OSHA's General Duty Clause: A Primer For Health Care Employers

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OSHA's general duty clause now applies to workplace violence in health care. *Sec. of Labor v. Integra Health Mgmt., Inc.* OSHRC Docket No. 13-1124 (March 2019). This decision by the Occupational Safety and Health Review Commission summarily dispensed with the employer's arguments that assault by a patient or visitor is inherently unforeseeable and that any attempt to remove that risk would result in refusing care to vulnerable populations.

Too little attention is paid to the general duty clause in the Occupational Safety and Health Act. Employers are familiar with OSHA's manifold standards but seldom see citations for violation of the general duty to maintain a workplace "free from recognized hazards that are causing or are likely to cause death or serious physical harm."

Health-care-related workplaces are often high-risk settings for workplace violence. Of the 15,000-20,000 incidents reported in 2015, two-thirds took place in health-care or social-service settings. And, health-care employees are 4-5 times more likely to miss work due to workplace violence than other private sector employees. Workplace violence in health-care settings may stem from patients, their families, co-workers, or strangers, but it undeniably happens.

OSHA considers four criteria in determining whether a general duty violation has occurred:

• The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed. This criteria focuses on whether the workplace condition or practice was foreseeable.

• The hazard was recognized. This criteria addresses the industry's overall recognition of the hazard rather than just the history of the specific employer or workplace. Ignorance of an industry-wide problem is unavailing.

• The hazard was causing or was likely to cause death or serious physical harm. This criteria focuses on physical safety, which means that complaints of stalking, loitering, or harassment, with nothing more, will not meet this threshold.

• There was a feasible and useful method to correct the hazard. This factor considers whether means of abatement were available to eliminate or materially reduce the likelihood of the hazard occurring but the employer failed to implement them.

For health care employers, the make-or-break defense under these criteria will be whether there were feasible means of hazard abatement and whether this employer has taken those or equivalent steps to protect its workforce. Those steps may include engineering controls and/or administrative controls such as the following:

Engineering Controls	Administrative Controls
Security/silenced alarm systems	Workplace violence response policy and a clear statement to patients, clients, and employees that violence is not tolerated

Exit routes	Detailed log-in and log-out systems to track workers' whereabouts, including a code word for the log to identify threats
Metal detectors	Tracking clients or patients with known histories of violence
Monitoring systems & natural surveillance	Advise staff on working alone or in secure areas, such as elevators, stairwells, patient interviews, etc.
Barrier protection (e.g., bulletproof glass at reception, deep counters, and keyless door systems)	Require workers to report all assaults or threats, and maintain thorough logbooks
Areas established for patients/clients to de-escalate, comfortable waiting areas to reduce stress, and divided waiting rooms to limit the spreading of agitation among clients/visitors	Enforcement of visiting hours and "restricted visitors" list for patients with histories of violence or gang activity
Furniture secured to the ground, if it could be used as a weapon	Sign-in procedures and timely updates provided to those waiting for news
Bright, effective lighting	Properly trained security or other personnel to respond to aggressive behavior
Appropriate maintenance of travel vehicles	Staff ID badges

More illustrations of controls are available in OSHA's Violence Prevention Program Checklist. But, the essentials for health-care employers can be quickly encapsulated in an ABC mantra: Analysis on a worksite-specific basis of possible hazards, Back-to-basics training customized by worksite, and Commitment demonstrated by management in both attention and resources.

Beyond these obligations under OSHA, 22 states have safety and health standards and regulations that may supersede the federal dictates. California's workplace violence rules are generally viewed as the most rigorous in addressing health-care workplace violence. Indeed, pending Congressional efforts to compel OSHA to implement standards on workplace violence largely mirror California's language.

In meeting OSHA's ABC mantra, health-care employers should consider California's mandate of a 12-point workplace violence prevention plans (WVPPs). Such plans require the name of the person responsible for implementing the plan, procedures to develop and provide workplace-violence prevention trainings, procedures to identify risk factors, and more (including a "violent incident log").

Health care employers can also begin the necessary work of protecting employees (along with patients and visitors) by utilizing this Violence Prevention Program Checklist, adapted from OSHA guidelines:

1. Risk Factors for Workplace Violence			
Risk Factor	Present	Not Present	Notes
Employees have contact with the public			
Employees exchange money with the public			

Employees work alone			
Employees work late at night or during early morning hours			
The workplace is often understaffed			
The workplace is located in a high-crime area			
Employees enter high-crime areas			
Employees have mobile workplaces (e.g., van, EMS vehicle)			
Employees transport patients or medication			
Employees perform duties that might put them in conflict with others			
Employees perform duties that could upset people (denying benefits, confiscating property, terminating child custody, etc.)			
Employees interact with people known or suspected of having a history of violence (e.g., dementia diagnosis, gang affiliation)			
Employees or supervisors have a history of harassment, abuse, or threats			
Other			

2. Inspecting Work Areas for Existing Hazard Abatement Controls

Items for Inspection	All Areas	Some Areas	Few Areas	No Areas	Notes
Name tags or ID cards are required for employees (omitting personal details)					
Workers are notified of past incidents of workplace violence					
Trained security & counseling personnel are accessible to workers in a timely manner					
Security & counseling personnel have sufficient authority to ensure worker safety					
Established liaison with local police and counseling agencies					
Bullet-resistant windows used at reception or wherever money is exchanged					
Areas where money is exchanged are visible to others who could help in an emergency					
Limited amounts of cash are kept on hand					
Workers calling for help can be heard					
Employees can observe patients in waiting areas					
Patient interview rooms allow co-workers to observe problems					

Waiting and work areas are free of objects that could be used as weapons					
Furniture is secured to prevent use as weapons					
Furniture is arranged to avoid entrapment of workers					
Waiting areas are designed to maximize comfort and minimize stress					
Waiting individuals are timely and clearly informed about services to avoid frustration					
Private, locked restrooms are available for employees					
There is a secure place for workers to store personal belongings					

3. Inspecting Exterior Building Hazard Abatement Controls					
Items for Inspection	All Areas	Some Areas	Few Areas	No Areas	Notes
Workers feel safe walking to and from the workplace					
Building entrances are clearly visible from the street					
The area surrounding the building is free of bushes or other hiding places					
Outdoor lighting is bright and effective					
Security personnel are stationed outside the building					
Building exteriors are under video surveillance					
Remote areas are secured during off shifts					
"Buddy" escort system is required to remote areas during off shifts					
All exterior walkways are visible to security personnel					

4. Inspecting Parking Lots for Hazard Abatement Controls					
Items for Inspection	All Areas	Some Areas	Few Areas	No Areas	Notes
A nearby parking lot is reserved for employees only					
Parking lot is attended or otherwise secured					
Parking lot is free of blind spots and landscaping is trimmed to prevent hiding places					
Security escorts are available to employees walking to and from the parking lot					

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5. Security Measures for Hazard Abatement Controls				
Security Measures	Present	Not Present	Doesn't Apply	
Physical barriers (plexiglass partitions, bullet-resistant customer window, etc.)				
Security cameras or closed-circuit TV in high-risk areas				
Panic buttons				
Alarm systems				
Metal detectors				
Security screening devices				
Door locks				
Internal phone system to contact emergency assistance				
Phones with an outline line programmed for 911				
Cell phones for employee use (while at work)				
Security mirrors				
Secured entry (e.g. buzzers)				
Personal alarm devices				
"Drop safes" to limit the amount of cash on hand				
Broken windows repaired promptly				
Security systems, locks, etc. are tested on a regular basis and repaired promptly				
6. Comments				

Checklist Completed by:

Date:

Department/Location:

Phone Number/Email: