

Health Employment and Labor

Labor and Employment Law for the Health Care Industry

Workplace Violence Prevention Plans Now Mandatory for California Hospitals and Skilled Nursing Facilities

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Effective April 1, 2018, California became the first state to **require** all acute-care hospitals and skilled-nursing facilities to develop and implement comprehensive workplace violence prevention plans. This mandate is intended to protect hospital employees from workplace violence caused by patients and/or family members.

Taking several years to develop, this statute was conceived by California's Division of Occupational Safety and Health ("Cal OSHA"), in conjunction with professional nursing organizations such as California Nurses Association to address the high risk of workplace injuries faced by health care workers daily. Overall, health care workers suffer the **greatest number** of workplace injuries, with over 650,000 individuals injured each year. Violence in the health care industry, however, is historically underreported; **one survey** estimated that just 19% of all violent events are reported.

Under the new law, affected employers in the health care industry must prepare a workplace violence prevention plan that includes:

1. Annual personnel education and training regarding workplace violence;
2. A system for responding to and investigating violent or potentially violent incidents; and
3. Procedures for annual assessment and evaluation of factors that could help to prevent workplace violence.

Employers must provide annual education and training to all employees at their facility who administer direct patient care, including physicians and temporary employees. This training must include, but not be limited to, information regarding:

- Identifying potentially harmful and violent situations and appropriate responses thereto;
- Reporting violent incidents to law enforcement officials; and
- Resources available to employees coping with the aftermath of a violent incident, such as critical incident stress debriefing and/or employee assistance programs.

Employers' annual assessment identifying the factors that could possibly minimize the number of incidents of workplace violence should include a review of staffing and staffing patterns; the sufficiency of security systems at the facility; job design, equipment, and facilities; and areas of high security risk including entry and exit points for employees during late-night and early-morning shifts and employee parking lot safety.

Additionally, employers must develop these workplace prevention plans with input from their employees and any applicable collective bargaining agents. Employers are also expressly prohibited from taking punitive or retaliatory action against employees for reporting violent incidents.

Employers, however, should be aware of the dichotomy between interests regulated by Cal OSHA and by the Centers for Medicare and Medicaid Services (CMS). While Cal OSHA creates rules to ensure health care workers have a safe work environment free from harm, CMS creates **rules** to control aggressive patients in order to protect patients' rights. These competing interests often create conflicting obligations for health care facilities. With Cal OSHA designating health care as a high risk industry for workplace violence and CMS focusing heavily on patient safety and patient rights, health care facilities

must carefully navigate these competing obligations to appropriately protect both their employees and their patients.

Employers with affected health care operations in California should consult counsel for assistance with the development of a legally-compliant violence prevention plan and annual training materials in light of this new regulation.

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