels, *Employment Law Considerations*

premises or wait outside until the victim leaves the building.<sup>12</sup> These acts affect an employee's ability to work,<sup>13</sup> and they may be warning signals of a potential workplace hazard.<sup>14</sup>

### B. *The Prevalence of Workplace Domestic Violence*

Attacks on women in the workplace reflect the epidemic of domestic abuse generally. In the United States, two to four million women suffer abuse by an intimate partner each year.<sup>15</sup> Domestic violence is the largest single cause of injuries to women, generating more than 20% of all hospital emergency room visits.<sup>16</sup> The National Domestic Violence Hotline has taken approximately 120,000 calls since its inception in 1996.<sup>17</sup> However, these statistics do not reflect the true magnitude of domestic abuse because many incidents are never reported.<sup>18</sup>

According to a Department of Justice study, approximately one million people are victims of violent workplace crimes each year.<sup>19</sup> Of the victims, women are more likely to be attacked by an acquaintance, and men are more likely to be attacked by a stranger.<sup>20</sup> Violence is the leading cause of death for women on the job.<sup>21</sup> As "one of the more lethal forms of workplace violence,"<sup>22</sup>

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*Stress Management and Elimination of Bias: The Risk Management Perspective*, 285, 482 (PLI Litig. & Admin. Practice Course Handbook Series No. H4-5249, 1996). Most stalkers are male and know their victims intimately. See *id.* at 481.

12. See *id.*

13. See Castro, *supra* note 9, at 3; see also *infra* note 33 and accompanying text (explaining that corporations lose \$3 to \$5 billion annually as a result of the effects of domestic violence).

14. See Nadel, *supra* note 5, at 984 (identifying domestic violence as a "precursor to workplace violence").

15. See Snyder, *supra* note 4, at 336; see also Zorza, *supra* note 1, at 275 (estimating that 3.9 million women are abused each year).

16. See Joan Zorza, *Mandatory Arrest for Domestic Violence, Why It May Prove the Best First Step in Curbing Repeat Abuse*, 10 CRIM. JUST. 2, 2 (1995).

17. See Bonnie J. Campbell, *A Message from Bonnie J. Campbell*, VIOLENCE AGAINST WOMEN ACT NEWS, *supra* note 9, at 1.

18. See Gretchen Schroeder, *National Hotline Helps Thousands*, VIOLENCE AGAINST WOMEN ACT NEWS, *supra* note 9, at 7 (emphasizing that violent incidents against women are severely underreported).

19. See BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NO. 148199, VIOLENCE AND THEFT IN THE WORKPLACE (1994) (studying the violent crimes of rape, robbery, aggravated assault and simple assault).

20. See *id.* (finding that 60% of female and 42% of male victims knew their offenders).

21. See Michele Weldon, *Reducing Risk: Safety at Work Can't Be Taken for Granted*, CHI. TRIB., Jan. 26, 1997, at 7.

22. Mark J. Maggio, *Keeping the Workplace Safe: A Challenge for Managers*, 60 FED. PROBATION 67, 69 (1996).

more than 13,000 workplace domestic attacks victimize women each year.<sup>23</sup>

### C. *Why Domestic Violence Affects the Workplace*

Domestic violence takes at least two avenues from home to work. First, a workplace spillover unavoidably occurs when an abuse victim is employed outside the home.<sup>24</sup> Domestic violence is not an "out of sight, out of mind" phenomena for victims. It is difficult, if not impossible, for them to ignore the threat of abuse for eight hours a day.<sup>25</sup> Second, because many women spend predictable hours on the job, abusers can track down their victims at work with relative ease<sup>26</sup> and continue the harassment at work.<sup>27</sup> Because job sites are such easy targets for batterers,<sup>28</sup> the abuse literally follows women into the workplace, creating an inescapable dilemma for victims and making their offices no safer than their violent homes.

### D. *The Effects of Workplace Domestic Abuse*

Workplace domestic violence creates potentially unsafe working conditions with costly consequences. According to a recent report from the U.S. Department of Labor, 96% of working domestic abuse victims said that violence affected their jobs.<sup>29</sup> Sixty percent of the victims reported that the violence made them late for work and 50% reported significant absences.<sup>30</sup> Each year, domestic violence causes victims to miss more than 170,000 days of work.<sup>31</sup> As a result of these encumbrances, 60% of the victims surveyed in the Department of Labor study were reprimanded and

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23. See Pat Swift, *Helping Employers To Work Against Domestic Violence*, BUFF. NEWS, Sept. 28, 1996, at C7.

24. See Esta Soler, *Domestic Violence: A Pressing Workplace Issue* (visited Mar. 2, 1998) <<http://www.igc.apc.org/fund/workplace/wrkplacesta.html>> (stating that a majority of abuse victims are working women).

25. See *infra* text accompanying notes 34-36 (demonstrating that victims are generally less productive at work because of abuse-related stress).

26. See Brenda Hegedus, *Managers Learn About Workplace Costs of Domestic Abuse*, ORLANDO SENTINEL, Oct. 2, 1996, at B1 (reporting that victims are "especially vulnerable at work," where batterers know where to find them).

27. See *supra* text accompanying notes 9-12 (stating that abusive partners or ex-partners may stalk their victims at work or harass them with telephone calls or electronic mail messages).

28. See Hegedus, *supra* note 26, at B1.

29. See Diane E. Lewis, *Firms Take Role in Solving Domestic Violence Problem*, BOSTON GLOBE, Mar. 18, 1997, at C16 (discussing the U.S. Department of Labor study).

30. See *id.*

31. See Swift, *supra* note 23, at C7.

30% lost their jobs.<sup>32</sup> The effects translate into significant losses for corporations, inflicting financial losses of three to five billion dollars each year.<sup>33</sup> The loss accrues from worker absenteeism, increased employee health care costs and reduced productivity as a result of abuse-related stress.<sup>34</sup> Symptoms of post-traumatic stress disorder, common in domestic abuse victims, include lack of concentration, avoiding challenges, lack of creativity, distrusting others, anxiety and difficulty sleeping.<sup>35</sup> Just one violent incident at work may result in debilitating costs to the employer, including loss of a valued employee, decreased productivity, medical bills, increased insurance rates, security improvements and attorneys' fees for liability lawsuits.<sup>36</sup>

In addition to corporate burdens, workplace domestic abuse also carries with it significant societal costs. Failing to address the problem may cause more women to leave their jobs in fear of an unsafe workplace, thus increasing the demand for public assistance and social services.<sup>37</sup> Firing the victims would inflict the same societal burdens. A study found that 60% of battered women on public assistance in Washington State stayed with their abusers out of financial necessity.<sup>38</sup> By depriving women of the opportuni-

32. See Lewis, *supra* note 29, at C16. For example, when a woman left work to obtain a court injunction against her abusive ex-boyfriend, she was fired from her assistant manager position at a golf course. See Christina Headrick, *Tarpon Employee Protests Her Firing*, ST. PETERSBURG TIMES, Dec. 18, 1996, at 3B. "It seems (Monley) has been revictimised. . . . First by the perpetrator and second by the employer. The message that was sent to her is that her safety was not important." *Id.* (quoting Lynn Rosenthal, Executive Director of the Florida Coalition Against Domestic Violence).

33. See Nadel, *supra* note 5, at 983.

34. See *id.*

35. See Sheryl L. Howell, *How Will Battered Women Fare Under the New Welfare Reform?*, 12 BERKELEY WOMEN'S L.J. 140, 145-47 (1997) (citing AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STAT. MANUAL OF MENTAL DISORDERS, 424-29 (4th ed. 1994)).

36. See Howard W. Timm & Callie J. Chandler, *Defense Personnel Security Research Center, Guidelines for Employers* (visited Oct. 7, 1997) <<http://amdahl.com/ext/lacp/pslcl.section1.html>> (determining that addressing workplace violence can be considerably less costly than the impact of a violent incident).

37. See Howell, *supra* note 35, at 145 ("[P]ublic aid may be the sole lifeline on which a woman escaping violence can hold.").

Victims transcend all socio-economic groups; even women from wealthy backgrounds may find themselves in financial straits when they leave their abusers. See Snyder, *supra* note 4, at 339.

