

HEALTHCARE EMPLOYERS MUST PREPARE FOR OSHA TO RELEASE PROPOSED WORKPLACE VIOLENCE RULE BY YEAR'S END

Insights
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Federal workplace safety officials plan to release a proposed rule later this year aimed at preventing workplace violence in the healthcare industry, giving you time to prepare for the potential of increased compliance obligations and greater legal exposure. The Occupational Safety and Health Administration (OSHA) will likely propose a new standard in December – which could potentially be finalized and take effect next year – requiring healthcare employers to implement written workplace violence prevention programs and other measures to protect their workers. We'll explain what happened, how we got here, and what you should do now.

What Happened?

Last month, OSHA published an updated regulatory agenda showing that it plans to release the [Prevention of Workplace Violence in Health Care and Social Assistance proposed rule](#) in December. The proposed rule would then be subject to a comment period of up to 60 days and could potentially be finalized and effective sometime next year.

This latest move follows the agency's years-long review of workplace violence in healthcare and social assistance settings. For example:

- In 2016, OSHA [issued a request for information](#) that solicited information from healthcare employers, workers, and other subject matter experts, including on impacts of violence and prevention strategies in the industry. A broad coalition of labor unions (and, separately, the National

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Nurses United) then petitioned OSHA for a standard preventing workplace violence in healthcare. The agency granted those petitions in 2017.

- In 2023, the agency [convened a Small Business Advocacy Review \(SBAR\) panel](#) and [issued a SBAR report](#) after receiving input from small businesses in various sectors including hospitals, residential behavioral health facilities, freestanding emergency centers, residential care facilities, and home healthcare.

According to the SBAR report, healthcare workers “face an increased risk of workplace violence resulting primarily from violent behavior of their patients, clients, residents, and/or visitors in their workplaces.” For example, [estimates show](#) hospital workers experience nonfatal assaults in the workplace at a significantly higher rate (8.3 assaults per 10,000 workers) than the rate for workers in all private sector industries (2.0 assaults per 10,000 workers). And the injury rate is even higher among certain segments, such as psychiatric and substance abuse hospitals.

What Might the New Proposed Rule Require?

If published, a new proposed rule could provide a programmatic, performance-based approach to addressing workplace violence and require healthcare employers to:

- develop and implement a **written workplace violence prevention program**;
- perform **regular hazard assessments**;
- implement controls to **mitigate the hazards** identified;
- **train and educate** all staff members on potential hazards and how to protect themselves and their coworkers;
- maintain a specific workplace violence **recordkeeping log** and perform incident investigation procedures; and
- **inform employees of their rights** to the protections under the new rule.

Recent Examples of OSHA Taking Action Over Workplace Violence Issues

OSHA is no stranger to taking action against employers for incidents involving workplace violence. Here are two recent



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examples:

- **Employer Faces \$100k in Penalties After Employee Attacked by Patient.** In May, OSHA [cited the operator of multiple psychiatric and rehabilitation facilities](#) with a “repeat violation for not providing a workplace free of recognized safety and health hazards,” finding that the employer “failed to provide sufficient controls to prevent the escalation of acts of aggression toward professional staff.” The investigation began after the employer reported a Florida worker’s hospitalization resulting from a patient using a metal hole punch to repeatedly strike the mental health technician at a nurse’s workstation. The employer now faces \$101,397 in proposed OSHA penalties for these violations.
- **VA Cited for Failing to Protect Employees from Serious Patient Violence.** In July, OSHA announced that it [cited an Arizona veterans’ medical center](#) after concluding it failed to protect nurses, nursing assistants, and housekeeping staff from unit residents who kicked, bit, struck, punched, slapped, and sexually harassed them. While government employers are generally exempt from OSHA violations and penalties, they can be “issued notices of unsafe and unhealthful working conditions and required to demonstrate they have abated hazards.” OSHA said if this facility had been a private sector employer, it could have faced penalties up to \$161,323.

What Should Healthcare Employers Do Now?

The Prevention of Workplace Violence in Health Care and Social Assistance proposed rule will likely be published by the end of the year and could potentially be finalized as early as next year. Now is a good time to review your existing workplace safety policies and evaluate whether they adequately address workplace violence. You should stay tuned for updates regarding the new proposed rule and make sure you are complying with existing laws and guidance, including:

- **Federal Law.** Federal OSHA [has long taken the position](#) that the general duty clause under the Occupational Safety and Health (OSH) Act requires employers to “take reasonable steps to prevent or abate a recognized violence hazard in the workplace.” And in 2019, the Occupational Safety and Health Review Commission – an independent federal agency that is not part of the

Department of Labor or OSHA – [ruled for the first time](#) that the general duty clause requires employers to protect employees from incidents of workplace violence.

- **OSHA Guidance.** In 2016, OSHA released [Guidelines for Preventing Workplace Guidance for Healthcare and Social Service Workers](#). While the guidance is not legally binding, it recommends incorporating a written program for workplace violence prevention and provides detailed measures and checklists for implementing the program. OSHA also maintains a [Workplace Violence Safety and Health Topics Page](#) for employers across industries.
- **State Laws.** You should also be aware of any relevant state plan OSHA laws. For example, a California OSHA law that took effect in July requires each employer to create and implement a workplace violence prevention program, train employees and supervisors on workplace violence matters, create and maintain a violence incident log, and keep records of all training and violent workplace incidents. [Click here to read more about California's new law and four steps you can take to comply.](#)

Conclusion

Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. We will continue to monitor the situation and provide updates as more information becomes available. Any questions may be directed to your Fisher Phillips attorney, the author of this Insight, any member of [our Workplace Safety and Catastrophe Management Practice Group](#), or any attorney on [our Healthcare Team](#).