

Workplace Violence and Workers' Compensation
A Primer for Legal Employers

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Each year, nearly one million individuals become victims of violent crime while working or on duty, accounting for 15 percent of the total acts of violence experienced in the United States.¹ Homicide is now the second leading cause of death in the workplace, following motor vehicle accidents.² As the more sensational acts of workplace violence, such as hostage situations or mass murders, receive heightened media attention, a generalized fear of violent events at work is becoming part of our national consciousness. However, few, if any, legal employers had any reason to consider how this important issue might affect their offices, until the Pettit and Martin shootings in San Francisco.

This article surveys statistical data regarding the scope and risk of the problem, and cases from across the country involving violence in legal offices, analyzing them in terms of Arizona cases discussing the compensability of assaults.

Scope of the Problem

Frequency data suggests that those at greatest risk for workplace homicide are those involved in sales and service occupations, and executive, administrative and managerial positions.³ However, at least one study suggests factors creating a risk of victimization at work according to the task performed.⁴ All of those factors exist in legal employment: face-to-face contact with large numbers of persons on a routine basis, handling money as part of the job, and jobs involving more than a single worksite or routine travel, were all associated with victimization at work.

Even the work setting can increase the risk: The National Crime Victimization Survey determined that 61 percent of victimizations occurring at work happened in a private company, with eight percent occurring in self-employment situations, and 30 percent occurring to government employees. That statistic suggests a potential risk for legal employment in those arenas.

It is interesting to note that workplace violence is affected by gender. Female employees are more likely to be victimized by someone they know, while male employees are more likely to be victimized by strangers.⁵ There is evidence to suggest that the circumstances of non-fatal workplace assaults may be very different from those in fatal assaults. One study found that of all physical attacks reported occurring on the job, 44 percent of the respondents reported being attacked by customers or clients, 30 percent by co-workers or former employees, 24 percent by strangers; three percent by someone else.⁶ However, in evaluating workplace homicides, it was noted that 82 percent were associated with robberies or miscellaneous crimes, and nine percent involved business disputes, either between current or former co-workers, customers and clients, or other individuals, six percent involved police killed in the line of duty, and four percent were personal disputes.⁷

Even if you are not aware of it, violence in the workplace could be costing you. Crime victimizations cause about half a million employees to miss 1,751,100 days of work each year (an average of 3.5 days per crime) and a loss in wages of \$55 million, which does not include days covered by sick and annual leave.⁸

As substantial as these statistics are, there is evidence to suggest that more than half of all victimizations sustained at work were not reported to the police.⁹ Threat victims were almost twice as likely not to report as victims of actual attacks.¹⁰ Though these statistics may not conclusively suggest that legal employers are a breeding ground for workplace violence, certainly they indicate that there are risk factors associated with legal employment that justify a further evaluation of the issue. The remainder of this article examines documented cases of legal workplace violence, and the Arizona cases applicable to workplace assaults.

Arizona Assault Cases

In Arizona, workers' compensation is payable for injuries or deaths by accident arising out of and in the course of employment, wherever the injury occurs, unless it is purposely self-inflicted.¹¹ "Arising out of and in the course of employment" has been defined to include "an injury caused by the wilful act of a third person directed against an employee because of his employment."¹² This article focuses on workers' compensation coverage, because if it exists, the employer has immunity from superior court civil suit by the employee,¹³ unless the employer has engaged in wilful misconduct,¹⁴ or the dual capacity doctrine applies.¹⁵ A claimant's status as the aggressor does not affect the compensability of his injury.¹⁶

Arising Out of Employment¹⁷

This aspect of the analysis refers to the origin or cause of the injury.¹⁸ If an injury is caused by a work-related risk, it will be said to arise out of employment.¹⁹