38. See Battered Women Employment Protection Act, S. 367, 105th Cong. § 2 (1997); see also Martha F. Davis & Susan J. Kraham, *Article and Essay: Protecting Women's Welfare in the Face of Violence*, 22 FORDHAM URB. L.J. 1141, 1145 (citing WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, OVER HALF OF WOMEN ON PUBLIC ASSISTANCE IN WASHINGTON STATE REPORTED PHYSICAL OR SEXUAL ABUSE

ties to achieve the economic viability needed to leave their batterers, employers may push victims back into the abusers' lives, thereby perpetuating the cycle of violence.<sup>39</sup>

### *E. Responding to Workplace Domestic Violence*

The prevalence and resulting costs of domestic abuse-related problems in the workplace have forced many employers to confront this complicated issue.<sup>40</sup> Several progressive companies have established guidelines on how to address workplace domestic violence,<sup>41</sup> most corporations, however, have been slow to respond.<sup>42</sup> While a National Institute of Justice survey of employee assistance program (EAP) counselors across the nation found that most counselors have worked with domestic abuse situations in the past year,<sup>43</sup> many corporations remain ill-equipped to deal with the is-

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AS ADULTS 1 (1993)). Battered women's efforts to leave their abusers are "hampered . . . by the economic deprivation that frequently accompanies domestic violence . . ." *Id.* at 1146.

39. See Davis & Kraham, *supra* note 38, at 1146. The cycle of abuse in a typical violent relationship includes three stages: tension-building, explosion and calmness. See Lenore E. Walker, *How Battering Happens and How To Stop It*, in BATTERED WOMEN 59, *supra* note 2, at 64-65. The first phase includes verbal outbursts or minor abuse incidents, and the victim continually tries to calm the abuser as the tension mounts. See *id.* at 66-68. In phase two, which is usually short-lived, the abuser displays an act of out-of-control rage through battery. See *id.* at 68-69. Finally, in phase three, the batterer exhibits his love for the victim. See *id.* at 69. His apparent regret for harming her often convinces the woman to forgive him and to stay. See *id.* at 70. The calm "honeymoon" phase eventually turns into the tension-building phase, repeating the cycle. See *id.* at 71. The manipulative pattern is difficult to change. See *id.* at 71-72; see also Snyder, *supra* note 4, at 341 ("[T]he longer the violence continues, the more difficult the cycle is to break. . . . A traumatic bond forms between abuser and victim, linking them ever more inextricably.").

The cycle of abuse also has a generational component, in that battered women are 150 times more likely to abuse their children. Furthermore, a son who witnesses intra-familial violent acts is 10 times more likely to become a batterer. See BUZAWA & BUZAWA, *supra* note 2, at 12.

40. See Maggio, *supra* note 22, at 69 (finding that because domestic violence is especially personal, unpredictable and dangerous, the problem is uniquely difficult to address).

41. See, e.g., *infra* Part IV (describing some corporations' actions to prevent workplace domestic violence).

42. See *Some Companies Respond to Violence*, GREENSBORO NEWS & RECORD, Mar. 11, 1996, at B6 (reporting employers' slow reactions to addressing domestic abuse in the workplace); see also *infra* text accompanying note 45 (finding that few workplace violence policies include domestic violence).

43. See Nancy E. Isaac, *Corporate Sector Responses to Domestic Violence*, VIOLENCE AGAINST WOMEN ACT NEWS, *supra* note 9, at 5 (noting that 83% of EAP providers handled a situation where an employee had a restraining order against a partner, and 71% of the counselors dealt with an employee who was stalked by a past or current intimate).



sue.<sup>44</sup> Seventy-five percent of companies surveyed had workplace violence policies in place, but only 14% of the policies included domestic abuse.<sup>45</sup>

In a 1994 survey conducted by Liz Claiborne, Inc., 96 out of 100 employers believed that domestic violence should be handled primarily at home.<sup>46</sup> Even though 57% of employers surveyed identified domestic violence as a major societal problem and 49% recognized that the violence has harmful effects on job performance, only 12% of the corporations believed that workplaces should "play a major role in addressing the issue" of domestic violence.<sup>47</sup>

## II. The Difficulty of Combating Workplace Domestic Violence

The underlying difficulty of addressing domestic violence in the workplace is twofold. Employers may not take the threat of workplace domestic violence seriously because they ignore the destructive effects,<sup>48</sup> and employees may fear seeking help from or admitting abuse to employers.<sup>49</sup> This section discusses why employers fail to address domestic violence, and why employees are reluctant to actively seek help.

### A. Why Employers Avoid the Issue of Domestic Violence

The typical employer's "not my problem" attitude likely emanates from traditional views of domestic violence as a private, family affair.<sup>50</sup> Under the often-cited "rule of thumb" concept, wife beating was once permitted if the stick used were no thicker than the husband's thumb.<sup>51</sup> An 1874 court said that in cases of non-permanent injury, "it is better to draw the curtain, shut out the

44. *See id.*

45. *See id.* (this situation persists despite the report by approximately 25% of the counselors that companies have become more aware of domestic abuse in the past year). *See id.* at 6 (concluding that although employers realize the social impact of domestic violence, they have not yet seriously considered its effects in the workplace).

46. *See Nadel, supra* note 5, at 983 (referring to the Women's Work Program, Liz Claiborne, Inc., survey conducted by Roper Starch Worldwide, NY (1994)).

47. *See id.*

48. *See Isaac, supra* note 43, at 4.

49. *See id.* ("The results are mutually reinforcing—employers see little need to respond to a problem that appears rarely to occur, and women see little reason to reveal their abuse in an environment that does not communicate awareness and support around this issue.").

50. *See Nadel, supra* note 5, at 983; *see also infra* note 53.

51. *See Eva Jefferson Paterson, How the Legal System Responds to Battered Women, in BATTERED WOMEN* 79, *supra* note 2, at 81.

public gaze, and leave the parties to forget and forgive."<sup>52</sup> These patriarchal views, though outdated, are not completely extinct.<sup>53</sup> The sanctified home ideal has somehow sterilized abusive conduct into private "family problems."<sup>54</sup> Indeed, the personal nature of domestic abuse, "committed by people the victim knows and trusts,"<sup>55</sup> sets it apart from other violent acts. But employers should realize that domestic violence attacks are no less harmful and feared than acts of non-domestic violence.<sup>56</sup> The workplace mirrors societal attitudes about domestic violence<sup>57</sup> as employers tend to ignore the troubling reflection.<sup>58</sup>

Employers may blame victims for the abuse, wondering why they stay with their batterers.<sup>59</sup> This common oversimplification ignores the debilitating cycle of domestic abuse.<sup>60</sup> First, a victim may legitimately fear harm to herself or her children if she leaves the abusive home.<sup>61</sup> Leaving her abuser increases a victim's chances of being seriously harmed or killed by 75%.<sup>62</sup> The major reasons why some women do not leave their batterers are because they do not have a support network,<sup>63</sup> they are financially depend-

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52. *State v. Oliver*, 70 N.C. 60, 61-62 (1874).

53. See Nadel, *supra* note 5, at 983 ("People tend to think that abusing your family is a right . . . and Americans are particularly protective of their right to privacy.") (statement by Christel Nichols, Executive Director of House of Ruth).

54. See Walker, *supra* note 39, at 59 (stating that domestic abuse has been perceived as "an acceptable resolution to marital disagreements, as long as violence is contained within the home"); see also Zorza, *supra* note 16, at 2 (describing traditional police views of domestic violence as private matters).

55. *Hearings*, *supra* note 3, at 6 (statement of Janet Reno, U.S. Attorney General).

56. See Maggio, *supra* note 22, at 69 ("Few acts of violence are as dangerous and unpredictable as domestic violence.").

57. See MILDRED D. PAGELow, *WOMAN BATTERING: VICTIMS AND THEIR EXPERIENCES* 45 (1981) (asserting that domestic violence occurs largely because society tolerates it).

