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The Workplace Injunction: An Emerging but Imperfect Weapon in the Fight Against Domestic Violence

Michael D. Moberly
mmoberly@rcalaw.com

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THE WORKPLACE INJUNCTION: AN EMERGING BUT IMPERFECT WEAPON IN THE FIGHT AGAINST DOMESTIC VIOLENCE

MICHAEL D. MOBERLY*

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INTRODUCTION

Domestic violence has been described as an “escalating societal problem”¹ that poses “a grave threat to the family, particularly to women and children.”²

* B.B.A., J.D., University of Iowa; Shareholder, Ryley, Carlock & Applewhite, Phoenix, Arizona.

1. *In re Walker*, 597 N.E.2d 1271, 1272 (Ind. 1992); *see also* *Hutcherson v. City of Phoenix*, 933 P.2d 1251, 1266 (Ariz. Ct. App. 1996) (Grant, J., concurring in part and dissenting in part) (“We are all well aware that our society is rife with violent crime and domestic violence.”), *vacated*, 961 P.2d 449 (Ariz. 1998).

2. *State v. Chenique-Puey*, 678 A.2d 694, 696 (N.J. 1996); *see also* *State ex rel. Hope House v. Merrigan*, 133 S.W.3d 44, 46-47 (Mo. 2004) (“Domestic violence is one

This is true both in Arizona and in the nation at large.³ In fact, the statistics in Arizona alone are staggering.⁴ It has been estimated that 1,300 domestic violence-related fatalities occur in the United States every year,⁵ of which approximately ninety, or seven percent of the total, occur in Arizona.⁶ This reportedly ranks Arizona second in the nation in the rate at which women are murdered by their intimate partners.⁷

of the most serious threats to the safety and welfare of women, children, and families.”).

3. See *Brzonkala v. Virginia Polytechnic Inst. & State Univ.*, 169 F.3d 820, 905 (4th Cir. 1999) (Niemeyer, J., concurring) (“Violence against women is undoubtedly a national problem in that it is a problem that exists throughout every state in the nation.”); Carolyn V. Williams, Comment, *Not Everyone Will “Get It” Until We Do It: Advocating for an Indefinite Order of Protection in Arizona*, 40 ARIZ. ST. L.J. 371, 400 (2008) (“Domestic violence is a growing problem in the United States, especially in Arizona.”).

4. See *State v. Korzep*, 791 P.2d 1058, 1061 (Ariz. Ct. App. 1989) (“We recognize that the increasing incidences of domestic violence pose a threat to many Arizona residents and that a substantial number of criminal offenses occurring in the home are committed by residents against other residents, all of whom reside within the same household.”), *vacated*, 799 P.2d 831 (Ariz. 1990); Williams, *supra* note 3, at 372 (“Domestic violence occurs frequently in Arizona. . . . In 2005, Arizona Attorney General Terry Goddard reported that police in Arizona responded to a domestic violence call every five minutes.”).

5. See *Georgia v. Randolph*, 547 U.S. 103, 117 (2006). Domestic violence obviously need not be fatal to be abhorrent. See *State v. Blonski*, 707 N.E.2d 1168, 1175 (Ohio Ct. App. 1997) (“One does not have to cause serious injury to be guilty of domestic violence.”). In fact, “domestic violence is not limited to physical assault.” *Borchgrevink v. Borchgrevink*, 941 P.2d 132, 140 (Alaska 1997).

6. See Williams, *supra* note 3, at 372 n.10. Massachusetts, for example, “has a seventy-five percent lower number of domestic violence related homicides than Arizona.” *Id.* at 393. This is despite the fact that in 1989 “a Massachusetts woman was murdered every twenty-two days by an intimate partner; by 1990, it was one every sixteen days, and by 1992 the number was a staggering one every nine days.” Nichole Miras Mordini, Note, *Mandatory State Interventions for Domestic Abuse Cases: An Examination of the Effects on Victim Safety and Autonomy*, 52 DRAKE L. REV. 295, 297 (2003) (citing ANN JONES, NEXT TIME SHE’LL BE DEAD: BATTERING AND HOW TO STOP IT 7 (1994)). By comparison, a “man murders his wife or girlfriend every four days” in Arizona. Williams, *supra* note 3, at 372.

7. See Williams, *supra* note 3, at 372 n.10. Domestic violence may be perpetrated “by a woman against a man or by a man or a woman against a member of the same sex.” *People v. Dobbs*, 940 N.E.2d 1088, 1099 n.2 (Ill. App. Ct. 2010). However, courts and commentators tend to refer to victims as female “because the overwhelmingly majority of the victims are women.” *Weiland v. State*, 732 So.2d 1044, 1057 n.16 (Fla. 1999). Unless the context dictates otherwise, this article will adhere to that convention. Cf. Njeri Mathis Rutledge, *Employers Know Best? The Application of Workplace Restraining Orders to Domestic Violence Cases*, 48 LOYOLA L.A. L. REV. 175, 181 n.11 (2014) (“Since the vast majority of victims are women, this Article will focus on female victims of domestic violence. The analysis, however, can apply to any battered employee, male

The damaging effects of domestic violence are not limited to its impact on the intended victim and members of her family.⁸ As one jurist observed, “the perils of domestic violence are often experienced in the workplace,”⁹ where the victims may include the employer itself¹⁰ “and too often innocent bystanders, including co-workers, who also may suffer injuries in any violent

or female.”).

8. See Jill C. Robertson, *Addressing Domestic Violence in the Workplace: An Employer’s Responsibility*, 16 LAW & INEQ. 633, 659 (1998) (“The malignancy of domestic violence, infecting all aspects of society, inflicts pain on many friends, relatives and neighbors. In essence, society feels the harmful repercussions of domestic abuse outside the home.”); Donna Wills, *Domestic Violence: The Case for Aggressive Prosecution*, 7 UCLA WOMEN’S L.J. 173, 174 (1997) (“The harm caused by this violence refuses to be neatly confined between the abuser and the victim. Rather, domestic violence impacts everyone: children, neighbors, extended family, the workplace, hospital emergency rooms, [and] good Samaritans who are killed trying to intervene.”); Mordini, *supra* note 6, at 298-99 (“Domestic abuse does not only affect women who are assaulted by their partners and the children who witness those assaults. Domestic violence affects us all.”).

9. *Imes v. City of Asheville*, 594 S.E.2d 397, 402 (N.C. Ct. App.) (Timmons-Goodson, J., dissenting), *aff’d*, 606 S.E.2d 117 (N.C. 2004); see also *Burgess v. Cahall*, 88 F. Supp. 2d 319, 323 (D. Del. 2000) (observing that “the problem of violence against women permeates not just the homefront but also the workplace”); *Matter of Castillo v. Schriro*, 15 N.Y.S. 3d 645, 657 (Sup. Ct. 2015) (referring to “the plight of victims of domestic violence and the corresponding impact of domestic violence in the workplace”); Rebecca Smith et al., *Unemployment Insurance and Domestic Violence: Learning from Our Experiences*, 1 SEATTLE J. SOC. JUST. 503, 504 (2002) (“Domestic violence is not confined to the home. It often follows a victim to work.”).

10. See, e.g., *ConAgra Foods, Inc. v. Zimmerman*, 846 N.W.2d 223, 229 (Neb. 2014) (noting that an individual seeking “to harass and possibly harm his estranged wife” at her place of employment could cause “irreparable damage to [the employer’s] property and its employees”); see also Rutledge, *supra* note 7, at 187 n.47 (discussing an employee whose “estranged husband attempted to set fire to her place of employment resulting in a one month closing for renovations”); Timothy John Durbin, Note, *Accommodating Employers’ Interests Into the Discussion of Employment Protections for Victims of Domestic Violence*, 22 J. L. & POL’Y 845, 853 (2014) (discussing an individual who came to his wife’s place of employment and “started a fire inside the workplace with a propane tank”); Hilary Mattis, Comment, *California’s Survivors of Domestic Violence Employment Leave Act: The Twenty-Five Employee Minimum Is Not a Good Rule of Thumb*, 50 SANTA CLARA L. REV. 1319, 1324 (2010) (“[D]omestic violence affects not only victims, but also employers, who bear increased agency costs as a result of upset, distracted, or absent employees.”).

act.”¹¹ Indeed, like domestic violence generally,¹² workplace domestic violence has become a virtual epidemic,¹³ and the problem is – or at least should be¹⁴ – a matter of grave concern to potential victims,¹⁵ their

11. John E. Matejkovic, *Which Suit Would You Like? The Employer's Dilemma in Dealing with Domestic Violence*, 33 CAPITAL U.L. REV. 309, 312 (2004); see also Marcy L. Karin, *Changing Federal Statutory Proposals to Address Domestic Violence at Work*, 74 BROOK. L. REV. 377, 378 (2009) (“Individuals subjected to abuse, their coworkers, and other third parties (like volunteers, contractors, and customers) all suffer consequences as a result of domestic violence that occurs or spills over into the workplace.”); Nicole Buonocore Porter, *Victimizing the Abused?: Is Termination the Solution When Domestic Violence Comes to Work?*, 12 MICH. J. OF GENDER & L. 275, 276 (2006) (“[I]n many cases, the domestic violence spills over into the workplace, and the abuser harms not only his victim but other employees as well.”).

12. See *Brennan v. Orban*, 678 A.2d 667, 675 (N.J. 1996) (“The problem of domestic violence has become so pervasive that scholars now repeatedly refer to it as an ‘epidemic.’”); *Grafton v. Swanson*, 497 N.W.2d 421, 423 (N.D. 1993) (“Incidents of domestic violence occur against women in the United States at epidemic rates – up to 60% of all married women suffer physical abuse at the hands of their spouses at some time during their marriage, and the same can be said of unmarried cohabitants.”).

13. See Robertson, *supra* note 8, at 634 (describing workplace domestic violence as a “public epidemic”); *id.* at 636 (“Attacks on women in the workplace reflect the epidemic of domestic abuse generally.”); cf. *Oleszko v. State Comp. Ins. Fund*, 243 F.3d 1154, 1159 (9th Cir. 2001) (characterizing “workplace and domestic violence” as “serious national problems”).

14. See Karin, *supra* note 11, at 379 (“Generally speaking, . . . the business community has not yet realized the significant burden domestic violence imposes or changed the usual employer response of ignoring a ‘personal’ problem or taking ill-advised actions that result in further negative legal and practical consequences.”); Stephanie L. Perin, Note, *Employers May Have to Pay When Domestic Violence Goes to Work*, 18 REV. LITIG. 365, 401 (1999) (“[M]any employers remain unconvinced that domestic violence is a problem in the workplace.”).

15. See, e.g., *Constantine v. Employment Dep’t*, 117 P.3d 279, 280 (Or. Ct. App. 2005) (“[C]laimant was a victim of domestic violence and . . . she was endangered at her workplace.”); see also *E.C. v. RCM of Wash., Inc.*, 92 A.3d 305, 319 (D.C. 2014) (“Studies have shown that 96% of employed domestic violence victims experience problems at work related to the abuse and that 30% lose their jobs due to domestic violence.” (quoting *The Unemployment and Domestic Violence Amendment Act of 2003: Hearing on Bill 15-436 Before the Pub. Servs. Comm.*, 2003 Leg., Council Period 15, at 2:51-3:56 (D.C. Nov. 10, 2003) (statement of Councilmember David Catania, Chairman))); Nina W. Tarr, *Employment and Economic Security for Victims of Domestic Abuse*, 16 REV. L. & SOC. JUST. 371, 376 (2007):

The issue of domestic violence is relevant in the employment context because its consequences impact every aspect of the victim’s life. Domestic violence can cause victims to be absent or late for work, interfere with their ability to perform on the job, result in termination of their employment, or force them to quit their jobs to escape the violence.

advocates,¹⁶ and employers,¹⁷ all of whom are in need of more effective weapons to combat this growing menace.¹⁸

This article explores one particular weapon available to employers in Arizona and a few other states¹⁹ – the workplace injunction.²⁰ Part I of the

16. See Maria Amelia Calaf, *Breaking the Cycle: Title VII, Domestic Violence, and Workplace Discrimination*, 21 LAW & INEQ. 167, 172 (2003) (“Advocates for victims of domestic violence have attempted to remedy this situation by identifying low or no-cost steps that employers can implement to make the workplace safer for domestic violence victims.”); see also Kari Ricci, *Chapter 476: A Three-Pronged Approach to Addressing Issues of Domestic and Workplace Violence*, 38 MCGEORGE L. REV. 61, 61 (2007) (“Domestic violence advocates are particularly concerned about violent attacks in the workplace because of the abuser’s ability to harass both the victim and other employees, thus threatening the safety of the entire workplace.”).

17. See Karin, *supra* note 11, at 385 (“In addition to lost economic costs, employers are increasingly faced with lawsuits seeking to impose liability on employers . . . for actions a company took or failed to take in response to domestic violence at work.”); Rutledge, *supra* note 7, at 183 (“Employers must contemplate the issue of domestic violence because it impacts productivity, safety, and finances.”); Jennifer Moyer Gaines, Comment, *Employer Liability for Domestic Violence in the Workplace: Are Employers Walking a Tightrope Without a Safety Net?*, 31 TEX. TECH L. REV. 139, 147 (2000) (“[W]hen domestic violence enters the workplace, employers may be susceptible to liability for injuries resulting from an inherently private relationship.”); Perin, *supra* note 14, at 401 (noting that a “growing number of businesses . . . have made domestic violence a company issue”).

18. See *Melvin v. Melvin*, 580 A.2d 811, 815 (Pa. Super. Ct. 1990) (“While more traditional remedies . . . remain available to victim’s [sic] of domestic violence, we note . . . the widely perceived *inadequacies* of the traditional remedies standing alone.”); *Hayen v. Hayen*, 606 N.W.2d 606, 611 (Wis. Ct. App. 1999) (noting that “domestic abuse victims need particular protective measures”); Karin, *supra* note 11, at 403 (“[E]mployers need [a] preventative tool to proactively seek protection from a court when people are endangered at work or on the worksite.”); cf. Williams, *supra* note 3, at 372 (stating that “the approach taken now in Arizona in responding to domestic violence may fall short”). See generally *Coburn v. Coburn*, 674 A.2d 951, 955 n.4 (Md. 1996) (“[D]espite the significant progress that has been made in the domestic violence arena, there is still ample room for further legal and social reform.”).

19. The article focuses on the use of workplace injunctions in the author’s home state, Arizona, in part because it was one of the first (and remains one of the few) states to enact legislation authorizing such injunctions. See Kyle Riley, *Employer TROs Are All the Rage: A New Approach to Workplace Violence*, 4 NEV. L.J. 1, 2 (2003); Deborah A. Widiss, *Domestic Violence and the Workplace: The Explosion of State Legislation and the Need for a Comprehensive Strategy*, 35 FLA. ST. U. L. REV. 669, 714-15 (2008). However, the analysis is likely to be instructive in other states as well. See Riley, *supra* note 19, at 2, 24 (noting that “Nevada modeled [its legislation] after the Arizona and California statutes,” and that statutes authorizing workplace injunctions “share similar characteristics”).

20. See Matejkovic, *supra* note 11, at 344 (“A number of states have proposed or

article uses an illustrative case to describe the risks associated with workplace domestic violence,²¹ and identifies some of the reasons for the prevalence of such violence.²² Part II discusses the employer's duty to provide its employees and other invitees with a safe work environment.²³ Part III examines the potential applicability of state workers' compensation laws in workplace domestic violence cases,²⁴ and Part IV discusses the employer's potential tort liability for an incident of domestic violence.²⁵ Part V identifies some common strategies for addressing workplace violence.²⁶ In Parts VI and VII, the author discusses the emergence of workplace injunction statutes,²⁷ and the Arizona statute in particular.²⁸ The limitations of workplace injunctions are explored in Part VIII.²⁹ Part IX examines the practical dilemma faced by an employer contemplating the pursuit of a workplace injunction,³⁰ and Part X describes the employer's ability to obtain an injunction without the victim's consent.³¹ The author ultimately concludes that as more states enact legislation authorizing such injunctions, employers are likely to make greater use of this weapon in their efforts to combat workplace domestic violence.³²

enacted statutes allowing employers to seek . . . protective or restraining orders, where violence, harassment, or stalking of employees has occurred.”). The use of injunctions to combat workplace violence has received relatively little prior scholarly attention, and virtually none in Arizona. *See, e.g.*, N. Douglas Grimwood & Maureen Kane, *State Legislative Environment*, 1 ARIZ. EMP'T L. HANDBOOK § 1.9.9, at 1.9-7 (Thomas M. Rogers 2d ed. 2004) (containing a four paragraph discussion of the Arizona statute “permitting employers to seek injunctions against workplace harassment”); *see also* Rutledge, *supra* note 7, at 182 n.14 (“At the time of the writing of this Article there were only five law review articles that provided a limited discussion of workplace restraining orders.”).

21. *See infra* notes 33-56 and accompanying text.
22. *See infra* notes 57-61 and accompanying text.
23. *See infra* notes 62-74 and accompanying text.
24. *See infra* notes 75-100 and accompanying text.
25. *See infra* notes 101-31 and accompanying text.
26. *See infra* notes 132-46 and accompanying text.
27. *See infra* notes 147-71 and accompanying text.
28. *See infra* notes 172-92 and accompanying text.
29. *See infra* notes 193-210 and accompanying text.
30. *See infra* notes 211-34 and accompanying text.
31. *See infra* notes 235-56 and accompanying text.
32. *See infra* notes 257-65 and accompanying text.

I. THE WORKPLACE DOMESTIC VIOLENCE PROBLEM

Workplace violence is a matter of significant public concern,³³ and in recent years employers have become increasingly attuned to the issue.³⁴ Although this violence takes various forms,³⁵ workplace domestic violence is a particularly vexing problem for employers,³⁶ not only because of its prevalence,³⁷ but also because the typical employer may have little or no

33. See *Franklin v. Monadnock Co.*, 59 Cal. Rptr. 3d 692, 702 (Ct. App. 2007) (“The public has a vital interest in ensuring, to the extent possible, that employees are provided a workplace that is free from credible threats of violence and physical assaults.”); see also *Shell v. Host Int’l*, 513 N.W.2d 15, 17 (Minn. Ct. App. 1994) (“Violence in the workplace is an increasingly prevalent problem and is disruptive of the normal employer/employee relationship.”); James R. Todd, Comment, “*It’s Not My Problem*”: *How Workplace Violence and Potential Employer Liability Lead to Employment Discrimination of Ex-Convicts*, 36 ARIZ. ST. L.J. 725, 757 (2004) (“The widespread frequency of workplace violence . . . requires that Arizona be proactive in preventing such ills of society.”).

34. See *G.B. Goldman Power Co. v. United Paperworkers Int’l Union*, 957 F. Supp. 607, 618 (E.D. Pa. 1997) (“Workplace violence has become an increasingly more prominent concern to employers around the country in recent years.”); see also *Baldor Elec. Co. v. Arkansas Emp’t Sec. Dep’t*, 275 S.W.3d 771, 773 (Ark. Ct. App. 2000) (“Violence in the workplace is of paramount concern to employers.”); Adam K. Treiger, *A Weapon Against Violence in the Workplace*, 20 L.A. LAW., Nov. 1997, at 20 (“Violence at the workplace is a growing phenomenon in the United States. . . . In the face of this rising violence, employers are finding it more difficult to keep the workplace safe for their employees and others who work there.”).

