

Insights, News & Events

## PREVENTION IS KEY (ER...REQUIRED): WILL YOUR STATE SOON MANDATE WORKPLACE VIOLENCE PREVENTION PROGRAMS?

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It is no secret to hospital and other healthcare employees that their workplace is no longer a guaranteed safe zone. In fact, recent statistics released by the Occupational Safety and Health Administration (OSHA) indicate that workplace violence is four times more prevalent in the healthcare and social services industries than in other private industries. Violence may come from many sources, including patients or those accompanying them, employees and those who have relationships with employees, and third parties with no business at the facility.

Responding to an outcry from nurses' unions and patients' rights groups, and following the lead of seven other states, the California Occupational Safety and Health Administration (CalOSHA) recently enacted a new law (effective April 1, 2017) creating a standard for workplace violence prevention in the healthcare industry. While the breadth of coverage and depth of action required of employers in California now exceeds what can be found in any other state, it could be a sign of things to come for other states.

Because the national tide is turning to legislation that mandates workplace violence prevention programs, particularly in the healthcare context, all healthcare employers would be wise to emulate the practices required by CalOSHA. The federal OSHA and numerous state counterparts are working to assemble similar legislation.

### A NATIONAL TREND TOWARD LEGISLATING PREVENTIVE MEASURES

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At the federal level, OSHA is considering creating a federal standard to prevent workplace violence in healthcare and social services settings. Last year, the agency published its updated [Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers](#). Meanwhile, at the state level, several states besides California currently require some form of prevention program, including Connecticut, Illinois, Maryland, Minnesota, New Jersey, Oregon, and New York (public agencies only). In hopes of spurring further action, the American Nurses Association published a “Model State Bill: The Violence Prevention in Healthcare Facilities Act” and has been extremely proactive in efforts at every level of government.

## **NEW CALIFORNIA LAW SERVES AS A GUIDE**

With the clear momentum toward stricter legislation, it is instructive for any healthcare employer to note the California requirements summarized below. Organizations with existing injury and illness prevention plans should expand them to include elements pertaining to workplace violence. From a practical perspective, a formal, written workplace violence prevention policy, with documented training on recognizing factors leading to violence and response strategies, may decrease the number and severity of incidents. Further, it will certainly aid in providing defenses from employee or third-party injury claims.

### ***Who's Covered?***

The scope of covered employers under California's law is quite broad, including all health facilities, in-home care, emergency medical services and transport, drug treatment programs, and outpatient medical services in correctional and detention settings. The number of employees is not a factor, nor is the corporate state of residence.

“Health facilities” are defined broadly under the regulation as “any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer.” The list includes hospitals of many types, care facilities, treatment centers, and hospice centers.

## *Workplace Violence Prevention Plan*

The law requires all healthcare employers to draft and disseminate a site-specific workplace violence prevention plan, either as a stand-alone policy or as part of an existing Injury and Illness Prevention Program (IIPP). The plan must be in place by April 1, 2018, developed with employee input, be specific to each worksite, and cover a bevy of required topics. The plan must include some very specific items, including identifying those persons responsible for implementation, an assessment of possible risk factors, information about obtaining law enforcement assistance, and strategies for responding to reports of workplace violence and prohibiting retaliation

## *Mandatory Training*

Adding another layer to the logistical headaches caused by this new law, covered employers are required to train all employees on their specific plan, not just general violence prevention concepts, before the implementation date. The law includes a list of mandatory subjects that must be included in the training. This training must be offered when the plan is implemented, when a new employee is hired, when new work practices or equipment are introduced, and when a new hazard has been identified.

## *Recordkeeping*

California's new law also requires employers to create and retain records of violent incidents, employee training, and incident investigations. Incident logs and recordkeeping methods were to be updated by April 1 of this year. In other words, covered employers in California need to adjust to this new reality now if they haven't yet done so.

## *Privacy Concerns*

It should be noted that patient and employee privacy issues are implicated by the new law. For example, violent incident records must not contain medical information as set forth in state law. Employers must be vigilant in maintaining the privacy of their employees and patients when creating records, investigating incidents, and especially in reporting to external agencies.

## **NEXT STEPS FOR ALL EMPLOYERS**

California employers should immediately look to the following list of tasks to ensure compliance, while healthcare organizations in other states should consider using the same list as a step-by-step guide:

- Compile all records of workplace violence incidents from the previous year;
- Develop a recordkeeping system for incidents and training sessions;
- Analyze existing policies and training programs (whether or not part of an IIPP);
- Assess each workplace for environmental risk factors;
- Draft (with employee input) and implement a plan; and
- Develop (with employee input) and provide a training program on workplace violence and your Workplace Violence Prevention Plan.

If you have operations in several states, you should check with the occupational health and safety agency in each state for any existing or planned regulations. It would benefit you to keep a careful watch on these developments, and to make preparations to implement or bolster comprehensive recordkeeping, training, assessment, and reporting procedures relating to workplace violence.

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