58. See Karen Burstein, *Naming the Violence: Destroying the Myth*, 58 ALB. L. REV. 961, 965 (1995) (stating that even if persons are aware of the abuse, they utilize instinctual denial mechanisms to turn their backs to the problem).

59. See Snyder, *supra* note 4, at 341 ("Why women do not 'just leave' these [abusive] relationships has long been a vexing question."); see also Zorza, *supra* note 1, at 274 (finding that the most-asked question about domestic violence is why women do not end the abusive relationships).

60. See Snyder, *supra* note 4, at 341-42 (finding that the longer the cycle of abuse continues, the more difficult it is for women to leave); see also *supra* note 39 and accompanying text (discussing the cycle of domestic abuse).

61. See Zorza, *supra* note 1, at 274 (Domestic violence "almost always escalates when the batterer discovers or believes that the victim is about to or actually has left him.").

62. See V. MICHAEL MCKENZIE, *DOMESTIC VIOLENCE IN AMERICA* 20-21 (1995).

63. See Snyder, *supra* note 4, at 341.

ent on the abuser, or they feel absolute helplessness.<sup>64</sup> Furthermore, contrary to common belief, most women *do* try to escape, but their efforts are thwarted either because their abusers find them or because they cannot financially survive.<sup>65</sup>

Additional reasons for employers' delayed reactions to potential violence may include a perceived significant cost of setting up safety precautions, apprehension of alienating male employees, reluctance to convey a potentially negative image of the company, and an assumption that victims will approach employers.<sup>66</sup>

### B. *Why Abuse Victims Are Reluctant To Seek Help*

Domestic violence victims are often unwilling to come forward with their abuse-related problems, and they may deny the violence when confronted.<sup>67</sup> A victim's possible fears include: 1) that the batterer may seek revenge if he discovers that she revealed information to the employer; 2) that she may be responsible for the abuse; 3) that the abuser, whom she may still care about, will be harmed; 4) that her employer may not care about or have time for her problems; and 5) that she will be fired.<sup>68</sup> Often, an abused woman isolates herself from family and friends, either because her abusive partner forces the separation with threats, or because the victim feels too ashamed to seek support.<sup>69</sup> Without external motivation and overt support from employers, employees will likely keep the issue of abuse private and hidden.

Employees' tendency to avoid the issue of domestic violence may also result from societal attitudes that stem from a history of weak law enforcement and lax criminal prosecution of batterers.<sup>70</sup> Traditionally, domestic violence victims did not have legal recourse

64. See *id.* at 341-42.

65. See Zorza, *supra* note 1, at 280 (citing CATHERINE KIRKWOOD, LEAVING ABUSIVE PARTNERS: FROM THE SCARS OF SURVIVAL TO THE WISDOM FOR CHANGE 9, 105 (1993)).

66. See Isaac, *supra* note 43, at 5 (relaying conclusions from 60 interviews of corporate professionals).

67. See Nadel, *supra* note 5, at 984 (reporting that employees often feel too humiliated to admit abuse).

68. See *Why Women Don't Tell Employers About the Abuse*, in VIOLENCE AGAINST WOMEN ACT NEWS, *supra* note 9, at 8 (citing Patricia R. Seller & Ellen Taliaferro, THE PHYSICIANS' GUIDE TO DOMESTIC VIOLENCE (1995)).

69. See Howell, *supra* note 35, at 143 (concluding that victims are unlikely to report abuse without an emotional support system).

70. See Zorza, *supra* note 16, at 2-3 (criticizing traditional police responses to domestic assault calls).

Note that only *physical* domestic assaults are considered "crimes." Psychological forms of domestic abuse are not covered by criminal laws. See Busch, *supra* note 2, at 10.

for their injuries because of interspousal tort immunity.<sup>71</sup> In an effort to preserve family privacy, the U.S. Supreme Court prohibited state interference in domestic assault cases.<sup>72</sup> Today, most states have abolished or limited the interspousal immunity rule,<sup>73</sup> but the privacy invasion stigma attached to domestic violence has not completely dissolved. Police may still avoid responding to domestic assault calls so that couples can work out "family problems" on their own.<sup>74</sup> In the courts, broad judicial discretion in issuing protective orders has frequently resulted in granting less relief than a victim requests.<sup>75</sup> Furthermore, without court and police support, protective orders are essentially ineffective.<sup>76</sup> The legal system has simultaneously invoked feelings of helplessness in victims and perpetuated dangerous confidence in batterers.<sup>77</sup> After the recent high-profile O.J. Simpson murder trial, some abusers

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71. See *Thompson v. Thompson*, 218 U.S. 611 (1910) (upholding interspousal tort immunity under the rationales of protecting the harmony of marriage and preventing a flood of unnecessary lawsuits).

72. See *id.*

73. See *Developments in the Law—Legal Responses to Domestic Violence*, 106 HARV. L. REV. 1528, 1531 n.20 (1993) [hereinafter *Developments in the Law*] (finding that only three states still uphold interspousal tort immunity: the doctrine has been completely abolished in 38 states and the District of Columbia, and partially abolished in nine states).

74. See Zorza, *supra* note 16, at 3 (discrediting the following myths that once deterred police officers from responding to domestic violence calls: 1) that domestic abuse calls were especially dangerous, 2) that victims could leave at any time, and 3) that women rarely pressed charges against their batterers); see also BUZAWA & BUZAWA, *supra* note 2, at 241 (recognizing that although many police departments have improved their domestic violence response policies in the past five years, not all departments' responses have changed significantly); see also, e.g., Martin, *supra* note 2, at 35 ("I called the police one time. They not only did not respond to the call, they called several hours later to ask if things had 'settled down.' I could have been dead by then!") (quoting a letter from a battered woman).

Arrest rates improved after the U.S. Attorney General recommended that police adopt arrest as their usual response to domestic assault calls. This recommendation followed a 1984 Minneapolis study finding that arrest most effectively deterred repeated domestic violence. See *Developments in the Law*, *supra* note 73, at 1536 (citing Lawrence W. Sherman and Richard A. Berk, *The Specific Deterrent Effects of Arrest for Domestic Assault*, 49 AM. SOC. REV. 261, 263 (1984)).

75. See BUZAWA & BUZAWA, *supra* note 2, at 193-95.

76. See *id.* at 200 (finding that, regardless of whether temporary restraining orders were in place, abuse did not stop in 60% of the abuse cases studied) (citation omitted).

For example, a Minnesota judge issued two arrest warrants to an abusive man for violating protection orders. Five days later, the man killed his ex-girlfriend at her workplace. See Chip Johnson, *Victim's Mother Sought Long Jail Term for Abuser: Slaying Suspect Flouted Protection Orders*, ST. PAUL PIONEER PRESS, Feb. 16, 1996, at 1B; see also Snyder, *supra* note 4, at 346 (stating that protection orders are often ineffective in deterring abuse or producing arrests).

77. See BUZAWA & BUZAWA, *supra* note 2, at 199-200.

have told their victims, "Go call the police—O.J. Simpson got off and I will too."<sup>78</sup>

Partly in response to low arrest rates for domestic violence calls,<sup>79</sup> Congress passed the 1994 Violence Against Women Act (VAWA).<sup>80</sup> The legislation enacted tougher penalties for abusers and implemented resources for victims.<sup>81</sup> In general, VAWA helped level the criminal assault playing field "by putting gender-motivated violence on equal footing with violent crime based on racial, religious, or political bias."<sup>82</sup>

### III. Legal and Policy Incentives for Employer Response

In addition to the corporate and societal costs discussed above,<sup>83</sup> the threat of legal liability and the motivation of sound public policy should convince employers to respond to workplace domestic violence issues. By protecting employees from domestic abuse, employers both safeguard their businesses and better their communities.<sup>84</sup>

#### A. Legal Liability for Failure To Address Domestic Violence

Employers may be legally obligated to protect their employees from workplace domestic violence. Thus far, out-of-court settlements have limited relevant case law and the development of legal theories.<sup>85</sup> The current settlement trend reflects employers'

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78. *Id.* at 200.

79. *See Hearings, supra* note 3, at 6 (statement of Janet Reno, U.S. Attorney General).

80. 42 U.S.C. § 13981 (1984).