35. See, e.g., *Cty. of Maricopa v. Indus. Comm’n*, 654 P.2d 307, 309 (Ariz. Ct. App. 1982) (describing a psychiatric case worker who was injured when “one of the patients attacked her, grabbing her around the neck and cutting her hand with a knife”); see also *Ulrick v. Kunz*, 594 F. Supp. 2d 847, 852 (N.D. Ohio) (referring to cases in which “employee-on-employee violence is at issue”), *aff’d*, 349 F. App’x 99 (6th Cir. 2009). See generally Karin, *supra* note 11, at 407 n.161 (stating that domestic violence is “only one category of workplace violence,” and that the “other major categories of workplace violence are stranger violence, client/customer violence, and coworker violence”).

36. See *Reynolds v. Fraser*, 781 N.Y.S.2d 885, 889 (Sup. Ct. 2004) (“The impact of domestic violence in the workplace has received increased attention in recent years.”); see also Matejkovic, *supra* note 11, at 311-12 (“While workplace violence from any source is obviously a concern for employers, the issues presented when acts of domestic violence spill into the workplace are particularly thorny, as employers face exposure to liability claims based upon a variety of sources and theories.”); Darcelle D. White et al., *Is Domestic Violence About to Spill Into Your Client’s Workplace?*, 81 MICH. B.J., Oct. 2002, at 28, 29 (“Every employer must be aware of the increasing reports of domestic violence. . . . The statistics related to the spillover of domestic violence into the workplace are startling.”).

37. See Porter, *supra* note 11, at 277 (“Domestic violence occurs in the workplace more frequently than one might presume.”); Lea B. Vaughn, *Victimized Twice—The Intersection of Domestic Violence and the Workplace: Legal Reform Through*

knowledge of the potential perpetrator's propensity for violence,³⁸ making it difficult to anticipate a violent workplace incident,³⁹ let alone prevent one from occurring.⁴⁰

Consider the following incident, described in the Arizona Court of Appeals' opinion in *Epperson v. Industrial Commission*.⁴¹ An employee with a stormy 20-year marriage that had been plagued by violent fights spent the night in a motel after a serious quarrel with her husband.⁴² To avoid a further confrontation with her husband, who was familiar with her work schedule, the employee went to work early the following morning, without

Curriculum Development, 47 LOY. L. REV. 231, 244 (2001) (referring to "the emerging and very public reports about the prevalence of domestic violence at the workplace").

38. See Karin, *supra* note 11, at 390 ("Embarrassment and fear of termination or other retribution often prevent victim employees from talking to their employers about their situations."); Widiss, *supra* note 19, at 705 n.123 ("[S]ome victims may be relatively sure that there is little or no likelihood that they would be attacked at work and have no reason to 'alert' their employers to this highly speculative risk."); Perin, *supra* note 14, at 396 ("An employee who is a victim of domestic violence may turn to her employer for help; however, it is more likely that she will remain silent.") (footnote omitted). Past incidents of domestic violence may "portend violence in the workplace." *Morris v. Crawford Cty.*, 299 F.3d 919, 925 (8th Cir. 2002). However, domestic violence "is unlike most crimes in that its victims are often reluctant to report the crime or to seek help to escape the perpetrator, due to fear, shame, or economic dependence." *Danny v. Laidlaw Transit Servs., Inc.* 193 P.3d 128, 146 (Wash. 2008) (Madsen, J., concurring in part and dissenting in part).

39. See Ricci, *supra* note 16, at 68-69 ("When an employee is the target of a specific threat, there is no way to predict what will happen and who will be injured if the perpetrator gains access to the workplace."); Gaines, *supra* note 17, at 184 ("The manifestation of domestic violence in the work environment is, at best, unpredictable."). See generally Dana Harrington Conner, *To Protect or to Serve: Confidentiality, Client Protection, and Domestic Violence*, 79 TEMP. L. REV. 877, 880 (2006) ("All too often the risk of serious physical injury faced by those who endeavor to survive domestic violence is very real. Research, however, shows that future violence is difficult to predict.").

40. See Robertson, *supra* note 8, at 657 (stating that "the unpredictable nature of domestic violence makes preventing violent workplace acts difficult") (footnote omitted); cf. Lisalyn R. Jacobs & Maya Raghu, *The Need for a Uniform Federal Response to the Workplace Impact of Interpersonal Violence*, 11 GEO. J. OF GENDER & L. 593, 604 (2010) (asserting that "employers cannot take safety precautions if they do not know what is going on"). *But cf.* Gaines, *supra* note 17, at 155-56 ("Because domestic violence is often a condition which employees make known or employers have reason to suspect, foreseeability is more likely in domestic violence assaults in the workplace than in random acts of violence in the workplace.").

41. 549 P.2d 247 (Ariz. Ct. App. 1976).

42. See *id.* at 248.

first returning home.⁴³

Upon arriving at work, the employee told a security guard she was having personal problems with her husband,⁴⁴ and that she did not want to see him if he showed up at the workplace.⁴⁵ Despite this disclosure,⁴⁶ the employer did virtually nothing to protect the employee.⁴⁷ As a result, the employee was seriously injured when her husband, who was angered by her failure to return home, came to her workplace later that morning.⁴⁸ After being permitted to speak with her for several minutes, he drew a gun hidden under his shirt, disarmed the security guard, and shot the employee, his wife.⁴⁹

As troubling as this scenario is,⁵⁰ the outcome could have been even worse.⁵¹ The employee in *Epperson* survived the workplace assault to which she was subjected,⁵² and neither the security guard nor any of the employee's coworkers appear to have been injured.⁵³ Nevertheless, the type of violent workplace incident described in *Epperson* occurs all too frequently,⁵⁴ and,

43. *See id.* at 248-49.

44. *See id.* at 249.

45. *See id.* at 249; *cf.* Robertson, *supra* note 8, at 650 (“[I]f a woman feels threatened by a batterer, she should inform her employer. Once notified, the employer may have a duty to protect the employee.”).

46. *See Epperson*, 549 P.2d at 250 (observing that “the security guard had knowledge of the marital conflict and [the employee’s] desire to have her husband denied admission to the building”).

47. When the employee’s husband arrived at her workplace, he was initially “stopped at the door.” *Id.* at 250. He was standing at the security guard’s desk when his wife appeared in the area approximately one half hour later. *See id.* at 249. At that point, he was permitted to approach her, apparently with no interference from the security guard, and begin the conversation that ultimately culminated in violence. *See id.*

48. The husband’s anger in this situation was predictable. *See generally* Williams, *supra* note 3, at 376 (“When the batterer sees his ongoing control of the relationship being questioned . . . violence escalates.”).

49. *See Epperson*, 549 P.2d at 249.

50. *See generally* Catholic Cemeteries v. RI Laborers Dist. Council, 177 L.R.R.M. (BNA) 2148, 2154 (R.I. Super. Ct. 2005) (“[W]orkplace anger and violence is often ignored by employers who fail to take appropriate steps to diffuse potential violence before it erupts.”).

51. *See, e.g.*, Matejkovic, *supra* note 11, at 313 (“In [one] case, a husband appeared at the wife’s workplace and opened fire with a shotgun. The husband killed two employees and wounded nine.”).

52. *See generally Epperson*, 549 P.2d 247.

53. *Id.* at 249 (describing how the husband was eventually subdued by police).

54. *See, e.g.*, *In re Estate of Alarcon*, 718 P.2d 989, 990 (Ariz. 1986) (describing an individual who, upon being informed of her husband’s intent to seek a divorce, “drove to [his] place of work,” where she “summoned him to meet her” and then “shot him

like domestic violence occurring in other settings⁵⁵, occasionally with lethal results.⁵⁶

This phenomenon is not altogether surprising.⁵⁷ Employment is often confined to a specific and relatively public location,⁵⁸ and involves a predictable work schedule,⁵⁹ leaving employees who are involved in abusive

repeatedly”); *see also* State v. Adams, 745 P.2d 175, 176 (Ariz. Ct. App. 1987) (describing an assailant who “shot his wife in the back outside of a pizza parlor where she worked”); Clark v. Carla Gray Dress Co., 342 S.E.2d 468, 469 (Ga. Ct. App. 1986) (describing an employee whose “estranged husband came onto the work premises and shot her”); Johnson v. Drummond, Woodsum, Plimpton & Nelson, P.A., 490 A.2d 676, 677 (Me. 1985) (describing an employee who “was shot by her estranged husband in the reception area of her place of employment”).

55. *See, e.g.*, Vasquez v. Residential Invs., Inc., 12 Cal. Rptr. 3d 846, 849 (Ct. App. 2004) (describing “a jealous boyfriend [who] broke into the apartment of his estranged girlfriend and murdered her”); *see also* McSwane v. Bloomington Hosp., 916 N.E.2d 906, 908 (Ind. 2009) (discussing “a domestic violence victim whose former husband killed her on the way home” from a hospital in which she had been treated); State v. Burnett, 230 S.W.3d 15, 20 (Mo. Ct. App. 2007) (referring to “a residence that had been the site of a recent, fatal incident of domestic violence”). *See generally* Commonwealth v. Gordon, 29 N.E.3d 856, 868 (Mass. App. Ct.) (discussing the “lethal nature of many domestic violence incidents”), *appeal denied*, 36 N.E.2d 30 (Mass. 2015).

56. *See, e.g.*, State v. Woods, 881 P.2d 1155, 1165 (Ariz. 1994) (“Defendant shot and killed his estranged girlfriend . . . at a Tucson automotive paint and body shop . . . owned and operated by [her] family.”); *see also* State v. Lundstrom, 776 P.2d 1067, 1069 (Ariz. 1989) (describing an individual who fatally wounded his wife in the restaurant where she worked); Carroll v. Shoney’s, Inc., 775 So.2d 753, 754 (Ala. 2000) (describing an employee who “died as a result of a gunshot wound inflicted by [her husband] while she was working”); State v. Cooper, 718 S.W.2d 256, 256 (Tenn. 1986) (affirming the murder conviction of an individual who “shot his wife four times with a pump shotgun at her place of employment”).

57. *See* E.C. v. RCM of Wash., Inc., 92 A.3d 305, 318-19 (D.C. 2014) (“Domestic violence victims are often stalked by their batterers at work . . . (quoting COUNCIL OF D.C., COMM. ON PUB. SERVS., REP. ON BILL 15-436, at 1 (Jan. 28, 2004)); *see also* State v. Reyes, 796 A.2d 879, 884 (N.J. 2001) (“Domestic violence rarely consists of an isolated event and often occurs both within and outside the home.”).

58. *See, e.g.*, Beck v. State, 779 S.W.2d 367, 371 (Tenn. 1989) (“In the case at bar, the assailant had access to [the victim] because her workplace was open to the public.”); *see also* Karin, *supra* note 11, at 377 (“[D]omestic violence regularly and repeatedly spills over to the ‘public’ workplace.”); Rutledge, *supra* note 7, at 187 (“Working can make [one] an easy target for a stalker or batterer, particularly if she . . . works in a public building where members of the public can enter and exit at all times.”). *See generally* Muller v. Automobile Club of S. Cal., 71 Cal. Rptr. 2d 573, 586 (Ct. App. 1998) (“There is a certain risk of crime in any workplace to which the general public has access.”) *disapproved on other grounds in* Colmenares v. Braemar Country Club, 63 P.3d 220, 226 n.6 (Cal. 2003).

59. *See, e.g.*, Michaelson v. Garr, 323 P.3d 1193, 1195-96 (Ariz. Ct. App. 2014)

relationships vulnerable to attack while they are at work.⁶⁰ As one commentator explained, domestic violence may spill into the workplace “for no other reason than the perpetrator knows where the victim is going to be at some particular point in time – at work.”⁶¹

II. THE EMPLOYER’S DUTY TO PROVIDE A SAFE WORK ENVIRONMENT

Employers can ill afford to ignore the workplace risks associated with domestic violence,⁶² however subtle the warning signs of a potentially

(describing an individual who called his former fiancée’s employer and “gained access to her work schedule, and then sent her a text stating that he . . . knew when she was at work or at home”); *see also* Porter, *supra* note 11, at 277 (stating that “because a woman’s hours on the job are often predictable, the woman’s abuser can readily find her at work”); Robertson, *supra* note 8, at 637 (observing that “because many women spend predictable hours on the job, abusers can track down their victims at work with relative ease”).

60. *See, e.g.*, *McMillan v. State Mut. Life Assurance Co.*, 922 F.2d 1073, 1079 (3d Cir. 1990) (noting that an employee’s estranged husband “knew at what time [she] would finish work because she always did so at the same time” and murdered her “where he knew she would exit”); *see also* *Johnson v. Drummond, Woodsum, Plimpton & Nelson*, P.A., 490 A.2d 676, 677 (Me. 1985) (“Because [the employee] had taken steps to avoid her husband during nonworking hours, the only place where he was sure to make personal contact with her was at the law firm [where she worked].”); Vaughn, *supra* note 37, at 232-33 (“[S]hould an employed woman manage to escape her situation and find protected shelter, her former partner knows that the one place he can find her is at her place of employment.”). *See generally* Rutledge, *supra* note 7, at 187-88 (“Work confines most individuals to a set geographic location and a set time, leaving victims feeling vulnerable.”).

61. Matejkovic, *supra* note 11, at 313; *see also* *AMTRAK v. Su*, No. 2:15-cv-0924-KJM-EFB, 2017 U.S. Dist. LEXIS 167477, at *21 (E.D. Cal. Oct. 10, 2017) (observing that a victim of domestic violence “may be vulnerable at work while trying to end an abusive relationship because the workplace may be the only place where the perpetrator knows to contact the victim” (quoting A.B. 1522, 2013-14 Leg., Reg. Sess. (Cal. 2014), 2014 Cal. Stat. ch. 317, § 1(n)); Karin, *supra* note 11, at 381 (“Acts of domestic violence often occur while a victim is at work because work is the one place where perpetrators know they will be able to find their victims.”); Porter, *supra* note 11, at 278 (“A substantial portion of the battered women each year are abused in the workplace because it is easy for batterers to find their victims at work.”); Smith et al., *supra* note 9, at 504 (“A perpetrator may stalk a victim at her workplace because it may be the only place he knows that he can find her.”).

62. *See* *Hughes v. Kentucky Horse Racing Auth.*, 179 S.W.3d 865, 869 (Ky. Ct. App. 2004) (“[T]he increasing incidence of workplace violence requires vigilance by any employer.”); *see also* Robertson, *supra* note 8, at 644 (“[T]he threat of legal liability and the motivation of sound public policy should convince employers to respond to workplace domestic violence issues.”).

violent incident may be.⁶³ In addition to the costs domestic violence imposes on employers in terms of employee turnover,⁶⁴ absenteeism,⁶⁵ and lost productivity,⁶⁶ the Arizona courts (and the courts of most other states)⁶⁷ have

63. See, e.g., Robertson, *supra* note 8, at 635-36 (“In stalking situations, the perpetrator may enter the premises or wait outside until the victim leaves the building. These acts . . . may be warning signals of a potential workplace hazard.”) (footnotes omitted); see also Perin, *supra* note 14, at 397:

Clues that an employee is a victim of domestic violence include repeated bruises or injuries attributed to a fall or being clumsy; clothing which appears to be inappropriate, including long sleeves, sunglasses, or heavy makeup; high absenteeism; lack of concentration; an unusual number of phone calls, and a strong reaction to such calls; and the employee’s reluctance to participate in informal activities.

64. See, e.g., Municipality of Anchorage v. Gregg, 101 P.3d 181, 190 (Alaska 2004) (discussing an employee who “was effectively unable to work because she fled the state to leave an abusive husband”); see also Constantine v. Employment Dep’t, 117 P.3d 279, 280 (Or. Ct. App. 2005) (“[C]laimant gave [her] employer two weeks’ notice that she would be leaving work to move to another city because her husband had been abusing her and she was concerned for her own safety.”); see also L.C. v. Board of Review, 110 A.3d 949, 961 (N.J. Super. Ct. App. Div. 2015) (“[A]s a result of being a victim of domestic violence, a person may decide to move some distance from the abuser; but, as a result, the commute to work may become burdensome, leading the person to quit his or her job.”). See generally Brown v. Division of Emp’t Sec., 320 S.W.3d 748, 751 (Mo. Ct. App. 2010) (“Certainly there can be instances where the factual circumstances surrounding a case of domestic abuse are such that the victim has no choice but to resign . . . in order to escape serious physical harm.”).

65. See, e.g., Cheek v. Emp’t Sec. Dep’t, 25 P.3d 581, 482 (Wash Ct. App. 2001) (describing an employee who was “granted a leave of absence . . . due to an ongoing domestic violence situation with her ex-boyfriend”); see also Widiss, *supra* note 19, at 677 (“Domestic violence . . . frequently causes absences from work. Victims often need to miss work to go to court, meet with the police, obtain medical treatment, relocate to a new home, or secure an existing home.”).

66. See, e.g., Clark v. Carla Gray Dress Co., 342 S.E.2d 468, 469 (Ga. Ct. App. 1986) (describing an employee whose “work had slowed because of her domestic problems”); see also Margaret C. Hobday, *Protecting Economic Stability: The Washington Supreme Court Breathes New Life In the Public Policy Exception to At-Will Employment for Domestic Violence Victims*, 17 WM. & MARY J. WOMEN & L. 87, 91 (2010) (“A current victim’s productivity may . . . suffer because of workplace harassment or stalking, or because of the stress and distraction the abuse at home causes.”). See generally Reynolds v. Fraser, 781 N.Y.S.2d 885, 889 (Sup. Ct. 2004) (“Domestic violence leads to absenteeism, increased health care costs, higher turnover, lower productivity, and a greater risk that a violent incident will occur at the workplace.” (quoting *Domestic Violence Not Just a Problem in the Home*, CAL. EMP’T L. LETTER (M. Lee Smith Publishers), Mar. 19, 2001, at 11)) (bracketing omitted).

67. See Davis v. Liberty Mut. Ins. Co., 525 F.2d 1204, 1207 (5th Cir. 1976) (stating that “in most states, the law . . . is clear that an employer has a legal obligation to provide his employees with a safe place to work”); cf. Reynolds Metals Co. v. Secretary of Labor,

held that employers have a legal obligation to provide their employees, and other invitees⁶⁸, with a safe work environment,⁶⁹ and that they may be liable for failing to protect their employees (and other invitees)⁷⁰ from reasonably foreseeable criminal conduct.⁷¹ This obligation logically encompasses a

442 F. Supp. 195, 200 (W.D. Va. 1977) (discussing the existence of “a strong governmental policy that every worker in the United States should be afforded a safe working environment”).

68. *See, e.g.*, *Knauss v. DND Neffson Co.*, 963 P.2d 271, 277 (Ariz. Ct. App. 1997) (assuming that “the employer’s duty extends not only to its own employees but also to an independent contractor’s employees”); *see also* *Allen v. Connolly*, 158 S.W.3d 61, 66 (Tex. App. 2005) (finding “no sound basis to treat [an entity’s] duty, as an employer, to exercise reasonable care to provide . . . a reasonably safe place to work differently from [its] duty, as premises occupier, to use ordinary care to protect invitees from criminal acts of third parties”). Indeed, it is in part precisely because employees “are considered invitees of their employer” that “employers are responsible for providing a safe work place to their employees.” *Guerrero v. Memorial Med. Ctr.*, 938 S.W.2d 789, 791 (Tex. App. 1997). Some states have codified the employer’s duty to invitees in what occasionally are referred to as “frequenter” statutes. *Eicher v. United States Steel Corp.*, 512 N.E.2d 1165, 1167 (Ohio 1987). Ohio’s statute, for example, states that “[e]very employer . . . shall furnish a place of employment which shall be safe for the employees therein and for frequenters thereof[.]” *Id.* (quoting OHIO REV. CODE ANN. § 4101.11); *cf.* *Stefanovich v. Iowa Nat’l Mut. Ins. Co.*, 271 N.W.2d 867, 869 (Wis. 1978) (“The Wisconsin safe-place statute provides that it is an employer’s duty to provide safe employment, premises and equipment for the protection of his employees and frequenters.” (construing WIS. STAT. § 101.11)). The Ohio Supreme Court has held that the duty embodied in these statutes is “a codification of the common-law duty owed by an owner or occupier to invitees.” *Eicher*, 512 N.E.2d at 1167.

