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# Workplace Violence: Why Every State Must Adopt a Comprehensive Workplace Violence Prevention Law

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# Workplace Violence: Why Every State Must Adopt a Comprehensive Workplace Violence Prevention Law

## **Abstract**

[Excerpt] On August 24, 2012, a fired clothing designer gunned down a former co-worker outside the Empire State Building in New York City. The violent act was the culmination of built up tension between two former co-workers. Their anger towards one another had already resulted in at least one physical confrontation at work that led to both men filing police reports against each other. This case is an extreme example of workplace violence; however, workplace violence takes many forms and occurs with great regularity. Nearly 2 million employees are victims of workplace violence annually.

The Occupational Safety and Health Act of 1970 (“OSH Act”) is not well-enforced and therefore fails to provide protection to employees subjected to workplace violence. This article explores what can be done to better protect workers at the state level. Part I of this article reviews the phenomenon of workplace violence. Part II discusses the lack of enforcement of the OSH Act as it relates to workplace violence. Part III of this article describes how some states choose to supplement the OSH Act with their own workplace violence laws. Finally, Part IV proposes that state legislatures should adopt a law in line with the Occupational Safety and Health Administration (“OSHA”) promulgated suggestions to provide legal protections for workers against workplace violence. Since Congress has yet to enact federal legislation that provides comprehensive workplace violence prevention, all states must enact legislation beyond the OSH Act to protect their workers.

## **Keywords**

HR Review, Human Resources, Workplace Violence, OSHA, Occupational Safety, Employee Safety, Workplace Safety, Violence Prevention, Workplace Emergency Planning

## **Disciplines**

Human Resources Management

## **Comments**

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# CORNELL HR REVIEW

## **WORKPLACE VIOLENCE: WHY EVERY STATE MUST ADOPT A COMPREHENSIVE WORKPLACE VIOLENCE PREVENTION LAW**

*Mark Haynes*

On August 24, 2012, a fired clothing designer gunned down a former co-worker outside the Empire State Building in New York City.<sup>1</sup> The violent act was the culmination of built up tension between two former co-workers.<sup>2</sup> Their anger towards one another had already resulted in at least one physical confrontation at work that led to both men filing police reports against each other.<sup>3</sup> This case is an extreme example of workplace violence; however, workplace violence takes many forms and occurs with great regularity. Nearly 2 million employees are victims of workplace violence annually.<sup>4</sup>

The Occupational Safety and Health Act of 1970 (“OSH Act”) is not well-enforced and therefore fails to provide protection to employees subjected to workplace violence. This article explores what can be done to better protect workers at the state level. Part I of this article reviews the phenomenon of workplace violence. Part II discusses the lack of enforcement of the OSH Act as it relates to workplace violence. Part III of this article describes how some states choose to supplement the OSH Act with their own workplace violence laws. Finally, Part IV proposes that state legislatures should adopt a law in line with the Occupational Safety and Health Administration (“OSHA”) promulgated suggestions to provide legal protections for workers against workplace violence. Since Congress has yet to enact federal legislation that provides comprehensive workplace violence prevention, all states must enact legislation beyond the OSH Act to protect their workers.

### **Workplace Violence: a Regular Occurrence with Significant Mortality**

OSHA defines workplace violence as “any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site.”<sup>5</sup> A report commissioned by the Department of Justice suggests that there are about 1.7 million incidents of workplace violence in the United States each year.<sup>6</sup> Workplace assaults cause about 500,000 employees to lose 1,751,000 days of work annually.<sup>7</sup> Employees who fall victim to workplace violence lose \$55 million annually in wages.<sup>8</sup> However, workplace violence is not only costly to employees; it also adds up to a \$4.2 billion annual expense for employers as well.<sup>9</sup> When indirect costs such as loss of public image, insurance, and lost productivity are added in; the total cost to employers increases to between \$6.4 and \$36 billion annually.<sup>10</sup>

## **Categories of Workplace Violence**

Workplace violence ranges from threats and verbal abuse to physical assaults and homicide.<sup>11</sup> In order to better understand the cause of workplace violence, researchers have divided workplace violence incidents into four main categories:<sup>12</sup> criminal intent (Type I), customer/client (Type II), worker-on-worker (Type III), and personal relationship (Type IV).

