



# Bill Aimed At Preventing Workplace Violence In The Health Care Industry Advances In Congress

Insights

1.31.20

According to the Occupational Safety and Health Administration (OSHA), health care employees experience nearly as many serious injuries due to workplace violence as do employees in all other industries combined. As a result, dating back to at least 2015, the agency has continued to strongly encourage health care employers to maintain robust programs to safeguard against workplace violence. In 2016, in fact, OSHA explored the possibility of implementing an occupational and safety standard specifically designed to protect employees in the health care and social services industries from workplace violence.

Although OSHA did not ultimately implement any such standard, the U.S. House of Representatives recently voted to pass the “Workplace Violence Prevention for Health Care and Social Service Workers Act” on November 21, 2019. The bill would essentially direct the Secretary of Labor to issue the same type of occupational safety and health standard for these industries as previously contemplated by OSHA. If passed into law, it would require various employers within the health care and social services industries to develop and implement a comprehensive workplace violence prevention plan designed to reduce violent incidents in the workplace.

## **The Proposed Law, In A Nutshell**

As currently written, the Act contains an expansive definition of covered facilities, which includes (with few exceptions) hospitals, nursing homes, skilled nursing facilities, long-term care facilities, drug or substance abuse treatment centers, group homes, mental health and psychiatric treatment clinics, outpatient services clinics, emergency centers, clinics at correctional or detention facilities, as well as “any other facility the Secretary determines should be covered.” Also of note, the Act defines “covered employers” as including any “person” that employs an individual in a “covered facility,” making clear that individuals and small employers would nevertheless be governed by these requirements. The Act does, however, expressly exclude from coverage individuals who privately employ others to perform health care or social services within a personal residence.

## ***Prevention Plans Would Be Required***

With respect to the specific requirements geared toward reducing workplace violence, the Act would require covered employers to develop and implement a workplace violence prevention plan that is tailored to address the specific conditions and potential hazards of each facility based on factors such as the services provided by, size and operations of the facility at issue. Of note, the Act indicates that such plans should be developed and implemented with assistance from and

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“meaningful participation” of employees and employee representatives. It further provides that such plans would have to be made available and, to the extent possible, emailed to all employees on an annual basis. The Act would also require covered employers to provide annual training to employees regarding the prevention plan, and to provide additional training to supervisors and managers to aid with recognizing hazards and high-risk situations.

In addition to the plan development and training requirements, covered employers would also be required to perform and document investigations into each incident of “workplace violence,” which the Act basically defines as “any act of violence or threat of violence,” regardless of intent, that occurs either at a covered facility or otherwise in the performance of health care or social services.

### ***Violent Incident Log And Reporting***

The Act would also require employers to maintain a Violent Incident Log, which contains relevant details about each incident such as: a description of the incident; the date, time, and location of the incident; the names and job titles of all involved employees; the nature and extent of injuries suffered by covered employees; information regarding the perpetrator of the violence; and how the incident was abated. At the end of each year, covered employers would have to prepare an annual summary of the employer’s Violent Incident Log, which is to be posted in a conspicuous location in the employer’s facility for at least three months.

Covered employers would also have annual reporting obligations to the Secretary of Labor regarding the frequency and severity of any workplace violence occurring at the employer’s facility, and would also have to annually evaluate and update the workplace violence prevention plan as may be appropriate based on the evaluation process. With respect to record retention, the Act would require that the various records related to each employer’s plans, including the violent incident logs, training documents, and any investigative records, be retained for at least five years.

### ***Anti-Retaliation And Related Provisions***

The Act also contains an anti-retaliation provision, which would prohibit covered employers from discriminating or retaliating against any employee who reports or otherwise participates in an investigation regarding any incident, threat or concern of workplace violence. In addition, the Act would require covered employers to prepare and adopt a policy prohibiting any such discrimination or retaliation.

### ***What’s Next?***

The bill now moves on to the Senate for a vote. Notably, the House vote largely followed party lines, with a majority of the support (219 of the 251 supporting votes) coming from the Democratic party and only a few Republicans (32) voting in favor. Consequently, the bill is currently not expected to pass the Republican-controlled Senate.

Nevertheless, Fisher Phillips will continue to track and report on the progress of this bill for the health care community as new information becomes available. Make sure you are subscribed to Fisher Phillips’ alert system to gather the most up-to-date information.

to Fisher Phillips attorneys, seek to gather the most up-to-date information.

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## ***Industry Focus***

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