

## 12 NYCRR PART 800.6

### PUBLIC EMPLOYER WORKPLACE VIOLENCE PREVENTION PROGRAMS

800.6

**(a) Title and Citation:** Within and for the purposes of the Department of Labor, this part may be known as Code Rule 800.6, Public Employer Workplace Violence Prevention Programs, relating to requirements of public employers to develop and implement programs to prevent and minimize the hazards of workplace violence to public employees; allowing any employee or authorized employee representative of employees who believes that a serious violation of this safety or health standard exists, or an imminent danger exists, to request an inspection by the department of labor; and providing for the enforcement of such requirement by the Commissioner of Labor. It may be cited as Code Rule 800.6“Public Employer Workplace Violence Prevention Programs” as an alternative and without prejudice to its designation and citation established by the Secretary of State.

**(b) Purpose and Intent:** It is the purpose of this part to ensure that the risk of workplace assaults and homicides is evaluated by affected public employers and their employees and that such public employers design and implement protection programs to minimize the hazard of workplace violence to employees.

**(c) Application:** This part shall apply throughout the State of New York to the State, any political subdivision of the state, any public authority, public benefit corporation or any other governmental agency or instrumentality thereof. This part shall not apply to any employer as defined in Section twenty-eight hundred one-a of the Education Law.

**(d) Terms:** As used in or in connection with this part, the following terms mean:

(1) *Authorized Employee Representative.* An employee authorized by the employees or the designated

representative of an employee organization recognized or certified to represent the employees pursuant to Article 14 of the Civil Service Law.

(2) *Commissioner*. The Commissioner of Labor of the State of New York or his or her duly authorized representative for the purposes of implementing this Part.

(3) *Employee*. A public employee working for an employer.

(4) *Employer*. The State, any political subdivision of the State, any public authority public benefit corporation, and any other governmental agency or instrumentality thereof, except that an employer shall not include, for purposes of this part, any employer defined as such in Section twenty-eight hundred one-a (2801a) of the Education Law.

(5) *Imminent Danger*. Any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided for by this Part.

(6) *Retaliatory Action*. The discharge, suspension, demotion, penalization or discrimination against any employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

(7) *Serious physical harm*. Physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ or a sexual offense as defined in Article 130 of the Penal Law.

(8) *Serious Violation*: A serious violation of the public employer workplace violence prevention program (WVPP) is the failure to:

(a) Develop and implement a program.

(b) Address situations which could result in serious physical harm.

(9) *Supervisor*. Any person within the employer's organization who has the authority to direct and control the work performance of an employee, or who has the authority to take corrective action regarding the violation of a law, rule or regulation to which an employee submits written notice.

(10) *Workplace*. Any location away from an employee's domicile, permanent or temporary, where an employee performs any work-related duty in the course of his or her employment by an employer.

(11) *Workplace Violence*. Any physical assault or acts of aggressive behavior occurring where a public employee performs any work-related duty in the course of his or her employment including but not limited to:

(i) An attempt or threat, whether verbal or physical, to inflict physical injury upon an employee;

(ii) Any intentional display of force which would give an employee reason to fear or expect bodily harm;

(iii) Intentional and wrongful physical contact with a person without his or her consent that entails some injury;

(iv) Stalking an employee with the intent of causing fear of material harm to the physical safety and health of such employee when such stalking has arisen through and in the course of employment.

(12) *Workplace Violence Prevention Program*. An employer program designed to prevent, minimize and respond to any workplace violence, the development and implementation of which is required by Article 2, Section 27-b of the New York State Labor Law.

#### **(e) Management Commitment and Employee Involvement**

(1) *Workplace Violence Policy Statement*: The employer shall develop and implement a written policy statement on the employer's workplace violence prevention program goals and objectives and provide for full employee participation through an authorized employee representative.

(i) The workplace violence policy statement shall be posted where notices to employees are normally posted. (ii) The policy statement shall briefly indicate the employer's workplace violence prevention policy and incident alert and notification policies for employees to follow in the event of a workplace violence incident.

(2) The responsibility and authority for preparing, determining the content of and implementing the requirements of this part remains with the employer. Local governments and all other public employers

may elect to share resources in the development and implementation of their workplace violence prevention programs.

