

Federal OSHA issues workplace violence enforcement procedures

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In September, the Occupational Safety and Health Administration issued a directive on Enforcement Procedures for Investigating or Inspecting Incidents of Workplace Violence.

The directive establishes uniform procedures for OSHA field staff for responding to incidents and complaints of workplace violence and conducting inspections in industries considered vulnerable to workplace violence, such as healthcare and social service settings, and late-night retail establishments.

Under the new Enforcement Procedures, "Employers may be found in violation of the general duty clause if they fail to reduce or eliminate serious recognized hazards.

Under this directive, inspectors should therefore gather evidence to demonstrate whether an employer recognized, either individually or through its industry, the existence of a potential workplace violence hazard affecting his or her employees.

Furthermore, investigations should focus on the availability to employers of feasible means of preventing or minimizing such hazards." See http://www.osha.gov/OshDoc/Directive_pdf/CPL_02-01-052.pdf.

Other information about the new procedures, including links to a new web page and OSHA publications on workplace violence can be found in the OSHA press release at http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_REL EASES&p_id=20637.

At this time, there is no indication on the Kentucky OSH Program website that Kentucky has adopted or will adopt this new enforcement procedure. The Kentucky OSH Standards Board has not met since May 2011 and thus has not met since federal OSHA issued the new enforcement guidance.

A search of general duty citations issued by Kentucky OSHA in the last year turned up none for workplace violence. However, it may be only a matter of time before the Kentucky Labor Cabinet begins citing employers under the general duty clause.

Whether Kentucky employers should anticipate such enforcement action and begin taking steps to assess hazards and adopt other measures is something they should seek legal counsel about, due to the potential exposure of employers to liability under common law theories of liability relating to implementing or failing to implement or follow policies regarding workplace violence.

The magnitude of workplace violence may be surprising — a top cause of fatalities

Federal OSHA reports that workplace violence ranks among the top four causes of on-the-job deaths in the U.S. during the past 15 years. Between 2006 and 2010, more than 3,000 people died from workplace homicides; and during that same time, more than 15,000 nonfatal workplace injuries, caused by violence, were reported annually.

Additionally, nearly two million American workers every year report being victims of workplace violence, and many more cases go unreported.

According to the Bureau of Labor Statistic Census of Fatal Occupational Injuries (CFOI), of the 4,547 fatal workplace injuries that occurred in 2010 in the United States, 506 were workplace homicides. The 2010 figure was a decline of more than 50 percent from the high of 1,080 workplace homicides in 1994.

Homicide is the leading cause of death for women in the workplace. While workplace homicides declined 7 percent last year to the lowest total ever recorded by the fatality census, workplace homicides involving women increased by 13 percent.

Workplace suicides declined slightly last year with 258 cases, down from 263 cases in 2009. However, even with the decline, the 2010 preliminary count of workplace suicides is the third highest annual total.

OSHA advises that one of the best protections employers can offer their workers is to establish a zero-tolerance policy toward workplace violence, and the policy should cover all workers, patients, clients, visitors, contractors, and anyone else who may come in contact with company personnel. The policy can be

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