



November 10, 2014

## Client Alert

### Beyond the Punch that Changed the NFL: The Impact of Domestic Violence on the Workplace, Divorce and Custody

Domestic violence was a topic rarely, if ever, discussed at a dinner party or a business lunch. In fact, it was the consequences of domestic violence – the black eye, the arm in a sling, or in extreme cases, the dead spouse – that garnered attention, while the underlying issue was still discussed in whispered tones, at best. However, in recent months, the issue of domestic violence has shifted to the center of public conversation largely because an incident of abuse was captured on video *as it occurred*, the abuser was a prominent NFL player and, in the opinion of many people, the league's commissioner and the player's team failed to address the seriousness of what had transpired and its ramifications. In light of the heightened attention that domestic violence has received recently, we thought it appropriate to provide our clients with a short overview of some of the legal implications of domestic violence – specifically in the context of the workplace and in divorce and child custody proceedings.

#### Background

Domestic violence is not a recent problem, nor is its scope limited to any particular segment of society. The New York State Office for the Prevention of Domestic Violence defines it as a pattern of coercive tactics by one person against an adult intimate partner to establish or maintain power and control over the victim; and this abuse can be physical, sexual, psychological and economic.<sup>1</sup> It affects people regardless of race, socioeconomic status, sex, sexual orientation, ethnicity, age or

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<sup>1</sup> New York State Office for the Prevention of Domestic Violence, *New York State's Response to Domestic Violence: Systems and Services Making a Difference*, pg. 7, [http://www.opdv.ny.gov/whatisdv/about\\_dv/nyresponse/nysdv.pdf](http://www.opdv.ny.gov/whatisdv/about_dv/nyresponse/nysdv.pdf) [2006].

religion. In New York City alone in 2013, police responded to over 765 domestic violence incidents per day, the City's Domestic Violence Hotline answered over 270 calls per day and there were 62 family-related homicides.<sup>2</sup>

## The Workplace

The social and legal implications of domestic violence can be more far-reaching than most people realize and can have serious deleterious effects on a business. We recommend that businesses familiarize themselves with the signs and potential effects of domestic violence and implement a Domestic Violence Workplace Policy to provide appropriate training for recognizing, responding to and protecting victims of domestic violence.

A 2005 national survey found that 21% of full-time employed adults were victims of domestic violence.<sup>3</sup> The costs of intimate partner rape, physical assault and stalking exceed \$ 5.8 billion each year, including the loss of nearly 8 million days of paid work annually (the equivalent of over 32,000 full-time jobs) and nearly \$ 0.9 billion in productivity.<sup>4</sup> In addition, up to two-thirds of victims have reported that their abusers harassed them at work.<sup>5</sup> Victims often need to miss work to heal from injuries or illnesses caused by the violence, obtain counseling, care for family members or go to court to seek safety for themselves and their families. New York State law protects victims of domestic violence from discrimination for taking time off from work to go to court, consulting with professionals and recuperating from injuries.<sup>6</sup> New York City's administrative code also requires employers to make reasonable accommodations to enable victims to satisfy the essential requisites of their jobs.<sup>7</sup>

From a business standpoint, employers should want to make every effort to minimize the loss of productivity to their businesses and protect their workers from the effects of domestic violence. A Domestic Violence Workplace Policy can assist an employer in achieving these goals by, among other things, informing employees of available sources of assistance, providing workplace safety response plans, and ensuring that personnel policies and procedures do not discriminate against victims of domestic violence and are responsive to their needs.

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<sup>2</sup> New York City Mayor's Office to Combat Domestic Violence, *Domestic Violence Annual Fact Sheet 2013*, [http://www.nyc.gov/html/ocdv/downloads/pdf/Statistics\\_Annual\\_Fact\\_Sheet\\_2013.pdf](http://www.nyc.gov/html/ocdv/downloads/pdf/Statistics_Annual_Fact_Sheet_2013.pdf) [accessed Oct. 30, 2014].

<sup>3</sup> Corporate Alliance to End Partner Violence, *National Benchmark Telephone Survey on Domestic Violence in the Workplace*, <http://www.ncdsv.org/images/CAEPVSurvey.WorkPlace.pdf> [2005].