**(f) Risk Evaluation and Determination**

(1) Record Examination:

The employer shall examine any records relevant to the purposes of this Part in its possession, including records compiled in the previous year under Labor Law Section 27a, that concern workplace violence incidents to identify patterns in the type and cause of injuries. The examination shall look to identify patterns of injuries in particular areas of the workplace or incidents which involve specific operations or specific individuals.

(2) Administrative Risk Factors

The employer shall assess relevant policies, work practices, and work procedures that may impact the risk of workplace violence.

(3) Evaluation of Physical Environment

The employer, with the participation of the authorized employee representatives, shall evaluate the workplace to determine the presence of factors which may place employees at risk of workplace violence. The Department of Labor has tools to aid employers in performing this evaluation which will be posted on the Department's web- site. Factors which might place an employee at risk include but are not limited to:

- (i) Working in public settings (e.g. Social Service Workers, Police Officers, Firefighters, Teachers, Public Transportation Drivers, Health Care Workers, other Governmental Workers or Service Workers);
- (ii) Working late night or early morning hours; (iii) Exchanging money with the public;
- (iv) Working alone or in small numbers;
- (v) Working in a location with uncontrolled public access to the workplace; or
- (vi) Areas of previous security problems.

**(g) The Workplace Violence Prevention Program**

(1) Employers with 20 or more full time permanent employees, with the participation of the authorized employee representative, shall develop a written workplace violence prevention program. Such participation shall include soliciting input from the authorized employee representative as to those situations in the workplace that pose a threat of workplace violence, and on the workplace violence prevention program the employer intends to implement under these regulations. Safety and health programs developed and implemented to meet other federal, state or local regulations, laws or ordinances are considered acceptable in meeting this requirement if those programs cover or are modified to cover the topics required in this paragraph. An additional or separate safety and health program is not required by this paragraph.

(2) The workplace violence prevention program shall include the following:

(i) A list of the risk factors identified in the workplace examination;

(ii) The methods the employer will use to prevent the incidence of workplace violence incidents;

(iii) A hierarchy of controls to which the program shall adhere as follows: engineering controls, work practice controls, and finally personal protective equipment;

(iv) The methods and means by which the employer shall address each specific hazard identified in the workplace evaluation;

(v) A system designed and implemented by the employer to report any workplace violence incidents that occur in the workplace. The reports must be in writing and maintained for the annual program review;

(vi) A written outline or lesson plan for employee program training;

(vii) A plan for program review and update on at least an annual basis. Such review and update shall set forth any mitigating steps taken in response to any incident of workplace violence.

(viii) Nothing in this part shall require the disclosure of information otherwise kept confidential for security reasons. Such information may include information which, if disclosed:

(a) Would interfere with law enforcement investigations or judicial proceedings;

- (b) Would deprive a person of a right to a fair trial or impartial adjudication;
- (c) Would identify a confidential source or disclose confidential information relating to a criminal investigation;
- (d) Would reveal criminal investigative techniques or procedures, except routine techniques and procedures; or
- (e) Would endanger the life or safety of any person. (h) Employee Information and Training

(1) Upon completion of the workplace violence prevention program, every employer shall provide each employee with information and training on the risks of workplace violence in their workplace or workplaces at the time of the employee's initial assignment and at least annually thereafter.

Such information as necessary shall be provided to affected employees whenever significant changes are made to the workplace violence program. At a minimum training shall address the following:

- (i) Employers shall inform employees of the requirements of this Part and the risk factors in their workplace that were identified in the risk evaluation and determination, except that nothing in this part shall require the disclosure of the information otherwise kept confidential for security reasons as identified in paragraph (g)(2)(viii).
- (ii) Employers shall inform employees of the measures that employees can take to protect themselves from the identified risks including specific procedures that the employer has implemented to protect employees such as incident alert and notification procedures, appropriate work practices, emergency procedures, and use of security alarms and other devices;
- (iii) Employers with 20 or more full-time permanent employees shall inform employees of the location of the written workplace violence program and how to obtain a copy, and shall make it available for reference to employees, authorized employee representatives and the Commissioner in the work area during the regularly scheduled shift.

**(i) Recordkeeping and Recording of Workplace Violence Incidents**

(1) Employers shall establish and implement reporting systems for incidents of workplace violence.

Reporting systems developed and implemented to meet other federal state or local regulations, laws or ordinances are considered acceptable in meeting this requirement if they cover or are modified to cover the information required in this paragraph. An additional or separate reporting system is not required by this paragraph.