81. *See id.* Title II of VAWA funds state pro-arrest policies, a national domestic violence hotline, abuse shelters, educational programs and research. *See id.* The Act also prevents abusers from escaping criminal charges by crossing state lines and validates state protective orders in all states. *See id.*

82. *Developments in the Law, supra* note 73, at 1545.

83. *See supra* Part I.D. (stating that workplace domestic violence causes \$3-5 billion in corporate losses, as well as significant public assistance and social services costs).

84. *See infra* Parts III.A-B. (discussing employers' legal and policy reasons for addressing workplace domestic violence).

85. *See* Telephone Interview with Roberta Valente, Staff Director, American Bar Association Commission on Domestic Violence (Oct. 9, 1997) (on file with the author); *see, e.g.,* Joseph Pereira, *Employers Confront Domestic Abuse*, WALL ST. J., Mar. 2, 1995, at B1. Francisia LaRose was killed by an ex-boyfriend at her job in Houston, Texas. *See id.* LaRose had told her employer that she had obtained a restraining order against the man, but the employer paid little attention. *See id.* At LaRose's request, her desk was moved, but it was still visible from the hallway. *See id.* at B10. LaRose's mother told a reporter that the employer did not take her daughter's fears seriously. *See id.* at B1. LaRose's parents sued State Mutual Life Assurance and building manager Duddleston Management for failure to protect

fear to go to court and face potential liability for third-party assaults against employees, according to Roberta Valente, Staff Director of the American Bar Association Commission on Domestic Violence.<sup>86</sup> Valente believes courts will begin holding businesses liable if employers know about the threat of violence.<sup>87</sup> For example, an employee may obtain a protection order against a domestic partner that includes a clause forbidding harassment at work.<sup>88</sup> If the employer is aware of the order, or if the employee asks for help, Valente believes the employer has a duty to respond by protecting the employee.<sup>89</sup>

By failing to protect their employees, employers may also violate the Occupational Safety and Health Act (OSH Act).<sup>90</sup> And depending on the exclusivity of state workers' compensation laws, victims of workplace domestic violence seeking legal redress against their employers could raise common law tort or contract claims, or statutory claims.

### 1. OSH Act's General Duty Clause

Although domestic violence begins at home, employers may become legally responsible when it enters the workplace.<sup>91</sup> The Occupational Safety and Health Administration (OSHA) could cite employers under the OSH Act's general duty clause,<sup>92</sup> which requires that an employer provide a workplace "free from recognized hazards that are causing or are likely to cause death or serious physical harm."<sup>93</sup> "Hazards" may be construed to include criminal

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their daughter. *See id.* The employer denied wrongdoing but settled the case for over \$350,000 before going to trial. *See id.*

86. *See* Telephone Interview with Roberta Valente, *supra* note 85.

87. *See id.*

88. *See id.*

89. *See id.*; *see also infra* Part III.A.3. (discussing employee tort claims against employers).

90. 29 U.S.C. §§ 651-655 (1970) [hereinafter OSH Act].

91. *See generally* Linda A. Sharp, Annotation, *Employer's Liability to Employee or Agent for Injury or Death Resulting from Assault or Criminal Attack by Third Person*, 40 A.L.R. 5th 1 (1996) (discussing an employer's potential duty to protect employees from third-person assaults).

92. *See Hearings, supra* note 3, at 74 (statement of Deborah E. Tjaden, DuPont Personnel Relations Consultant) ("We . . . recognize that much of what we deal with occurs outside of our normal business day. Nevertheless, we are held accountable by our leadership and [OSH Act's] general duty clause to prevent situations from entering our office buildings and plant facilities.")

93. 29 U.S.C. § 654(a)(1) (1970); *see also* National Realty & Constr. Co. v. Occupational Safety and Health Review Comm'n, 489 F.2d 1257, 1263 (D.C. Cir. 1973) (finding that the Secretary of Labor must identify "steps a cited employer should have taken to avoid citation, and . . . demonstrate the feasibility and likely utility of those measures" to show an OSH Act violation under the general duty

acts of violence, such as domestic assaults.<sup>94</sup> Industries should recognize workplace domestic violence as a hazard, particularly in light of the issue's recent publicity.<sup>95</sup> Because employers are obligated to provide employees with a safe workplace, OSHA can issue citations if foreseeable violence endangers workers, and the employer does not attempt to prevent it.<sup>96</sup>

Because citations invoke only limited penalties, employers may not be compelled to adhere to OSH Act standards.<sup>97</sup> In addition, the OSH Act does not provide a private cause of action for injured employees.<sup>98</sup> However, employers should be aware that employees may later use OSH Act violations as negligence per se or evidence of negligence in separate tort actions.<sup>99</sup>

OSHA exemplified its concern over workplace violence by issuing federal advisory guidelines for preventing violent acts in health care and social service industries.<sup>100</sup> Although OSHA constructed the guidelines only for the two industries where violent acts are most prevalent,<sup>101</sup> employers from all areas can utilize the

clause).

94. See 116 CONG. REC. 38,377 (daily ed. Nov. 23, 1970) (statement of Rep. Daniels).

A recognized hazard is a condition that is known to be hazardous, and is known not necessarily by each and every individual employer but is known taking into account the standard of knowledge in the industry. In other words, whether or not a hazard is "recognized" is a matter for objective determination; it does not depend on whether the particular employer is aware of it.

*Id.*

95. See Soler, *supra* note 24 (stating that weekly news reports relay stories of women killed at work by abusive partners).

96. See Michaels, *supra* note 11, at 432 (determining that OSHA may enforce advisory guidelines under the OSH Act's general duty clause).

97. See Ann E. Phillips, *Violence in the Workplace: Reevaluating the Employer's Role*, 44 BUFF. L. REV. 139, 145 (1996) (finding that preliminary citations for OSH Act's general duty clause violations range from \$750 - \$5000).

98. See John P. Luddington, Annotation, *Violation of OSHA Regulation as Affecting Tort Liability*, 70 A.L.R. 3d 962 § 3 (1978) (stating that courts do not recognize any private cause of action claims for OSH Act violations).

99. See, e.g., *Thoma v. Kettler Bros.*, 632 A.2d 725, 730 (Dist. Col. App. 1993) (finding that a violation constitutes evidence of negligence); *Johnson v. Interstate Power Co.*, 481 N.W.2d 310, 315 (Iowa 1992) (ruling that a violation constitutes negligence per se). *But see, e.g., Ellis v. Chase Communications*, 63 F.3d 473, 477 (Tenn. 1995) (violation does not necessarily constitute negligence per se). See generally Luddington, *supra* note 98 (explaining that courts are split on whether OSH Act violations constitute negligence per se or evidence of negligence).

100. See OCCUPATIONAL SAFETY & HEALTH ADMIN., U.S. DEPT OF LABOR, GUIDELINES FOR PREVENTING WORKPLACE VIOLENCE FOR HEALTH CARE AND SOCIAL SERVICE WORKERS (1996) [hereinafter OSHA GUIDELINES].

101. See *id.* at 1 (stating that workers in the health care and social services industries are assaulted more than employees in other employment areas) (citing Bureau of Labor Statistics (1993)). The OSHA Guidelines address violent acts by

information and apply it to their respective workplaces.<sup>102</sup> The guidelines suggest a zero-tolerance policy for workplace violence, including a prevention program that addresses: "(1) management commitment and employee involvement, (2) worksite analysis, (3) hazard prevention and control, and (4) safety and health training."<sup>103</sup> Employers may want to implement similar guidelines to avoid citations under the OSH Act's general duty clause.<sup>104</sup>

OSHA will not likely investigate noncomplying employers.<sup>105</sup> Instead, the agency intends to encourage employers to address the important issue of workplace violence.<sup>106</sup> However, if OSHA does not demand compliance, the potential effectiveness of the advisory guidelines is questionable.

Additional and more specific state safety regulations may encourage employers to address workplace domestic violence.<sup>107</sup> Some states have issued requirements<sup>108</sup> accompanying OSHA regulations that obligate employers "to do everything that is reasonably necessary to protect the life, safety and health of employees, including the furnishing of safety devices and safeguards, and the adoption of practices, means, methods, operations and processes reasonably adequate to create a safe and healthful workplace."<sup>109</sup>

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clients or patients, but employers may voluntarily broaden coverage by applying the guidelines to acts committed by a domestic partner.