69. *See* *Div. of Occupational Safety & Health v. Chuck Westenburg Concrete Contractors, Inc.*, 972 P.2d 244, 253 (Ariz. Ct. App. 1998) (“Every Arizona employer is responsible for providing his employees with a safe place of employment.” (citing Ariz. Rev. Stat. § 23-403.A)); *see also* *Circle K Corp. v. Rosenthal*, 574 P.2d 856, 861 (Ariz. Ct. App. 1977) (noting that “an employer in Arizona has a duty to provide his employees with a reasonably safe place to work” (citing *Bond v. Cartwright Little League, Inc.*, 536 P.2d 697 (Ariz. 1975))); *Flynn v. Lindenfield*, 433 P.2d 639, 642 (Ariz. Ct. App. 1967) (“An employer owes an employee the duty to provide a reasonably safe place to work and to warn the employee of dangers inherent in the place of employment.”).

70. *See, e.g.*, *Hillcrest Foods, Inc. v. Kiritsy*, 489 S.E.2d 547, 548 (Ga. Ct. App. 1997) (describing a restaurant patron injured in a workplace shooting incident who asserted a tort claim against the restaurant “for negligent retention of its employee . . . , the intended victim, who was the wife of the shooter”); *see also* *Allen*, 158 S.W.3d at 65 (“[T]he risk of criminal violence against employees, in a small office open to the public, is virtually identical to the risk of criminal violence there against invitees.”). *See generally* *Lefmark Mgmt. Co. v. Old*, 946 S.W.2d 52, 56 (Tex. 1997) (Owen, J., concurring) (“Employers . . . should shoulder some responsibility for the protection of those at the workplace or on the premises from criminal acts.”).

71. *See* *Circle K Corp.*, 574 P.2d at 861; *cf.* *Rossell v. Volkswagen of Am.*, 709 P.2d

duty to protect employees from workplace domestic violence,⁷² and employers risk incurring significant liability if they fail to take reasonable steps to prevent a violent incident from occurring.⁷³ The Arizona Supreme Court has described the source of this duty in the following terms:

The duty of a master to provide his servant with a safe place to work and to exercise reasonable care in making the place of work safe is a principle of law which has the sanctity of age and the approval of mankind generally. The rule has always been enforced by the courts in proper cases. It is engrained in the law of negligence.⁷⁴

517, 526 (Ariz. 1985) (“[T]he scope of the risk created by the negligence of the original actor may include the foreseeable . . . criminal conduct of others.”). *See generally* Foley v. Boston Hous. Auth., 555 N.E.2d 234, 237 n.5 (Mass. 1990) (“A number of jurisdictions have held that the employer-employee relationship may in certain circumstances give rise to a duty to protect the employees from the criminal acts of third parties. These cases uniformly require that, before liability may attach, the act must have been at least reasonably foreseeable.”) (citations omitted).

72. *See, e.g.*, Franklin v. Monadnock Co., 59 Cal. Rptr. 3d 692, 697 (Ct. App. 2007) (stating that the “public policy requiring employers to provide a safe and secure workplace” includes “a requirement that an employer take reasonable steps to address credible threats of violence in the workplace”); *see also* Porter, *supra* note 11, at 312-13 (“Employers may be legally obligated to protect their employees (including the employee-victim) from workplace domestic violence.”); Rutledge, *supra* note 7, at 185 (“Certainly employers bear some responsibility for ensuring the safety of all its employees, including those who are in abusive relationships.”).

73. *See* Peco Foods, Inc. v. Retail Wholesale & Dep’t Store Union Mid-S. Council, No. 7:16-cv-01345-LSC, 2017 U.S. Dist. LEXIS 93505, at *14 (N.D. Ala. June 19, 2017) (discussing the contention that “employers can face liability under negligence theories and workers’ compensation laws for their failure to prevent workplace violence”); *see also* Ricci, *supra* note 16, at 69 (“If an act of violence is perpetrated in the workplace, employers may be exposed to legal liability due to their actual or perceived inadequate security measures.”); Gaines, *supra* note 17, at 158 (“No action on the part of the employer to provide security at work for the domestic violence victim-employee could constitute a breach of a duty to provide a safe workplace.”).

74. Apache Ry. Co. v. Shumway, 158 P.2d 142, 148 (Ariz. 1945); *see also* Earles v. Union Barge Line Corp., 486 F.2d 1097, 1104 (3d Cir. 1973) (observing that “the duty to use reasonable care to provide a safe place to work is found in the law of negligence”); House v. Mine Safety Appliances Co., 417 F. Supp. 939, 946 (D. Idaho 1976) (“It has traditionally been the duty of employers to furnish a safe place of employment. Such a policy is reflected in the common law, labor law, workmen’s compensation laws, Federal Mine Safety Code and the Occupational Safety and Health Act.”). Like a number of other states, Arizona has codified the employer’s duty to provide its employees with a safe work environment. *See* ARIZ. REV. STAT. § 23-403.A; *cf.* Gossett v. Twin Cty. Cable T.V., Inc., 594 So.2d 635, 639 (Ala. 1992) (“An employer/master has a duty to provide employees/servants with a reasonably safe work environment; this duty exists both by statute and under the common law.”). The Arizona Court of Appeals has indicated that “for all practical purposes, the common law duty and the statutory duty are substantively

III. THE IMPACT OF WORKERS' COMPENSATION

Like every other state in the nation,⁷⁵ Arizona has a workers' compensation act,⁷⁶ the principal purpose of which is to provide employees with prompt and reliable economic redress for injuries suffered on the job.⁷⁷ The Arizona Supreme Court has explained that these laws reflect a trade-off involving the employee's waiver of potential tort recovery in exchange for an expeditious method by which the employee can receive compensation for an injury sustained in a work-related incident.⁷⁸

the same.” *State v. Far West Water & Sewer Inc.*, 228 P.3d 909, 933 n.12 (Ariz. Ct. App. 2010).

75. *See Liberty Mut. Ins. Co. v. Friedman*, 639 F.2d 164, 166 (4th Cir. 1984) (observing that “all states in the United States have enacted workers’ compensation laws”); *Sams v. United Food & Commercial Workers Int’l Union*, 681 F. Supp. 1575, 1583 (S.D. Ga. 1988) (“Workers’ compensation acts in every state provide that employers are liable without fault for a broad range of work-related accidents.”), *rev’d on other grounds*, 866 F.2d 1380 (11th Cir. 1989).

76. *See State Comp. Fund v. Symington*, 848 P.2d 273, 275 (Ariz. 1993) (“When the Arizona Constitution was adopted, it directed the state legislature to enact a workers’ compensation law. Ariz. Const. art. XVIII, § 8. The legislature responded by enacting the comprehensive statutory scheme, 1925 Ariz. Sess. Laws, ch. 83, which now appears at A.R.S. §§ 23-902 through 23-1091.”). For a discussion of the Arizona act’s evolution, see Sandra A. Day, *How Did We Get Here? The Development of Arizona Workers’ Compensation Law*, 36 ARIZ. ATT’Y, Apr. 2000, at 10.

77. *See Hays v. Continental Ins. Co.*, 838 P.2d 1334, 1338 (Ariz. Ct. App. 1992) (“The legislature enacted the Workers’ Compensation Act pursuant to art. 18, § 8 of the Arizona Constitution. The purpose of the act was to curtail litigation between employers and employees and insure injured employees sure and speedy compensation.”), *vacated on other grounds sub nom. Hayes v. Continental Ins. Co.*, 872 P.2d 668 (Ariz. 1994); *see also Engler v. Gulf Interstate Eng’g, Inc.*, 258 P.3d 304, 312 (Ariz. Ct. App. 2011) (“Arizona’s Workers’ Compensation Act is remedial legislation enacted to protect employees injured in the course of their employment.”), *aff’d*, 280 P.3d 599 (Ariz. 2012); *cf. Anderson v. Save-A-Lot, Ltd.*, 989 S.W.2d 277, 281 (Tenn. 1999) (stating that “workers’ compensation is intended to compensate employees for economic loss resulting from tangible injuries suffered on-the-job”).

78. *See Stoecker v. Brush Wellman, Inc.*, 984 P.2d 534, 537 ¶ 11 (Ariz. 1999) (“The underlying principle of the compensation system is a trade of tort rights for an expeditious, no-fault method by which an employee can receive compensation for accidental injuries sustained in work-related accidents.”); *cf. Rudisill v. Ford Motor Co.*, 709 F.3d 595, 601 (6th Cir. 2013):

The system represents a public-policy tradeoff: Employees receive guaranteed compensation for injuries arising out of their employment, regardless of fault, thereby obtaining a degree of protection against workplace injuries and bypassing the myriad defenses and exceptions that often permitted employers to escape liability at common law; in return, employees waive the right to bring tort actions against their employers for workplace injuries, thereby minimizing

The availability of a statutory workers' compensation remedy is a potential "stumbling block"⁷⁹ for employees injured by workplace violence who seek to impose tort liability on their employers for failing to maintain a safe work environment.⁸⁰ This is so because the statutory remedy is generally deemed to be exclusive of other remedies,⁸¹ and thus, under most circumstances,⁸² precludes employees who are injured at work from asserting common law claims against their employers.⁸³

the expense and administrative burden of litigation and giving employers a measure of peace.

79. Riley, *supra* note 19, at 17.

80. See *Spratley v. Winchell Donut House*, 234 Cal. Rptr. 121, 122 (Ct. App. 1987) ("Workers' compensation is the sole remedy for an employee injured by the employer's failure to provide a safe workplace."); see also Pamela Treadwell-Rubin, *Workplace Violence and Workers' Compensation*, 33 ARIZ. ATT'Y, Dec. 1996, at 16, 19 ("[M]any types of workplace assaults have been found to be compensable under workers' compensation principles, thereby limiting the liability exposure [of] . . . employers based upon the exclusive remedy provision of the workers' compensation act.").

81. See *Bonner v. Minico, Inc.*, 766 P.2d 598, 601 (Ariz. 1988) ("In most cases, absent a pre-accident election by the employee, workers' compensation is the employee's exclusive remedy for work-related injuries."); see also *McKee v. State*, 388 P.3d 14, 18 (Ariz. Ct. App. 2016) ("In Arizona, workers' compensation is the exclusive remedy for compensation against an employer for the work-related injury or death of an employee.").

82. There are certain narrow exceptions to the exclusivity of the workers' compensation remedy. For example, the remedy is not exclusive "when the injury is caused by the employer's willful misconduct." *Diaz v. Magma Copper Co.*, 950 P.2d 1165, 1172 (Ariz. Ct. App. 1997) (citing Ariz. Rev. Stat. § 23-1022.A). In that situation, "a worker may elect *after* injury whether to claim workers' compensation or bring a civil damage action against the employer." *Bernhart v. Indus. Comm'n*, 26 P.3d 1181, 1184 (Ariz. Ct. App. 2001). In addition, an employee can elect to opt out of workers' compensation coverage before an otherwise compensable injury occurs, in which case the employee retains the right to pursue tort claims against the employer. See *Grammatico v. Indus. Comm'n*, 90 P.3d 211, 213 (Ariz. Ct. App. 2004) (citing ARIZ. REV. STAT. § 23-906.A). Finally, an employee can elect "to bring a civil action against [an] employer who [has] not secured insurance or otherwise provided for compensation for injured employees as required by the [Workers' Compensation] Act." *Jackson v. Northland Constr. Co.*, 531 P.2d 144, 147 (Ariz. 1975).

83. See, e.g., *Irvin Investors, Inc. v. Superior Ct.*, 800 P.2d 979, 980 (Ariz. Ct. App. 1990) ("[C]laims for negligence are barred by the workers' compensation law, which provides the exclusive remedy for workers injured on the job."); see also *Mardian Constr. Co. v. Superior Ct.*, 754 P.2d 1378, 1381 (Ariz. Ct. App. 1988) ("In our opinion, in line with the overwhelming majority of cases, the Arizona Worker's Compensation statutes evidence a clear legislative intent to bar any common law right-of-action which might possibly flow from a work-related injury."). For a more comprehensive discussion of this issue, see Stephen J. Beaver, Comment, *Beyond the Exclusivity Rule: Employer's Liability for Workplace Violence*, 81 MARQUETTE L. REV. 103 (1997).

Nevertheless, the existence of a statutory remedy for an injury “arising out of” the victim’s employment⁸⁴ – a prerequisite for coverage under Arizona’s and most other states’ workers’ compensation laws⁸⁵ – is unlikely to immunize an employer from tort liability for an incident of workplace *domestic* violence.⁸⁶ This is particularly true when the person injured is an invitee or other innocent bystander,⁸⁷ who would not fall within the coverage of Arizona’s (or, in all likelihood, any other state’s)⁸⁸ workers’ compensation

84. See *Colvert v. Indus. Comm’n*, 520 P.2d 322, 324 (Ariz. App. Ct. 1974) (“Arizona’s workman’s compensation laws were enacted to provide the workman with compensation for injuries ‘arising out of and in the course of employment.’” (quoting ARIZ. REV. STAT. § 23-1021)); see also *Peter Kiewit Sons’ Co. v. Indus. Comm’n*, 354 P.2d 28, 30 (Ariz. 1960) (“Under A.R.S. § 23-1021, an employee who is subject to the provisions of the Workmen’s Compensation Law is entitled to compensation for injuries resulting from an accident, or . . . an assault, ‘arising out of and in the course of employment.’”).

85. See, e.g., *Royall v. Indus. Comm’n*, 476 P.2d 156, 159 (Ariz. 1970) (“A compensable injury must *both* ‘arise out of’ the employment, and be sustained ‘in the course of’ the employment.”); see also *Gonzales v. Indus. Comm’n*, 531 P.2d 555, 557 (Ariz. Ct. App. 1975) (“For an injury to be compensable under workmen’s compensation law, the claimant must prove the elements ‘arising out of’ and ‘in the course of’ employment.”); *Fisher v. Mayfield*, 551 N.E.2d 1271, 1273 (Ohio 1990) (“Ohio’s workers’ compensation statute, as do those of the vast majority of states, contains the basic coverage formula: ‘in the course of, and arising out of’ employment.”). See generally *Anderson v. Westfield Grp.*, 259 S.W.3d 690, 695 (Tenn. 2008) (“[N]early all states require that the injury arise out of and occur in the course of employment.”).

86. See *Matejkovic*, *supra* note 11, at 340 (“[T]he greater weight of authority seems to indicate that domestic violence occurrences in the workplace do not ‘arise out of’ the victim’s employment and therefore are not covered by workers’ compensation [C]ourts . . . instead hold that the injured employee may have a [tort] claim for inadequate security.”); see also *Gaines*, *supra* note 17, at 186 (“[T]he more foreseeable acts of domestic violence in the workplace open a window of liability for the employer, fitting almost perfectly into the exceptions to workers’ compensation claims.”).

87. See *Riley*, *supra* note 19, at 18 (“The workers’ compensation scheme applies only when the injury arises out of the scope of employment. Given this limitation, employers will be open to liability from non-employee victims, including independent contractors.”) (footnote omitted); see also Ann E. Phillips, Comment, *Violence in the Workplace: Reevaluating the Employer’s Role*, 44 BUFF. L. REV. 139, 152 n.88 (1996) (stating that “workers’ compensation does not shield employers when violent crime occurring in the workplace injures clients or independent contractors” (citing Phillip M. Perry, *Assault in the Work Place: How to Cut Your Legal Risk*, EDITOR & PUBLISHER, Mar. 26, 1994, at 18)).

88. See, e.g., *Gebhard v. Carbonic*, 625 N.W.2d 207, 210 (Neb. 2001) (“A basic principle underlying the Nebraska Workers’ Compensation Act is that only employees are entitled to workers’ compensation benefits.”); see also *Danna v. Econ. Heat & Air Savers, Inc.*, 663 P.2d 395, 396 (Okla. Civ. App. 1983) (“Only ‘employees’ as defined by the [Oklahoma] Workers’ Compensation Act . . . are entitled to its benefits. An

laws,⁸⁹ and thus could “enforce common law liability against an employer for injuries not encompassed by the compensation statute.”⁹⁰

Even insofar as employees are concerned,⁹¹ the workers’ compensation remedy is exclusive, precluding a common law tort recovery⁹² only when the employee’s injury is actually compensable under the state’s workers’ compensation act.⁹³ The Arizona Supreme Court has held that the fact that an employee’s injuries stemmed from a third party assault “does not, of itself, render these injuries non-compensable,”⁹⁴ and courts in other states have reached the same conclusion.⁹⁵

independent contractor is not such an employee and cannot claim workers’ compensation. The act does not . . . abrogate causes of action possessed by those not beneficiaries of it.”) (citations omitted).

89. See *Carnes v. Phx. Newspapers, Inc.*, 251 P.3d 411, 416 (Ariz. Ct. App. 2011) (“In workers’ compensation cases, the employer’s responsibility is limited to . . . employees, and workers’ compensation benefits turn on whether the employee was injured while performing a work-related activity.”) (emphasis added); see also *Wills v. Pima Cty. Pub. Safety Pers. Ret. Bd.*, 743 P.2d 944, 945 (Ariz. Ct. App. 1987) (“Workers’ compensation is a statutory scheme peculiar to employer/employee relationships which has as its purpose compensation for work-related occurrences . . .”).

90. *Irvin Inv’rs, Inc. v. Superior Ct.*, 800 P.2d 979, 981 (Ariz. Ct. App. 1990); see also *Franks v. United Fid. & Guar. Co.*, 718 P.2d 193, 197 (Ariz. Ct. App. 1985) (“The Workers’ Compensation Act does not bar a common law tort action . . . if the conduct does not fall within the coverage of the Act.”).

91. See generally *Matejkovic*, *supra* note 11, at 312 (asserting that an employer must “concern itself with a variety of potential tort-based claims presented by any victim,” including “coworkers and bystanders”) (emphasis added).

92. See *Hills v. Salt River Project Ass’n*, 698 P.2d 216, 219 (Ariz. Ct. App. 1985) (“Arizona’s Worker’s Compensation statutes . . . normally preclude a tort action against [the] employer.”); cf. *Govan v. Sec. Nat’l Fin. Corp.*, 502 F. App’x 671, 674 (9th Cir. 2012) (“[T]he exclusive-remedy provisions of Arizona’s workers’ compensation statute . . . preclude tort claims against an employer unless the employee’s injury is caused by the employer’s ‘willful misconduct.’” (quoting ARIZ. REV. STAT. § 23-1022.A)).

93. See *Franks*, 718 P.2d at 196 (“The exclusive remedy provisions apply only when the injury is covered by the Workers’ Compensation Act.”); see also *Williams v. Magma Copper Co.*, 425 P.2d 138, 139 (Ariz. Ct. App. 1967) (noting that workers’ compensation law provides the injured employee’s exclusive remedy “when . . . there is coverage”).