Assaults that are “personal” in nature, or arising out of a personal motivation, cannot, by their very nature, arise out of employment. This is bad news for victims of domestic violence who are one of the higher-risk groups for workplace violence, since almost all of the cases hold that “domestic disputes” are necessarily personal.²⁰ However, Arizona does follow the “imported quarrel” rule, which provides that if a personal dispute takes place in the workplace, it can be compensable if the work is found to have exacerbated the quarrel.²¹ *Epperson* denied compensation to the victim of an assault by her husband, where there was no indication that the employer had notice of the husband’s dangerous propensities, or that the work was the motivating factor in the quarrel.²²

Another principle known as the “positional risk doctrine” can provide for workers’ compensation coverage, where the employee’s mere placement at work results in injury. However, this doctrine, by its very terms, must apply to a “neutral risk,” such as an act of nature, and therefore cannot be met in a situation where a quarrel is personal.²³ Similarly, though the quarrel may have originated in the performance of work duties, which ordinarily makes it compensable, it can be converted to a personal assault if the assault continues after a “cooling off” period.²⁴ Injuries can also be compensable if it can be shown that the origin of that injury is a risk connected to the employment, flowing from the source of the employment.²⁵

In the Course of Employment²⁶

An injury in the course of employment is one that occurs when an employee is doing what he or she may reasonably do within work hours, at a place where he or she may reasonably be during that time.²⁷ Usually, this issue arises under circumstances where injuries do not occur on the actual premises of the employer. As long as there is a continuous course that either begins on those premises, as in *Hartford Accident & Indemnity Co v. Industrial Commission*,²⁸ or where the employee is injured at a place close by his work station where he would have a right to be during work hours, such as in *Peter Kiewit Sons’ Co. v. Industrial Commission*,²⁹ the injury will be compensable.

The activity during which the injury is sustained can be compensable if it directly or indirectly benefits the employer, such as where an employee is acting to protect property of, or prevent crime from occurring to, the employer,³⁰ or where the employee is arguably following employer policy which regulates the manner of the work at the time the injury occurs.³¹ However, if the employee is engaging in misconduct at the time of injury, that misconduct can be considered to determine whether the employee was still within the course of employment when injured.³² It should be noted that there are some types of acts, such as sexual harassment, that are not “within” the course and scope of employment due to the fact that they serve a personal purpose and not an employer’s purpose.³³

Legal Workplace Cases

At least two reported cases involved lawyers as victims of violence. In both cases, though the injury was actually sustained at home rather than at work, there was a sufficient connection between the employment and the injury to provide for worker’s compensation coverage.

In *Graybeal v. Board of Supervisors of Montgomery County*,³⁴ a prosecutor was injured by a bomb that exploded late at night, placed at his home by a defendant he had successfully prosecuted, following that defendant’s release from prison five years after the verdict. The former defendant had previously vowed revenge involving bombs upon “everyone having anything to do” with his case, and made threats to kill Graybeal specifically.

The Virginia Supreme Court refused to limit the “arising out of” element to require that it must actually occur within the specified time, space and circumstances of that employment.³⁵ The court interpreted the word “arising” to mean “originating,” and found that there was a continuous course of circumstances beginning with work and ending with injury, so that the beginning and the end were connected parts of a single work-related incident.³⁶ In reaching their decision, the court made reference to the fact that this particular lawyer could reasonably be expected to discharge his duty in different places, including his home, and at various times, including late evening hours. Though the focus was on public employment, certainly the same things could be true of nearly any lawyer in any setting. Certainly the court was mindful of the inherent risk of vengeful criminals in the work life of a prosecutor.

An attorney on the same side as the “vengeful criminal” was the victim in *State Compensation*

*Insurance Fund v. Workers' Compensation Appeals Board of the State of California.*³⁷ Attorney Faye Stender had been a lawyer in the "prison law project" for three years in the early '70s, until it was no longer funded. During that time, many case meetings occurred in her home, where she was subsequently shot. After that, Stender continued her prison law work, but no longer was as involved in direct client representation. At the hearing, an expert sociologist testified that some prisoners could perceive a later reduction or cessation of that work activity by the attorney as a "betrayal" of prisoners, which could have served as personal motivation for the assault.