### **Type I: Criminal Intent**

Criminal intent workplace violence occurs when the perpetrator has no legitimate relationship to the business or its employees and attacks an employee.<sup>13</sup> Usually the perpetrators are committing a crime and use a deadly weapon to further their cause. These crimes typically include some element of theft.<sup>14</sup> Employees who are most at risk of criminal intent workplace violence are those who exchange cash with customers as part of their jobs, who work at night, or who primarily work alone.<sup>15</sup> Eighty-five percent of all workplace violence homicides fall into this category.<sup>16</sup>

### **Type II: Customer/Client**

Customer/client workplace violence occurs when the perpetrator is a customer or client of the employee and attacks that employee.<sup>17</sup> The most common targets of customer/client workplace violence are school teachers, health care workers, social workers, and public transportation operators.<sup>18</sup>

### **Type III: Employee-on-Employee**

Employee-on-employee workplace violence occurs when an employee attacks his or her co-workers.<sup>19</sup> This category of only makes up about seven percent of all workplace violence. Yet this is the type of workplace violence that is most prevalent in the news media. Since these incidents are most likely to involve workplace disputes, managers and supervisors are at a greater risk of being victims of this category of workplace violence. No evidence suggests that one industry is more prone to employee-on-employee workplace violence than another industry.<sup>20</sup>

### **Type IV: Personal Relationship**

Personal relationship workplace violence occurs when an employee has a personal relationship with the perpetrator of the violence.<sup>21</sup> This category is typified by domestic violence that finds its way into the workplace. Perpetrators of this type of workplace violence are typically not employees or former employees of the affected workplace. The majority of victims in this category of workplace violence are women.<sup>22</sup>

## **OSH Act and Workplace Violence: The OSH Act is not Sufficiently Enforced by OSHA**

The OSH Act places a general duty on employers to protect employees from recognized hazards that are causing, or likely to cause, death or serious harm.<sup>23</sup> There is a high legal standard that the government must establish to raise a general duty violation.<sup>24</sup> Often OSHA is not able to meet this standard and employers escape liability. Employers can be cited for violating a standard if OSHA has promulgated a standard addressing the particular safety hazard at issue.<sup>25</sup> Yet OSHA has yet to issue a specific standard that regulates workplace violence.<sup>26</sup> Instead, workplace violence is regulated under the OSH Act's general duty clause.<sup>27</sup>

OSHA is not in a position to provide comprehensive enforcement of the OSH Act.<sup>28</sup> OSHA has about 2,200 employees charged with overseeing approximately 130 million workers at more than 8 million worksites nationwide.<sup>29</sup> This equates to about one compliance officer for every 59,000 workers. Furthermore, OSHA only manages to inspect about a quarter of worksites with a reported workplace fatality.<sup>30</sup>

OSHA has essentially been reduced to an enforcement agency without any "bite."<sup>31</sup> The maximum civil penalty for a serious violation of the general duty clause is \$7,000 per violation.<sup>32</sup> Willful or repeated violations carry a maximum penalty of \$70,000 per violation.<sup>33</sup> The relatively small penalty amounts do little to incentivize companies to address workplace violence issues.<sup>34</sup> Moreover, OSHA has raised the maximum penalty only once in its history.<sup>35</sup>

Criminal penalties for OSH Act violations are only imposed if the violation is willful and results in a death.<sup>36</sup> The maximum criminal penalty under the OSH Act is classified as a misdemeanor and can result in up to six months of jail.<sup>37</sup> It is nice to know that the government grants prison sentences to employers who willfully violate the general duty clause and whose violation results in a death. However, it is disheartening to realize that the maximum resulting prison sentence is only half the penalty someone would receive for "harassing a wild burro on federal lands."<sup>38</sup> Since the OSH Act has failed to provide adequate protection for employees, some states have taken matters into their own hands.