94. *Peter Kiewit Sons’ Co. v. Indus. Comm’n*, 354 P.2d 28, 29-30 (Ariz. 1960); see, e.g., *S.E. Rykoff & Co. v. Indus. Comm’n*, 833 P.2d 39, 40 (Ariz. Ct. App. 1992) (upholding an award of workers’ compensation benefits to an employee who sustained injuries “in an altercation with a thief”); see also *PF Chang’s v. Indus. Comm’n*, 166 P.3d 135, 140 (Ariz. Ct. App. 2007) (“Assault-related injuries are compensable, when the altercation arises out of a work-related dispute.”).

95. See, e.g., *Beck v. Kan. Univ. Psychiatry Found.*, 671 F. Supp. 1563, 1575 (D. Kan. 1987) (summarily dismissing the “contention that third party assaults are not

Nevertheless, under what some courts refer to as the “personal animosity” exception to workers’ compensation coverage,⁹⁶ injuries resulting “from assaults occurring in the workplace but originating from inherently private disputes, such as domestic disputes, are not compensable”⁹⁷ under Arizona law (and for that matter, under the workers’ compensation laws of most other states)⁹⁸ because they are not deemed to arise out of the victim’s employment.⁹⁹ One Arizona workers’ compensation attorney has asserted

compensable under the Kansas Workmen’s Compensation statute”); *see also* Clark v. D.C. Dep’t of Emp’t Servs., 743 A.2d 722 (D.C. 2000) (stating that “where an employee is assaulted by a third party on the employer’s premises or otherwise in the course of employment, the employee’s resulting injuries are presumed covered under the [District of Columbia] Workers’ Compensation Act”); Jennifer v. Dep’t of Pub. Safety & Corr. Servs., 932 A.2d 1213, 1223 n.22 (Md. Ct. Spec. App. 2007) (“Other state courts have similarly held that an injury caused by a third party’s assault may arise out of the victim’s employment and hence be compensable under the applicable workers’ compensation statute.”).

96. *See, e.g.*, Nasser v. Sec. Ins. Co., 724 S.W.2d 17, 19 (Tex. 1987) (“[T]he purpose of the ‘personal animosity’ exception is to exclude from coverage . . . those injuries resulting from a dispute which has been transported into the place of employment from the injured employee’s private or domestic life, at least where the animosity is not exacerbated by the employment.”); *cf.* Kohler v. McCrory Stores, 615 A.2d 27, 30 (Pa. 1992):

[T]he [Pennsylvania Workmen’s Compensation] Act provides that the term, *injury arising in the course of his employment*, “shall not include an injury caused by an act of a third person intended to injure the employee because of reasons personal to him, and not directed against him as an employee or because of his employment.” We refer to this loosely as the “personal animus exception.”

Id. at 30 (quoting 77 PA. STAT. AND CONS. STAT. ANN. § 411 (West 2011)) (ellipses omitted).

97. Coleman v. St. Thomas Hosp., 334 S.W.3d 199, 204 (Tenn. Ct. App. 2010); *see also* Gaines, *supra* note 17, at 147 (“[A]ssaults that occur in the workplace due to a relationship in the employee’s domestic life are considered inherently private or personal assaults and are not covered by workers’ compensation remedies.”).

98. *See, e.g.*, Dependable Messenger, Inc. v. Indus. Comm’n, 858 P.2d 661, 662 (Ariz. Ct. App. 1993) (“In Arizona, such noncompensable privately-motivated assaults historically have been confined to personal conflicts imported to the workplace.”); *see also* Monahan v. United States Check Book Co., 540 N.W.2d 380, 384 (Neb. Ct. App. 1995) (“[T]he general rule is that assaults motivated by personal reasons, although occurring at work, are not compensable under workers’ compensation law.”); Commercial Standard. Ins. Co. v. Marin, 488 S.W.2d 861, 863 (Tex. Civ. App. 1972) (“It is almost universally held that when the animosity or dispute which culminates in the assault is imported into the place of employment from the injured employee’s private or domestic life, the injury is not compensable, at least where the animosity is not exacerbated by the employment.”).

99. *See* Wyckoff v. Indus. Comm’n, 482 P.2d 897, 899 (Ariz. Ct. App. 1971)

that this exception is detrimental to domestic violence victims:

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.¹⁰⁰

IV. THE EMPLOYER'S POTENTIAL TORT LIABILITY FOR WORKPLACE DOMESTIC VIOLENCE

State workers' compensation laws were designed primarily to benefit employees by making it easier for them to recover for work-related injuries.¹⁰¹ The various state legislatures sought to accomplish this objective by eliminating the need for employees to establish that their injuries were the

("When the animosity or dispute that culminates in an assault is imported into the employment from claimant's domestic or private life, and is not exacerbated by the employment, the assault does not arise out of the employment under any test." (quoting 1 ARTHUR LARSON, WORKMEN'S COMPENSATION LAW § 11.21, at 171-72 (1968))); see also *Dependable Messenger*, 858 P.2d at 662:

An assault arises out of employment if its nature or setting increases the risk of assault, the subject-matter of the assault is work-related or, in an increasing number of jurisdictions, the strain of enforced contact among workers provokes the assault. Conversely, then, privately motivated assaults do not arise out of employment.

100. Treadwell-Rubin, *supra* note 80, at 18 (internal quotation marks omitted). As discussed in more detail in the following section of the article, not all would agree that the unavailability of a workers' compensation remedy is "bad news" for domestic violence victims. See *infra* notes 101-31 and accompanying text. As one commentator explained:

Today, workers question the equity of [the workers' compensation] bargain in a society where the modern tort system fosters improved prospects for recovery and significantly higher monetary recoveries. Even though the workers' compensation system provides a guaranteed recovery, it frequently serves as an inadequate remedy for certain workplace injuries, especially those incurred as a result of violence in the workplace.

Phillips, *supra* note 87, at 150 (footnote omitted).

101. See *Bohn v. Indus. Comm'n*, 999 P.2d 180, 183 ¶ 20 (Ariz. 2000) (Zlaket, C.J., concurring in part and dissenting in part) (observing that workers' compensation "is intended to be a benevolent system facilitating easy and expeditious compensation for injured workers"); *Coca-Cola Bottling Co. v. Indus. Comm'n*, 534 P.2d 304, 305 (Ariz. Ct. App. 1975) (stating that "the workmen's compensation statutes are designed to provide a simple, no-fault, non-adversary system of compensating workmen injured during the course of their employment"); Patricia S. Wall, *Workers' Compensation Gone Awry*, 44 TENN. B.J., Nov. 2008, at 22 ("Workers' compensation, a creation of statutory law, was intended to make it easier for employees injured while working to receive compensation for lost wages.").

result of fault on the part of their employers.¹⁰² Nevertheless, the unavailability of a workers' compensation remedy might be a blessing in disguise for an employee injured in a workplace domestic violence incident,¹⁰³ because it would expose an employer that *had* been negligent to potential tort liability in a civil action brought by the injured employee.¹⁰⁴

In *Peavler v. Mitchell & Scott Co.*,¹⁰⁵ for example, the personal representative of the estate of an employee who was shot and killed by her ex-boyfriend while she was at work brought suit against her employer,¹⁰⁶ alleging that its negligence in failing to provide its employees with a reasonably safe work environment was the proximate cause of her death.¹⁰⁷

102. See *Wills v. Pima Cty. Pub. Safety Pers. Ret. Bd.*, 743 P.2d 944, 945 (Ariz. Ct. App. 1987) (“Workers’ compensation . . . has as its purpose compensation for work-related occurrences without regard to fault.”); *Nation v. Weiner*, 701 P.2d 1222, 1228 (Ariz. Ct. App. 1985) (“In enacting the workers’ compensation law the legislature provided workers with coverage through their employers for all injuries occurring in the workplace, regardless of fault.”).

103. One Arizona trial court judge observed that workers’ compensation “can be both good and bad from the employee’s standpoint. . . . The ‘bad’ side is that . . . the employee gives up the right to bring a civil lawsuit against an at-fault employer for additional compensation.” *Lee v. M & H Enters. Inc.*, No. CV 2010-001154, 2013 WL 1914737, at *2 (Maricopa Cty. Jan. 31, 2013).

104. See, e.g., *Arceneaux v. K-Mart Corp.*, Civ. A. No. 94-3720, 1995 WL 479818, at *1-2 (E.D. La. Aug. 11, 1995) (holding that an employee who was shot by her husband at her place of employment was “not precluded as a matter of law by the exclusive remedy provisions of the Worker’s Compensation Statute from pursuing her tort remedy” because her “injury did not arise out of her employment”); see also *Porter*, *supra* note 11, at 314-15 (“As long as the employee can prove that the employer . . . knew or should have known that violence could ensue, the injured employee (or survivors of killed employees) would be better off suing under a tort theory, because the potential damages under a tort theory are much higher than under a workers’ compensation claim.”).

105. 638 N.E.2d 879 (Ind. Ct. App. 1994).

106. In Indiana, where *Peavler* arose, the personal representative of a decedent’s estate may bring a wrongful death action against the individual or entity allegedly responsible for the decedent’s death. See *Rogers v. Grunden*, 589 N.E.2d 248, 258 (Ind. Ct. App. 1992) (“Indiana’s wrongful death statute grants the right to maintain a wrongful death action only to the personal representative of the decedent.”) (citation omitted). The same is true in most other states. See *Tank v. Chronister*, 160 F.3d 597, 601 (10th Cir. 1998) (observing that “a majority of states require that wrongful death claims be brought by an appointed personal representative of the estate, even though the estate is not the beneficiary of any recovery”); *Carter v. Wallace & Gale Asbestos Settlement Tr.*, 96 A.3d 147, 164 (Md. 2014) (“[E]very American state [has] adopted its own wrongful death statute, with many states requiring the suit to be brought by the executor, administrator, or personal representative of the deceased person’s estate.”).

107. See *Peavler*, 638 N.E.2d. at 880. The court noted that “[a]t the time of the shooting, there had been no security guards at the plant and the ex-boyfriend had not

The employer argued that the claim was barred by the exclusivity provision of the state's workers' compensation act.¹⁰⁸ The trial court agreed and awarded judgment to the employer,¹⁰⁹ but the Indiana Court of Appeals reversed that ruling on appeal.¹¹⁰

The appellate court began its analysis by observing that Indiana's workers' compensation act only provides a remedy for injuries that arise out of and in the course of an individual's employment.¹¹¹ The court then articulated the rule generally applicable in domestic violence cases: "When the animosity or dispute that culminates in an assault on the employee is imported into the workplace from the claimant's domestic or private life, and is not exacerbated by the employment, the assault cannot be said to arise out of the employment under any circumstances."¹¹²

Applying this principle to the facts before it, the court held that the employee's fatal injury arose out of her private life, even though it occurred while she was at work.¹¹³ Because there was no evidence "that the character of her work or the particular duties imposed upon her through her employment exacerbated the risk that she would be assaulted by her former

reported to anyone before entering the plant." *Id.* The personal representative alleged that the employer "was aware of the danger the ex-boyfriend posed to [the employee] and was negligent in failing to take more reasonable safety precautions to protect her." *Id.*

108. *See id.* at 880-81 (discussing IND. CODE ANN. § 22-3-2-6); *cf.* Perin, *supra* note 14, at 387:

[W]hen an employer is sued by an employee for damages resulting from a work-related injury, the employer may raise workers' compensation as a defense. For example, the employer may argue that the employee's claim is barred by the applicable workers' compensation statute in order to avoid the higher damages that accompany tort claims when employees are injured or killed at the workplace.

109. *See Peavler*, 638 N.E.2d at 880.

110. *See id.* at 882. Even if the trial court's ruling was correct and Indiana employers were immune from tort liability in workplace domestic violence cases, they still might face "increased workers' compensation claims and increased insurance premium rates" as the result of domestic violence incidents occurring in the workplace. Phillips, *supra* note 87, at 142 n.13; *cf.* Rajeh v. Steel City Corp., 813 N.E.2d 697, 707 (Ohio Ct. App. 2004) ("Since employers are ultimately responsible for paying workers' compensation claims, through insurance premiums or self-insuring payments, they are more likely to keep their workplaces safe for all employees.").

111. *See Peavler*, 638 N.E.2d at 881 (citing IND. CODE § 22-3-2-2).

112. *Id.*

113. *See id.*; *cf.* Carnes v. Tremco Mfg. Co., 30 S.W.3d 172, 174 (Ky. 2000) ("[T]he fact that the murder occurred in the workplace was not a sufficient causal nexus from which to conclude that it arose out of the employment.").

boyfriend,”¹¹⁴ the injury that resulted in her death was not compensable under the workers’ compensation act,¹¹⁵ and the personal representative’s negligence claim was not barred by the exclusivity provision of that act.¹¹⁶

Although *Peavler* arose in Indiana,¹¹⁷ the outcome of the case presumably would have been no different if it had arisen in Arizona¹¹⁸ (or, for that matter, any other state).¹¹⁹ And while there are relatively few reported decisions addressing the issue,¹²⁰ the limited authority that does exist suggests that employers whose employees (or invitees)¹²¹ are injured in workplace

114. *Peavler*, 638 N.E.2d at 881-82.

115. *See id.* at 882; *cf.* *Monahan v. United States Check Book Co.*, 540 N.W.2d 380, 384 (Neb. Ct. App. 1995) (“[T]he general rule is that assaults motivated by personal reasons, although occurring at work, are not compensable under workers’ compensation law.”).

116. *See Peavler*, 638 N.E.2d at 882; *cf.* *Evans v. Yankeetown Dock Corp.*, 491 N.E.2d 969, 972 (Ind. 1986) (“[I]f the injury . . . does not arise out of and in the course of employment . . . the employee is not excluded from his common law rights and remedies.”). *See generally* *Athas v. Hill*, 476 A.2d 710, 713 (Md. 1984) (“[I]n cases not covered by the workmen’s compensation statute, an employer owes his employees a common law duty to provide a safe place to work.”).

117. For a brief academic discussion of the general principle that “there must be some causal connection to the employment” for an employee’s injury to be compensable under Indiana’s workers’ compensation laws, see Carol Modesitt Wyatt, *1998-1999 Brings New Developments to Indiana’s Worker’s Compensation Law*, 33 IND. L. REV. 1625, 1634-35 (2000).

118. *See, e.g.*, *Epperson v. Indus. Comm’n*, 549 P.2d 247, 248 (Ariz. Ct. App. 1976) (holding that the workplace domestic violence incident described in that case “did not arise out of [the victim’s] employment, and was therefore not compensable under the Workman’s Compensation Act of Arizona”); *see also* *Colvert v. Indus. Comm’n*, 531 P.2d 555, 556 (Ariz. Ct. App. 1975) (“Assaults arise out of the employment either if the risk of assault is increased because of the nature or setting of the work, or if the reason for the assault was a quarrel having its origin in the work.” (quoting 1 ARTHUR LARSON, WORKER’S COMPENSATION LAW § 8.02, at 3-119 (2017))).

119. *See, e.g.*, *Holliday v. State*, 747 So.2d 755, 757-58 (La. Ct. App. 1999) (holding that the exclusivity provisions of the Louisiana Worker’s Compensation Act did not bar a tort claim asserted against the employer of an individual who was shot by her husband where there was no suggestion that the shooting incident “was in any way related to [her] employment other than the fact that it occurred at the workplace”); *see also* *Park Oil Co. v. Parham*, 336 S.E.2d 531, 534 (Va. Ct. App. 1985) (“No jurisdiction allows compensation for assaults purely personal to the employee that are not exacerbated by the job.”).

120. *See* *Robertson*, *supra* note 8, at 644 (“Thus far, out-of-court settlements have limited relevant case law and the development of legal theories.”).

121. *See, e.g.*, *Catlett v. Stewart*, 804 S.W.2d 699, 700, 702 (Ark. 1991) (affirming a jury verdict in favor of hotel restaurant patrons who were shot by the husband of a hotel employee during a domestic dispute on the hotel premises).

domestic violence incidents face significant potential monetary liability for common law tort claims that are not barred by the existence of a state statutory workers' compensation remedy.¹²²

In *Vaughn v. Granite City Steel Division*,¹²³ for example, the court affirmed a \$415,000 jury verdict in favor of the estate of an individual who was murdered in his employer's parking lot,¹²⁴ finding that the employer was negligent in performing a duty to protect its employees while they were on its premises.¹²⁵ In reaching this result, the court relied on the existence of evidence of security measures the employer could have taken to minimize the risk of a workplace attack upon its employees.¹²⁶

Other employees injured in workplace domestic violence incidents have been allowed to pursue common law tort claims against their employers,¹²⁷

122. See, e.g., *Gantt v. Sec., USA, Inc.*, 356 F.3d 547, 549, 555-56 (4th Cir. 2004) (allowing an employee to pursue an intentional infliction of emotional distress claim against her employer arising out of an incident in which her former boyfriend kidnapped her from her workplace "and held her captive for six hours, assaulting and raping her," because the claim fell within an "intentional tort exception to the [Maryland Workers' Compensation] Act's normal exclusivity rule"); see also *Matejkovic*, *supra* note 11, at 312-13 ("Media reports often contain . . . stories about domestic violence in the workplace. Often the stories report multi-million dollar lawsuits; often they report multi-million dollar verdicts; often they report substantial settlements."). See generally *Widiss*, *supra* note 19, at 686 ("[M]any of the legal commentators who have discussed in detail the effects of domestic violence on the workplace have focused on the legal liability that may be associated with workplace violence.").

123. 576 N.E.2d 874 (Ill. Ct. App.), *appeal denied*, 584 N.E.2d 141 (Ill. 1991).

124. See *id.* at 876.

125. See *id.* at 879-80. Relying on the proposition that "a plaintiff cannot recover in tort for negligence unless the defendant has breached a duty owed to the plaintiff," the employer argued that "it did not, in fact, owe any legally cognizable duty to the decedent." *Id.* at 878. The court rejected this argument, finding that the employer had undertaken "the task of protecting its employees while on [its] property, including the parking lots." *Id.*; cf. *Matejkovic*, *supra* note 11, at 315:

[W]hile an employer might initially perceive that its liability on a tort-based claim would be limited due to a lack of any duty owed to its employees, . . . the law clearly provides that duties may be implied because of the employer-employee relationship, the voluntary assumption of a duty to protect and provide security, or the foreseeability of harm from a third party.

126. See *Vaughn*, 576 N.E.2d at 877; cf. *Widiss*, *supra* note 19, at 685 ("[S]o long as an employer could show that it acted reasonably in light of any perceived threat, it . . . would not be deemed to be liable under a tort framework for third party violence; in fact, taking appropriate precautions would decrease the likelihood that an employer would be held responsible.").

127. See, e.g., *Phillips v. BJ's Wholesale Club*, No. 08-1444, 2008 WL 8201344 at *1, *2 (Va. Cir. Ct. (2008) (permitting an individual who was shot by her husband at her place of employment to proceed with a personal injury claim against her employer

and some of them have obtained even larger awards than the jury verdict that was upheld in *Vaughn*.¹²⁸ Alluding to the inherent unpredictability of jury behavior¹²⁹ (and, inferentially, to the potential for jury bias in workplace violence cases),¹³⁰ one commentator asserted that “[a]n employer’s liability exposure for a domestic violence incident in the workplace claim may be limited only by what a jury perceives to be ‘fair’ or ‘just’ compensation.”¹³¹

V. COMMON STRATEGIES FOR COMBATTING WORKPLACE DOMESTIC VIOLENCE

Despite the legal and economic risks they face,¹³² very few employers

because employers have a duty to protect their employees from the reasonably foreseeable criminal conduct of a third party, and the facts as pled could support a finding that the plaintiff’s employer “should have foreseen the assault”); *see also* Julia Corlman, Note, *Allowing the Issuance of Domestic Violence Protective Orders Based on Stale Claims of Abuse and a Likelihood of Future Abuse*, 36 WOMEN’S RTS. L. REP. 330, 338 (2015) (“Victims have filed and won common negligence-based suits against employers who had warning signs of domestic violence occurring at work and who chose to not get involved.”).