102. See Michaels, *supra* note 11, at 432 (suggesting that all employers review the guidelines to deter workplace violence).

103. OSHA GUIDELINES, *supra* note 100, at 2. "The goal [of the guidelines] is to eliminate worker exposure to conditions that lead to death or injury from violence by implementing effective security devices and administrative work practices, among other control measures." *Id.*

104. See *id.* at v; see also Michaels, *supra* note 11, at 432 (stating that implementing the guidelines "create[s] a 'safe harbor'" from OSH Act citations for employers).

105. See Suzy Hagstrom, *Violence Captures OSHA's Attention: Workplace Incidents Are on the Rise and the Agency Wants To Help Reverse the Trend*, ORLANDO SENTINEL, May 23, 1996, at B1 ("We're not interested in doing a lot of heavy-handed enforcement to deal with this issue because it's a new issue and, frankly, we don't have the resources. We think education and outreach would be more effective.") (quoting OSHA Workplace Violence Coordinator Patricia D. Biles).

106. See *id.*

107. See Phillips, *supra* note 97, at 146-49 (stating that although OSHA may not prevent workplace violence, several states have passed legislation that effectively helps protect employees).

108. See CAL. LAB. CODE §§ 6400-6403 (West 1997); MINN. STAT. ANN. § 182.65 (West 1997).

109. Michaels, *supra* note 11, at 293-94 (describing general requirements of OSH Act's state law counterparts).



## 2. Workers' Compensation

Most states have adopted workers' compensation as the exclusive remedy for claims against an employer for an employee's injury or death at work.<sup>110</sup> Workers' compensation covers medical bills, lost wages and rehabilitation costs resulting from workplace injuries.<sup>111</sup> Injured employees may not sue under common law tort or contract theories, which provide considerably larger damage awards than workers' compensation provides.<sup>112</sup> State workers' compensation statutes generally preclude civil actions against an employer who fails to provide a safe workplace free from third-person attacks.<sup>113</sup>

An intentional tort exception to the workers' compensation exclusivity rule may arise if the employer's act is "genuinely' intentional, or the employer . . . acted deliberately with the specific intent to injure the employee."<sup>114</sup> Under New York's workers' compensation law, employees may choose to seek either civil damages or workers' compensation benefits for an intentional tort.<sup>115</sup> Most courts are reluctant to undermine the expediency<sup>116</sup> of the

110. See Pollet, *supra* note 6, at 135 (finding that 47 states require that employers obtain workers' compensation coverage, and that the insurance is voluntary in the three remaining states).

To be compensable under workers' compensation, the injury must "ar[ise] out of" and occur "in the course of employment." David Carl Minneman, Annotation, *Workers' Compensation Law as Precluding Employees' Suit Against Employer for Third Person's Criminal Attack*, 49 A.L.R. 4th 926, 938 (1987).

111. See MARK A. ROTHSTEIN & LANCE LIEBMAN, *CASES AND MATERIALS ON EMPLOYMENT LAW* 795 (3d ed. 1994).

112. See *id.* at 801 (stating that plaintiffs in common law actions may obtain punitive and compensatory damages for pain and suffering); see, e.g., *Eckis v. Sea World Corp.*, 134 Cal. Rptr. 183, 188 (Cal. Ct. App. 1976) (holding that the plaintiff's injuries occurred in the course of her employment, so that workers' compensation provided her exclusive remedy).

113. See generally Minneman, *supra* note 110.

Note that the OSH Act, discussed *supra* Part III.A.1., does not provide private causes of action, though it may affect workers' compensation and personal injury litigation. See ROTHSTEIN & LIEBMAN, *supra* note 111, at 863.

"Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any manner the common law or statutory rights, duties, or liabilities of employers and employees." 29 U.S.C. § 654(b)(4) (1970).

114. See Minneman, *supra* note 110, at 926 (examining intentional tort exception to workers' compensation exclusivity).

115. See Pollet, *supra* note 6, at 136 (citing *Jackson v. Frederick Richman & Co.*, 206 N.E.2d 350 (1965)).

116. The U.S. Chamber of Commerce outlined the following six objectives for workers' compensation:

- 1) Provide sure, prompt, and reasonable income and medical benefits to work-accident victims, or income benefits to their dependents, regardless of fault;

workers' compensation remedy, however, and thus construe the exception narrowly.<sup>117</sup>

Under some states' workers' compensation statutes, cases may fall within an assault exception.<sup>118</sup> If the attacker "intended to injure the employee for *personal* reasons," the victim may raise tort or breach of contract claims against the employer.<sup>119</sup> For example, in Indiana, a woman's boyfriend entered the plant where she worked and killed her.<sup>120</sup> Because the assault arose from the victim's personal life, the court deemed the case an assault exception to the exclusive remedy of workers' compensation.<sup>121</sup> The death did not "arise out of" the employment.<sup>122</sup> Workplace domestic violence attacks, by definition, involve attackers with personal vendettas against the victim. Therefore, in states with an assault exception, the court could excuse a plaintiff from workers' compensation and permit tort or contract claims if the victim is injured or killed on the job by a partner or ex-partner.

The following discussions of tort and contract claims assume that workers' compensation is not the exclusive remedy available to employees.

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- 2) Provide a single remedy and reduce court delays, costs, and workloads arising out of personal-injury litigation;
  - 3) Relieve public and private charities of financial drains incident to uncompensated industrial accidents;
  - 4) Eliminate payment of fees to lawyers and witnesses as well as time-consuming trials and appeals;
  - 5) Encourage maximum employer interest in safety and rehabilitation through an appropriate experience-rating mechanism; and
  - 6) Promote frank study of causes of accidents (rather than concealment of fault)—reducing preventable accidents and human suffering.

ROTHSTEIN & LIEBMAN, *supra* note 111, at 797 (quoting U.S. CHAMBER OF COMMERCE, 1994 ANALYSIS OF WORKERS' COMPENSATION LAWS vii (1994)).

117. See Minneman, *supra* note 110, at 932 (finding no case where the court invoked the intentional tort exception under this strict standard). *But see* Mandolidis v. Elkins Indus., Inc., 246 S.E.2d 907 (W.Va. 1978) (determining that an employer's willful, wanton or reckless misconduct may constitute deliberate intention and thus except the injury from workers' compensation exclusivity).

118. See, e.g., Williams v. Munford, Inc., 683 F.2d 938, 939 (5th Cir. 1982) (recognizing that torts committed by a third party based on a personal vendetta against the victim occur outside the employment relationship, and are thus exempt from workers' compensation); Yunker v. Honeywell, Inc., 496 N.W.2d 419, 424 (Minn. Ct. App. 1993) (noting an assault exception to the exclusive remedy of workers' compensation).

119. Yunker, 496 N.W.2d at 424 (emphasis added) (quoting MINN. STAT. § 176.011(16) (1986)).

120. See Peavler v. Mitchell & Scott Mach. Co., 638 N.E.2d 879 (Ind. Ct. App. 1994).

121. See *id.* at 882.

122. *Id.*

### 3. Tort Claims

Individuals may have a duty to protect others from third-party assaults where there is a special relationship<sup>123</sup> between parties and where the harm is foreseeable.<sup>124</sup> Case law is split regarding whether a special relationship exists between employers and employees,<sup>125</sup> and courts have also been unclear on what constitutes foreseeable harm.<sup>126</sup> Generally, it seems that an abuser must actually threaten an employee, and that the employer must be aware of the threat for the harm to be legally foreseeable. In *Clark v. Carla Gay Dress Co., Inc.*,<sup>127</sup> the plaintiff's husband entered the factory where she worked and shot her.<sup>128</sup> The court affirmed a directed verdict for the employer, stating that the harm was not foreseeable in this situation, because the husband did not appear violent or angry when he entered the premises, nor did the wife communicate to her employer that she feared her husband.<sup>129</sup> Based on this case, if a woman feels threatened by a batterer, she should inform her employer. Once notified, the employer may have a duty to protect the employee.