## **The State Level Response to Workplace Violence: a Tale of Three States**

Over the past two decades, a few states began enacting workplace violence legislation. California's Workplace Violence Safety Act embodies the most common type of workplace violence legislation that has been enacted at the state level.<sup>39</sup> The California law is retrospective legislation that gives employers the ability to seek temporary restraining orders against perpetrators of workplace violence on behalf of their employees. The New York Workplace Violence Prevention Act represents legislation that seeks to prevent workplace violence before it occurs.<sup>40</sup> The Illinois' Health Care

Workplace Violence Prevention Act is representative of prospective workplace violence legislation that only targets the health care industry.<sup>41</sup>

### **California's Workplace Violence Safety Act**

In 1994, California became the first state to pass a workplace violence law when it enacted the Workplace Violence Safety Act ("WVSA").<sup>42</sup> The law allows an employer to obtain a temporary restraining order ("TRO") and an injunction against any individual who has engaged in unlawful violence or has made a credible threat of violence at the workplace. A judge must find by clear and convincing evidence that a person engaged in unlawful violence or made a credible threat of violence against the employee before it becomes mandatory that the judge issue an injunction to protect the employee. Petitioners may request an injunction for a period of up to three years, and the injunction is renewable. Other states which have enacted similar legislation include Arizona, Arkansas, Colorado, Georgia, Indiana, Nevada, North Carolina, Rhode Island, and Tennessee.<sup>43</sup>

### **Illinois' Health Care Workplace Violence Prevention Act**

In 2005, Illinois enacted the Health Care Workplace Violence Prevention Act ("HCWVPA").<sup>44</sup> This law states that "every health care workplace must adopt and implement a plan to reasonably prevent and protect employees from violence at that setting." Before adopting a plan, a healthcare employer must conduct an assessment to look for potential hazards for violence. The employer may consider guidelines promulgated by relevant state agencies and OSHA.<sup>45</sup> The adopted plan must then address the security considerations brought to light by the assessment. The employer must review this plan at least once every three years. The employer must then report to the state whether or not it made changes to the plan and why. Other states that have adopted health care workplace violence prevention laws include Washington and New Jersey.<sup>46</sup> Connecticut also recently adopted regulations similar to the Illinois HCWVPA.<sup>47</sup>

### **New York's Workplace Violence Prevention Act**

In 2006, the New York Legislature enacted the Workplace Violence Prevention Act ("WVPA").<sup>48</sup> The purpose of this legislation is to "ensure that the risk of workplace assaults and homicides is evaluated by affected public employers and their employees and that such employers design and implement workplace violence protection programs to prevent and minimize the hazard of workplace violence to public employees."<sup>49</sup> Under this law, public employers with two or more permanent employees must evaluate the current violence risks in the workplace. Public employers with twenty or more employees must also develop a written workplace violence prevention program. The written program must include the risk factors present in the workplace and the methods the employer will use to prevent assaults and homicides in the workplace.<sup>50</sup>

## **Proposed State Legislation to Curb Workplace Violence: Current Legislation is Not Enough**

As discussed previously in the article, employers are not required to follow OSHA promulgated workplace violence guidelines as they are only considered recommendations.<sup>51</sup> Additionally, the levels of the fines that OSHA can prescribe provide little economic incentive for employers to take any preventative action to address workplace violence.<sup>52</sup> States have begun to acknowledge the limitations of the OSH Act in terms of addressing workplace violence. However, while New York, Illinois, and California have taken steps to curb workplace violence, their steps are inadequate.

The New York law focuses on prevention but only covers public employers.<sup>53</sup> The California law only applies after workplace violence has occurred.<sup>54</sup> Furthermore, it leaves it to the discretion of the employer to decide whether to seek a TRO on behalf of their employee or not.<sup>55</sup> Thus, in California, employer action is optional. The Illinois law does not apply to any other industry besides the healthcare industry.<sup>56</sup> The disjointed efforts at the state level leave much to be desired. Therefore, a more comprehensive framework to combat workplace violence must be put in place.

