

Guide for Public Employers

How to Comply with Workplace Violence Regulations

12 NYCRR Part 800.6

Getting Started

The majority of workplace violence incidents in the public sector workplace include: assaults and verbal and non-verbal threats from customers, patients, clients, co-workers and inmates. It is important that those who are establishing workplace violence prevention programs understand the different types of violence and the varying types of responses they require.

Examples:

- Violence directed at employees by customers, clients, patients, students, inmates or any others whom the public employer provides a service to. This is the predominant type of violence in an institutional setting typical to healthcare and social services.
- Violence against coworkers, supervisors, or managers by a present or former employee.
- Violent acts by criminals who have no other connection with the workplace but enter to commit a robbery or other crime.
- Violence in the workplace by someone who does not work there, but has a personal relationship with an employee. This includes domestic violence and is usually perpetrated by an acquaintance or family member while the employee is at work.

Employers are ultimately responsible for preparing, determining the content of and implementing workplace violence prevention programs. Successful programs usually start by forming a group, committee, or using an existing safety and health committee. The workplace violence prevention regulations require the participation of authorized employee representatives in:

- evaluating the physical environment;
- developing the workplace violence prevention program;
- reviewing workplace violence incident reports at least annually to identify trends in the types of incidents in the workplace; and
- reviewing the effectiveness of mitigating actions taken.

Step 1 - Develop and implement a workplace violence prevention policy statement.

- A. Develop a written policy statement on the workplace violence prevention program goals and objectives and provide for full employee participation through an authorized employee representative. Briefly describe the incident alert and notification policies for employees to follow in the event of a workplace violence incident.
- B. Post the policy statement where notices to employees are normally posted.

See sample policy statement on preventing workplace violence at Appendix 1.

Step 2 - Conduct a risk evaluation and determine what risk factors are present.

- A. Examine records including those compiled in the previous year that concern workplace violence incidents to identify patterns in the type and cause of injuries. Examples:
 - i. Injury and illness documentation (SH 900, SH 900.1 and SH 900.2)
 - ii. Workplace violence incident reports
 - iii. Workers' compensation reports and disciplinary reports.

See sample tool to assist with record review at Appendix 2-A.

- B. Assess policies, practices, and procedures that may impact the risk of workplace violence. Examples:
 - i. Policies regarding sexual harassment
 - ii. Firearms policies
 - iii. Work practices requiring work in public settings, including exchanging money with the public, working alone or in small numbers, and working with potentially violent clients.
- C. Evaluate the physical work environment for the presence of factors which may place employees at risk of workplace violence, with the participation of the authorized employee representatives.

See sample checklist to assist with evaluation of the workplace at Appendix 2-B.

Step 3 - Develop a workplace violence prevention program.

- A. The program must be developed with the participation of the authorized employee representative. Only employers with 20 or more full-time permanent employees are required to have a workplace violence prevention program that is in writing.
- B. Safety and health programs developed and implemented to meet other federal, state or local regulations, laws or ordinances are considered acceptable in meeting this requirement if those programs cover or are modified to cover the topics listed below. An additional or separate safety and health program is not required by this paragraph if an existing program is modified to cover the topics listed below.
- C. The program must include the following:
 - i. A list of risk factors identified in the workplace examination completed in Step 2.
 - ii. The methods the employer will use to try to prevent workplace violence incidents. Examples include enforcing existing workplace rules, training to increase employee awareness of the signs/effects of workplace violence and the importance of reporting workplace violence. Determine methods that are

- applicable to your workplace and include the list of those methods in your program.
- iii. A hierarchy of controls to which the program shall adhere as follows: engineering controls, work practice controls, and personal protective equipment. In situations where the hazard cannot be completely eliminated, the employer must use control measures to reduce the risk to employees:
 - a. **Engineering Controls** reduce the hazard through substitution or design. An example of an engineering control would be the installation of a physical barrier to protect employees from a member of the public (windows, deep counters). Engineering controls are not always feasible. If engineering controls are not feasible, the employer must then consider work practice controls.
 - b. **Work Practice Controls** reduce the hazard by changing organizational policies and procedures. An example of a work practice control would be requiring check-in procedures and/or itineraries to account for employees who work alone and are not under the direct supervision of management.
 - c. **Personal Protective Equipment** For the most part, this type of intervention is not relevant to workplace violence prevention. An example of personal protective equipment would be ballistic body armor for law enforcement personnel.
 - iv. The methods and means by which the employer shall address each specific hazard identified in the workplace evaluation. Take the list of risk factors compiled in the beginning of this Step and assign control measures for each specific hazard identified.
 - v. A system designed and implemented by the employer to report any workplace violence incidents that occur in the workplace. The reports must be in writing and maintained for the annual program review. Include a description of your workplace violence incident reporting system in the program.
 - vi. A written outline or lesson plan for employee program training.
 - vii. A plan for program review on at least an annual basis. Such review and update shall set forth any mitigating steps taken in response to any incident of workplace violence.

