How Should an Employer Respond to Domestic Violence Between Co-workers?



SITUATION

An architectural draftsperson and her domestic partner both work at the same construction company in Ontario. The company has an open floorplan for the workspace. However, the draftsperson and her partner don't interact directly, based on their work duties. Neither of them has any record of disciplinary action. After a domestic violence incident between the draftsperson and her partner at their home in which the partner attacked the draftsperson, a court orders the partner not to approach or remain within three metres of the draftsperson or communicate with her. (The court is aware they work in the same workplace.) The draftsperson returns to work and informs her manager of the court order but indicates she feels safe working in the same location as her partner because of the openness of the workspace and the number of people around.

QUESTION

What, if anything, should this employer do'

A. Nothing, because employers have no duty to address domestic violence that doesn't occur in the workplace.

B. Meet with both employees separately to discuss how to

protect the draftsperson and honor the court order, so they can both continue to work there.

C. Fire the draftsperson, because it can’t protect her at work.

D. Fire the domestic partner, because he assaulted the draftsperson.

ANSWER

B. The employer should separately meet with both employees to discuss how to comply with the court order and protect the draftsperson while they both continue working for it.

EXPLANATION

This hypothetical is based on a real incident that occurred in Australia, but we’ve set our hypothetical in Ontario to demonstrate how Canadian law addresses domestic violence when it impacts the workplace. In the Australian case, the employer fired the draftsperson, saying it couldn’t protect her. The Australian Fair Work Commission found that there was no valid reason for the draftsperson’s termination’her firing wasn’t based on her own conduct or performance but rather her partner’s. The draftsperson said she felt safe in the open office despite her partner’s presence given the number of co-workers around them. And the court order barring him from communicating with her wouldn’t prevent either party from doing their work because they didn’t have to directly engage to do their jobs. So the employer should’ve met separately with each employee to discuss how to comply with the court order while they both continued working for it. But the employer hadn’t explored all possible options and so the Commission concluded her termination was ‘harsh, unjust and unreasonable.’

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because Ontario's *OHS Act* specifically addresses domestic violence, requiring an employer to take all reasonable action to protect a worker once it becomes aware of or should be aware of the threat of domestic violence toward that worker. (In other Canadian jurisdictions, the general duty clause in the OHS laws likely imposes an obligation to take precautions to protect a worker from domestic violence in the workplace.) In this case, although the domestic violence incident happened outside of the workplace, because the draftsperson's domestic partner and violence threat is a co-worker, the employer would have an obligation under the law to address that threat in its workplace. The draftsperson informed her manager directly about the domestic violence and the court order. Therefore, the employer was aware of the potential for violence and would be obligated to take appropriate action to protect her at work. For example, it could schedule them on different shifts, move their work stations to ensure compliance with the court order's three metre mandate and maintain a dialogue with the draftsperson and her domestic partner to ensure the work arrangements are successful.

***Insider* Says:** For more information about what to do when domestic violence impacts the workplace, see 'Workplace Violence: 5 Strategies for Addressing Domestic Violence in the Workplace.'

C is wrong because the employer has no cause to fire the draftsperson based on her conduct or performance. There's no indication in the facts that she's done anything wrong, at work or elsewhere. Additionally, she has no history of prior disciplinary actions. So if the employer *was* to fire the draftsperson, it would be based on the conduct of a third party, her partner, which isn't reasonable. Moreover, the employer couldn't justify firing her because it can't protect her at work when there's no indication that it has fully explored what would be needed to protect her and comply with

the court order.

D is wrong because one incident of violence doesn't automatically warrant termination. Engaging in violence, even outside of the workplace, can justify a worker's termination. And workers may be fired based on one incident of serious misconduct. However, all the facts and circumstances must be considered. Here, the partner has no prior disciplinary record. Although the domestic violence incident did involve a co-worker, it occurred outside of the workplace. And the draftsperson said she feels safe working in the same workspace as her partner. Lastly, compliance with the court order keeping the draftsperson and partner away from each other wouldn't prevent the partner from doing his job. Therefore, as with the draftsperson, the employer doesn't have just cause to terminate the partner.

***Insider* Says**: For more information about dealing with workplace violence in general, visit the Workplace Violence Compliance Centre.

SHOW YOUR LAWYER

Moghimi v. Eliana Construction and Developing Group Pty Ltd, [2015] FWC 486, July 23, 2015