### **Parameters for Workplace Violence Legislation**

Given the lack of comprehensive workplace violence legislation at both the state and federal level, all states should adopt OSHA's guidelines for preventing workplace violence for health care and social services workers as law.<sup>57</sup> The law must apply to all industries so as to benefit all workers within a state. Additionally, the law must apply to both public and private employers conducting business within the state. The proposed legislation must include the following five components of an effective safety and health program:<sup>58</sup>

#### **1. Require Management Commitment and Employee Involvement**

If a company's senior executives are not committed to a workplace violence prevention program, then it is unlikely to be effectively implemented.<sup>59</sup> Top management must endorse workplace violence prevention and be visible in their support.<sup>60</sup> The support of management provides motivation and resources for workplace violence prevention programs that would otherwise not be available.<sup>61</sup>

Employees also must be engaged to create effective workplace violence prevention programs.<sup>62</sup> Management can engage employees by creating teams or committees for workplace violence prevention comprised of frontline employees and managers.<sup>63</sup> Employers must implement the reasonable recommendations made by workplace violence prevention committees.<sup>64</sup>

## **2. Require a Worksite Analysis**

A worksite analysis is a systematic program that looks at the workplace to find existing or potential hazards for workplace violence. The recommended steps for a worksite analysis include, but are not necessarily limited to, analyzing tracking records, conducting screening surveys, and analyzing workplace security.<sup>65</sup>

## **3. Analyze tracking records**

Employers should review employee medical, safety, workers' compensation, and insurance records to look for instances of workplace violence. Maintaining and reviewing unit logs, employee records, and police reports of incidents or near-incidents of assaultive behavior to analyze and identify trends in assaults are musts. Employers should then look for correlations between workplace violence and functions of the organization such as certain departments, job titles, and unit activities.<sup>66</sup>

## **4. Conduct screening surveys**

Conducting an employee survey is a good way for employers to gauge how their employees rate the security of their workplace and to understand what workers feel are at the greatest risk areas for potential violence. This is important because every workplace is different and has different risk factors that can lead to workplace violence.<sup>67</sup> Employee surveys are also a good way to confirm the need for improved security measures. Surveys should be conducted at least annually. Surveys should also be conducted whenever operations change or when incidents of workplace violence occur. This will help to identify new or previously unnoticed risk factors or failures in current workplace violence prevention practices.<sup>68</sup>

## **5. Analyze workplace security**

At least annually, the workplace violence prevention committee should inspect the workplace and evaluate employee tasks to identify hazards that could lead to violence. The committee should analyze incidents and account for what happened to cause the incidents. The committee must also identify jobs or locations with the greatest risk of violence as well as those jobs or locations that put employees at risk of assault, including how often and in what circumstances it is most likely to occur.<sup>69</sup>

## **Require Programs to Emphasize Hazard Prevention and Control**

Once workplace violence hazards are identified through the worksite analysis, the next step for the employer is to create measures through both engineering and administrative controls to minimize workplace violence hazards.<sup>70</sup>

### **a. Engineering Controls**



Engineering controls attempt to remove the workplace violence hazard from the workplace or create a barrier between the worker and the hazard. Examples of engineering controls include the installation and maintenance of alarm systems, security devices, panic buttons, hand-held alarms, or noise devices. Where appropriate, employers can use metal detectors to detect weapons.<sup>71</sup> In public high risk areas, employers may use closed-circuit video recording on a 24-hour basis. Employers can also provide or designate employee “safe” areas for emergencies.<sup>72</sup>

#### **b. Administrative Controls**

Changing administrative procedures can help prevent violent incidents. Employers should clearly state to employees and customers that violence will not be tolerated. They should also require employees to report all assaults or threats to a supervisor or manager. Additionally, employers should also keep logs and create reports of incidents of workplace violence to help determine what actions to take to prevent future incidents. They should also ensure that police are automatically contacted when incidents of workplace violence occur. Finally, employers should consider employing trained security personnel and establishing on site emergency response teams to respond to incidents of workplace violence.<sup>73</sup>