Note: the regulations do not require the disclosure of information that is otherwise kept confidential for security reasons. The written program may need to explain how to deal with such confidential information.

See sample document to assist with listing risks and corresponding mitigation at Appendix 3.

Step 4 - Provide information and training to employees on workplace violence.

- A. Upon completion of the workplace violence prevention program, provide each employee with information and training on the risks of workplace violence in their workplace(s).

- B. Training must be provided at the time of the employee's initial assignment and at least annually thereafter. Information as necessary shall be provided to affected employees whenever significant changes are made to the workplace violence prevention program.
- C. At a minimum training shall address the following:
 - i. The requirements of the workplace violence regulations, described here, and the risk factors that were identified in the risk evaluation and determination;
 - ii. Measures that the employees can take to protect themselves from the identified risks including specific procedures that the employer has implemented to protect employees, such as incident alert and notification procedures, appropriate work practices, emergency procedures and the use of security alarms and other devices;
 - iii. The location of the written workplace violence prevention program and how to obtain a copy (again, a written program is only required for employers with 20 or more full-time permanent employees).

See sample workplace violence prevention training outline at Appendix 4.

Step 5 - Develop a system to record workplace violence incidents and maintain those records.

- A. Establish and implement reporting systems for incidents of workplace violence to ensure that all workplace violence incidents are reported in writing. Note: Reporting systems developed and implemented to meet other federal, state or local regulations, laws or ordinances are considered acceptable in meeting this requirement if they cover or are modified to cover the information listed below. An additional or separate reporting system is not required.
- B. A workplace violence incident report can be in any format but, at a minimum, shall contain the following relating to the incident being reported:
 - i. Workplace location where incident occurred;
 - ii. Time of day / shift when incident occurred;
 - iii. A detailed description of the incident, including events leading up to the incident and how the incident ended;
 - iv. Names and job titles of involved employees;
 - v. Name or other identifier of other individual(s) involved;
 - vi. Nature and extent of injuries arising from the incident; and
 - vii. Names of witnesses.

See a sample workplace violence incident report form at Appendix 5.

- C. Conduct a review of workplace violence incident reports at least annually, with the participation of the authorized employee representative(s), to identify trends in the types of incidents in the workplace and review of the effectiveness of the mitigating actions taken.

- D. If the case is a “privacy concern case,” remove the name of the employee who was the victim of the workplace violence and enter “PRIVACY CONCERN CASE” in the space normally used for the employee’s name. Privacy concern cases include cases involving:
- i. Injury or illness to an intimate body part or the reproductive system;
 - ii. Injury or illness resulting from a sexual assault;
 - iii. Mental illness;
 - iv. HIV infection;
 - v. Needle stick injuries and cuts from sharp objects that are or may be contaminated with another person’s blood or other potentially infectious material; and
 - vi. Other injuries or illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the report.

Employee Complaints to the Commissioner of Labor

Employee complaint procedures under the workplace violence regulation are different than those under the PESH Act.

Any employee or his or her authorized employee representative who believes that a serious violation of the employer’s workplace violence prevention program exists, or that a workplace violence imminent danger exists, shall bring such matter to the attention of a supervisor in the form of a written notice and shall afford the employer a reasonable opportunity to correct such activity, policy, or practice.

Written notice to an employer is not required where workplace violence imminent danger exists to the safety of a specific employee or to the general health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

If, after notifying the supervisor and giving the employer a reasonable opportunity to correct the situation, the employee or the authorized employee representative still believes that a serious violation of a workplace violence prevention program remains or that imminent danger exists, such employee may request an inspection by notifying the Public Employee Safety and Health Bureau (“PESH”) at the New York State Department of Labor. Such notice and request shall be in writing, shall set forth with reasonable particularity the ground(s) for the notice and shall be signed by such employee or their authorized employee representative.

Discrimination

No employer shall take retaliatory action against any employee because the employee exercises any right accorded him or her by the workplace violence prevention regulation.