<sup>4</sup> Centers for Disease Control and Prevention: National Center for Injury Prevention and Control, *Costs of Intimate Partner Violence Against Women in the United States*, pgs. 1-2, <http://www.cdc.gov/violenceprevention/pdf/ipvbook-a.pdf> [2003].

<sup>5</sup> American Bar Association Commission on Domestic Violence, *Employment Law and Domestic Violence: A Practitioner's Guide*, pg. 3, [http://www.americanbar.org/content/dam/aba/migrated/domesticviolence/Public\\_Documents/ABA\\_CDV\\_Employ.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/domesticviolence/Public_Documents/ABA_CDV_Employ.authcheckdam.pdf) [2009].

<sup>6</sup> N.Y. Executive Law § 296.

<sup>7</sup> Administrative Code of the City of New York § 8-107.1(3).

Implementing such a policy, as well as providing training in recognizing and responding to domestic violence, will help create a work environment with zero tolerance of domestic violence.

## Divorce Proceedings

In addition to adversely affecting productivity in the workplace, incidents of domestic violence within a marriage also may have significant implications in divorce litigation. In considering the equitable distribution of marital property, courts generally do not consider “marital fault” or misconduct of the parties, except for cases of “egregious conduct” that “shocks the conscience” of the court. While this standard typically has allowed consideration of fault only in instances of serious violent felonies, in certain cases, New York courts have held that patterns of physical and emotional abuse during lengthy marriages can rise to the “egregious” level.<sup>8</sup> While it is only one of a number of factors courts consider in determining the equitable distribution of assets, a pattern of domestic violence can lead to the court awarding all of the marital assets to the victim in extreme cases.<sup>9</sup> Domestic violence also is specifically considered by courts in determining the amount and duration of spousal maintenance or support. The statute that controls the determination of maintenance directs courts to consider acts “that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment . . . [including] acts of domestic violence.”<sup>10</sup>

Changes in employment status also have significant and sometimes counterintuitive implications in divorce actions. If, for example, an abuser loses his or her job, through involuntary termination or otherwise, there could be adverse financial consequences to the victim. Even if the court considers the domestic violence in distributing marital assets and grants a larger share to the victim as discussed above, there will be fewer total assets for the court to distribute. Moreover, if the abuser is the higher-wage-earning spouse, the termination of his or her employment will mean a smaller award of spousal maintenance to the victim.

## Child Custody

Domestic violence affects child custody and visitation proceedings, where courts are obligated to consider allegations of domestic violence provided the allegations are proven by a preponderance of the evidence—a lower standard than the criminal “beyond a reasonable doubt” measure.<sup>11</sup> Courts are especially loath to grant custody requests from parents who have committed acts of domestic violence in a child’s presence.<sup>12</sup> Custody is generally not awarded to non-parents such as grandparents,

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<sup>8</sup> *Havell v Islam*, 186 Misc. 2d 726 (Sup Ct NY County 2000), *aff'd* 288 AD2d 160 (1<sup>st</sup> Dep’t 2001).

<sup>9</sup> *DeSilva v DeSilva*, 236 NYLJ 46 (Sup Ct NY County 2006).

<sup>10</sup> N.Y. Domestic Relations Law § 236-B(6)(a)(7).

<sup>11</sup> N.Y. Domestic Relations Law § 240(1)(a).

<sup>12</sup> *Meyers v Sheehan*, 62 AD3d 802 (2d Dep’t 2009).

but domestic violence can constitute the “extraordinary circumstances” required to grant such an application.<sup>13</sup>

## Conclusion

The effects of domestic violence are far-reaching. This Alert provides only a basic overview of a few of the areas that it impacts.

For further information on preparing and implementing a Domestic Violence Workplace Policy, providing training for recognizing and responding to domestic violence or to discuss any questions you may have on this topic, please consult with any of the undersigned or your regular Warsaw Burstein attorney.

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<sup>13</sup> *Antoinette M. v Paul Seth G.*, 202 AD2d 429 (2d Dep’t 1994).