#### **Require Programs to Provide Ongoing Safety Training**

Training and education ensure employees are aware of potential security hazards and equipped with the skills necessary to protect themselves and their co-workers when incidents of workplace violence arise. Employers must explain to their employees that workplace violence is not 100% preventable. However, employers must also explain to their employees that while workplace violence may sometimes be expected, it can be mitigated through frequent training.<sup>74</sup>

Training programs must involve all employees, including supervisors and managers. New and reassigned employees must receive an initial orientation about workplace violence prevention before being assigned their job duties.<sup>75</sup> Qualified trainers should provide instruction on workplace violence prevention at the comprehension level appropriate for the employees they are training.<sup>76</sup> Topics of training may include personal safety training such as how to prevent and avoid assaults or how to manage assaultive behavior. Effective training programs should involve role playing, simulations, and drills.<sup>77</sup>

#### **Require Regular Program Evaluations**

Top management must review the workplace violence prevention program regularly to evaluate its success. Workplace violence prevention committees must reevaluate policies and procedures regularly to identify areas for improvement and to take corrective action.

Management must also share workplace violence prevention evaluation reports with all employees. Any changes in the program should be discussed at regular meetings with any union representatives or other employee groups.<sup>78</sup>

### **Additional Component: Require Employers to Practice Their Plans**

The FBI study on workplace violence prevention recommends that employers also regularly practice their workplace violence prevention program.<sup>79</sup> The study notes that no workplace violence prevention program will work if employees are unprepared when incidents arise. Training exercises must include the senior executives charged with making decisions in a real-life incident. The exercise must also be followed by an objective evaluation that will fix any deficiencies that are revealed.<sup>80</sup>

### **Conclusion**

Workplace violence is an intractable problem that endangers and strains employees, employers, and many governmental stakeholders. Given OSHA's limited resources and Congress' failure to provide for a comprehensive workplace violence prevention law, states are in the best position to provide this protection to their workers.

States can tailor laws to their individual needs by factoring in which industries are more prevalent in their respective state and the unique risks of workplace violence associated with each industry. Additionally, state enactment of comprehensive workplace violence prevention laws will help to pre-empt any federal legislation that may come later. State governments would be able to establish the best practices of creating and enforcing these laws. Federal lawmakers would likely look to the states that have enacted workplace violence prevention laws to determine what works and what does not.

While some states have attempted to buttress the OSH Act with their own workplace violence prevention laws, those laws have fallen short of addressing prevention and covering all of the workers in their respective states. By enacting OSHA promulgated recommendations for workplace violence prevention as law, states will be better able to protect their workers.

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<sup>1</sup> Sophia Hollander, Joseph De Avila, & Jennifer Maloney, *Deadly Clash Started in Workplace*, Wall Street Journal, August 25, 2012, at A15.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> <http://www.osha.gov/SLTC/workplaceviolence/> (last visited December 12, 2012)

<sup>5</sup> *Id.*

<sup>6</sup> U.S. Department of Justice, FBI Academy, National Center for the Analysis of Violent Crime, *Workplace Violence: Issues in Response*, available at <http://www.fbi.gov/stats-services/publications/workplace-violence> (last visited December 12, 2012).

<sup>7</sup> [http://www.osha.gov/dte/grant\\_materials/fy03/46j3-ht47.html](http://www.osha.gov/dte/grant_materials/fy03/46j3-ht47.html) (last visited December 8, 2012).

<sup>8</sup> *Id.*

<sup>9</sup> Jules M. Davis, *Potential Violence to the Bottom Line: Expanding Employer Liability for Acts of Workplace Violence in North Carolina*, 78 N.C. L. Rev. 2053, 2054 (2000).