128. *See, e.g.*, Matejkovic, *supra* note 11, at 313 (describing a workplace domestic violence case in which “the jury awarded the [victims] \$5 million” because “the employer had been warned of the husband’s threats and . . . did not beef up security.”); *see also* Widiss, *supra* note 19, at 683 (“There have been several cases arising out of violence at work related to domestic violence; a few have yielded several million dollar judgments or settlements to persons injured when employers failed to take reasonable precautions.”).

129. *See* *Miller UK Ltd. v. Miller Int’l Ltd.*, 17 F. Supp. 3d 711, 739 (N.D. Ill. 2014) (stating that “juries are inherently unpredictable”); *see also* *Gonzales v. State*, 691 So.2d 602, 603 (Fla. Dist. Ct. App.) (discussing “the lack of predictability as to what a jury in a given case will do”), *review denied*, 700 So.2d 685 (Fla. 1997).

130. *See* *Beaver*, *supra* note 83, at 107 (“The unpredictable nature of these suits induces many employers to settle workplace violence claims to avoid the potential of sympathetic juries and unfavorable outcomes.”); *Gaines*, *supra* note 17, at 146 (“The outcome of intentional tort suits against employers can be unpredictable, thereby pressuring employers to settle workplace violence claims in fear of sympathetic juries.”).

131. *Matejkovic*, *supra* note 11, at 313; *cf.* *Robertson*, *supra* note 8, at 644 (observing that the “current settlement trend reflects employers’ fear to go to court” because they “face potential liability for third-party assaults against employees”).

132. *See* *Gaines*, *supra* note 17, at 148 (“Employers may be held liable for domestic violence injuries in the workplace in situations where the employer knew or should have known of the risk of the violence and failed to take appropriate remedial or preventive measures.”). It is not only the *victim*’s employer that may be impacted by domestic violence; perpetrators “place significant costs on their own employers through tardiness and absences and use of work equipment to stalk or harass their partners.” *Widiss*, *supra* note 19, at 679; *see also* *Jacobs & Raghu*, *supra* note 40, at 598 (“An often-overlooked aspect of violence and its workplace effects is . . . the impact of the perpetrator’s behavior

have adopted domestic violence policies,¹³³ and surprisingly few have workplace violence policies of any kind.¹³⁴ However, employers contemplating the issue clearly must do something¹³⁵ – they cannot afford to sit idly by while their employees are exposed to the risk of a future domestic violence incident.¹³⁶ Indeed, some states have enacted legislation making it unlawful for employers to fail to accommodate the reasonable safety needs of employees who have been victimized by domestic violence.¹³⁷

on his or her employer's bottom line. Abusers often use their employer's property, including company cars, phones, computers, and sometimes fellow employees, to keep track of their victim's whereabouts.”)

133. See Hobday, *supra* note 66, at 94 n.35 (“According to a 2005 Survey of Workplace Violence Prevention, 29.1% of businesses have policies addressing workplace violence generally, and less than half of those address domestic violence specifically. Only 4% of businesses conduct training on how to respond to issues of domestic violence.” (citing Press Release, Bureau of Labor Statistics, U.S. Dep’t of Labor, Survey of Workplace Violence 15, 17 (Oct. 27, 2006))); Rutledge, *supra* note 7, at 218 (“Although domestic violence can have a significant impact on the workplace, very few companies actually have specific domestic violence policies.”). In an apparent effort to fill this void, “the Illinois legislature mandated the creation of a model policy regarding domestic violence and sexual assault awareness in the workplace.” *Daoust v. Abbott Labs.*, No. 05 C 6018, 2007 WL 118414 at *3 (N.D. Ill. 2007). The legislature’s objective “was ‘to provide businesses with the best practices, policies, protocols, and procedures in order that they ascertain domestic violence and sexual assault awareness in the workplace, assist affected employees, and provide a safe and helpful working environment for employees currently or potentially experiencing the effects of domestic violence or sexual assault.’” *Id.* (quoting 20 ILL. COMP. STAT. ANN. 605/605-550(b)) (West 2010).

134. See, e.g., *Carnes v. Tremco Mfg. Co.*, 30 S.W.3d 172, 174 (Ky. 2000) (“[A]t the time [its employee] was murdered the company had no policy concerning workplace violence, [and] knew little about dealing with workplace violence”); see also Jacobs & Raghu, *supra* note 40, at 599 (“More than 70% of U.S. workplaces have no formal programs or policies that address workplace violence, let alone domestic violence.”); Samantha Jean Cheng Chu, Note, *The Workplace Bullying Dilemma in Connecticut: Connecticut’s Response to the Healthy Workplace Bill*, 13 CONN. PUB. INT. L.J. 351, 353 (2014) (observing that “less than 30% of employers have workplace violence policies or programs in place, and only 20% provide training on preventing workplace violence”).

135. See Rutledge, *supra* note 7, at 183 (“The impact of domestic violence on the workplace leaves employers with little choice but to respond.”); see also Gaines, *supra* note 17, at 169 (“Clearly, the current legal environment surrounding domestic violence favors some effort on the part of the employer to address domestic violence injuries in the workplace.”).

136. See Treiger, *supra* note 34, at 22 (“Failure to protect employees from workplace violence . . . may lead to significant liability for the employer.”); see also Gaines, *supra* note 17, at 141 (“Employers, in today’s volatile legal environment, take foolish risks when they fail to address domestic violence issues in the workplace.”).

137. See, e.g., HAW. REV. STAT. § 378-81(a) (West 2012) (“An employer shall make

So what should a conscientious employer do?¹³⁸ Employers seeking to prevent domestic violence from invading their workplaces have a number of potential options.¹³⁹ These range from sensitizing their workforces to the risks and warning signs of domestic violence¹⁴⁰, to more direct efforts to secure the workplace¹⁴¹ (including the approach that failed to prevent the violent incident described in *Epperson v. Industrial Commission*,¹⁴²

reasonable accommodations in the workplace for an employee who is a victim of domestic or sexual violence, . . . provided that an employer shall not be required to make the reasonable accommodations if they cause undue hardship on the work operations of the employer.”); *see also* *Marshall v. Pollin Hotels II, LLC*, 170 F. Supp. 3d 1290, 1307 (D. Or. 2016) (“It is an unlawful employment practice for an employer to refuse to make a reasonable safety accommodation requested by . . . a victim of domestic violence, harassment, sexual assault or stalking, unless . . . the accommodation would impose an undue hardship on the operation of the business of the employer” (quoting OR. REV. STAT. § 659A.290(2)(c))) (internal punctuation omitted); Terry L. Fromson, *Domestic Violence Reform: From Page to Practice and Back Again*, 34 N.Y.U. REV. OF L. & SOC. CHANGE 435, 437 (2010) (“The recognition that domestic violence follows its victims into the workplace has led to laws requiring safety accommodations for employees”). *See generally* Durbin, *supra* note 10, at 888 (“Essentially, reasonable accommodation statutes require an employer to alter working conditions to accommodate an employee who is a victim of domestic violence, provided that the accommodation is reasonable.”).

138. *See generally* Widiss, *supra* note 19, at 679 (“Experts on workplace safety increasingly discuss the need to address domestic violence as part of a more general strategy to reduce the risk of violence at workplaces.”).

139. *See* Riley, *supra* note 19, at 6 (“There are many measures employers can take to increase the security of the workplace, which will also help prevent workplace violence.”); *cf.* Ricci, *supra* note 16, at 69 (“The more steps that an employer takes to protect employees from violent acts of third parties, the less likely an employer will be subjected to legal liability in the event that a violent act occurs.”).

140. *See* Hobday, *supra* note 66, at 93 (“Employers can train employees to recognize early warning signs of domestic abuse and to intervene if the employee wants protection or other assistance to reduce, or even prevent, future violence.”); *see also* Porter, *supra* note 11, at 323 (“Training employees and supervisors to recognize signs of domestic violence is an important preventative measure.”); Treadwell-Rubin, *supra* note 80, at 3-4 (“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.”); Perin, *supra* note 14, at 396 (“Employers should train their managers and supervisors to recognize domestic violence that reaches the workplace.”).

141. *See* Robertson, *supra* note 8, at 658 (“[S]uggestions to prevent workplace violence include . . . strengthening security measures, such as controlled access to the building, so that abusers would be unable to reach their victims.”); *see also* Treadwell-Rubin, *supra* note 80, at 4 (noting that employers can “avoid risk from unknown third-party assailants, by . . . increasing security options through either physical rearrangement inside the building or environmental design outside the building”).

142. 549 P.2d 247, 249 (Ariz. Ct. App. 1976).

employing armed security guards).¹⁴³ Some employers have even terminated the employment of domestic violence victims in an effort to avoid violent workplace incidents,¹⁴⁴ although this strategy may do little to alleviate the danger,¹⁴⁵ and poses its own independent risk of tort liability for the employer.¹⁴⁶

VI. THE EMERGENCE OF WORKPLACE INJUNCTIONS

Many of the existing strategies for addressing workplace domestic violence “tend to be ‘incident-focused’ reactive responses,”¹⁴⁷ and thus may

143. See, e.g., *Gray v. Denny’s Corp.*, 535 F. App’x 14, 16-17 (2d Cir. 2013) (describing an employer that “considered both additional work-place violence prevention training for its employees and hiring security guards”); see also *Riley*, *supra* note 19, at 6 (“Employers can . . . employ security guards to monitor the workplace, and/or install alarms to notify the police or others of a security breach or a potential situation.”).

144. See, e.g., *Hossack v. Floor Covering Assocs. of Joliet, Inc.*, 492 F.3d 853, 863 (7th Cir. 2007) (discussing an employee who “was terminated because management feared her husband’s threats and that he might very well cause workplace disruption in the future”); see also *Green v. Bryant*, 887 F. Supp. 798, 800 & n.2 (E.D. Pa. 1995) (assuming that the termination of a domestic violence victim’s employment was attributable to “concerns stemm[ing] from the physical or emotional danger to other employees . . . if [her] estranged husband came to the workplace and engaged in further violent behavior”); *Porter*, *supra* note 11, at 323 (“I would hypothesize that employers who make the decision to terminate the abuse victim do so in large part because they are unwilling to sacrifice the safety of their other employees.”).

145. See, e.g., *Campbell v. State*, 432 S.W.3d 673, 675 (Ark. Ct. App. 2014) (describing an individual who went to his wife’s workplace after she was terminated and “drove his car at [her supervisors] at a high rate of speed and made a slashing motion across his neck at the two men,” and then told another of his wife’s former coworkers “to tell the two men that ‘someone is going to die tonight’”); see also *Walton v. Spherion Staffing LLC*, 152 F. Supp. 3d 403, 409 (E.D. Pa. 2015) (“[F]rom the standpoint of workplace violence, termination of an employee is hardly a guarantee of safety.”).

146. See, e.g., *Danny v. Laidlaw Transit Servs., Inc.*, 193 P.3d 128, 141 (Wash. 2008) (holding that “Washington State has a clearly defined public policy” that “would protect employees from discharge based on their status as victims of domestic violence”) (emphasis omitted); see also *Perin*, *supra* note 14, at 400-01 (asserting that “an employee who has been terminated because of her status as a victim of domestic violence may convince a court of law to recognize the tort of wrongful discharge in violation of public policy.”). See generally *Sandra S. Park, Note, Working Towards Freedom From Abuse: Recognizing a “Public Policy” Exception to Employment-at-Will for Domestic Violence Victims*, 59 N.Y.U. ANN. SURV. AM. L. 121, 134 (2003) (discussing the potential judicial recognition of a wrongful discharge tort in this context further).

147. *Karin*, *supra* note 11, at 391; see also *Widiss*, *supra* note 19, at 682 (“Significantly, businesses often focus on domestic violence only *after* experiencing significant workplace violence related to domestic violence.”).

be of little assistance in preventing a violent workplace incident.¹⁴⁸ However, a more promising option available to employers in a few states is the workplace injunction,¹⁴⁹ sometimes referred to as a workplace restraining order¹⁵⁰ or “TRO.”¹⁵¹ Like a more traditional domestic violence protective order,¹⁵² which a victim can seek without her employer’s input or

148. See Riley, *supra* note 19, at 25 (“A review of the existing approaches to workplace violence reveal[s] glaring deficiencies in the types of approaches available . . . [G]eneralized preventative measures do little to address an imminent incident of workplace violence.”).

149. See, e.g., *Kovach v. Metropolitan Gov’t of Nashville & Davidson Cty.*, No. 3:09-cv-0886, 2010 U.S. Dist. LEXIS 39333, at *14 (M.D. Tenn. Mar. 25, 2010) (“The [Tennessee] Workplace Violence Act . . . provides a mechanism for employers to seek temporary restraining orders and injunctions on behalf of employees who are the victims of violence or of credible threats of violence.”), *adopted*, No. 3:09-cv-0886, 2010 U.S. Dist. LEXIS 39402 (M.D. Tenn. Apr. 21, 2010); see also *Franklin v. Monadnock Co.*, 59 Cal. Rptr. 3d 692, 696 (Ct. App. 2007) (stating that California’s workplace injunction statute “provides employers with an injunctive remedy to address ‘unlawful violence or a credible threat of violence’ by any individual” (quoting CAL. CIV. PROC. CODE § 527.8(a) (2016))).

150. See, e.g., *Widiss*, *supra* note 19, at 714 (“About ten years ago, states began to pass laws, which I refer to as ‘workplace restraining orders,’ permitting employers to apply for restraining orders . . . against perpetrators of actual or threatened violence.”); see also *Rutledge*, *supra* note 7, at 178 (“Workplace restraining orders . . . can apply in a variety of circumstances where an employee is the target of harassment, threats of violence, or stalking.”).

151. See, e.g., *Riley*, *supra* note 19, at 33 (“The employer TRO will complement existing options by giving employers the full realm of effective options to address workplace violence and by supplying the employer with pre-incident, imminent incident, and post-incident responses.”). The pertinent authorities refer to the relief available under these statutes as injunctions, protective orders, orders of protection, and restraining orders, all of which serve similar purposes. See, e.g., *Rosado v. Bridgeport Roman Cath. Diocesan Corp.*, 884 A.2d 981, 1007 (Conn. 2005) (observing that protective orders have “the force and effect of an injunction, and serve a similar equitable purpose, namely, to regulate prospectively the conduct of the parties”). Unless the context dictates otherwise, this article will use the more encompassing term “injunction.” See generally *People v. Collins*, 619 N.E.2d 871, 874 (Ill. App. Ct.) (“The courts have a policy of broadly construing the meaning of the term ‘injunction.’”), *appeal denied*, 624 N.E.2d 810 (Ill. 1993).

152. See, e.g., *Peters-Riemers v. Riemers*, 624 N.W.2d 83, 95 ¶ 54 (N.D. 2001) (Maring, J., concurring in part and dissenting in part) (“The purpose of a civil protection order is to prevent domestic violence in the future.”); see also *Williams*, *supra* note 3, at 388 (“Orders of protection may be the only remedy available to a threatened victim to prevent the threat or ‘abuse from escalating before an actual physical assault.’” (quoting Jennifer Rios, Note, *What’s the Hold-Up? Making the Case for Lifetime Orders of Protection in New York State*, 12 CARDOZO J. L. & GENDER 709, 726 (2006))).

assistance,¹⁵³ a workplace injunction may prevent threats or other forms of nonphysical abuse, egregious enough in themselves¹⁵⁴, from escalating into physical violence.¹⁵⁵

Traditional domestic violence protective orders typically require the perpetrator to refrain from contacting the victim,¹⁵⁶ which in the case of a victim who is employed means, among other things,¹⁵⁷ staying away from

153. See, e.g., *Gustafson v. Mauck*, 743 So.2d 614, 615 (Fla. Ct. App. 1999) (“Section 741.30(1)(a), Florida Statutes (1997), confers standing to seek an injunction against domestic violence on any person who has actually been the victim of domestic violence or who on some other basis has reasonable cause to believe that he or she faces impending danger from such violence.”); see also *Jarrett v. State*, 804 N.E.2d 807, 813 (Ind. Ct. App. 2004) (“Indiana Code § 34-26-5-2 authorizes a victim of domestic violence to file a petition to seek a protective order against the individual who committed the domestic violence.”), *aff’d*, 829 N.E.2d 930 (Ind. 2005). See generally *In re Certification of Need for Additional Judges*, 889 So.2d 734, 738 (Fla. 2004) (“[V]arious statutory changes . . . have provided greater access to the court system for domestic violence victims seeking injunctions for protection.”).

154. See *United States v. Huong Thi Kim Ly*, 798 F. Supp. 2d 467, 480 (E.D.N.Y. 2013) (stating that “a husband can create fear of physical harm against his wife without laying a hand on her, perhaps through verbal threats, non-physical gestures, or psychological means”), *aff’d*, 507 F. App’x 12 (2d Cir. 2013); see also *Rodriguez v. Zavala*, 398 P.3d 1071, 1076 (Wash. 2017) (“The harm caused by domestic violence can be physical or psychological.”); *J.C. v. B.S.*, No. FV-15-352-16, 2015 N.J. Super. Unpub. LEXIS 2624, at *9-10 (Ch. Div. Sept. 14, 2015) (“Emotional abuse can be just as detrimental, if not more so, than physical abuse. Harassment can be highly injurious to a recipient’s mental health and self-image, and may be even more painful when the perpetrator of the harassment is one’s own flesh and blood.”).

155. See *Riley*, *supra* note 19, at 24 (stating that a workplace injunction statute encompasses “situations where individuals have threatened others, but not engaged in violent conduct”); *cf.* *Karin*, *supra* note 11, at 402 (“As a fundamental matter, protection orders are designed to prevent future violence.”). See generally *TP Racing, LLLP v. Simms*, 307 P.3d 56, 62 (Ariz. Ct. App. 2013) (“An injunction may serve . . . to prevent future wrongs that are likely to occur.”).

156. See, e.g., *Lampley v. State*, 33 P.3d 184, 184-85 (Alaska Ct. App. 2001) (describing an individual convicted of “violating a domestic violence protective order that prohibited him from contacting his girlfriend”); *Constantine v. Emp’t Dep’t*, 117 P.3d 279, 280 (Or. Ct. App. 2005) (“[C]laimant sought and obtained a restraining order against her husband. The order prohibited claimant’s husband from contacting or attempting to contact her in person or by telephone or mail.”); see also *Douglass v. State*, 195 P.3d 189, 190 ¶ 5 (Ariz. Ct. App. 2008) (“The purpose of an order of protection is to protect the order of protection plaintiff . . . from contact by an order of protection defendant . . .” (quoting lower court minute entry order)). See generally *Tarr*, *supra* note 15, at 387 (“In all fifty states, regardless of marital status, a victim of domestic violence can get some kind of emergency court order prohibiting contact by a batterer.”).

