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Baird Holm Labor Law Forum Webinar Series

Session Seven

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From Facebook to Firearms: How to Avoid Threats and Violence in the Workplace

Heidi Gultau
David Kennison
Baird Holm LLP
1700 Farnam St. Suite 1500
Omaha, NE 68102
www.bairdholm.com

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Sources of Threat

- Employees
- Former employees
- Patients
- Visitors

Response depends on source of threat!

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Strategies

- Call law enforcement when legally permitted
- Bar and Ban letters
- Individual protection orders/restraining orders
- Security
- Involuntary committals

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Strategies (cont'd)

- Unemployment compensation
- Assist affected employees
- Facebook and social media issues

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Restraining Orders and Injunctions

- Injunctive Relief
- The right to relief is clear
- The damage threatened is irreparable
- The remedy at law is inadequate



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**Restraining Orders and Injunctions
(Cont.)**

- “Equity is determined on a case-by-case basis when justice and fairness so requires”
- Nature and frequency of trespasses
- Prevent or threaten substantial enjoyment of property

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**Restraining Orders and Injunctions
(Cont.)**

- Obtaining a Restraining Order or Injunction:
 - a. Petition/Complaint
 - b. Affidavits
 - c. Hearing
 - d. Bonds
 - e. Notice to Defendant
- Usually 1-year restriction
- Order narrowly tailored

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**When is a Defendant “Bad Enough”
to Seek A Restraining Order or
Injunction?**

Subjective determination weighing various factors:

- Defendant’s history
- Nature of the threats or threatening actions
- Frequency of the threats or actions

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**When is a Defendant “Bad Enough”
to Seek A Restraining Order or
Injunction? (Cont.)**

- Capability of carrying out threats
- Benefits of being pro-active versus the chances of “setting the Defendant off more”
- Evidence available

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**When is a Defendant “Bad Enough”
to Seek A Restraining Order or
Injunction? (Cont.)**

- Witness availability and willingness to be involved
- Other alternatives available and effectiveness of such alternatives
- Publicity



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**When is a Defendant “Bad Enough” to
Seek A Restraining Order or
Injunction? (Cont.)**

Recent examples:

- Gun and knife brought onto premises
- Threatening and repetitive voicemails/notes
- Threatening Facebook postings
- Assault on patient
- Employee increasingly talking about bringing weapons to work



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When is a Defendant “Bad Enough” to Seek A Restraining Order or Injunction? (Cont.)

- ConAgra v. Zimmerman (May 2014)
 - One-year permanent injunction against Zimmerman, the estranged husband of an employee, to prevent future harm
 - “The uncontroverted facts sufficiently demonstrate that Zimmerman will again trespass in flagrant violation of criminal law upon ConAgra’s property.”
 - A lengthy dissent characterized the majority’s opinion as a departure from more than 100 years of law

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Negligent Hiring, Supervision, Retention

Employers may be liable for violence that occurs in the workplace by negligently hiring, supervising, and retaining employees who later engage in violent behavior



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Elements

To recover in such an action, a victim generally must prove:

- a. The employer knew or in the exercise of ordinary care should have known of the violent employee’s unfitness at the time he engaged in the alleged wrongful conduct;
- b. Through negligent supervision, hiring or retention of such employee, his incompetence, unfitness, or dangerous characteristics proximately caused injuries; and
- c. There is some employment or agency relationship between the employer and the offending employee.

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Negligent Hiring, Supervision, Retention

Methods of Prevention:

- Hiring Practices
- Supervision and Retention practices
- Training



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Negligent Hiring, Supervision, Retention

- Communication, hotlines, etc.
- EAP
- Threat assessment teams
- Policies
- Monitoring email consistent with company policy

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Negligent Hiring, Supervision, Retention

- Recent case examples of negligent hiring, supervision and retention decisions
 - 2019 - \$54 million verdict against employer upheld
 - 2018 - Jury awarded \$101 million for employee's truck accident
 - 2017 - Court held that Home Depot could be liable for supervisor's murder of pregnant employee off premises
 - 2017 - Jury awarded more than \$1 million for murder in workplace

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Questions?

Heidi Guttau,
hguttau@bairdholm.com

David P. Kennison,
dkennison@bairdholm.com

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