



Workplace Violence Can Lead To General Duty Clause Violations

Insights

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In a matter of first impression, the Occupational Safety and Health Review Commission recently ruled that the Occupational Safety and Health Act's general duty clause requires employers to protect employees from incidents of workplace violence. In *Sec'y of Labor v. Integra Health Management, Inc.*, the Commission affirmed a citation issued to a social services provider after one of its employees was fatally stabbed by a mentally ill client.

Client Visit Turned Deadly Leads To Violation

Integra Health Management, Inc., employs "service coordinators" to assist its clients, or "members," in receiving and maintaining proper medical care. Those receiving treatment have chronic medical conditions such as mental illness, and have a history of avoiding treatment and taking their prescribed medications. The service coordinator locates members, informs them of the company's services, and secures their consent to accept services. The service coordinator then maintains frequent contact with the member and helps them seek medical treatment.

Integra provides training to its service coordinators, including an internet-based course with a session on "In-Home and Community Safety" containing presentations on "Screening the Dangerous Member" and "Safety in the Community." While the training instructs service coordinators to gather "critical history about previous unsafe behaviors," Integra did not mandate this information be obtained, nor did it perform member background checks at that time. Integra also conducts in-person training sessions, utilizes a voluntary "buddy system" (allowing employees to attend home visits together), and maintains a workplace violence prevention policy.

In 2012, a recent college graduate with no prior experience in social work or working with mentally ill individuals began work at Integra; after her training, she was assigned to complete mandatory home assessments with a client in Dade City, Florida, who suffered from schizophrenia. Unknown to the employee and Integra, the member had a prior criminal record, including convictions for aggravated assault and battery.

After several home visits with the member, the employee submitted reports to her supervisors in which she identified disturbing behavior from the member, and that she was "uncomfortable" being alone with him. Notwithstanding, on December 10, 2012, the employee returned to the member's home to complete her required assessment. During her visit, the member attacked the employee and fatally stabbed her nine times.

OSHA issued Integra a citation alleging a violation of the general duty clause, concluding that it exposed its employees “to the hazard of being physically assaulted by members with a history of violent behavior.” Following a hearing, an Administrative Law Judge affirmed the citation, and Integra appealed the decision to the Occupational Safety and Health Review Commission. On March 4, 2019, the Commission upheld the finding and ruled against the employer.

Commission Finds Violation

The general duty clause of the OSH Act states that “each employer ... shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” In order to demonstrate a general duty clause violation, the agency must prove:

1. The employer failed to keep the workplace free of a hazard to which employees were exposed;
2. The hazard was recognized;
3. The hazard was causing or was likely to cause death or serious physical harm; and
4. There was a feasible and useful method to correct the hazard.

The Commission concluded that that workplace violence could be included as a violation under the general duty clause. First, it found that workplace violence is covered by the general duty clause where there is a “direct nexus” between the work being performed and the risk of workplace violence. In this specific case, given that service coordinators meet face-to-face with members, many of whom have mental illness and violent backgrounds, it found that the direct nexus test was met.

Next, the Commission decided that Integra undoubtedly recognized the hazard of a physical attack against its employees and that such hazard could cause death or serious bodily harm. The Commission relied on evidence of the training provided to the victim, the specific concerns noted in reports submitted to her supervisors, and other threatening incidents previously told to Integra supervisors.

Finally, the Commission determined that practical proposed methods of abatement could have significantly reduced the likelihood of workplace violence. The Commission relied on expert testimony and the fact that, during the appeal, Integra implemented many of the recommended abatements, including the creation of a workplace violence prevention program, employing new standards to evaluate member’s behavioral history and reliable ways of communicating information about members with violent backgrounds to employees.

Time To Take Action

This decision makes clear that healthcare industry employers have a responsibility to manage the risk of workplace violence under the general duty clause. You can start by reviewing your safety policies and procedures and employee training programs to confirm they effectively reduce employees’ exposure to patient assaults. Most importantly, you must screen patients for violent

employees' exposure to patient assaults. Most importantly, you must screen patients for violent tendencies, communicate any relevant information to employees, and train employees on how to safely deal with and respond to violent patients.

House Democrats are advocating for more protection for healthcare and social service workers with a new bill referred to as the "Workplace Violence Prevention for Health Care and Social Service Workers Act," introduced by Rep. Joe Courtney (D-Conn.). The proposed law was heard before a House subcommittee in February and could reach the House floor by May. It would require OSHA to issue a standard that requires healthcare and social service industry employers to develop and implement a comprehensive workplace violence prevention plan. We will monitor its progress and provide updates on any developments.

For more information, contact the author at MU Sellis@fisherphillips.com or 502.561.3963.

Related People



Megan Reese U'Sellis

Partner

502.561.3963

Email

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