157. See, e.g., *Gantt v. Sec., USA, Inc.*, 356 F.3d 547, 557 (4th Cir. 2004) (Niemeyer, J., concurring in part and dissenting in part) (describing an employee who “obtained a

her place of employment.¹⁵⁸ Arizona's "order of protection" statute,¹⁵⁹ for example, authorizes a court to restrain the perpetrator from coming near the victim's "residence, place of employment or school" if there is reasonable cause to believe that physical harm might otherwise occur.¹⁶⁰ However, in most states these protective orders can be obtained only by the victim herself¹⁶¹ (or, under some circumstances, by another member of her family or household).¹⁶² The victim's employer has no standing to seek relief under

protective order against her boyfriend . . . prohibiting him from contacting [her] *anywhere*, including at her place of employment . . ." (emphasis added); *see also* VanHorn v. State, 889 N.E.2d 908, 913 (Ind. Ct. App.) ("The relief the trial court may grant includes ordering the respondent to stay away from the residence, school, or place of employment of the petitioner or a specified place frequented by the petitioner." (citing IND. CODE § 34-26-5-9 (2016))), *transfer denied*, 898 N.E.2d 1225 (Ind. 2008).

158. *See* Bates v. Bates, 793 S.W.2d 788, 789 (Ark. 1990) ("An 'order of protection' may include . . . excluding the offending party from the residence and place of work of the victim . . ."); People v. Cajigas, 979 N.E.2d 240, 242 (N.Y. 2012) ("An order of protection . . . typically requires a person to stay away from a victim's home or place of employment and to refrain from any contact . . ."); *see also* Riley, *supra* note 19, at 16 ("A [protective order] can prohibit the alleged batterer . . . from entering or approaching the petitioner's workplace or business."); Rutledge, *supra* note 7, at 195 ("A protective order can typically include both the victim's residence and employment.").

159. ARIZ. REV. STAT. § 13-3602. *See also* Williams, *supra* note 3, at 388-90 (discussing Arizona's order of protection statute more comprehensively).

160. ARIZ. REV. STAT. § 13-3602.G.3; *cf.* Finamore v. Aronson, 889 A.2d 1114, 1117 (N.J. Super. Ct. App. Div. 2006):

The [New Jersey Prevention of Domestic Violence] Act's protections . . . include barring the perpetrator of domestic violence from "entering the residence, property, school, or place of employment of the victim or of other family or household members of the victim and requiring the [perpetrator] to stay away from any specified place that is named in the order and is frequented regularly by the victim or other family or household members."

(quoting N.J. STAT. ANN. § 2C:25-29b(6) (2017)).

161. *See, e.g.,* Sharpe v. Sharpe, 695 So.2d 1302, 1303 (Fla. Ct. App. 1997) ("A domestic violence injunction is authorized under section 741.30, Florida Statutes (1995). But the statute limits the cause of action to 'family or household members' who have been or reasonably believe that they may become victims of domestic violence.") (emphasis omitted); *see also* Rutledge, *supra* note 7, at 194 ("Although requirements vary by jurisdiction, standing for domestic violence protective orders is generally limited to a narrow class of petitioners who are currently or were formerly in an abusive relationship.").

162. *See, e.g.,* Vera v. Yellowrobe, 2006-Ohio-3911, 2006 WL 2130726, at *2 (Ct. App. 2006) ("[OHIO REV. CODE ANN. §] 3113.31 . . . provides for orders concerning domestic violence. That section allows a person to petition the court for a protective order on his or her own behalf or on behalf of a family or household member."); *see also* Marquette v. Marquette, 686 P.2d 990, 993 (Okla. Ct. App. 1984) ("A victim of domestic

the statutes that authorize these types of protective orders.¹⁶³

For any number of reasons,¹⁶⁴ an employee involved in an abusive relationship may be unwilling – or unable¹⁶⁵ – to obtain a protective order on her own behalf,¹⁶⁶ leaving herself and possibly her coworkers vulnerable to

abuse, or any adult household member on behalf of any other family or household member who is a minor or incompetent, may seek relief . . . by filing a petition for protective order . . .” (quoting 22 OKLA. STAT. § 60.2(A) (1983))).

163. See, e.g., *City of L.A. v. Animal Def. League*, 37 Cal. Rptr. 3d 632, 638 (Ct. App. 2006) (“Section 527.6 [of the California Code of Civil Procedure] authorizes a ‘person’ who has been harassed to obtain an injunction under specified circumstances prohibiting any further harassment. . . . [T]he term ‘person’ . . . [does] not include . . . the employer of the victim of the harassment.”); see also *ConAgra Foods, Inc. v. Zimmerman*, 846 N.W.2d 223, 231 (Neb. 2014) (Cassel, J., dissenting) (“The Legislature has provided injunctive relief for victims of domestic abuse or victims of harassment, but . . . a victim’s employer clearly falls outside of the protections afforded by these statutes.”) (footnotes omitted); Riley, *supra* note 19, at 16 (observing that in most states, “only the victim of domestic violence” can obtain an injunction; an employer is “incapable of stepping into the [victim’s] shoes”).

164. See Ralph Henry, *Domestic Violence and the Failures of Welfare Reform: The Role for Work Leave Legislation*, 20 WIS. WOMEN’S L.J. 67, 96 (2005) (“For example, the threat of physical force in retaliation to obtaining a restraining order may be so great that the victim knows that she needs to have new housing and schools and child care for her children before obtaining a restraining order against her abuser.”); see also Riley, *supra* note 19, at 16 (“Victims of domestic violence may be wary to apply for a [protective order] because of threats by the batterer, the humiliation of relaying their story of abuse to others, the inability to afford legal representation, and a belief by victims that the [protective order] will be ineffective.”).

165. See, e.g., *Spence v. Kaminski*, 12 P.3d 1030, 1033 (Wash. Ct. App. 2000) (“The Domestic Violence Prevention Act . . . authorizes a victim of domestic violence to petition the court for an order of protection. . . . [V]ictims of domestic violence often have difficulty completing the petition paperwork”); see also Ricci, *supra* note 16, at 64 (asserting that “the cost to obtain a protective order can often prohibit a victim from seeking legal protection from an abuser”); Rutledge, *supra* note 7, at 203 n.156 (“The process for obtaining a protective order can be complicated, so some domestic violence victims are unsuccessful.”); Vivek Sankaran, *Using Preventive Legal Advocacy to Keep Children from Entering Foster Care*, 40 WILLIAM MITCHELL L. REV. 1036, 1039 (2014) (observing that “a domestic violence victim may be unable to secure a personal protection order”).

166. See, e.g., *Lowe v. Lowe*, 196 So.3d 672, 675 (La. Ct. App. 2016) (describing an individual who had experienced “past incidents of abuse” at the hands of her husband, but nevertheless “chose not to seek a temporary restraining order or an order of protection” because she did not want to jeopardize her husband’s job prospects); *Matter of Molinini-Rivera*, 802 N.Y.S.2d 136, 138 (App. Div. 2005) (“Although respondent suffered physical injury on many occasions, she did not seek an order of protection because she felt it was only a piece of paper that only would serve to further enrage her husband.”); see also Karin, *supra* note 11, at 405-06 (“For any number of reasons . . . a

a workplace assault.¹⁶⁷ Statutes authorizing workplace injunctions are intended to minimize this risk,¹⁶⁸ which they do by enabling employers to obtain “civil injunctive relief against an individual who has harassed, threatened, assaulted, or stalked an employee on the employer’s worksite or while conducting the employer’s business.”¹⁶⁹ As one commentator explained:

Civil protection orders are generally considered an important tool for domestic violence victims, but they are very distinct from workplace restraining orders. Both orders should accomplish the same goal as it relates to the workplace – to get an unwanted person to stay away and refrain from harassing, threatening, or assaulting the target. . . . The major difference between the civil protection order and the

victimised employee may be unwilling to seek a protection order for herself.”). *See generally* Widiss, *supra* note 19, at 715 n.168 (“[D]omestic violence advocates generally maintain that a victim should not be required to seek a protective order; rather, she should make a reasoned decision after assessing the situation and potential risks that may be posed by issuance of an order.”).

167. *See, e.g.*, *State v. Lopez*, No. 2 CA-CR 2006-0025, 2007 Ariz. App. Unpub. LEXIS 1094, at *3 (Apr. 27, 2007) (describing an individual who “attacked his wife . . . in a hallway of the residential care center where she was employed, stabbing and beating her while co-workers attempted to come to her aid,” and then “swung at two of her co-workers, verbally threatening one of them”); *see also* *Scott v. Butler*, 759 S.E.2d 545, 547 (Ga. Ct. App. 2014) (describing a domestic violence expert’s testimony that she “had worked with several . . . victims of domestic violence” whose abusers “showed up at their jobs” and “not only was the victim harmed, but also other employees as well”) (bracketing omitted).

168. *See, e.g.*, *Scripps Health v. Marin*, 85 Cal. Rptr. 2d 86, 94 (Ct. App. 1999) (observing that the California workplace injunction statute was “intended to enable employers to seek the same remedy for its employees” as traditional protective order statutes provide for “natural persons”); *see also* Rutledge, *supra* note 7, at 177-78 (“Workplace restraining order legislation provides standing for employers to obtain temporary restraining orders and injunctions to protect employees from harassment and violence at work.”); *see also* Widiss, *supra* note 19, at 714 (describing workplace injunctions as “the equivalent of the personal protective order that victims of domestic violence may seek”). *But see* Henry, *supra* note 164, at 96 (“A proponent of these employer standing provisions would argue that the employer’s restraining order is not the same as one that would be given to the victim herself.”).

169. Widiss, *supra* note 19, at 714; *see also* Rutledge, *supra* note 7, at 197 (“Legislative history from at least one state suggests that workplace restraining orders were considered an alternate solution when a domestic violence victim chose not to obtain a protective order.” (citing NEV. S. COMM. ON JUDICIARY, 71ST SESS., S. COMM. MINUTES A.B. 370 (2001))). However, an employer may also “seek an order to *supplement* a protection order obtained by a victim employee. . . . For example, the primary target may obtain a protection order on her own behalf, but the employer may wish to seek an order on behalf of other employees.” Karin, *supra* note 11, at 406-07 (emphasis added).

workplace restraining order is the person who initiates the relief.¹⁷⁰

VII. ARIZONA'S WORKPLACE INJUNCTION STATUTE

Most states have yet to enact legislation authorizing employers to obtain workplace injunctions,¹⁷¹ apparently due in part to a lack of enthusiasm for such legislation on the part of domestic violence victims and their advocates.¹⁷² However, Arizona does have such a statute,¹⁷³ which was enacted in 2000¹⁷⁴ with the support of several major Arizona employers,¹⁷⁵ and became effective in 2001.¹⁷⁶

Creating a remedy not previously available to employers,¹⁷⁷ the Arizona

170. Rutledge, *supra* note 7, at 195 (footnote omitted); *see, e.g.*, *Kovach v. Metropolitan Gov't of Nashville & Davidson Cty.*, No. 3:09-cv-0886, 2010 U.S. Dist. LEXIS 39333, at **14-15 (M.D. Tenn. Mar. 25, 2010) (observing that Tennessee's workplace injunction statute is "aimed at protecting individuals who have received a threat of violence outside the workplace (and for which they have most likely obtained a temporary restraining order and injunction) from that threat while at work"), *adopted*, No. 3:09-cv-0886, 2010 U.S. Dist. LEXIS 39402 (M.D. Tenn. Apr. 21, 2010).

171. *See Henry, supra* note 164, at 96 ("A few state domestic violence work leave laws give employers the right to seek protective orders or restraining orders against the abuser of an employee who is a victim of domestic violence."); Rutledge, *supra* note 7, at 200 n.139 (observing that "very few jurisdictions" have statutes authorizing workplace injunctions).

172. *See Widiss, supra* note 19, at 719 (asserting that attempts to enact legislation authorizing employers to obtain workplace injunctions have been "greeted with skepticism, if not outright opposition, by victims and their advocates").

173. *See id.* at 714-15 (identifying Arizona as one of ten states that had "enacted workplace restraining order laws" (citing *Ariz. Rev. Stat. § 12-1810* (2007))).

174. *See Riley, supra* note 19, at 21 n.141.

175. *See Hal Mattern, Bill Fights Workplace Violence*, ARIZ. REPUBLIC, Jan. 15, 2000, at D1 (stating that the Arizona statute was supported by "at least three major companies with operations in Arizona: AT&T, Intel and the Viad Corp."). *See generally* Widiss, *supra* note 19, at 715 ("These laws are generally strongly supported by the business lobby . . .").

176. *See Riley, supra* note 19, at 21.

177. *See Grimwood & Kane, supra* note 20 § 1.9.2, at 1.9-2:

Prior to the legislation, individuals could obtain an injunction against harassment, which would enjoin the harasser from further harassment and restrain the harasser from contacting or approaching the victim. However, employers were historically unable to obtain the protection of this injunction. The legislation provided employers this protection and gave employers a new weapon to combat workplace violence.

See also Mattern, *supra* note 175, at D1 (stating that prior to the enactment of Arizona's workplace injunction statute "only individuals [could] file for injunctions against other individuals who [were] harassing or threatening them").

statute allows an employer to obtain an “injunction against workplace harassment”¹⁷⁸ in the event of a threat that would cause a reasonable person to feel seriously annoyed or alarmed.¹⁷⁹ The threat can be directed at the employer or any person on its premises or performing work for it,¹⁸⁰ and the court can enjoin the potential perpetrator from contacting that person or the employer itself, and “from coming near the employer’s property or place of business.”¹⁸¹

The Arizona statute was intended to “help prevent workplace violence caused by former romantic partners or ex-spouses,”¹⁸² and allows the employer to seek an injunction on behalf of a domestic violence victim or anyone else in the workplace.¹⁸³ Although the empirical evidence is inconclusive,¹⁸⁴ such injunctions seem likely to deter workplace violence in

178. ARIZ. REV. STAT. § 12-1810.F (2017). The Arizona legislature’s designation of this injunction as one “against workplace harassment” creates the potential for confusion, as the same term has been applied to an injunction sought by an employee *against* an employer to prevent the kind of workplace harassment prohibited by many state and federal employment discrimination laws. *See, e.g.,* Allen v. ASRC Comm’n, No. 4:08CV1575 HEA, 2010 U.S. Dist. LEXIS 19566, at *1 (E.D. Mo. Mar. 4, 2010); *see also* Amirmokri v. Baltimore Gas & Elec. Co., 60 F.3d 1126, 1132 (4th Cir. 1995) (“The equitable relief ordinarily available in Title VII workplace harassment cases is an injunction prohibiting further harassment.” (citing 42 U.S.C. § 2000e-5(g)(1) (2012))).

179. *See* ARIZ. REV. STAT § 12-1810.S.2 (2017).

180. *See id.* § 12-1810.E.

181. *Id.* § 12-1810.F.1; *cf.* Karin, *supra* note 11, at 404 (“All of the state [workplace injunction] laws allow judges to require perpetrators to stay away from an employer’s work or property.”).

182. Mattern, *supra* note 175, at D1 (quoting Arizona House Majority Leader Lori Daniels, sponsor of the bill that became the workplace injunction statute). However, workplace injunction statutes “are not limited to domestic violence incidents and can apply in a variety of circumstances where an employee is the target of harassment, threats of violence, or stalking.” Rutledge, *supra* note 7, at 178; *cf.* Karin, *supra* note 11, at 407 n.161 (arguing for the enactment of legislation that would “allow employers to seek protection orders for other types of violence at work, such as when one employee attacks or harasses another”).

183. *See* Karin, *supra* note 11, at 403 (“Arizona allow[s] employers to seek an order on behalf of anyone in the workplace.”).

184. *See* Rutledge, *supra* note 7, at 182 n.14 (“Workplace restraining orders have been identified as a tool for domestic violence cases, but have not been thoroughly examined.”); *cf.* Rios, *supra* note 152, at 728 (“Results of studies concerning the effectiveness of protective orders are mixed. The effectiveness of restraining orders in reducing the incidence of domestic violence has only been examined in a few studies”); Williams, *supra* note 3, at 394-95 (“Experts debate whether or not orders of protection are effective tools for stopping domestic violence. It is difficult to trace definitively whether . . . orders of protection . . . are helping protect victims of domestic

at least some situations.¹⁸⁵ This is partly because employers tend to have access to more resources than their employees,¹⁸⁶ and thus may find it easier to obtain, and enforce,¹⁸⁷ injunctive relief against a potential perpetrator.¹⁸⁸ An employer seeking a workplace injunction also may draw attention away from the targeted victim,¹⁸⁹ making her less vulnerable to a retaliatory attack from her abuser than if she were seeking injunctive relief on her own behalf.¹⁹⁰ Thus, even a commentator who has lamented the limitations of workplace injunctions has described their potential to assist domestic

violence.”) (footnote omitted).

185. See, e.g., Ricci, *supra* note 16, at 61 (characterizing the incident recounted in *USS-Posco Industries. v. Edwards*, 4 Cal. Rptr. 3d 54 (Ct. App. 2003), as an “example of an employer using a civil temporary restraining order to successfully prevent an incident of workplace violence”); see also Riley, *supra* note 19, at 27 (“Evidence suggests that employer TROs have helped to diffuse small situations. For example, when an employee was being stalked by an ex-boyfriend, the employer was able to end the stalking by obtaining a temporary restraining order.”).

186. See *Redwind v. Western Union, LLC*, No. 3:14-cv-01699-AC, 2017 U.S. Dist. LEXIS 37857, at *14 (D. Or. Mar. 16, 2017) (observing that “employers generally have greater resources than their individual employees”); see also Kenneth G. Dau-Schmidt, *Meeting the Demands of Workers Into the Twenty-First Century: The Future of Labor and Employment Law*, 68 IND. L.J. 685, 700 n.75 (1993) (stating that employers “generally have more resources than employees”); Piper Hoffman, *How Many Plaintiffs Are Enough? Venue in Title VII Class Actions*, 42 U. MICH. J. L. REFORM 843, 865-66 (2009) (asserting that “employers almost always have significantly more resources than individual employees do”).

187. See Riley, *supra* note 19, at 27 (“Employers who obtain TROs are more motivated to prosecute violators of the TROs, whereas a recent study indicates that 87.7% of female domestic abuse victims fail to file contempt motions after violations of the TRO. The employer often has greater resources and police may treat the employer’s charges more seriously than the domestic violence victim.”).

188. See Rutledge, *supra* note 7, at 196 (“[U]nfortunately, enforcement of protective orders is a significant issue that can impact effectiveness. . . . Perhaps jurisdictions that fail to take domestic violence protective orders seriously may be more responsive to an employer-initiated workplace restraining order.”).

189. See Karin, *supra* note 11, at 406 (“When an employer seeks an order, some of the pressure is removed from the victim’s shoulders. According to the Arizona Coalition Against Domestic Violence, the perpetrator’s retribution against the victim may decrease in this situation because the victim did not seek the order herself.” (citing ARIZ. COALITION AGAINST DOMESTIC VIOLENCE, MANUAL FOR LAY LEGAL ADVOCATES ASSISTING IN CASES OF VIOLENCE AGAINST WOMEN IN ARIZONA 87 (2003))).

190. See Tarr, *supra* note 15, at 374 (“Advocates of such legislation suggest that since these protective orders are limited to the workplace and only protect the employer, they will not make victims vulnerable to retaliatory attacks by their batterers.”). *But see* Rutledge, *supra* note 7, at 202 (“Although the request for a workplace restraining order comes from the employer, it could trigger retaliation against the victim.”).

violence victims as “significant.”¹⁹¹

VIII. THE LIMITATIONS OF WORKPLACE INJUNCTIONS

Workplace injunctions are not a panacea,¹⁹² and their availability will not necessarily prevent domestic violence from spilling into the workplace.¹⁹³ For example, even if Arizona’s workplace injunction statute had been in effect at the time of the incident described in *Epperson v. Industrial Commission*,¹⁹⁴ it might not have been of any assistance to the employer in that case.¹⁹⁵ Among other things, the employer might not have perceived the need for an injunction,¹⁹⁶ and even if it had,¹⁹⁷ it might not have had sufficient

191. Rutledge, *supra* note 7, at 198; *see also* Riley, *supra* note 19, at 17 (“Despite [their] limitations, [protective orders] are accepted as a beneficial deterrent to domestic violence.”); Rutledge, *supra* note 7, at 193 (“[S]everal scholars have identified workplace restraining orders as a viable tool to combat domestic violence in the workplace.”).