Stender's assailant, a former prison inmate, forced her at gunpoint to write on paper: "I, Faye Stender, have betrayed George Jackson³⁸ and the prison movement when he and it needed me the most." He demanded money, and as she was getting money out, he became agitated, shooting her six times and leaving her residence, taking the note.

In ruling that Stender had a compensable workers' compensation claim, the California Appeals Court relied on *Graybeal*. Though Stender did not have a specific work-related connection with her assailant, the motivation for the assault was her work as a lawyer in the prison reform movement, which was still a significant portion of her activities at the time she was assaulted. This case applies a rule that also exists in Arizona,³⁹ and would likely be decided the same way here.

Law firm employees have also been victimized; however, they did not fare as well in their applications for compensation, primarily because they were women who were attacked by people they knew, where it could not be argued that the assault was related to, or exacerbated by, their employment. In *Johnson v. Drummond, Woodsum, Plimpton and MacMahon, P.A.*,⁴⁰ a law firm employee did not recover workers' compensation for injuries resulting from a gunshot wound inflicted by her estranged husband in the reception area of the law firm where she worked. On several occasions prior to the assault, Johnson's husband had attempted to contact her either in person or by telephone there, and she had refused. The firm's office manager counseled Johnson not to use other employees as a buffer between them. On the day of the assault, he appeared in person. Following a "short, calm conversation in the reception area," Johnson shot his wife and then himself.

The Maine Supreme Court relied upon an Arizona case, *Epperson v. Industrial Commission*,⁴¹ to find that the dispute was one "imported into the employment from the claimant's domestic or private life, and not exacerbated by the employment," and therefore, not compensable.⁴² The court did not find it significant that the office manager had convinced Johnson to face her husband, even though the employer probably received benefits from that requested behavior. This case might be decided differently in Arizona now, especially when it is considered against the background of general expansion of workers' compensations' compensability.⁴³

In *Kendrick v. Peel*,⁴⁴ a law firm receptionist was killed by an individual with whom she had previously worked, and who was not connected to the law firm in any manner. In that case, the attack was found to be personal and thus not compensable because the assailant had made very specific threats to get back at "everybody that hurt him." He only attacked those people he had worked with, or family members, and did not threaten or attack anyone else in close proximity while he was at the various locations on his rampage. In denying death benefits, the Arkansas Court of Appeals applied the positional risk doctrine as it would be applied in Arizona. Because Kendrick was specifically targeted, and the targeting had absolutely nothing to do with her law firm employment, compensation was denied.

Finally, though not a law firm employee per se, the victim in *Person v. Safeco Insurance Company*⁴⁵ was targeted for fatal injury due to her handling of a workers' compensation claim. Person was the employee charged with assisting an adopted daughter of a former employee with the processing of an accidental death claim. The daughter was ultimately dissatisfied with the manner in which the claim was handled and conspired to "get" Person by driving a truck through the employer's building, striking and killing her. The claim was found to be compensable.

Conclusion

As the above references show, legal employers can be at risk, due to the nature of the employment, for episodes of violence. However, many types of workplace assaults have been found to be compensable under workers' compensation principles, thereby limiting the liability exposure to legal employers based upon the exclusive remedy provisions of the workers' compensation act. Employers can reduce their risk for acts of employee violence by adopting clear policies that not only indicate that violence or threats of violence will not be tolerated, but that also provide for fair handling of personnel issues as to all employees. Employers can provide training for supervisors and managers in recognizing employees who may be at risk

to be victimized, and should utilize counseling programs upon appropriate referrals. Employers can also avoid risk from unknown third-party assailants, by evaluating the physical plant, increasing security options through either physical rearrangement inside the building or environmental design outside the building, and including training for all employees on appropriate means to handle stressful situations with clients or other members of the public in the daily operations of the firm.

