

Employer Liability for Off-Premises Violence

Employers must not tolerate sexual harassment or workplace violence on their premises. Not only is it wrong, but it exposes an employer to legal liability.

But what about a situation when violence between two employees happens off premises? Is an employer liable under those circumstances? The Seventh Circuit Court of Appeals recently held that an employee's estate had the right to proceed with a lawsuit against an employer where one of the employer's supervisors murdered a subordinate employee off-premises. The case of [Anicich v. Home Depot U.S.A., Inc., No. 16-1693 \(7th Cir. March 24, 2017\)](#) is groundbreaking because until recently, Illinois employers were generally immune from intentional torts committed off-premises.

The Tragic Facts in Anicich.

In Anicich, a Home Depot supervisor named Brian Cooper verbally abused and sexually harassed a young female employee named Alisha Broomfield. Alisha worked with Cooper in Home Depot's garden department from 2006 until 2012.

In 2012, when Alisha was pregnant, Cooper asked Alisha to go to his sister's wedding in Wisconsin. She refused. Cooper told Alisha he would fire her or reduce her hours if she did not relent. Alisha went to the wedding and when she refused to be in a relationship with Cooper, he strangled her to death. Cooper was found guilty of first degree intentional homicide and sentenced to two consecutive life terms.

The "Old" Rule for Employers.

Employers have a duty to act reasonably in hiring, supervising, and retaining their employees. Employees who are hurt by another employee can prove that an employer breached its duty if the injured employee can prove: 1) that the defendant-employer knew or should have known that an employee was unfit and created a danger to others; 2) the unfit

employee caused the injured employee's damages. Until recently, however, an injured employee also had to prove that his injury either occurred on the employer's premises or using the employer's [chattel](#).

The Significance of Cooper's Supervisory Status.

Home Depot argued that because Cooper's homicide was committed off-premises, and without Home Depot chattels, Alisha's case should be dismissed. The trial court accepted Home Depot's argument but the Seventh Circuit Court of Appeals rejected the argument. It held that Cooper used his supervisory authority to kill Alisha. The court reasoned that but for Cooper's threats to either fire Alisha, or reduce her hours, Alisha would have never gone to the wedding. The Seventh Circuit reinstated the case which is now moving forward.

The Many Mistakes of Home Depot.

Home Depot was not a sympathetic defendant in this case. Home Depot knew that Cooper had harassed Alisha's predecessor, Jessica, yet, it did nothing about that harassment and Jessica quit. Once, when Home Depot did discipline Cooper for harassing Alisha, it ordered him to take anger management classes. Home Depot never followed up, however, and Cooper never took the class.

The Takeaway.

Violent, angry, aggressive supervisors should be fired as soon as employers learn of their behavior, absent strong mitigating circumstances. Indeed, off-duty violence by supervisors that an employer learns about should be grounds for discipline, particularly if it is directed toward subordinate employees.

If you have any questions about the matters addressed in this *CCM Alert*, please contact the following CCM author or your regular CCM contact.

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