192. *See* Riley, *supra* note 19, at 33 (“Because . . . criticisms of the effectiveness of employer TROs have some legitimacy, it is unfair to classify the employer TRO as a panacea to cure workplace violence.”).

193. *See* Jacobs & Raghu, *supra* note 40, at 603 (“Employers may not realize that there are [certain] steps that they can take against the abuser – such as reporting harassment to the police or, in states that authorize it, seeking a workplace restraining order . . .”).

194. *See generally* *Epperson*, 549 P.2d 247 (Ariz. Ct. App. 1976). The incident described in *Epperson* occurred in 1973, *see id.* at 248-49, nearly thirty years before Arizona’s workplace injunction statute was enacted. *See supra* notes 174-77 and accompanying text.

195. *See generally* Riley, *supra* note 19, at 33 (“Unfortunately, even an employer utilizing all of its legal options may be unable to avoid a particular incident of workplace violence.”).

196. One commentator has noted that because a workplace injunction “is a targeted remedy, it requires that the threat be identified in advance.” *Id.*; *see also* Karin, *supra* note 11, at 391 (observing that “an employer cannot address a specific risk without knowledge that the risk exists”). With respect to that issue, the *Epperson* court held that the administrative hearing officer who issued the decision it was reviewing logically could have concluded that the victim had not “conveyed her fears sufficiently” because she had not informed the employer of her husband’s “violent nature or the fact that he might be armed.” *Epperson*, 549 P.2d at 250.

197. *Cf.* *Constantine v. Employment Dep’t*, 117 P.3d 279, 280 (Or. Ct. App. 2005) (“Claimant’s supervisor knew from prior conversations with claimant that claimant’s husband had been abusing her.”). *See generally* *Carroll v. Ohio Dep’t of Admin. Servs.*, No. 2-10-cv-385, 2013 WL 12180001, at *7 (S.D. Ohio Mar. 29, 2013) (“It might not always be possible to discern between those threats that are serious and those that are not, and therefore, a zero or low tolerance policy to discourage such threats is imperative.”), *aff’d*, 555 F. App’x 512 (6th Cir. 2014).

time to obtain and serve the injunction before the incident occurred.¹⁹⁸

Indeed, even a timely served injunction might not have prevented the incident described in *Epperson*,¹⁹⁹ in part because perpetrators of domestic violence frequently violate injunctions and protective orders.²⁰⁰ In *State v. Woods*,²⁰¹ for example, an employee's estranged boyfriend repeatedly attempted to contact her, both at her residences and at her place of employment, even though he had been served with a protective order prohibiting such contact.²⁰² The former boyfriend, who had periodically assaulted the employee in the past,²⁰³ ultimately went to her workplace and murdered her.²⁰⁴

Although a workplace injunction might prevent a violent workplace

198. See generally *State v. Greene*, 784 P.2d 257, 259 (Ariz. 1989) (noting that domestic violence incidents “commonly involve dangerous situations in which the possibility for physical harm or damage escalates rapidly”); *Matea v. Workers Comp. Appeals Bd.*, 51 Cal. Rptr. 3d 314, 324 (Ct. App. 2006) (observing that “workplace violence [incidents] are . . . usually totally unexpected events”).

199. See *Widiss*, *supra* note 19, at 715 (“Obtaining a protective order does not guarantee that violence will end.”) In an article appearing in the Arizona Republic shortly before Arizona's workplace injunction statute was enacted, the sponsor of the legislation, Arizona House Majority Leader Lori Daniels, was quoted as saying: “Obviously, if someone is determined to go in and shoot someone, there is probably not much [the employer] can do about it.” *Mattern*, *supra* note 175, at D1.

200. See *State v. Ramos*, 305 P.3d 921, 930 (N.M. 2013) (Maes, C.J., dissenting) (“A recent study involving over 750 women from various jurisdictions nationwide revealed that nearly 60% of women reported violations of protective orders.” (citing T.K. Logan & Robert Walker, *Civil Protective Order Effectiveness: Justice or Just a Piece of Paper?*, 25 VIOLENCE AND VICTIMS 332, 333 (2010))); see also *People v. Gellineau*, 681 N.Y.S.2d 729, 733 (Sup. Ct. 1998) (“Judicial orders of protection are issued chiefly to help protect victims of domestic violence from additional acts of abuse. Yet, they are violated all too frequently; sometimes with lethal – all but invariably with serious – consequences for those the orders are supposed to protect.” (quoting EXECUTIVE MEMORANDUM FILED WITH S. 7930, at 1 (N.Y. July 29, 1996), 1996 MCKINNEY'S SESSION LAWS OF N.Y., at 2309 (2d ed. 1996))).

201. See 881 P.2d 1158, 165-66 (Ariz. 1994).

202. See *id.* at 1165; *cf.* *Scott v. Butler*, 759 S.E.2d 545, 547 (Ga. Ct. App. 2014) (“Although [the victim] had . . . obtained two restraining orders against her ex-boyfriend, . . . he repeatedly violated those orders by stalking, harassing, and threatening her.”); *D.C. v. Superintendent of Elections*, 618 A.2d 931, 932 (N.J. Super. Ct. Law Div. 1992) (noting that the plaintiff's ex-husband “repeatedly violated a permanent restraining order”).

203. See *Woods*, 881 P.2d at 1165 & n.1.

204. See *id.* at 1165-66; *cf.* *Carnes v. Tremco Mfg. Co.*, 30 S.W.3d 172, 174 (Ky. 2000) (discussing evidence that “there is a very high fatality rate in stalking situations”).

incident under other circumstances,²⁰⁵ *Woods* is far from an isolated case²⁰⁶ – a fact that casts at least some doubt on the overall effectiveness of such injunctions.²⁰⁷ As one domestic violence victim observed, an injunction “has no force behind it, in and of itself; it is just a piece of paper.”²⁰⁸ The perpetrator’s mindset in this situation has been described in the following terms:

[W]hen a typical abuser goes to the workplace of his former wife or girlfriend in violation of a restraining order, . . . he has no regards for the law. He isn’t afraid. He’s attempting to assault the individual at her workplace, and that means by any means. He’ll try to get the employees that may try to stop him. So she may not

205. See Mattern, *supra* note 175, at D1 (“[I]f . . . someone . . . is really irritated, and [the employer has] an injunction, [it] can call in the police and maybe de-escalate the situation.” (quoting Arizona House Majority Leader Lori Daniels, sponsor of the Arizona workplace injunction statute); *cf.* Riley, *supra* note 19, at 27-28 (“One of the most important effects of an employer TRO is that it . . . will prompt a visit by a police officer to serve the TRO. This visit can diffuse the potential offender’s frustration and cause the offender to reconsider plotted acts of violence in the workplace.”).

206. See, e.g., *State v. Byars*, 823 So.2d 740, 741 (Fla. 2002) (describing an individual alleged to have shot and killed his wife in the consignment store at which she worked “[d]espite an existing domestic violence injunction prohibiting his physical presence within his wife’s place of employment”); see also *State v. Kee*, 956 S.W.2d 298, 301 (Mo. Ct. App. 1997) (describing an employee who was assaulted by her estranged husband in the parking lot of her place of employment despite the fact that on the morning of the assault she “had obtained a full order of protection against [him] because he had previously threatened and assaulted her over their impending divorce”); *State v. Dennis*, 607 S.E.2d 437, 442 (W. Va. 2004) (“[P]rotective orders did not deter [the perpetrator] who went to [the victim’s] place of employment . . . while a protective order was in effect.”).

207. See, e.g., *ConAgra Foods, Inc. v. Zimmerman*, 846 N.W.2d 223, 229 (Neb. 2014) (describing an individual who “flagrantly violated at least one of his estranged wife’s protection orders when he entered onto her work premises” thereby casting doubt “on the efficacy of a [workplace] injunction preventing [him] from again trespassing onto [that] property”); *cf.* Widiss, *supra* note 19, at 715 (“In fact, it is common for perpetrators of domestic violence to violate protective orders.”).

208. PAM PINNOCK, *THE FATHER FRACTURE: REVELATIONS OF A BATTERED WOMAN* 228 (2007); see, e.g., *People v. Atkins*, 177 Cal. Rptr. 3d 120, 121 (Ct. App.) (“After the hearing on the permanent restraining order, defendant told K.W. that a piece of paper was not going to keep him away from her. Defendant [then] called K.W. every day. He [also] went to her place of employment.”), *review granted*, 337 P.3d 1158 (Cal. 2014); *In re O’Neil*, 992 A.2d 672, 675 (N.H. 2010) (noting an ex-husband’s statement that a “domestic violence protective order was merely ‘a piece of paper,’ and that no one could keep him away from the marital home.”); see also Rutledge, *supra* note 7, at 195 (“Batterers who are used to manipulating the law or have little respect for the law tend to treat restraining and protective orders like meaningless pieces of paper.”).

be the only one harmed.²⁰⁹

IX. THE EMPLOYER'S DILEMMA

Being served with an injunction may anger the perpetrator,²¹⁰ causing an escalation in his abusive behavior.²¹¹ In addition, because workplace injunctions are designed to prevent acts of violence from occurring in the workplace,²¹² they may leave a victim of domestic violence “even more

209. *Scott v. Butler*, 759 S.E.2d 545, 547 (Ga. Ct. App. 2014) (internal punctuation omitted); *see also* *Riley*, *supra* note 19, at 17 (asserting that protective orders “are unlikely to deter those already contemplating . . . domestic violence”); Richard A. Lingg, Note, *Stopping Stalkers: A Critical Examination of Anti-Stalking Statutes*, 67 ST. JOHN'S L. REV. 347, 360 (1993) (“In many situations, [protective] orders are useless against a party already considering criminal conduct and are therefore of limited benefit in preventing unwanted contact.”). *But see* *Williams*, *supra* note 3, at 395 (“Certainly cases exist where an order of protection . . . did not prevent the batterer from killing or abusing the victim. However, the cases where ‘hard-core’ offenders will not care about going to jail and will not care about a ‘piece of paper’ are the extreme.” (quoting *Rios*, *supra* note 152, at 727-28)) (footnote omitted).

210. *See, e.g.*, *Commonwealth v. Johnson*, 711 N.E.2d 578, 580-81 (Mass. 1999) (“[A]fter the victim obtained a protective order against the defendant, two . . . police officers accompanied the victim back to her apartment, where they served the defendant with the protective order. The defendant became extremely angry, . . . and told the victim that he would be back.”); *see also* *Constantine v. Emp't Dep't*, 117 P.3d 279, 280 (Or. Ct. App. 2005) (“After she obtained [a] restraining order, claimant believed that her husband was very angry with her. She was uncertain about what he would do.”).

211. *See, e.g.*, *Fleet Bus. Credit v. Global Aerospace Underwriting Managers Ltd.*, 646 F. Supp. 2d 473, 485 (S.D.N.Y. 2009) (describing “a husband [who], apparently angered when his wife obtained a protective order against him, poured gasoline throughout the marital home, resulting in a fire” (discussing *Winter v. Aetna Cas. & Sur. Co.*, 409 N.Y.S.2d 85 (Sup. Ct. 1978))), *aff'd sub nom.* *Highland Capital Mgmt., L.P. v. Global Aerospace Underwriting Managers Ltd.*, 488 F. App'x 473 (2d Cir. 2012); *Walther v. KPKA Meadowlands Ltd. P'ship*, 581 N.W.2d 527, 533 (S.D. 1998) (describing an individual who, upon learning that his former girlfriend tried to obtain a domestic violence protective order against him, “attacked her and threatened her life”); *see also* *Rutledge*, *supra* note 7, at 203 (“Receiving a workplace restraining order could enrage some batterers who may, in turn, increase their aggression.”); *see also* *Karin*, *supra* note 11, at 407 (“There is evidence that demonstrates that violence increases immediately after a perpetrator is served with a protection order.”); *Riley*, *supra* note 19, at 32 (“One criticism is that a restraining order often will only enrage the offender to commit violence. . . . Because restraining orders are so confrontational, they may increase the risk of violence.”).

212. *See, e.g.*, *City of L.A. v. Animal Def. League*, 37 Cal. Rptr. 3d 632, 649 (Ct. App. 2006) (discussing the “nexus between the unlawful violence or credible threat of violence and the employee's workplace” that is an essential component of “an employer's right to a workplace violence restraining order”), *disapproved on other grounds in* *City of Montebello v. Vasquez*, 376 P.3d 624, 631 n.10 (Cal. 2016); *see also*

vulnerable in other aspects of her life, especially if the employer acted without her knowledge or acquiescence.”²¹³ As one commentator explained:

[I]f a workplace restraining order is granted, a victim may be more vulnerable at home if she does not have her own protective order in place. Unlike a domestic violence protective order, which can prohibit a respondent from coming within so many feet of the victim, a workplace restraining order would be limited to protecting the target at the workplace.²¹⁴

The fact that a workplace injunction “actually may increase the danger to the victim and, potentially to her coworkers”²¹⁵ creates an obvious dilemma for the victim,²¹⁶ as well as for the employer.²¹⁷ In an effort to mitigate this dilemma,²¹⁸ Arizona’s workplace injunction statute requires the employer to inform the victim of its intent to seek an injunction.²¹⁹ The statute also

Henry, *supra* note 164, at 96 (noting that a workplace injunction “does not cover anything other than the actual place of business at which the victim works”); Tarr, *supra* note 15, at 374 (stating that “these protective orders are limited to the workplace”).

213. Tarr, *supra* note 15, at 374-75; *see also* Rutledge, *supra* note 7, at 202 (stating that “workplace restraining order legislation that essentially allows an employer to obtain a restraining order behind a victim’s back . . . may further endanger the victim”).

214. Rutledge, *supra* note 7, at 203 (footnote omitted); *see also* Widiss, *supra* note 19, at 715 (asserting that “the perpetrator of violence . . . may take his anger out on the victim outside the workplace”).

215. Widiss, *supra* note 19, at 715; *see, e.g.*, Karin, *supra* note 11, at 378 (discussing a perpetrator who “began harassing his target’s coworkers after [being] served with a protective order”); *see also* Ricci, *supra* note 16, at 70-71 (“[A] workplace protection order has the potential to actually increase the likelihood of violence.”); Riley, *supra* note 19, at 17 (stating that a protective order “may infuriate the batterer and lead to more violence”).

216. *See* Henry, *supra* note 164, at 97 (“[T]he victim . . . faces increased levels of violence and severe harm if a protective or restraining order is obtained by her employer at a point at which the victim is not able to establish some independence from the abuser.”).

217. *See* Ricci, *supra* note 16, at 71 (“[T]he system creates a Catch-22: employers find themselves in the position of needing a restraining order to help alleviate any potential civil liability exposure but such action has the potential to escalate an increasingly volatile situation.”). *See generally* Rutledge, *supra* note 7, at 177 (“When domestic violence intersects with the workplace, both employers and employees are faced with a difficult dilemma.”).

218. *See generally* Karin, *supra* note 11, at 408 (“In an effort to combat this ‘catch-22’ and protect the victim employees, employers should be required to notify or otherwise engage in an interactive process with the targeted employees to ensure they have knowledge of the employer’s efforts to seek a protection order.”).

219. *See* ARIZ. REV. STAT. § 12-1810.M (“When the employer has knowledge that a specific person or persons are the target of harassment . . . the employer shall make a good faith effort to provide notice to the person or persons that the employer intends to

permits the employer to take up to a year to serve the injunction on the perpetrator.²²⁰ Thus, the statute affords the employer an opportunity to consult with the victim,²²¹ who may have valuable insight into the perpetrator's state of mind,²²² before deciding whether to proceed with the injunction.²²³ Consultation not only permits the victim to take steps to maximize her own personal safety²²⁴ (perhaps with the employer's

petition the court for an injunction against workplace harassment.”).

220. *See id.* § 12-1810.I. Once served, the injunction remains in effect for one year unless it is modified or quashed. *See id.* §§ 12-1810.G & .I. One commentator asserted that the Arizona statute thus allows the injunction to “last for up to two years without . . . extension.” Riley, *supra* note 19, at 25. However, the injunction does not become effective until it is served on the potential perpetrator. *See ARIZ. REV. STAT.* § 12-1810.I. It therefore would be more accurate to say that by postponing service the employer can delay the *expiration* of the injunction until two years after it was issued. *See generally* Riley, *supra* note 19, at 22 (“[B]y delaying service, an employer can effectively preserve the possibility of injunctive relief . . .”).

221. *See generally* Gaines, *supra* note 17, at 185 (“Consulting with a victim on various issues regarding a threat of domestic violence is in the best interest of the employer.”).

222. *See, e.g.*, Griffin v. AAA Auto Club S., Inc., 470 S.E.2d 474, 476 (Ga. Ct. App. 1996) (observing that between a domestic violence victim and her employer, the victim “had superior knowledge of [her former boyfriend’s] characteristics and temperament and of the nature of their relationship”); *see also* Rutledge, *supra* note 7, at 209-10 (“If there is a threat to workplace safety that involves someone the employee knows, the employee should always be consulted, given that the employee will know the harasser better than anyone else.”); Widiss, *supra* note 19, at 705 n.123 (“Domestic violence advocates tend to share a belief that the victim is best positioned to assess the probability that an abuser will take various actions.”). This is in contrast to the situation involving a potentially violent coworker, because “employers are usually in a better position to know and monitor how . . . other employees will behave than any one employee.” Choroszy v. Wentworth Inst. of Tech., 915 F. Supp. 446, 450-51 (D. Mass. 1996).

223. *See* Rutledge, *supra* note 7, at 179 (asserting that “a cooperative approach with the victim is the better approach because . . . employers will actually be able to make a more informed decision given that victims have valuable insight with respect to their intimate partners”).

224. *See* Karin, *supra* note 11, at 409 (“Consultation is necessary to ensure the employee understands what actions are being taken and has the opportunity to take the appropriate safety precautions . . .”); *see also* Rutledge, *supra* note 7, at 198 (noting that an employee informed that her employer was seeking an injunction “could take whatever action desired to receive protection outside the workplace”). *See generally* Widiss, *supra* note 19, at 715 (asserting that “particularly when linked to other opportunities for a victim to take steps she deems appropriate in addressing the violence,” workplace injunctions “may play a valuable role in balancing of the employer’s and employee’s interests and advancing their shared interest in promoting workplace safety and productivity”).

assistance),²²⁵ but it also enables the employer to assess whether the injunction is likely to be effective.²²⁶

Despite the potential benefits of consulting with the victim,²²⁷ Arizona's workplace injunction statute merely requires the employer to notify her of its intentions.²²⁸ Like its counterparts in most other states,²²⁹ the Arizona statute does not require the employer to consult with the victim,²³⁰ let alone give her

225. See, e.g., *Marshall v. Pollin Hotels II, LLC*, 170 F. Supp. 3d 1290, 1307 (D. Or. 2016) (noting that the employer's human resources director "offered to accompany [the victim] to . . . obtain a restraining order"); see also Rutledge, *supra* note 7, at 203 ("Employers can encourage employees to seek their own protective orders and help them navigate the process. Employers can also point victims to domestic violence resources that can assist with safety planning.").