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ENDNOTES:

1. R. Bachman, "Violence and Theft in the Workplace," *Crime Data Brief*, National Crime Victimization Survey, July 1994.
2. J. Rigdon, "Companies See More Workplace Violence," *Wall Street Journal*, 4/12/94.
3. P. Dietz, "Changes in Workplace Violence: The Increasing Standard of Care," *ABA Workman's Compensation and Employers Liability Committee*, 1994. Looking at the problem in terms of per capita rates of workplace homicide, suggests that legal employers may have a risk lower than that of taxi drivers, convenience store clerks, gas station attendants, and police officers.
4. J.P. Lynch, "Routine Activity and Victimization At Work," *Journal of Quantitative Criminology*, 3:283-300 (1987). See also, P.D. Dietz and S.P. Baker, "Murder at Work," *American Journal of Public Health*, 77(10):1273-1274 (1987), regarding risk to psychotherapists. Certainly, the circumstances under which lawyers may be dealing with their clients involve a high amount of stress, and also involve interacting with people in crisis and regarding problems, similar to psychotherapists.
5. R. Bachman, *supra* note 1.
6. Northwestern National Life, "Fear and Violence in the Workplace, A Survey Documenting the Experience of American Workers," Northwestern National Life, Minneapolis, Minnesota (1993).
7. *Id.* See also, D. Castillo, "Non-fatal Violence in the Workplace: Directions for Future Research," Department of Justice/National Institute of Justice Brief: J 28-24/3:L56/2.
8. Bachman, *supra*.
9. Bachman, *Id.* For some, the failure to report was due to reports to other entities, but as many as 40 percent said they believed the incident to be minor or a private matter.
10. Northwestern National Life, *supra*.
11. Vol. 8A, A.R.S. §23-1021.
12. Vol. 8 A.R.S. §23-901(12)(b).
13. Vol. 8, A.R.S. §23-906(A); Vol. 8A A.R.S. 23-1022.
14. See generally, *Lowery v. Universal Match Corporation*, 6 Ariz. App. 98, 430 P.2d 444 (1967). An employer can be held responsible for the acts of one co-employee against another. However, an insane co-employee's acts cannot be the basis for employer liability. See *Bonner v. Minico Inc.*, 159 Ariz. 242, 766 P.2d 594 (App. 1986).
15. See *Dugan v. American Express Travel Services*, 198 Ariz. Adv. Rep. 15, 18 (9/5/95); *Delbridge v. Salt River Project*, 177 Ariz. Adv. Rep. 56 (11/8/94). According to the dual capacity principle, not favored in Arizona, an employer who normally is shielded from tort liability by the exclusivity provision may be held responsible to the injured worker if the employer was acting in capacity independent from its status as employer, and the injury arose out of the other assumed role.
16. *Colvert v. Industrial Commission*, 21 Ariz. App. 409, 411, 520 P.2d 322, 324 (1974); *Dependable Messenger v. Industrial Commission*, 175 Ariz. 516, 858 P.2d 661 (App. 1993).
17. See generally, *Arizona Workers' Compensation Handbook*, Chap. 3, Section 3.3.6.
18. *Epperson v. Industrial Commission*, 26 Ariz. App. 467, 549 P.2d 247 (1976).
19. *Hartford Accident and Indemnity Company v. Industrial Commission*, 126 Ariz. 309, 311, 614 P.2d 851, 853 (App. 1980).
20. See *Epperson v. Industrial Commission*, 26 Ariz. App. 467, 549 P.2d 247 (1976).
21. *Id.*, *Wyckoff v. Industrial Commission*, 14 Ariz. App. 288, 482 P.2d 897 (1971); see generally, 1 Larson, *Workman's Compensation Law*, §1121 (1972).
