

PUBLICATION

OSHA Tags In on Workplace Violence Issue, Takes it to the Court

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The Occupational Safety and Health Administration (OSHA) is suing an employer for an employee's claims that she was subjected to workplace violence concerns in violation of Section 11(c) of the Occupational Safety and Health Act of 1970. Section 11(c) of the Act, often referred to as the whistleblower or anti-retaliation provision of the Act, prohibits an employer from discriminating against employees who file complaints alleging safety or health issues at their places of employment. A couple of things makes this case unique: 1) there is no standard that regulates the issue of workplace violence and 2) the allegations contained in the complaint filed by the Secretary of Labor in the U.S. District Court for the Middle District of Florida seem strikingly similar to a complaint that would be filed after an Equal Employment Opportunity Commission (EEOC) charge rather than after a whistleblower complaint to OSHA for safety violations.

OSHA has been clear that one of its focuses for the upcoming year will be on workplace violence issues. However, these types of issues have not been defined by OSHA as dealing with what typically are considered to be employment discrimination types of issues. In particular, OSHA has issued guidance on workplace violence that address concerns of particular industries, such as a convenience store located in a high crime area or places of employment where workplace violence could be reasonably anticipated to occur. The guidance does not necessarily reflect concerns about individual situations where a supervisor is being particularly difficult to an employee. One of the elements in an 11(c) case is that the employee has a reasonable belief of safety concerns in the workplace. Certainly, more facts are likely to emerge. But without a specific standard and with only general guidance from OSHA on the topic, it would seem that this element may prove difficult for the government to prove.

Moreover, in reviewing the actual complaint in the case, the allegations read like many employment discrimination cases: threatening to fire the complainant, verbally abusing her, making sexually inappropriate comments, yelling, screaming, physically threatening gestures, untimely paying and making demeaning comments. All of these allegations appear to be claims of a hostile work environment, but is this really workplace violence and a true safety issue or a complaint that should have been pursued through the EEOC as a violation of Title VII of the Civil Rights Act of 1964? In the days of sequestered government and lean resources, it would seem that a better use of OSHA's dollars could be spent on something other than pursuing a theory that virtually mirrors that of another government agency.

If you have questions about workplace violence issues, please contact any of our more than 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.