CLIENT ALERTS & INSIGHTS

OSHA Cites Employer for Failing to Protect Employees from Workplace Violence

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The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) continues to focus on preventing workplace violence in hospitals, nursing homes, and other healthcare settings, where employees are five times more likely to experience physical and verbal assaults and threats of assault. OSHA recently cited Circles of Care, Inc., a Florida behavioral health company, under the Occupational Safety and Health Act's General Duty Clause for failing to provide a workplace free of recognized hazards. This citation stemmed from a patient assaulting one of Circle of Care's mental health technicians at a nurse's workstation.

This was not the first time Circles of Care had faced OSHA's scrutiny for workplace violence. The company was previously cited for two incidents in 2020, one of which tragically resulted in the fatal shooting of a counselor by a former patient.

Failure to Prevent Workplace Violence Leads to Repeat Citation

OSHA's investigation found that Circles of Care failed to implement sufficient controls to prevent the escalation of aggressive behavior toward staff. Specifically, OSHA found that Circles of Care could have reviewed and updated its existing workplace violence policies to implement a comprehensive workplace violence prevention program. This lack of safeguards led to the "repeat" classification of the citation.

Additionally, OSHA found that Circles of Care had failed to report the employee's work-related hospitalization within the required 24-hour timeframe, resulting in an "other than serious" citation. These violations resulted in OSHA imposing penalties totaling $101,397. In response, Circles of Care contested the citations and penalty to the Occupational Health and Safety Review Commission on May 31, 2024.

Healthcare Workers Disproportionately Affected by Workplace Violence

Data from the U.S. Bureau of Labor Statistics paints a concerning picture. Healthcare workers are five times more likely to experience intentional workplace violence compared to workers in other professions. In 2018 alone, healthcare workers accounted for over 73% of all nonfatal workplace assaults, with a staggering 15,230 incidents reported.

Based on these statistics, we can expect OSHA to increase its focus on workplace violence inspections within the healthcare industry.

Some states, including California, Illinois, Maryland, New Jersey, Oregon and Washington, have already required employers to have workplace violence prevention plans. Effective July 1, 2024,

Senate Bill 553 strengthened Cal/OSHA's authority to penalize California-based employers lacking a Workplace Violence Prevention Plan (WVPP). The law defines four categories of workplace violence and mandates WVPP implementation, employee training and recordkeeping for incidents (to be maintained for a minimum of five years). Noncompliance can result in hefty fines, ranging from $18,000 for initial violations to over $161,000 for willful or repeated offenses. In New Jersey, a monetary penalty of up to $5,000 per violation can be assessed for each day of noncompliance with the state's law requiring workplace violence prevention programs for healthcare facilities.

In 2017, OSHA published an updated compliance directive providing OSHA officers with guidance in responding to complaints of workplace violence. To combat workplace violence, employers can establish zero-tolerance policies, conduct workplace assessments to identify risks and implement violence prevention programs with clear procedures and employee training.

What Employers Can Do to Combat Workplace Violence

Beyond the programs set forth on the OSHA Workplace Violence webpage, OSHA's citation to Circles of Care outlined several feasible and acceptable methods to improve workplace safety. These methods included:

- **Comprehensive Workplace Violence Prevention Program:** This program should involve a thorough assessment of the physical environment for potential risk factors, along with the implementation of controls to mitigate those risks.
- **Enhanced Training:** Staff training should cover de-escalation techniques, responding to aggressive behavior, using restraints and calling for assistance in emergency situations.
- **Clear and Updated Policies:** Workplace violence policies should be reviewed and clarified to ensure proper incident response procedures are in place.
- **Employee Involvement:** Employers can establish a combined safety and health committee to facilitate employee participation in the Workplace Violence Prevention Program.
- **Improved Communication:** Sharing the outcomes of workplace violence investigations, including near-misses, with all employees fosters transparency and allows for program improvement.

These factors are not contained in an OSHA safety standard but employers should expect OSHA compliance safety and health officers to continue to base citations on them under the General Duty Clause.

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