22. *Epperson* should be contrasted with *Murphy v. Worker's Compensation Appeals Board*, 86 Cal. App. 3rd 996, 150 Cal. Rptr. 561 (1978), where the work was the entire motivation for the husband's assault. In that case, he did not want his wife to work, continually interfered with her employment and made many threats regarding the violent actions he would take if the wife did not leave the employment, and the employer was on notice of the exact date, time and location of the assault, and did not allow the potential victim to transfer to another store or have time off.
23. See, *Estate of Sims v. Industrial Commission*, 138 Ariz. 112, 673 P.2d 310 (App. 1983). But see *Colvert v. Industrial Commission*, 22 Ariz. App. 365, 527 P.2d 767 (1974), (unprovoked assault by an inebriated co-employee on employer's premises during working hours was compensable). See also *Van Duzee v. Industrial Commission*, 25 Ariz. App. 395, 543 P.2d 1152 (App. 1975) (injuries of a bona fide peacemaker are compensable).
24. See, *Peter Kiewit & Sons Co. v. Industrial Commission*, 88 Ariz. 164, 354 P.2d 28 (1960).
25. In *Hartford Accident Indemnity Co. v. ICA*, 126 Ariz. 309, 614 P.2d 851 (App. 1980), the claimant was injured away from the place of employment in the course of a robbery, which began at work. His injuries were compensable, because the robbery was initiated, at least in part, to take the employer's property. In *S.E. Rykoff & Co. v. ICA*, 172 Ariz. 22, 833 P.2d 39 (App. 1992), there was an increased risk of personal crime associated with the employer's business location, but that risk was increased by the location and other circumstances surrounding the employment, thereby making the injuries compensable when the employee tried to stop a theft from his own vehicle parked across the street from the business where the employer had told him to park. For additional information regarding the compensability of injuries sustained in parking lots, see *P. B. Bell & Associates v. ICA*, 142 Ariz. 501, 690 P.2d 802 (App. 1984); and *Knoop v. Industrial Commission*, 121 Ariz. 293, 589 P.2d 1325 (App. 1978).
26. See generally *Arizona Workers' Compensation Handbook*, Chap. 4, and §3.3.6.
27. *Dependable Messenger v. Industrial Commission*, 175 Ariz. 516, 858 P.2d 661, 665 (App. 1993).
28. *Supra*, note 19.
29. *Supra*, note 24. A person can be found to be in the course of employment even after discharge, if he or she is still in the area to perform activities related to that discharge, such as obtaining a final paycheck or returning the employer's equipment.
30. *S. E. Rykoff & Co. v. Industrial Commission*, *supra*, note 25.
31. See, *Burnett v. Industrial Commission*, 158 Ariz. 548, 764 P.2d 33 (App. 1988).
32. *Id.* In the *Burnett* case, however, even though it was found that the employee did violate the store policy involved, he did not abandon his employment, because the policy merely regulated the manner in which he was to perform work for his employer, rather than describing the ultimate work he was to perform.
33. *State of Arizona v. Schallock*, 196 Ariz. Adv. Rep. 35 (8/10/95).
34. 216 Va. 77, 216 S.E.2d 52 (1975).
35. *Id.*, at p. 54.
36. *Id.* There was no difference between the nighttime injury the applicant sustained at home from a bomb that might have been triggered to explode in the courthouse or in the applicant's office after he returned from the courthouse.
37. 120 Cal. App. 3d 124, 174 Cal. Rptr. 447 (1981).
38. One of her original prison clients.
39. *Id.*, at p. 451.
40. 490 A.2d 676 (Me. 1985).
41. *Supra*, note 18.
42. See, 1 A. Larson, *The Law of Workman's Compensation*, §11.21 at 3-245 to 3-251 (1985).
43. See, *Delgado v. Industrial Commission*, 179 Ariz. Adv. Rep. 18, 1994; *Jayo v. Industrial Commission*, 183 Ariz. Adv. Rep. 15 (1995). Contrast with *Murphy v. Worker's Compensation Appeals Board*, *supra*, note 22.
44. 32 Ark. App. 29, 795 S.W.2d 365 (1990).
45. 637 S.W.2d 461 (Tenn. 1982).