In cases where the perpetrator is also an employee, a plaintiff may have legitimate negligent hiring, negligent retention or negligent supervision claims against the employer if the employer is aware of potentially violent applicants or employees.<sup>130</sup> For exam-

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123. A special relationship may exist where there is, among other things, a clear ability of one party to protect another from criminal harm. See RESTATEMENT (SECOND) OF TORTS § 320 (1965).

124. See Sharp, *supra* note 91, at 16 ("[A plaintiff with] injuries resulting from a third person's assault should plead and prove, *inter alia*, an extraordinary risk of assault by a third person and knowledge or notice by the defendant of the extraordinary risk.").

125. See, e.g., *Habich v. Crown Cent. Petroleum Corp.*, 642 So. 2d 699 (Ala. 1994) (finding no special relationship); *McBeth v. TNS Mills, Inc.*, 458 S.E.2d 52 (S.C. Ct. App. 1995) (finding a special relationship).

126. See Phillips, *supra* note 97, at 169 (determining that courts' interpretations of foreseeability differ, using either a "prior similar incidents rule" or "totality of the circumstances" test to determine whether the violent attack was foreseeable); see also, e.g., *Isaacs v. Huntington Mem'l Hosp.*, 695 P.2d 653 (Cal. 1985) (considering past acts, nature of business and surroundings).

A subsequent court found that because criminal acts are foreseeable occurrences in today's violent society, the totality of circumstances test was too easy for plaintiffs to meet. See *Ann M. v. Pacific Plaza Shopping Ctr.*, 863 P.2d. 207, 214 n.6 (Cal. 1993) (finding that foreseeability must be balanced against the burden on the employer to prevent harm).

127. 342 S.E.2d 468 (Ga. Ct. App. 1986).

128. See *id.* at 470.

129. See *id.* at 472.

130. See, e.g., *Yunker v. Honeywell*, 496 N.W.2d 419 (Minn. Ct. App. 1993) (holding that an employer has a duty to maintain a safe workplace, which may be breached by retaining a violent employee).

ple, in *Yunker v. Honeywell, Inc.*,<sup>131</sup> an employee had been employed by Honeywell before he was imprisoned for five years for killing a co-employee.<sup>132</sup> After the former employee's release, Honeywell rehired him as a janitor.<sup>133</sup> Although the company knew that the employee was involved in violent workplace confrontations, Honeywell retained him.<sup>134</sup> He then shot and killed another co-worker.<sup>135</sup> The court held that Honeywell had a duty to maintain a safe workplace and remanded the case to determine whether retaining the worker constituted a breach of that duty.<sup>136</sup> The *Yunker* result could apply to a similar action involving a workplace domestic violence attack.

To better compensate victims for violent attacks and to ensure that employers address the issue of workplace domestic violence, courts should consider adopting a new standard of liability based on what employers *should have* foreseen. An easier standard to meet, the *foreseeability* requirement could be satisfied by employees' expressed fears, by a record of threatening behavior by a potential perpetrator, or by the societal prevalence of workplace domestic violence in general. As with other workplace issues, courts should invoke this test on a case-by-case basis.

#### 4. Contractual Claims

A workplace domestic violence victim may sue an employer for breach of contract under an implied contractual obligation theory.<sup>137</sup> If employers outline their workplace violence policies in employee handbooks but do not follow them, they may be held liable for employee injuries based on breach of contract.<sup>138</sup> If distributed throughout the workforce, an employee handbook could constitute a unilateral offer by the employer.<sup>139</sup> Acceptance of the

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131. *Id.*

132. *See id.* at 420-21.

133. *See id.*

134. *See id.*

135. *See id.*

136. *See id.* at 423.

137. *See, e.g.,* *Foley v. Interactive Data Corp.*, 47 Cal.3d 654 (Cal. 1988) (finding that a fired plaintiff may proceed with breach of implied contract claim because the employer failed to follow written pre-termination procedures before discharge).

138. *See id.*; *see also* *Mobil Coal Producing, Inc. v. Parks*, 704 P.2d 702 (Wyo. 1985) (affirming that an employee discharge was unlawful because employer failed to abide by disciplinary procedure outlined in employee manual).

139. *See* *Woolley v. Hoffman-La Roche, Inc.*, 491 A.2d 1257 (N.J. 1985), *modified*, 499 A.2d 515 (N.J. 1985) (finding that policy manual distributed to employees constituted a binding, unilateral contract); *see also* *Pine River State Bank v. Mettill*, 333 N.W.2d 622 (Minn. 1983) (outlining the conditions under which hand-

offer and consideration for the contract is assumed based on the employee's continued work under the handbook policies.<sup>140</sup>

### 5. Additional Legislation

Workplace domestic violence may violate Title VII of the Civil Rights Act,<sup>141</sup> which prohibits discrimination based on sex.<sup>142</sup> In *Meritor Savings Bank, FSB v. Vinson*,<sup>143</sup> the U.S. Supreme Court found that harassment creating a hostile work environment is actionable under Title VII.<sup>144</sup>

Domestic violence-related behavior is analogous to sexual harassment, implicating the same "hostile work environment." In a Ninth Circuit case, after their romantic relationship ended, a male police officer harassed his ex-girlfriend, a female co-worker, with phone calls, confrontations and attempts to run her car off the road.<sup>145</sup> The court found that the city, as the employer, fostered a hostile working environment by failing to remedy harassment after becoming aware of it.<sup>146</sup> Thus, the court placed an affirmative duty on the employer to address workplace harassment, even when it occurs between intimate, or formerly intimate, partners.<sup>147</sup>

Sexual harassment claims may not be limited to co-worker or supervisor behavior; employers may also be liable for sexual harassment of employees by a non-employee.<sup>148</sup> The Minnesota Court of Appeals found that, under the Minnesota Human Rights Act,<sup>149</sup> employers must take "timely and appropriate action" to stop har-

books become enforceable as part of the original contract).

140. See *Mettile*, 333 N.W.2d at 627.

141. 42 U.S.C. § 2000e-2(a)(1) (1988).

142. See *id.* ("It shall be an unlawful employment practice for an employer— 1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his [or her] compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex . . .").

143. 477 U.S. 57 (1986) (recognizing that both quid pro quo harassment and a hostile working environment may constitute sex discrimination under Title VII).

144. See *id.* at 73.

145. See *Fuller v. City of Oakland*, 47 F.3d 1522 (9th Cir. 1995).

146. See *id.* at 1528.

147. See *id.*

148. See, e.g., *Folkerson v. Circus Circus Enters., Inc.*, 107 F.3d 754, 756 (9th Cir. 1997) (holding that an employee sexually harassed by company patrons may have a cause of action against an employer who fails to take immediate and/or corrective action); *Costilla v. State*, 571 N.W.2d 587, 588 (Minn. Ct. App. 1997) (holding that an employee may have a sexual harassment claim against an employer if the employer is aware of a non-employee's harassing behavior but fails to remedy it).

149. See MINN. STAT. § 363.01 (1996).

assing behavior from non-employees as well as employees.<sup>150</sup> The court relied partly on the federal Equal Employment Opportunities Commission Guidelines, which recognize that employers who know or should have known of the misconduct may be held liable if non-employees sexually harass employees.<sup>151</sup>

Proposed federal legislation may force employers to address workplace domestic violence. A bill introduced in February 1997 would expand the Family and Medical Leave Act<sup>152</sup> to allow battered employees to take unpaid leave for court appearances or counseling.<sup>153</sup> The bill would also grant unemployment compensation to victims who leave their jobs because of domestic violence.<sup>154</sup> The purposes of the proposed statute are to decrease incidents of domestic violence by providing victims with job opportunities to achieve the financial independence needed to leave abusive situations, to promote employee safety, and to reduce employers' economic losses from domestic violence.<sup>155</sup>

### *B. Policy Reasons for Addressing Domestic Violence in the Workplace*

In addition to the risk of legal consequences, sound public policy dictates the need for employers to address domestic violence in the workplace. More than just a criminal issue, domestic violence poses a public health risk.<sup>156</sup> Rather than avoid the problem, which sends a clear and discouraging message to women that they will receive no help, employers, as part of their community responsibility, should help stop domestic abuse. Policy incentives for employers include strengthening families, reinforcing women's equal

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150. *Costilla*, 571 N.W.2d at 592.