<sup>10</sup> [http://www.osha.gov/dte/grant\\_materials/fy03/46j3-ht47.html](http://www.osha.gov/dte/grant_materials/fy03/46j3-ht47.html) (last visited December 8, 2012)

<sup>11</sup> *Id.*

<sup>12</sup> Injury Prevention Research Center, *Workplace Violence: A Report to the Nation*, February, 4 2001, available at <http://www.public-health.uiowa.edu/iprc/resources/workplace-violence-report.pdf> (last visited December 8, 2012)

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Workplace Violence: A Report to the Nation*

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Id.* at 7. This includes violent attacks from “unwilling” clients such as prisoners who attack prison guards or arrestees who attack police officers.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 9. The perpetrator may be a current or former employee.

<sup>20</sup> *Id.* The term “going postal” has been used to describe the employee-on-employee workplace violence category. There is no evidence to suggest that the U.S. Postal Service is more prone to this type of workplace violence than any other industry. *Id.*

<sup>21</sup> *Id.* at 11.

<sup>22</sup> *Id.* However, both men and women are affected directly or indirectly from the violence. *Id.*

<sup>23</sup> Occupational Safety and Health Act of 1970 (“OSHA”), 29 U.S.C. § 654 (2006).

<sup>24</sup> Dayna B. Royal, *Take Your Gun to Work and Leave It in the Parking Lot: Why the Osh Act Does Not Preempt State Guns-at-Work Laws*, 61 Fla. L. Rev. 475, 490 (2009)

<sup>25</sup> OSHA §5(a)(2), 29 U.S.C. § 654(a)(2).

<sup>26</sup> <http://www.osha.gov/SLTC/workplaceviolence/standards.html> (last visited December 12, 2012)

<sup>27</sup> *Id.*

<sup>28</sup> Orly Lobel, *Interlocking Regulatory and Industrial Relations: The Governance of Workplace Safety*, 57 Admin. L. Rev. 1071, 1080 (2005). Noting that “OSHA is actually a low-budget, understaffed, overextended agency.” *Id.*

<sup>29</sup> <http://www.osha.gov/oshstats/commonstats.html> (last visited December 12, 2012)

<sup>30</sup> *The Governance of Workplace Safety*, *Id.* at 1081.

<sup>31</sup> Ann E. Phillips, *Violence in the Workplace: Reevaluating the Employer's Role*, 44 Buff. L. Rev. 139, 145-46 (1996) (arguing that OSHA lack teeth in addressing violence in the workplace).

<sup>32</sup> OSHA §17(b), [29 U.S.C. § 666\(b\)](#). A “serious violation” is a citation for hazards that pose a substantial probability to cause serious physical harm or death to an employee. OSHA §17(k), [29 U.S.C. § 666\(k\)](#).

<sup>33</sup> OSHA §17(a), [29 U.S.C. § 666\(a\)](#).

<sup>34</sup> David Barstow & Lowell Bergman, *Deaths on the Job, Slaps on the Wrist*, N.Y. Times, Jan. 10, 2003, available at <http://www.nytimes.com/2003/01/10/us/deaths-on-the-job-slaps-on-the-wrist.html?pagewanted=all&src=pm>. (last visited December 12, 2012).

<sup>35</sup> *Id.* Noting that “[i]n [OSHA’s] 32-year history, the fines have been increased just once, in 1990, when the maximum sanction for a single safety violation was increased to \$70,000 from \$10,000.” *Id.*

<sup>36</sup> OSHA §17(e), [29 U.S.C. § 666\(e\)](#). The penalty for conviction is a maximum fine of \$10,000 or six months imprisonment. *Id.*