(2) Employers at sites where there is a developing pattern of workplace violence incidents which may involve criminal conduct or a serious injury shall attempt to develop a protocol with the District Attorney or Police to insure that violent crimes committed against employees in the workplace are promptly investigated and appropriately prosecuted. The employer shall provide information on such protocols and contact information to employees who wish to file a criminal complaint after a workplace violence incident.

(3) Systems for reporting instances of workplace violence.

(i) The employer shall develop and maintain a Workplace Violence Incident Report that can be in any format but, at a minimum, shall contain the following relating to the incident being reported:

(a) Workplace location where incident occurred;

(b) Time of day/ shift when incident occurred;

(c) A detailed description of the incident, including events leading up to the incident and how the incident ended;

(d) Names and job titles of involved employees;

(e) Name or other identifier of other individual(s) involved;

(f) Nature and extent of injuries arising from the incident; and

(g) Names of witnesses.

(ii)(a) If the case is a “privacy concern case” as defined below, the employer shall still be liable for developing a Workplace Violence Incident Report as set forth above. However, before sharing a copy of

such Report with any party other than the Commissioner, the employer shall remove the name of the employee who was the victim of the workplace violence and shall instead enter “PRIVACY CONCERN CASE” in the space normally used for the employee’s name.

(b) The employer shall treat incidents involving the following injuries or illnesses as privacy concern cases: (1) An injury or illness to an intimate body part or the reproductive system;

(2) An injury or illness resulting from a sexual assault;

(3) Mental illness;

(4) HIV infection;

(5) Needle stick injuries and cuts from sharp objects that are or may be contaminated with another person’s blood or other potentially infectious material; and (6) Other injuries or illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the Report.

(4) The Workplace Violence Incident Report must be maintained for use in annual program review and updates. This requirement does not relieve an employer of the recordkeeping requirements of 12NYCRR Part 801.

(5) The employer, with the participation of the authorized employee representative, shall conduct a review of the Workplace Violence Incident Reports at least annually to identify trends in the types of incidents in the workplace and review of the effectiveness of the mitigating actions taken.

**(j) Employee Reporting of Workplace Violence Prevention Concerns or Incidents**

(1) Any employee or his or her authorized employee representative who believes that a serious violation of the employer’s workplace violence protection program exists, or that a workplace violence imminent danger exists, shall bring such matter to the attention of a supervisor in the form of a written notice and shall afford the employer a reasonable opportunity to correct such activity, policy or practice.

(2) Written notice to an employer shall not be required where workplace violence imminent danger exists to the safety of a specific employee or to the general health of a specific patient and the employee

reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

(3) If, following a referral of such matter to the employee's supervisor and after a reasonable opportunity to correct such activity, policy or practice, the matter has not been resolved and the employee or the authorized employee representative still believes that a serious violation of a workplace violence prevention program remains or that an imminent danger exists, such employee may request an inspection by notifying the Commissioner of Labor of the alleged violation. Such notice and request shall be in writing, shall set forth with reasonable particularity the ground(s) for the notice and shall be signed by such employee or their authorized employee representative. A copy of the written notice shall be provided by the Commissioner to the employer or the person in charge no later than the time of inspection, except that at the request of the person giving such notice, such person's name and the names of individual employees or authorized employee representatives of employees shall be withheld. Such inspection shall be made forthwith by the Commissioner.

4) The authority of the Commissioner to inspect premises pursuant to such employee complaint shall not be limited to the alleged violation contained in such complaint. The Commissioner may inspect any other area of the premises in which he or she has reason to believe that a serious violation of this section exists.

(5) The Commissioner may, upon his or her own initiative, conduct an inspection of any premises occupied by an employer if he or she has reason to believe that a violation of this section has occurred.

The current PESH administrative plan will be used for the enforcement of this section, including a general schedule of inspections, which provides a rational administrative basis for such inspection.

(6) No employer shall take retaliatory action against any employee because the employee exercises any right accorded him or her by this Part.

#### **(k) Effective Dates**

(1) The Employer's Policy Statement required by section (e) of this Part shall be completed within 30 days after the effective date of this Part. (5/29/09)

(2) The workplace risk evaluation and determination required by section (f) of this Part shall be completed within 60 days of the effective date of this Part. (6/29/09)

(3) The workplace violence prevention program required by section (g) of this Part shall be complete within 75 days of the effective date of this Part. (7/14/09)

(4) Employers shall be in compliance with the entire Part within 120 days of the effective date of this Part. (8/27/09)