151. *See* 29 C.F.R. § 1604.11(e) (1996).

152. 29 U.S.C. § 2601 et seq. (1994) (requiring that employers give employees 12 weeks unpaid leave for adoption, childbirth, or medical care for self, spouse, child, or parent).

153. Battered Women's Employment Protection Act, S. 367, 105th Cong. § 1 (1997).

154. *See id.* at § 3(a)(3) (amending Internal Revenue Code § 3304(a) (1986) to read: "compensation is to be provided where an individual is separated from employment due to circumstances directly resulting from the individual's experience of domestic violence").

Only 13 states currently consider domestic violence victims who leave work because of their abusive situations qualified for unemployment compensation. *See id.* at § 2(a)(9).

155. *See id.*

156. *See Hearings, supra* note 3, at 5 (statement of Janet Reno, U.S. Attorney General); *see also Walker, supra* note 39, at 73 ("Domestic violence . . . is a psychosocial disorder of society at large.").

role in society, improving employee morale and portraying a positive corporate image.

First, employers have a "person-to-person obligation" to assist employees who are being threatened or harmed.<sup>157</sup> Carrying out the moral duty of reducing workplace domestic violence will improve society by strengthening families.<sup>158</sup> If the cycle of abuse goes uninterrupted, it furthers violence in homes and workplaces.<sup>159</sup> Children also endure psychological harm from witnessing violent acts and are likely to be abused at home themselves.<sup>160</sup>

Employers should encourage employees to report threats of abuse so perpetrators may be stopped from causing future injury to their families.<sup>161</sup> In theory, this reporting practice will also deter potential abusers from committing violent acts.

Second, abuse perpetuates the societal subordination and objectification of women.<sup>162</sup> Acts of domestic violence are gender-based.<sup>163</sup> By controlling and victimizing their partners, men intend to "intimidate and terrorize" all women, reinforcing the traditional view of women's subordinate familial role.<sup>164</sup> Employers can help hold batterers accountable for their crimes by identifying and refusing to tolerate domestic abuse.<sup>165</sup>

Third, employers should send the important message to employees that they value their workers' safety by offering managerial and co-worker support. Addressing domestic violence in the workplace promotes individual well-being among workers by con-

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157. Nadel, *supra* note 5, at 983 (quoting Christel Nichols, Executive Director of House of Ruth).

158. See *Hearings, supra* note 3, at 72 (statement of Deborah E. Tjaden, DuPont Personnel Relations Consultant) ("[W]e have the opportunity to stop the cycle of domestic violence if we can intervene and prevent today's children, who will be the next generation of our workforce from carrying these behaviors into their lives.").

159. See *id.* at 6 (statement of Janet Reno, U.S. Attorney General) ("[C]hildren who are abused and who witness violence at home are substantially more likely to commit violent acts themselves."); see also *supra* note 39 and accompanying text (discussing the cycle of domestic violence and the effects it may have on children).

160. See Snyder, *supra* note 4, at 348-49 (footnotes omitted) (stating that child abuse is present in 70% of the homes where the mother is a victim of domestic violence).

161. See *supra* notes 158-160 and accompanying text.

162. See Busch, *supra* note 2, at 22-24 (finding that domestic violence keeps women in a powerless familial position and treats them as property, rather than as equals).

163. See *id.* at 24 ("[C]ultural facilitators: the belief in a natural order of power within families, the objectification of women and the economic power of men—explain the disproportionate number of victims and indicate that family violence is overwhelmingly gender-motivated.").

164. *Id.*

165. See Nadel, *supra* note 5, at 983.

vincing abuse victims to seek needed help.<sup>166</sup> Moreover, communicating a commitment to reducing domestic violence boosts employee morale and builds confidence, resulting in satisfied, healthy workers who contribute to overall workforce productivity.<sup>167</sup> Employers will also directly benefit by retaining valuable employees.<sup>168</sup>

Finally, addressing domestic violence portrays a positive image of the company to the public, thus attracting more quality employees and customers.<sup>169</sup> Corporations with strong workplace domestic violence policies may be viewed as community leaders and organizations committed to fighting domestic violence for the betterment of their employees and of society.<sup>170</sup> The workplace is a crucial link of support required to prevent detrimental effects of domestic abuse in the community.

#### IV. How to Address Domestic Violence in the Workplace

To satisfy the legal obligations of providing a safe workplace and policy incentives of bettering their communities and workplace environments, employers must take steps to end domestic violence.<sup>171</sup> The Department of Justice suggests that employers take the following measures: 1) get management support; 2) establish policies, such as paid leave, for domestic violence victims; 3) include domestic violence services within employee assistance programs; 4) educate and train management and employees on domestic violence; 5) distribute materials and hotline referrals to all employees; 6) improve workplace security; and 7) support local domestic violence shelters.<sup>172</sup> Employers should acknowledge the prevalence of domestic violence, detect warning signs in their em-

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166. See Soler, *supra* note 24 (stating that responding to domestic violence at work influences a woman's decision to get help).

167. See Castro, *supra* note 9, at 4.

168. See, e.g., *infra* text accompanying notes 180-182 (describing how one employer benefited from helping an abused employee).

169. See Steve Albrecht, *Domestic Violence in the Workplace: The Security Manager's Response to a Serious Off-the-Job Problem* (visited September 24, 1997) <<http://www.albrecht.com/domestic.html>>.

170. See *id.*

171. See Walker, *supra* note 39, at 73 ("[W]e need a systematic approach that affects every level of society so we can slowly eliminate this problem through long-term social change while at the same time we must provide support for those women who are presently being wounded.")

172. See U.S. Dep't of Justice, Advisory Council on Violence Against Women, *A Community Checklist: Important Steps to End Violence Against Women* (visited Oct. 7, 1997) <<http://www.usdoj.gov/vawo/cheklist.html>> (identifying business and labor leaders' strategies for addressing workplace domestic violence).



ployees, protect victims from abuse, and provide them with referrals for help.<sup>173</sup> These suggested measures can be divided into three areas of employer action: awareness, protection and prevention.

First, employers must be aware of the prevalence of domestic violence and identify the tell-tale signs of abuse in typical situations.<sup>174</sup> Consciousness-raising in the workforce requires education, which is satisfied simply by disseminating informational pamphlets or by requiring employees to attend educational workshops. For example, Target Stores has held education events and provided its 140,000 employees with awareness packets about domestic abuse.<sup>175</sup> Likewise, Liz Claiborne, Inc. has hosted educational seminars at work to inform employees about domestic abuse issues.<sup>176</sup> Regardless of what education methods are used, employees, as well as managers, should be able to recognize victims of abuse. Raising awareness helps eradicate outdated, traditional views of abuse as a purely private matter, thus opening minds to the importance of offering help.

Second, after identifying employees who are victims of abuse, employers must offer support. Doing the "right thing" for employees in need is not only socially beneficial, it may also be advantageous to the corporation. For example, a Texas business owner helped an employee who was attempting to leave her batterer.<sup>177</sup> To ease the adjustment, he gave her paid leave and use of his vans and storage space during the move.<sup>178</sup> The employer said, "It was the right thing to do . . . and it made good business sense. She was a good, hard-working and dedicated employee."<sup>179</sup> By helping the employee, the corporation retained a valuable worker. Similarly,

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173. See Albrecht, *supra* note 169.

174. See Frederica Lehrman, *Every Employer's Concern: Domestic Violence in the Workplace*, in VIOLENCE AGAINST WOMEN ACT NEWS, *supra* note 9, at 2. Typical signs of abuse include:

[R]epeated bruises or injuries attributed to falling down or being clumsy; inappropriate clothing with long sleeves, sunglasses or heavy makeup; high rate of absenteeism; lack of concentration; unusual amount of phone calls from a family member and strong reaction to these calls; or a reluctance to participate in informal activities.

