



NYS Workplace Violence Prevention Law

Key Elements of a Workplace Violence Prevention Program



What is the New York State Workplace Violence Prevention Law?

New York State (NYS) has enacted legislation that requires public employers to develop and implement workplace violence prevention programs that cover all employees at each of their worksites. The Law is the most comprehensive standard in the country. It is intended to reduce workplace violence, making all NYS public workplaces safer for the workers and the public they serve.

Contained in this factsheet is an outline of key elements of a violence prevention program to assist health and safety committees and other labor/management groups in developing site specific programs. The goal should be to implement practical improvements to prevent the negative consequences of violence in the workplace, in addition to complying with the new requirements. The key elements are based on requirements of the new law and the related regulations that went into full effect on August 27, 2009, as well as OSHA guidelines, and the experience of the PEF Health and Safety Program.

What are Public Employers Required to Do to Comply with This Law?

The NYS Department of Labor (DOL) is charged with enforcing compliance with the Workplace Violence Prevention Law, Article 27(b). The regulations, published as 12 NYCRR Part 800.6, can be found at:

http://www.labor.state.ny.us/workerprotection/safetyhealth/PDFs/Workplace_Violence_Final_Regs_May09.pdf. Those regulations detail what is required of affected employers.

The purpose of the Law and accompanying regulations is “to ensure that the risk of workplace assaults and homicides is evaluated by affected public employers and their employees and that such public employers design and implement protection programs to minimize the hazard of workplace violence to employees.” For public employers with a combined total of 20 or more full-time permanent employees, the program must be written.

The Law and regulations mandate that the program “provide for full employee participation”.

Though no federal workplace violence prevention standard exists, the Federal Occupational Safety and Health Administration (OSHA) has published guidelines for preventing workplace violence. In it, OSHA identifies the key elements of any workplace violence prevention program. The NYS Law and DOL regulations are based on the OSHA guidelines.

Key Elements of a Workplace Violence Prevention Program

The DOL regulations require that each workplace violence prevention program include the following:

1. A list of the risk factors identified in the workplace examination;
2. The methods the employer will use to prevent the incidence of workplace violence incidents;
3. A hierarchy of controls to which the program shall adhere as follows: engineering controls, work practice controls, and finally personal protective equipment;
4. The methods and means by which the employer shall address each specific hazard identified in the workplace evaluation;
5. 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;
6. A written outline or lesson plan for employee program training;
7. A plan for program review and update 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.

The DOL regulations outline minimum requirements for compliance. However, effective programs that actually reduce and prevent violence also should use the following guidelines.

Management Commitment and Employee Involvement

The first step is to establish a process such as a task force, subcommittee, or use an existing forum where managers, union officials, frontline workers, and other stakeholders can work together to plan, implement, and evaluate a worksite-specific workplace violence prevention program.

According to OSHA, “Management commitment, including the endorsement and visible involvement of top management, provides the motivation and resources to deal effectively with workplace violence.” “Employee involvement and feedback enable workers to develop and express their own commitment to safety and health and provide useful information to design, implement, and evaluate the program.”

Thus, management is advised to

- exhibit equal commitment to the safety and health of workers and patients/clients/customers
- assign responsibility for the various aspects of the workplace violence prevention program to ensure that all managers, supervisors, and employees understand their obligations
- ensure that systems for reporting and responding to workplace violence are clearly implemented and effective
- allocate appropriate authority and resources to all responsible parties
- maintain a system of accountability
- establish a comprehensive program of medical and psychological counseling and debriefing for employees experiencing or witnessing assaults and other violent incidents
- support and implement appropriate recommendations

Risk Assessment / Worksite Analysis

To again quote OSHA, “a worksite analysis involves a step-by-step, common-sense look at the workplace to find existing or potential hazards for workplace violence.” Involvement of frontline workers and union representatives in this process is critical, both because of the insight that they

bring and as a means for ensuring their commitment to the program. Additionally, it is a requirement of the Law and DOL regulations.

The worksite analysis should be site-specific and include multiple components:

- an in-depth review of incidents that have occurred, identifying characteristics of the assailant, victim, and all other relevant factors such as time of day, location, activity being performed, possible warning signs, etc.
- active solicitation of input from staff and union representatives, including focus groups, written surveys, and group discussions
- a walk-through of the workplace, looking for potentially dangerous elements, such as unsecured doors, isolated and/or dark areas, the presence of objects which could be used as weapons, etc.
- a review of related injury data including the SH 900 Log of Injuries and Illnesses, workers' compensation, or agency specific databases
- an examination of work activities, identifying those which may be high-risk, including
 - duties that involve the exchange of money
 - delivery of passengers, goods, or services
 - duties that involve mobile workplace assignments
 - working with unstable or volatile persons in health care, social service or criminal justice settings
 - working alone or in small numbers
 - working late at night or during early morning hours
 - working in high-crime areas
 - duties that involve guarding valuable property or possessions
 - working in community-based settings
- a review of relevant existing policies and procedures

Workplace violence can take many forms; many researchers use a four-part typology as a way to evaluate and prevent workplace violence. This typology is based upon the relationship of the perpetrator to the victim.

