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Workplace Violence Prevention and the Overlap of Employment Law and Safety Compliance

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Workplace violence continues to be a growing national concern and one of the leading causes of occupational fatalities. In 2023, according to the Bureau of Labor Statistics, there were 5,283 workplace deaths nationwide. Of these, 740 fatalities, or 14%, were due to violent acts. More than 60% of those incidents were homicides, and 18% workplace homicide victims were women. Workers aged 25 to 34 experienced the highest number of fatalities related to violent acts, and nearly 30 percent of workplace homicides occurred in the retail trade industry.

As regulators, lawmakers, and employers respond to this trend, workplace violence prevention has emerged as a critical focus with overlap between occupational safety regulation and employment law compliance.

Understanding Workplace Violence

Workplace violence is often defined as any act or threat of physical violence, harassment, intimidation, or other threatening behavior that occurs at the worksite. Incidents may involve employees, clients, customers, visitors, or those in a personal relationship with an employee, and can range from verbal threats to physical assaults or the use of weapons.

Employees at elevated risk include those who exchange money with the public, work alone or in isolated areas, provide care or services, serve alcohol, or work late at night or in high-crime areas.

OSHA Framework

Federal OSHA does not have a specific workplace violence prevention standard, but it regulates this issue under the General Duty Clause, which requires employers to provide a workplace free from recognized hazards likely to cause death or serious harm.

To support a General Duty Clause citation, OSHA must show that:

- A workplace hazard existed to which employees were exposed
- The hazard was recognized by the employer or the industry

- The hazard was likely to cause death or serious harm
- There was a feasible and effective means of abatement

OSHA guidance encourages employers to assess workplace violence risks, establish a written prevention program, train employees, investigate all reported incidents, and document corrective actions.

State Law Developments

While federal OSHA has yet to adopt a specific standard, states are starting to fill the gap with their own workplace violence prevention requirements. Many states have had healthcare-specific workplace violence prevention standards for years, and recently, some have begun regulating general industry as well.

The most notable example is California's Labor Code Section 6401.9, which went into effect July 1, 2024, and requires most employers to maintain a written Workplace Violence Prevention Plan (WVPP). The plan must include, among other things, procedures for employee involvement, hazard identification, incident reporting, communication during emergencies, post-incident review, and training and recordkeeping requirements.

In Texas, employers must post a notice providing contact information for the Department of Public Safety, informing employees of their right to report workplace violence or suspicious activity anonymously.

New York, New Jersey, and Florida have each enacted targeted workplace violence prevention laws covering retail, hotel, and convenience store employers, respectively.

Other states are considering similar legislation for general industry employers.

The Intersection of Occupational Safety and Employment Law

Workplace violence prevention sits at the intersection of occupational safety and employment law. The steps required to comply with workplace safety standards inevitably overlap with employers' Human Resource policies, workplace conduct rules, and employment law responsibilities.

California's Labor Code Section 6401.9 demonstrates how safety and Human Resources functions must work together. The statute requires procedures for reporting, investigations, communication, and non-retaliation. Complying with such requirements requires collaboration between safety professionals, HR managers, and legal counsel.

For example, investigations should be fair, thorough, and impartial. They should follow consistent procedures, give all parties an opportunity to be heard, and be documented carefully. Investigators should maintain confidentiality to the extent possible, avoid bias or pre-judgment, and base conclusions on objective evidence. When conducting workplace violence investigations, safety personnel should collaborate with Human Resources and legal, as needed, to ensure that investigations comply with how Human Resources conducts their investigations to prevent potential litigation. After investigations are complete, the resulting disciplinary actions or terminations must be consistent between incidents and lawful. A fair and well-executed workplace violence investigation and disciplinary decision help protect the organization from OSHA violations, but also claims of discrimination, retaliation, negligent retention, or wrongful termination.

Furthermore, victims of workplace may be entitled to counseling, protected leave or accommodations under safety regulations, federal and/or state law.

Failure to adequately address workplace violence can result in both regulatory liability and civil exposure.

Conclusion

Workplace violence prevention represents an evolving legal landscape and requires employers to adopt integrated approaches that combine safety management, HR policy, and legal oversight.

Employers who proactively build comprehensive, living workplace violence prevention programs will not only be more likely to meet their regulatory obligations but also create safer workplaces and reduce the risk of costly litigation.