- <sup>37</sup> *The Governance of Workplace Safety, Id.* at 1081.
- <sup>38</sup> *The Governance of Workplace Safety, Id.* at 1082
- <sup>39</sup> Cal. Civ. Proc. Code § 527.8 (2012).
- <sup>40</sup> N.Y. Lab. Law § 27-b (2012).
- <sup>41</sup> IL ST CH 405 § 90/15 (2012).
- <sup>42</sup> Cal. Civ. Proc. Code § 527.8 (2012).
- <sup>43</sup> Ariz. Rev. Stat. § 12-1810 (2012); Ark. Code Ann. § 11-5-115 (2012); Colo. Rev. Stat. § 13-14-102(4)(B) (2012); Ga. Code Ann. § 34-1-7 (2012); Ind. Code § 34-26-6 (2012); [Nev. Rev. Stat. §§ 33.200-.360](#) (2011); N.C. Gen. Stat. Ann. § 95-261 (2012); R.I. Gen. Laws § 28-52-2 (2012); Tenn. Code Ann. § 20-14-101-109 (2012).
- <sup>44</sup> IL ST CH 405 § 90/15 (2012).
- <sup>45</sup> *Id.* Relevant state agencies include the Illinois Department of Public Health and the Illinois Department of Human Services. Employers may also consider guidelines offered by health care workplace accrediting organizations. *Id.*
- <sup>46</sup> Wash. Rev. Code Ann. § 72.23.400 (2012); N.J. Stat. Ann. § 26:2H-5.20 (2012).
- <sup>47</sup> Conn. Gen. Stat. Ann. § 19a-490q (2012). Adopted in October of 2011, the Connecticut law requires health care employers to establish ongoing workplace safety committees composed of at least fifty percent non-managerial staff. In conjunction with the workplace safety committee, the employer must review their plan annually based on current risk factors. *Id.*
- <sup>48</sup> N.Y. Lab. Law § 27-b (2012).
- <sup>49</sup> *Id.*
- <sup>50</sup> *Id.* A copy of a model workplace violence plan for New York can be found at <http://www.labor.state.ny.us/workerprotection/safetyhealth/workplaceviolence.shtm> (last visited December 19, 2012).
- <sup>51</sup> Letter from Joseph A. Dear, Acting Assistant Sec'y of the Occupational Safety & Health Admin., to Congressman Cass Ballenger (Oct. 23, 1996), available at [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=22281](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22281). Noting that “[t]hese guidelines are our recommendations to employers and workers who may be at risk; they are advisory in nature, . . . [and] cannot and will not be enforced as though they were standards promulgated after notice-and-comment rulemaking.” *Id.*
- <sup>52</sup> See supra notes 34 and 35 with accompanying text. See also Susan Harthill, *The Need for A Revitalized Regulatory Scheme to Address Workplace Bullying in the United States: Harnessing the Federal Occupational Safety and Health Act*, 78 U. Cin. L. Rev. 1250, 1297 (2010) (arguing that OSHA as an agency has certain disadvantages in attempting to tackle workplace bullying and workplace violence).
- <sup>53</sup> N.Y. Lab. Law § 27-b (2012).
- <sup>54</sup> Cal. Civ. Proc. Code § 527.8 (2012).
- <sup>55</sup> *Id.* “Employer” also includes a federal agency, the state, a state agency, a city, county, or district, and a private, public, or quasi-public corporation, or any public agency thereof or therein. *Id.* “Employer” and “employee” mean persons defined in Section 350 of the Labor Code. *Id.* “Employer” means every person engaged in any business or enterprise in this state that has one or more persons in service under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, irrespective of whether the person is the owner of the business or is operating on a concessionaire or other basis. Cal. Lab. Code Ann. § 350 (2012).
- <sup>56</sup> IL ST CH 405 § 90/15 (2012).
- <sup>57</sup> 1 Checklists for Corporate Counsel § 1:23: OSHA guidelines for preventing workplace violence for healthcare and social services workers.
- <sup>58</sup> OSHA Guide for Health Care Facilities, App. II, Doc. 800-2 available at <http://www.osha.gov/Publications/OSHA3148/osha3148.html> (last visited December 12, 2012).
- <sup>59</sup> *Workplace Violence: Issues in Response* at 19.
- <sup>60</sup> 1 Checklists for Corporate Counsel § 1:23: OSHA guidelines for preventing workplace violence for healthcare and social services workers.
- <sup>61</sup> *Id.*
- <sup>62</sup> *Id.*
- <sup>63</sup> *Id.* However, it is important that management considers compliance with the National Labor Relations Act when creating a committee. *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Workplace Violence: Issues in Response* at 19.

<sup>80</sup> *Id.*