226. See *Riley*, *supra* note 19, at 33 ("There will be individuals who will not abide by the TRO. An employer must determine if the TRO will help diffuse or escalate the violence, and determine if other options are more appropriate, based on the specific individual."); see also Rutledge, *supra* note 7, at 211 (noting that consultation with the targeted employee allows employers "to consider the potential repercussions from obtaining an [injunction] before they act").

227. See generally *Danny v. Laidlaw Transit Servs., Inc.*, 193 P.3d 128, 141 (Wash. 2008) ("[S]tatistics suggest that it is in an employer's best interest to work with employees experiencing domestic violence and that such work will ultimately result in a stronger and more stable workforce." (citing L'Nayim A. Shuman-Austin, Comment, *Is Leaving Work to Obtain Safety "Good Cause" to Leave Employment? Providing Unemployment Insurance to Victims of Domestic Violence in Washington State*, 23 SEATTLE U. L. REV. 797, 821 (2000))).

228. See ARIZ. REV. STAT. § 12-1810.M. It is actually relatively rare for a workplace injunction statute to require the employer to notify the victim of its intent to seek an injunction. See Rutledge, *supra* note 7, at 200 (noting that the "vast majority of workplace restraining order legislation does not require any notice to the known target of violence").

229. See *Karin*, *supra* note 11, at 408:

North Carolina . . . requir[es] employers to confer with the targeted employee before seeking an order "to determine whether any safety concerns exist *in relation to the employee's participation in the process*." North Carolina does not, however, require employers to engage with the targeted employee about the employer's decision to seek an order or have it served on the perpetrator. Other state statutes are silent on the issue.

(quoting N.C. GEN. STAT. § 95-261 (2007)) (footnotes omitted).

230. See *Karin*, *supra* note 11, at 408 (noting that Arizona's workplace injunction statute merely requires the employer to "make a good faith effort to notify" the victim of its intent to seek an injunction); cf. Rutledge, *supra* note 7, at 211 ("North Carolina's statute is a valuable tool for domestic violence victims because it invites them to participate in the dialogue related to their safety by requiring employers to consult them first.").

the right to “veto” its decision to pursue injunctive relief.²³¹ Thus, unlike traditional protective order legislation,²³² workplace injunction statutes may operate to deny the victim a voice in her own protection.²³³

X. THE EMPLOYER’S ABILITY TO ACT UNILATERALLY

The victim may be the person best suited to determine the course of action that would afford her the most protection.²³⁴ However, she ordinarily will be focused on protecting herself and her family members,²³⁵ rather than on

231. See Rutledge, *supra* note 7, at 201 (“Instead of addressing her safety concerns in partnership with the employee, the employer is able to make a decision without her input . . .”). Workplace injunction statutes have been criticized on this ground. See *id.* at 178 (“[W]orkplace restraining orders . . . pose some troubling implications in domestic violence cases, particularly since most state legislation does not require the victim’s consent or notice.”).

232. See Karin, *supra* note 11, at 409 (“Historically, protection order statutes were created to allow the victim to have a self-initiated process by which she could seek safety and be given a voice in her situation.”).

233. See Deborah M. Weissman, *Countering Neoliberalism and Aligning Solidarities: Rethinking Domestic Violence Advocacy*, 45 SW. L. REV. 915, 929 (2016) (observing that workplace injunctions “are often sought by employers without notice to or consent of victims who have determined not to seek their own protection order”); *cf.* Rutledge, *supra* note 7, at 201 (“[A]lthough workplace restraining orders appear helpful to employees on the surface, most statutes have taken the position of excluding employee involvement rather than including it.”). See generally *Galloway v. State*, 781 A.2d 851, 870 n.28 (Md. 2000) (“[M]uch of the law on . . . domestic violence . . . far too often negates the victim’s voice.” (quoting Carol E. Jordan et al., *Stalking: Cultural, Clinical and Legal Considerations*, 38 BRANDEIS L.J. 513, 577-78 (2000))).

234. See *Quinn v. Gjoni*, 50 N.E.3d 448, 450 (Mass. App. Ct.) (“A victim of domestic abuse is in the best position to decide what course of action will provide more safety. At a given time, an abuse prevention order might exacerbate the [victim’s] danger[.]” (quoting COMMONWEALTH OF MASS. TRIAL CT. GUIDELINES FOR JUDICIAL PRACTICE: ABUSE PREVENTION PROCEEDINGS § 5:08 commentary, at 108 (Sept. 2011))) (internal punctuation omitted), *appeal denied*, 56 N.E.3d 829 (Mass. 2016); Henry, *supra* note 164, at 96 (“Situations of domestic violence may be vastly different from one another, and the victim is in the best position, even in light of all the trauma she has faced, to determine what actions should be taken and at what time.”); Rutledge, *supra* note 7, at 211 (“[T]he battered employee is in the best position to know whether a workplace restraining order would be effective or if it would further jeopardize her safety.”); Mordini, *supra* note 6, at 323:

[O]rders barring defendants from having contact with . . . victims may keep victims safer, but forcing victims to cut ties to abusive partners may also place them at risk of increased danger as batterers often become more violent during separation. The victim is in a better position to choose, as she knows best what her partner is capable of and what is likely to occur from the separation.

235. See *State v. Delama*, 967 So.2d 385, 387 (Fla. Dist. Ct. App. 2007) (Gersten,

protecting her coworkers.²³⁶ For various reasons, the victim may not be convinced that a workplace injunction would be effective in providing her with the protection she needs.²³⁷ Thus, even if she is consulted about her employer's intentions,²³⁸ the victim may refuse to cooperate in its efforts to obtain an injunction.²³⁹

This is certainly the victim's prerogative,²⁴⁰ and in many cases her refusal

C.J., dissenting) (“[A] battered woman knows what is best for the well-being of her children and herself. Her foremost concern is necessarily the safety and welfare of her family.”); *see also* EDWARD W. GONDOLF & ELLEN R. FISHER, *BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS* 18 (1988) (“The fundamental assumption is . . . that [battered women] seek assistance in proportion to the realization that they and their children are more and more in danger. They are attempting, in a very logical fashion, to assure themselves and their children protection and therefore survival.”).

236. There may be some incongruity in the existence of a statutory notification requirement because “employees that have obtained a protection order are under no legal duty to inform an employer that they have obtained one or that coworkers or customers may be endangered.” Karin, *supra* note 11, at 391. *But see* Scott v. Butler, 759 S.E.2d 545, 547 (Ga. Ct. App. 2014) (describing an employee’s concern that her former boyfriend “would not only injure or kill *her* at her workplace, but that he would *also* harm her co-workers and store customers”).

237. *See* Rutledge, *supra* note 7, at 198 (“Whether a workplace restraining order will benefit a domestic violence victim depends on many variables. . . . For some domestic violence victims, time off from work to complete a safety plan or obtain a civil protection order may be a more welcome form of employer support.”).

238. *See generally* Widiss, *supra* note 19, at 715 (“[I]t would be foolhardy for a business to take such a step without at least consulting the victim and learning how she expects the abuser would respond.”); Rutledge, *supra* note 7, at 211:

There is no downside to the employer to consulting with an employee prior to obtaining a workplace restraining order. . . . [T]he employer still retains the ability to make the final decision, but [consultation] . . . forces employers to pause and consider the potential consequences with as much information as possible, given that the victim likely knows the batterer best.

239. *See, e.g.*, Marshall v. Pollin Hotels II, LLC, 170 F. Supp. 3d 1290, 1307 (D. Or. 2016) (describing an employee who “initially accepted [her employer’s] offer to accompany her to . . . obtain a restraining order” against her abusive former boyfriend, but subsequently “stonewalled the plan”); *see also* Robertson, *supra* note 8, at 642 (“A victim’s possible fears include . . . that the batterer may seek revenge if he discovers that she revealed information to the employer . . .”). *See generally* Rutledge, *supra* note 7, at 209 (“Of course, there is a risk that if the employee were consulted she or he may not want a court order.”).

240. At least one state’s workplace injunction statute specifically provides that targeted employees “who are unwilling to participate in the [injunctive] process . . . shall not face disciplinary action based on their level of participation or cooperation.” N.C. GEN. STAT. § 95-261 (2004).

to cooperate is likely to deter the employer from proceeding with its plans to seek an injunction.²⁴¹ Nevertheless, the employer has its own interests to consider in this situation,²⁴² and those interests are not directly aligned with those of the victim.²⁴³ This is primarily because the employer, and not the victim,²⁴⁴ bears responsibility for maintaining a safe work environment.²⁴⁵ This is a duty the employer owes to all of its employees,²⁴⁶ and not merely to those who are (or are at risk of becoming) domestic violence victims.²⁴⁷ Although this occasionally may place the employer in a seemingly untenable

241. See Karin, *supra* note 11, at 410 (noting that “after consulting with the targeted employee” an employer “may elect not to seek an order”).

242. See generally Widiss, *supra* note 19, at 714 (“Employers obviously have a legitimate interest in taking steps to reduce the likelihood that a perpetrator of domestic violence will engage in harassing or violent conduct against the victim or her coworkers at the workplace.”).

243. See Henry, *supra* note 164, at 96 (“The employer is not getting a protective or restraining order on behalf of a particular employee who is a victim of domestic violence. Rather, the order applies to the place of business generally, on behalf of its employees.”) (footnote omitted); see also Rutledge, *supra* note 7, at 198-99 (“Arguably, an employer must be concerned with the risk to other coworkers, the business, and liability issues, in addition to the safety of the individual victim.”).

244. See Weber v. Gerads Dev., 442 N.W.2d 807, 811 (Minn. Ct. App. 1989) (observing that “any duty to provide a safe work place belong[s] solely to the employer . . . , not the employees”); see also O’Neal v. Steinhage, 949 S.W.2d 274, 277 (Mo. Ct. App. 1997) (“[I]t is the employer’s duty to use reasonable care to provide a safe place to work. That is not a duty shared by the employee.”); Ineos USA, LLC v. Elmgren, 505 S.W.3d 555, 566 (Tex. 2016) (observing that “employees have no duty to provide a safe workplace”); cf. Benjamin v. Wal-Mart Stores, Inc., 413 F. Supp. 2d 652, 656 (D.S.C. 2006) (“One does not have an affirmative duty to maintain safe premises . . . merely by virtue of being an employee, absent some evidence of more substantial level of control of the business.”).

245. See Fisher v. Monsanto Co., 863 F. Supp. 285, 290 (W.D. Va. 1994) (“The primary responsibility for a worker’s safety falls to the employer.”); Barnes v. Liberty Mut. Ins. Co., 468 So.2d 124, 126 (Ala. 1985) (“It is the employer who owes the duty to provide its employees a safe place to work.”); see also Fernandez v. McDonald’s, 292 P.3d 311, 316 (Kan. 2013) (observing that it is the “employer who must bear the responsibility for maintaining a safe work environment for all employees”).

246. See Wills v. Superior Ct., 125 Cal. Rptr. 3d 1, 19-20 (Ct. App. 2011) (observing that employers “must provide all employees with a safe work environment free from threats and violence”); see also Blackwell v. Fireman’s Fund Ins. Co., 278 So.2d 925, 927 (La. Ct. App. 1973) (referring to “the general duty to all employees by the employer to provide a safe place to work”).

247. See Robertson, *supra* note 8, at 657 (“Co-workers, in addition to the victim, may be at risk in violent workplace situations and employers are accountable for *all* employees’ safety.”); see also Rutledge, *supra* note 7, at 185 (“Employer concern must encompass the safety of the battered employee as well as other coworkers and clients.”).

position,²⁴⁸ the employer cannot simply allow the victim's interests "to trump the safety interests of the rest of the workforce,"²⁴⁹ and thus may decide to pursue injunctive relief even without the victim's cooperation or consent.²⁵⁰

Given the risk to the victim inherent in this situation,²⁵¹ some commentators have questioned the wisdom of allowing the employer to proceed without her consent,²⁵² rather than leaving the ultimate decision in her hands.²⁵³ Nevertheless, all of the existing workplace injunction statutes

248. See generally Rutledge, *supra* note 7, at 187 ("Balancing the need to protect a battered employee while also protecting other employees, customers, profits, and property can be very difficult for employers.").

249. Porter, *supra* note 11, at 322; cf. Rutledge, *supra* note 7, at 198 ("[T]he target not wanting an injunction is a frequent problem, but . . . the safety of the other employees and customers is also a concern.").

250. See Rutledge, *supra* note 7, at 209:

The employer may still decide it is in the best interest of the company and all employees for a restraining order to be issued. After all, the employer's responsibility goes beyond the wishes of any individual employee. The employer is responsible for the safety of all employees, company property, and profits.

251. See Widiss, *supra* note 19, at 715 ("The order in . . . a [workplace injunction] case is issued in the name of the business, and the laws permit the business to decide whether to seek such an order. But the perpetrator of violence will typically understand the order as coming at the individual victim's behest and may take his anger out on the victim . . ."); see also Ricci, *supra* note 16, at 71 ("Based on . . . social pressure and [the] threat of potential civil liability, an employer's rationale in obtaining a workplace protection order is clear. However, . . . a protective order served on an abuser could be the final straw that leads to violence.").

252. See, e.g., Henry, *supra* note 164, at 96 ("The most dangerous time in a relationship in which domestic violence occurs is often that point at which the abuser realizes that the victim is attempting to leave. Allowing an employer to get a restraining order against an abuser would imprudently allow the employer to determine when the victim should face this danger.") (footnote omitted); see also Rutledge, *supra* note 7, at 207 ("[T]hese statutes assume that employers are in the best position to determine if a workplace restraining order is needed. Elevating the decisionmaking of the employer over that of the target of the violence raises a number of concerns."); Weissman, *supra* note 233, at 929-30 ("Workplace restraining order statutes reflect a paternalistic attitude toward victims and may further endanger them. They . . . protect[] market interests without providing long-term safety or security for victims of domestic violence.").

253. See, e.g., Henry, *supra* note 164, at 96 ("It should be the victim's prerogative to determine how best to approach obtaining the necessary services to facilitate her escape from her abuser."); see also Conner, *supra* note 39, at 921 ("Although some academics have argued that battered women do not always appreciate the risk they face, the majority of victim advocates maintain that the victim is the best predictor of her own safety, stressing the importance of considering the victim's own assessment of risk.") (footnote omitted). See generally Mordini, *supra* note 6, at 329 ("[L]egislatures . . . should develop policies that require victim input and that consider victims' perspectives in the final

permit employers to pursue injunctive relief unilaterally.²⁵⁴ As one commentator explained, “consent (although preferable) cannot be required because it does not take into account the potential [workplace injunctions] have to protect other members of the workplace community.”²⁵⁵

XI. CONCLUSION

By employing creative strategies to combat workplace violence,²⁵⁶ employers can further their own economic interests,²⁵⁷ and in the process become “a powerful force in effectively addressing domestic violence.”²⁵⁸ In Arizona and a few other states, one promising, albeit imperfect,²⁵⁹ weapon

decision.”).

254. See Tarr, *supra* note 15, at 370 (“[S]tate statutes . . . allow employers to obtain a protective order or restraining order, regardless of an employee’s wishes, if the employer believes that a perpetrator of domestic violence poses a threat to the workplace.”). A bill introduced in 2011 would have authorized employers in the State of Washington to “petition for an order for protection to restrain a person from engaging in unlawful harassment affecting the workplace,” but would have required the employer to “provide actual notice to the [targeted employee] and obtain his or her consent” before seeking such relief in cases in which the harassment arose out of an incident of domestic violence. H.B. 1591, 62nd Leg., Reg. Sess. (Wash. 2011). However, the bill was never enacted.

255. Karin, *supra* note 11, at 409; see also Henry, *supra* note 164, at 97 (“Several commentators have argued that employer standing to seek protective or restraining orders is necessary because of the risk that the violence will spill over into the workplace creating a danger for other employees as well.”).

256. See generally Robertson, *supra* note 8, at 634 (“Upon understanding the financial, legal and societal importance of addressing workplace domestic violence, employers can implement strategies to help combat the public epidemic.”); Durbin, *supra* note 10, at 904 (“As the employment landscape shifts around them, employers should reconsider their position on employment protections for victims of domestic violence.”).

257. See, e.g., Ricci, *supra* note 16, at 65 (“By obtaining protective orders on behalf of threatened employees, employers can reduce the risk of liability for injuries resulting from workplace violence.”); see also Riley, *supra* note 19, at 30 (“[E]mployers who [obtain protective orders] may attempt to use the issuance of the [protective order] as evidence that they met their duty of reasonable care.”); Durbin, *supra* note 10, at 858 (“[D]omestic violence has powerful direct and indirect economic effects on the victims’ workplace. Due to these economic effects employers have an economic interest in solutions that provide employees with the opportunity to end the cycle of violence in their lives.”).

258. Widiss, *supra* note 19, at 681; see also Hobday, *supra* note 66, at 93 (“Collectively, employers could substantially impact the lives of those who experience domestic violence and, as a consequence, reduce the frequency and severity of the harm in our society.”).

259. See Henry, *supra* note 164, at 96 (“There are several hazards to allowing an employer to obtain a protective or restraining order against a victim’s abuser.”); Riley, *supra* note 19, at 20 (stating that “the employer TRO may . . . have a limited effect on

at their disposal is the workplace injunction.²⁶⁰ Some proactive employers, cognizant of the impact domestic violence may have on their businesses,²⁶¹ have already incorporated this weapon into their arsenals.²⁶² As the number of states that authorize workplace injunctions continues to grow,²⁶³ more employers can be expected to follow suit.²⁶⁴

workplace violence”).

260. See Riley, *supra* note 19, at 33 (“The TRO . . . offers an important option for employers to act deliberately and quickly to incidents that may be imminent.”); Rutledge, *supra* note 7, at 214 (“Workplace restraining orders can be a tool, but there are other tools available as well.”); Treiger, *supra* note 34, at 22 (stating that a workplace injunction “certainly is not a foolproof remedy . . . but its use may go a long way in reducing the threat”).

261. See Durbin, *supra* note 10, at 862 (“[S]ome employers are beginning to recognize that they have an economic interest in ensuring there are adequate protections for victim-employees.”); see also Gaines, *supra* note 17, at 143 (“Employers are fast becoming aware of the devastating impact domestic violence has on their businesses.”).

262. See White et al., *supra* note 36, at 31 (“Some employers are actively pursuing restraining orders to protect their victimized employees at the workplace.”); cf. Riley, *supra* note 19, at 28 (noting that in California, which was the first state to authorize such relief, applications for workplace injunctions “have escalated steadily”).

263. See Riley, *supra* note 19, at 34 (“Given the recent spread of employer TROs, more states may be willing to consider the TRO and can build off of the experiments in California, Arizona, and Nevada.”); see also Rutledge, *supra* note 7, at 200 n.139 (“Although very few jurisdictions have enacted [statutes authorizing] workplace restraining orders, interest is steadily growing with additional state bills being proposed as recently as 2012.”); Weissman, *supra* note 233, at 929 (characterizing the “number of states [that] have enacted legislation that allows employers to obtain workplace restraining orders” as “growing”).

264. See generally Ricci, *supra* note 16, at 69-70 (“By increasing the availability and efficiency of protective orders for the workplace, employers will be better equipped to . . . protect employees from the violent acts of third parties and provide . . . evidence of their reasonable attempts to avoid acts of violence in the workplace.”).