*Id.*

175. See Michele Himmelberg, *Marriott Providing Work-Life Help for Low-Income Workers*, ORANGE COUNTY REGISTER, Oct. 7, 1996, at D7 (describing businesses' Domestic Violence Awareness Month campaigns).

176. See Lehrman, *supra* note 174, at 2.

177. See *Good Business Sense*, in VIOLENCE AGAINST WOMEN ACT NEWS, *supra* note 9, at 3.

178. See *id.*

179. *Id.*

when an employer noticed that one of her four-year employees was getting disturbing telephone calls at work, she gave the employee money and time off to obtain a restraining order.<sup>180</sup> The employer found making accommodations worthwhile.<sup>181</sup> Today the abuse survivor is one of the company's "most loyal and hard-working employees."<sup>182</sup>

Domestic abuse support is not necessarily expensive or difficult to implement. Marshalls stores posted domestic abuse crisis hotline numbers in bathroom stalls and provided the company's EAP phone number.<sup>183</sup> Liz Claiborne, Inc., inserted domestic violence brochures and referral telephone numbers in all paycheck envelopes.<sup>184</sup> These inexpensive methods of communication assist employees in a confidential, nonconfrontational manner, and help create a climate in which employees feel comfortable seeking help.

Discreet approaches that respect a victim's need for confidentiality may be the most effective ways for an employer to address domestic violence.<sup>185</sup> Companies should be sensitive to employees' privacy concerns, but "the employer must weigh the privacy rights of the employee against its own obligation to maintain a safe workplace."<sup>186</sup> Co-workers, in addition to the victim, may be at risk in violent workplace situations, and employers are accountable for all employees' safety.<sup>187</sup>

Finally, the unpredictable nature of domestic violence makes preventing violent workplace acts difficult,<sup>188</sup> but taking action will help protect employees from harm and employers from liability.<sup>189</sup>

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180. See Geeta Sharma-Jensen, *Domestic Violence Gets Workplace Focus*, MILWAUKEE J., Nov. 19, 1996, at 1S.

181. See *id.*

182. *Id.*

183. See Mareva Brown, *Abuse Takes Workplace Toll Problem*, SACRAMENTO BEE, Aug. 31, 1997, at A1.

184. See *id.*

185. See Nadel, *supra* note 5, at 984.

186. *Id.* at 983 (quoting Joseph A. Kinney, Executive Director of the National Safe Workplace Institute).

Privacy issues should not discourage employers from offering help. A nurse said she may have had the courage to leave her abusive marriage sooner if her employer or co-workers had approached her. Even though her co-workers knew the signs of abuse, they did not offer support or encouragement. See Denise Wagner, *Battered Wives—Ways To Help: Co-Workers Should Be a Source of Support*, Panel Says, S.F. EXAMINER, Oct. 2, 1997.

187. See Maggio, *supra* note 22, at 69 (stating that ignoring workplace domestic violence will victimize everyone, including co-workers).

188. See *supra* note 40 (stating that the unpredictability of domestic abuse magnifies the problem).

189. See Lehrman, *supra* note 174, at 2.

If women working at Polaroid fear abuse, employers may tap telephones, provide escorts, seek restraining orders to keep batterers away from the job site,<sup>190</sup> and relocate domestic abuse victims to help them escape their abusers.<sup>191</sup> Liz Claiborne, Inc., has provided battered employees with special parking spaces and escort services to promote safety.<sup>192</sup> Other suggestions to prevent workplace violence include providing battered women with more flexible work hours and strengthening security measures, such as controlled access to the building, so that abusers would be unable to reach their victims.<sup>193</sup>

Zero-tolerance policies require that employees report all threats and violent acts.<sup>194</sup> Employers should then remove potential perpetrators from the workplace and assist in their prosecution.<sup>195</sup> Employers must know their state's criminal statutes, so they can have the abuser arrested before a violent act occurs. Statutes may prohibit harassing telephone calls,<sup>196</sup> stalking,<sup>197</sup> and trespass by credible threat.<sup>198</sup>

Government offices can help set an example by adopting their own policies. For example, Boston's zero-tolerance domestic violence policy provides counseling to city employees if they are domestic violence victims or potential abusers.<sup>199</sup> Any of the mayor's

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190. See Pereira, *supra* note 85, at B1.

191. See Francine Knowles, *Employers Are Learning Cost of Domestic Violence*, CHI. SUN-TIMES, Sept. 30, 1996, at 49 (relating steps employers have taken to prevent violence).

192. See *id.*

193. See Georgia Pabst, *Business Leaders Attend Task Force Workshop*, MILWAUKEE J. SENTINEL, Dec. 30, 1996, at 3 (reporting that employers should have specific violence prevention plans in place).

194. See Lehrman, *supra* note 174, at 2.

195. See *id.* When a woman told her employer about her spouse's threats to kill her at work, the employer moved the woman to a new office and warned security officers of the potentially dangerous man. See Michaels, *supra* note 11, at 517-18. Upon entering the premises, security personnel detained the man until police arrived. See *id.* Law enforcement authorities successfully charged the perpetrator with carrying a concealed weapon. See *id.*

196. See, e.g., TEX. PENAL CODE ANN. § 42.07 (West 1994 & Supp. 1998) (defining harassment to include making obscene, threatening, falsely alarming or annoyingly repeated telephone calls).

197. See, e.g., COLO. REV. STAT. § 18-9-111(4) (1986 & Supp. 1996) (defining stalking as repeatedly following or communicating with a person or member of a person's immediate family when the actions are related to a credible threat).

198. See, e.g., CAL. PENAL CODE § 601(a)(2) (West 1988 & Supp. 1998) (stating that a person commits a trespass by credible threat if, within 30 days of making a threat to seriously injure, he/she "unlawfully enters into the workplace of the person threatened," intending to act on the threat).

199. See Mark A. Brunelli, *Menino Targets Domestic Violence*, BOSTON GLOBE, Oct. 4, 1997, at B3 (reporting that the policy also provides more domestic violence

appointees who are accused of domestic abuse will be suspended, and anyone convicted will be fired.<sup>200</sup>

Similarly, Acting Massachusetts Governor Paul Cellucci signed an executive order authorizing state supervisors to discipline a worker if the court has found "probable cause" that the individual committed battery.<sup>201</sup> The order also allows abused workers to take fifteen days of paid leave and six months of non-paid leave for domestic violence-related appointments or emergencies.<sup>202</sup>

On the federal level, in response to recommendations by the Advisory Council on Violence Against Women, President Clinton ordered federal agencies to address the effects of domestic violence in the workplace.<sup>203</sup> And recently, the President encouraged the private sector to join the nationwide alliance of combatting violence against women.<sup>204</sup> He emphasized the issue's broad scope: "Domestic violence is not simply a private family matter—it is a matter affecting the entire community."<sup>205</sup>

## Conclusion

President Clinton's message conveyed that the epidemic of domestic violence will not be stopped until it is ameliorated in all areas, including public and private workplaces. Preventing violent acts at work and reducing workplace effects from abuse inflicted at home requires employer awareness, attitudinal changes and action.

The malignancy of domestic violence, infecting all aspects of society, inflicts pain on many friends, relatives and neighbors. In essence, society feels the harmful repercussions of domestic abuse outside the home. The problem, too large to ignore, demands that employers recognize their moral, legal, and community responsibilities to address workplace domestic violence. Because the battlefield extends beyond the home, resulting in adverse societal and business effects, even those employers hesitant to infringe on a

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information and prevention training in the workplace).

200. *See id.* (outlining the mayor's zero-tolerance domestic violence policy for city government employees).

201. *See* Doris Sue Wong, *Unions Question Domestic-Violence Order*, BOSTON GLOBE, Aug. 2, 1997, at B2 (also reporting union officials' views that discipline without conviction may be illegal, particularly when violent acts occur at home rather than in the workplace).

202. *See id.*

203. *See Hearings, supra* note 3, at 5 (statement of Janet Reno, U.S. Attorney General).

204. *See* Proclamation No. 7030, 62 Fed. Reg. 52,007 (1997).

205. *Id.*

“private” affair will realize the importance of joining the frontlines of the fight to eradicate domestic abuse.