



Confronting violence in the workplace: OSHA's general duty clause

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Violence in the workplace has become an all too frequent issue that employers must be prepared to address. To provide employers with guidance and practical insights, McDonald Hopkins is presenting a Business Hour on May 6, 2018, on workplace violence. [You can click here to register](#) for the program in Cleveland or sign up to view the live webcast.

One issue we will touch on during the Business Hour is an employer's obligations under the Occupational Safety and Health Administration's (OSHA) general duty clause to provide a safe workplace and how workplace violence may lead to a violation of the general duty clause. Under the General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act, employers are required to provide their employees with a place of employment that is "free from recognized hazards that are causing or are likely to cause death or serious physical harm."

A recent case illustrates how an employer's actions – or inaction- in the face of known threats may result in violation of the general duty clause obligations.

In *Secretary of Labor v. Integra Health Management, Inc.*, No. 13-1124 (OSHR Mar. 4, 2019) - the Occupational Safety and Health Review Commission considered the implications of the general duty clause in a matter dealing with a social worker who was violently attacked by a client during an in-home visit.

As in many workplace violence situations, the facts of this case are chilling. The social worker, a recent graduate and new hire, unsuccessfully tried to meet with the client in November 2012 and returned on December 10 to complete her assessment. The agency client had a history of mental illness and violent criminal behavior, but the agency had not conducted a background check. During several previous meetings, the client refused to allow an initial assessment and made various bizarre and delusional comments that were reported by the social worker and reviewed by her supervisors. Unknown to the employee and the employer, the client had a prior criminal record, including for aggravated battery with a deadly weapon and aggravated assault with a weapon.

On the December 10 visit, the client stabbed the social worker multiple times and social worker later died from her injuries.

Following this incident, OSHA conducted an inspection and issued the employer a citation for violation of the general duty clause for exposing employees to the hazard of being physically assaulted by a violent client. To prove a violation of the general duty clause, the Secretary of Labor must establish four elements:

- That a condition or activity in the workplace presented a hazard.
- That the employer or its industry recognized the hazard.
- That the hazard was causing or likely to cause death or serious physical harm.
- That a feasible and effective means existed to eliminate or materially reduce the hazard.

As you might imagine, the employer argued "the violent conduct of a third party is an inherently unpredictable act of a different nature than the hazards typically regulated under the general duty clause."

In upholding the citation, the commission noted, "Here, there is a direct nexus between the work being performed by [the employer's] employees and the alleged risk of workplace violence," the commissioners said. "[Employer] requires its service coordinators to meet face-to-face with members, many of whom have been diagnosed with mental illness and have criminal backgrounds as well as a history of violence and volatility." In addition, the employer's own policies recognized the danger that was present.

The commission noted that "that preparation is essential to reduce the risk of physical assault in the [employer's] workplace by a member with a violent history." OSHA suggested certain measures, including performing background checks prior to meeting with clients, informing its employees of client's criminal/behavioral histories or a propensity for violence, determining the behavioral history of new or transferred members, implementing a buddy system as needed and provide staff with a reliable way to summon assistance when needed to abate the hazard at issue.

Importantly, the commission stated that creating a stand-alone written workplace violence prevention program was also necessary. Such a program "decreases the risk of assault by helping prepare the [social worker] for the possibility of a violent situation. An expert testified that:

1. A written document is an established resource for trainees, preventing experienced workers from taking all of their knowledge with them if they leave the company.
2. The safety program also provides "scenarios" to make trainees aware of possible safety situations like a member with a weapon, dogs, trespassing signs, and other people in the member's house.
3. The safety program will then list ways to identify, prevent, and escape from those scenarios."

While all employers do not have the same clear violent hazards as the employer in this matter, this decision underscores the need for employers to analyze their workplace and develop a written workplace violence prevention program.

In addition to understanding and preventing workplace risks, our [Business Hour on May 6](#) is intended to help employers start taking steps to develop written workplace violence prevention programs.



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