- Type 1 – Criminal intent (stranger) – the perpetrator is not legitimately at the workplace, but is there to commit robbery or assault
- Type 2 – Client/patient/inmate – the person has a legitimate reason to be at the workplace, but perpetrates workplace violence, nonetheless
- Type 3 – Co-worker – the violence is perpetrated by a fellow employee, be it a peer, supervisor, or supervisee
- Type 4 – Personal – the perpetrator is a partner, family member or friend. This includes domestic violence which occurs in the workplace.

Each employer should consider which types of violence pose the greatest risk for their workplace and workers. Risk factors and prevention strategies will vary, depending on the source(s) of the potential violence. There may be a significant risk of multiple violence types in the same workplace. Appropriate prevention strategies will need to be developed for each.

Hazard Prevention and Control

After hazards are identified through the comprehensive worksite analysis, the next step is to design

site-specific measures to prevent or control those hazards. These measures can include engineering strategies such as securing doors, installing mirrors, or other modifications to the physical environment and administrative and work practice controls such as staffing, program changes, policies and training.

Again, it is critical to involve affected staff, as they will have insight as to the practicality and potential unintended consequences of proposed changes.

Warning: worksite interventions should include a balance between improving organizational systems and methods individual workers can take to protect themselves from violence. Programs that focus exclusively on changing worker behavior fail to recognize that agencies, as well as individuals, have a responsibility for health and safety.

Training and Education

Under the new law, training is required upon initial assignment and annually thereafter. While violence prevention training for employees should be specific to the type of facility and duties performed, there are certain essential topics that should be addressed. These may include:

- Overview and definition of workplace violence
- The organization's commitment to providing a safe workplace
- How to obtain a copy of the agency's written program
- The contents of the site-specific risk assessment, including all significant identified risk factors, such as high-risk activities and tasks, dangerous locations, and times of day when the risk of violence is increased.
- Techniques on how to recognize and avoid potentially violent situations, including de-escalation techniques and other specific agency policies and procedures
- The importance of reporting all incidents, including threats and verbal assaults and how to report such incidents
- Where employees can go for assistance during a dangerous situation
- Resources, such as workers' compensation and trauma counseling that are available to employees after an incident has occurred. Depending on the severity of the incident, these resources should be made available to the victim's co-workers, as well.

Recordkeeping and Evaluation

The regulations state that "Employers shall establish and implement reporting systems for incidents of workplace violence. 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 required in this paragraph. An additional or separate reporting system is not required by this paragraph."

"The employer shall develop and maintain a Workplace Violence Incident Report that can be in any format but, at a minimum, shall contain the following relating to the incident being reported":

1. Workplace location where incident occurred;
2. Time of day/ shift when incident occurred;
3. A detailed description of the incident, including events leading up to the incident and how the incident ended;
4. Names and job titles of involved employees;
5. Name or other identifier of other individual(s) involved;
6. Nature and extent of injuries arising from the incident; and
7. Names of witnesses.

Employers should use accident and illness recordkeeping data to ensure that their written workplace violence prevention plan is as effective as possible. This includes looking at trends over time and identifying risk factors that require the implementation of additional prevention measures. The regulations require an annual review of the workplace violence prevention program is conducted together with authorized union representatives.

How Can Employees Protect Themselves From Workplace Violence?

PEF encourages its members to let union representatives and agency officials know if there are gaps in violence prevention programs such as inadequate training, short-staffing, or lack of information on client histories. Knowledge is powerful! Learn everything there is about agency programs to prevent violence. On a personal level be sure you understand the warning signs of potentially violent individuals or situations. Take advantage of the training that is provided. Report any workplace violence incident to supervision or management, the union, and to the police, as appropriate.

If cooperative efforts fail, the new law requires that you must first file a written complaint to your supervisor and give an appropriate amount of time for corrections to be made, before you file a complaint with the NYS Department of Labor. We strongly encourage PEF members to work through their PEF Division if they are considering this course of action. It is important to note that the Workplace Violence Prevention Law states that “No employer shall take retaliatory action against any employee for bringing a workplace violence-related complaint to management or requesting a DOL inspection.”

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<http://www.pef.org/stopworkplaceviolence/index.htm>