



DEALING WITH THE UNIMAGINABLE

HATE CRIMES AND MASS VIOLENCE
(Risk Management, Safety, and
Workers' Compensation Implications)

Hate Crimes and Mass Violence 16th Annual L&I WC Conference 2017



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OUR SCENARIO

1. Compensability of Intentional Assault Injuries (In General) (Torrey)
 2. Compensability of Intentional Assault Injuries and the Issue of “Personal Animus” (Black)
 3. Risk Management and Mass Violence (O’Rourke)
 4. Risk Management and Insuring for Mass Violence Losses (Gilpin)
 5. Questions

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Our Point of Reference: ORLANDO'S "PULSE" NIGHTCLUB SHOOTING

On June 12, 2016, Omar Mateen killed 49 people and wounded 53 others in a terrorist attack/hate crime inside "Pulse," a gay nightclub in Orlando, FL. He was ultimately shot and killed by the police after a three-hour standoff. It was both the deadliest mass shooting by a single shooter and the deadliest incident of violence against GLBT people in United States history. It was also the deadliest terrorist attack in the United States since the 9.11 atrocities.

(from Wikipedia)

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Compensability of Workplace Injuries

Pennsylvania Workers' Compensation covers injuries "arising in the course of employment. . . ." Section 301(c)(1) of the Act, 77 P.S. § 411(1).

Injuries "Arising" from employment = causal connection between the injury and the duties performed by employee.

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Injuries “Arising” from Employment

Three Types of Risks of Injury:

1. Professional Risks =
always covered by workers’ comp.
2. Personal Risks = never covered by workers’
comp.
3. Neutral Risks = coverage depends on the
particular risk involved.

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Basis of this “personal animus” exception:
The same law: Section 301(c)(1) of the Act

The WC Act excepts from the “injury” one 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.”

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Assaults

- ... are reflective of Professional Risk if inherently occupational in origin.
 - Ex.: Work disputes facilitated by environment or accentuated by nature of job.
- ... are reflective of Personal Risk if inherently private in origin.
 - Ex.: Disputes from a personal issue.
- ... are reflective of Neutral Risk if from an irrational or unexplained force, or by mistake.
 - Ex.: Random acts of violence.
 - Assaults that are Neutral Risks are typically covered by workers' compensation!

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Compensability of Assaults at Work (In General)

In general, an injury or death can “arise in the course of employment” via an intentional assault from a co-worker or third-person foreign to the workplace

Section 301(c)(1) of the Act, 77 P.S. section 411(1)

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Compensability of Assaults at Work (In general)

Examples: (1) *Helm v. WCAB (U.S. Gypsum)* (Pa. Commw. 1991) (co-worker assaulted by another after dispute surrounding use of marijuana in the locker room did sustain injury arising in course of employment).

(2) *Brooks v. Marriott Corp.* (Pa. Super. 1987) (employee murdered at work at conclusion of robbery was in course of employment without some showing that murder had its genesis in personal animus)

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Hate Crimes

In general, a hate crime is any harm or threat of harm placed upon another person by reasons of the actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, or national origin of another individual, regardless of the existence of any other motivating factor or factors. *See* 720 ILCS 5/12-7.1 (2015) (Illinois' hate crime statute).

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Injuries from Hate Crimes

- Professional Risk if accentuated by the nature of the claimant's job
 - Ex.: hate crime in a church, an NAACP office, an LGBT business, or in a Planned Parenthood Center.
- Main issue lies in determining whether the injury from a hate crime is a personal risk, and therefore not compensable; or if it a neutral risk, and therefore compensable.

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Arguments that Hate Crimes are NOT Compensable

1. General racial hatred alone *can establish* a personal connection to the assault, and therefore, a hate crime is not compensable
2. The motivation for the assault need only be one-sided. That is, if the assault was for a reason personal to the attacker, even if the victim doesn't know about this personal animus, then it is enough for the personal animus exception to apply.

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Arguments that Hate Crimes ARE Compensable

1. In order to qualify for the personal animus exception, the personal animus/hatred must be specific to the employee, and not of some generalized nature.
2. The motivation for the assault must be known to the employee. That is, the assault must be for a reason personal to the employee.

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Article on the “Personal Animus” Exception
(focus on hate crimes)

“Don’t Take it Personally”: Explaining the Correct Interpretation of Pennsylvania Workers’ Compensation Act Section 301(c)(1)’s “Reasons Personal” Exception—and Why it’s More than Just a Matter of Semantics

by Kyle D. Black, Esq.

Post & Schell, Pittsburgh, PA

(PBA Work Comp Law Section Newsletter, Vol. VII, No. 128)

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An important legal and risk management point to recall: Once we say that an injury is not compensable, as a threshold matter, room exists for the worker or his estate to sue the employer at common law, under a theory (for example) of failure to provide a safe workplace.

“ In such a case, the employee is permitted to maintain a common-law action against his employer, typically on the theory that the employer was negligent in failing to take precautions necessary to prevent a foreseeable attack by the third party.”

Brooks v. Marriot Corp. (Pa. Super. 1987)

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Another authority:

Section 301(a) of the Act, 77 P.S. section 431:

“[N]o compensation shall be paid if, during hostile attacks on the United States, injury or death of employes results solely from military activities of the armed forces of the United States or from military activities or enemy sabotage of a foreign power.”