

## ***First Wednesday — A Monthly Discussion of Employment Law Issues and Other Hot Topics for Management***

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### **Screwdriver Attack Leads to Case of Wrongful Termination**

A new California case reaffirms that employers must take action to prevent and address violence in the workplace. In the case of *Franklin v. The Monadnock Co.*, (2007) 151 Cal.App.4<sup>th</sup> 252, an employee tried to assault another with a screwdriver. The victim previously complained to the employer about threats of violence by this other employee but the employer took no action based on the complaint, and later terminated the victim after he complained to the police. The victim ended up suing the employer for wrongful termination, based on the important public policy of providing a safe workplace.

Employers have a duty to maintain a safe and violence-free work environment, but dealing with threats of violence or actual violence can often prove tricky. For example, the duty to act quickly to address potential violence may involve consideration of other laws, including those aimed at preventing discrimination on the basis of race, gender, or other protected classes of employees.

This bulletin will provide a summary of the *Franklin* case and its unique facts, followed by some general tips for addressing actual or threatened violence tied to the workplace.

### ***The Franklin Case Facts***

Calvin Franklin filed suit against his former employer alleging one claim: wrongful termination in violation of public policy. His termination followed a series of events involving the threat of violence by a co-worker that ultimately led to Franklin's termination.

While Franklin was employed as a "heat-treater" by The Monadnock Company, a co-worker threatened to kill Franklin and three other employees. Franklin was appointed by the other threatened employees to complain about the threatening employee, Richard Ventura. Franklin complained to Human Resources, but no action was taken against Ventura.

One week after Franklin complained to his employer about Ventura's threats, Ventura tried to stab Franklin with a metal screwdriver and another weapon. Interestingly, the Court's opinion implies the screwdriver attack may have occurred outside the workplace, but that fact did not shield the employer from potential liability. After the attack, Franklin complained to the police that his safety, and the safety of his co-workers, was being threatened by Ventura. He was fired shortly thereafter. Franklin alleged he was terminated because of his complaints to the employer and the police.

In his legal complaint, Franklin alleged that his employer failed to keep Franklin and his coworkers safe, failed to counsel, warn, or segregate Ventura, and failed to prevent Ventura from directly assaulting employees, including Franklin.

### ***Whistleblowers and Public Policy Considerations***

In most states, including California, an at-will employee can sue the employer for wrongful discharge based on the employee's performing an act that public policy would encourage, or for refusing to do something public policy would discourage. These are often called "whistleblower cases," where the employer can be shown to have fired the "whistleblower" for coming forward. The Monadnock Company argued in its defense that in California, Franklin's complaints did not involve a fundamental public policy concern, so there was no wrongful termination.

The Court ruled against the company and held that under California law, there is an express public policy requiring that employers take reasonable steps to provide a safe and secure workplace. In fact, the law creates a duty mandating that employers

adequately address potential workplace violence. Several statutory schemes are relevant.

California Labor Code section 6400 *et seq.*, describes occupational safety rules for employers. The gist of this statutory scheme is that an employer cannot maintain any place of employment that is not “safe and healthful”. California Code of Civil Procedure section 527.8 was enacted to provide a useful remedy to address potential workplace violence. Section 527.8 allows an employer to seek an immediate temporary restraining order or injunction on behalf of an employee who has suffered unlawful violence, or a credible threat of violence, if that violence can be carried out -- or was carried out -- at the workplace.

The Court in *Franklin* held that by reading the occupational rules of the Labor Code together with the Section 527.8 provision for obtaining legal restraint on behalf of a threatened employee, there is an express public policy in California requiring employers to address credible threats of violence in the workplace. This interpretation allowed Franklin to sue his employer for wrongful termination in violation of public policy. The bottom line is that Franklin’s employer may have acted unlawfully by firing him for making a good faith complaint about the threat of criminal violence.

### ***Addressing Workplace Violence***

Based on the *Franklin* case and California law, employers must promptly address threatened or actual violence, or they face potential civil liability. According to the case, workplace violence is a real threat; the U.S. Department of Labor reports 631 national workplace homicides in 2003 (the third-leading cause of job-related injury deaths). Other studies show approximately 1.7 million non-fatal violent crimes in the workplace each year and workplace violence as the top security threat facing Fortune 1000 companies.

### ***Handling Threats of Violence***

According to *Franklin*, employers must proactively deal with “credible threats” of violence. A credible threat is one that an employee reasonably believes will be carried out, causing the employee fear for himself or his family. If an employer is informed of a credible threat, it should promptly:

- Contact its employment counsel;

- Investigate the threat and interview the person making the complaint, any witnesses, and the person that made the threat if possible;
- If the alleged perpetrator is an employee, consider placing him or her on administrative leave pending the results of the investigation. *Note:* make sure to avoid violating any discrimination laws in the process, by handling each case in a consistent manner and keeping good records of investigations and actions taken in each case;
- If the alleged perpetrator is a stranger or a customer, client, or supplier, investigate the complaint and consider measures that might be necessary to immediately protect your employees and customers, such as hiring a security guard or avoiding contact with the person until the investigation is complete;
- Assess the information gathered and make a good faith determination. If there is reason to believe the threat was made, it may be necessary to discipline or terminate the employee, or sever the relationship with the threatening non-employee to avoid all future contact. It may also be necessary to take formal legal action such as obtaining a temporary restraining order or injunction under Section 527.8.

Employers should also take preventive steps to plan for emergencies, including marking escape routes, having an exit plan, and programming the phones to make placing 911 calls quick and easy. If a violent event has occurred, employers should consult with legal counsel, report the event, and cooperate with various governmental authorities as required by law.

Whether workplace violence is actual or threatened, it is essential to remember that terminating an employee who makes a good faith complaint may violate public policy. Each case will be decided based on its unique facts, in which the employer's approach and response will be studied. Thorough and accurate recordkeeping is vital. Because there is a public interest in preventing and addressing workplace violence, promptly addressing credible threats is a must. Punishing an employee for making a report contradicts the public interest and can create liability for the employer.

In sum, employers must provide a workplace free of violence and harassment, including harassment of a sexual or violent nature. Failure to address and prevent threats of violence or harassment may give rise to liability under state and federal laws.

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