

LEGISLATIVE PUSHES TO PROTECT HEALTH CARE WORKERS AGAINST VIOLENCE

States and the federal government are currently expanding laws intended to protect health care workers against workplace violence or raise the penalties for causing harm to health care workers.

WORKPLACE VIOLENCE

Workers in health care settings often face the risk of workplace violence as a result of their interaction with patients and clients. While patients/clients cause most of the violence, health care workers may also experience a heightened risk of violence due to the actions of family members and associates, jobs that may require close contact with individuals who are unstable due to substance abuse or weapons, stressful work environments that may trigger or impact coworkers negatively and work settings that have greater public access and less security in terms of physical barriers and security personnel. In fact, according to the Occupational Safety and Health Administration ("OSHA") of the U.S. Department of Labor, the rate of reported workplace violence incidents that required a worker to take days off to recuperate after suffering injuries was more than four times greater in the health care industry compared to the average in all private industries combined.^[1]

Because of these significant risks, health care workers, professional associations and policymakers are looking for ways to curb violence against health care workers.

NATIONAL DEVELOPMENTS

While many state occupational and health agencies already require employer training addressing workplace violence, there is currently no federal mandate. However, in November 2019, the House of Representatives passed H.R. 1309, the "Workplace Violence Prevention for Health Care and Social Service Workers Act."^[2] If it passes, the law would give OSHA 42 months to issue requirements to health care employers to implement comprehensive workplace violence prevention plans. The proposed legislation defines covered health care facilities very broadly and includes all employees of all medical, correctional, residential/long-term care and non-residential facilities and even social service settings.

STATE DEVELOPMENTS

At the state level, legislatures, professional associations and others are also making strides in expanding protections for health care workers. Approximately 36 states impose higher penalties on workplace violence against nurses and currently, at least five states (California, Delaware, Florida, Oklahoma and South Carolina) have proposed legislation creating or expanding protections related to violence against health care workers.^[3]

For example, in early February, Wisconsin passed a new law increasing penalties for harm to nurses and other health care providers in certain circumstances. The new law makes it a felony to intentionally cause physical harm to a nurse, someone acting under a nurse's supervision, to a health care provider who works in a hospital or to an individual who works in an emergency services role or setting such as an ambulance driver, emergency medical responder or emergency department worker.^[4]

PRIVACY CONSIDERATIONS WHEN HEALTH CARE EMPLOYEES EXPERIENCE VIOLENCE IN THE WORKPLACE

In the event that a health care employee is assaulted in his or her workplace or while he or she is operating in a professional capacity, the employee may report the crime to law enforcement officials. However, the information that may be provided to law enforcement is likely limited under HIPAA, 42 CFR Part 2 (the Substance Use Disorder rules) if applicable, and/or state privacy rules.

While HIPAA, many state laws and 42 CFR Part 2 permit the disclosure of limited information to report a crime on the premises, the exceptions are generally limited to making the initial report. Additional information beyond that specifically identified in the laws as being acceptable in an initial report cannot be provided to law enforcement absent written authorization from the patient/client or another applicable exception in the privacy laws. Remember - the key consideration when determining the applicability of this exception is who is initiating the disclosure. The crime on the premises exception permits the victim (or employer of the victim) to initiate a disclosure to law enforcement to report the crime using the minimum necessary information permitted by the applicable law. It does not extend to responding to requests for information from law enforcement, even where such requests are made in order to investigate the reported crime on the

premises.

HUMAN RESOURCE CONSIDERATIONS WHEN HEALTH CARE WORKERS FACE VIOLENCE

The employer's leave of absence policies, and state law impacting crime victims, may take on a greater meaning as the laws representing health care workers expand. In addition to the federal Family and Medical Leave Act ("FMLA"), employees may have protection for absences under state FMLA laws and/or state victim leave laws.^[5]

For assistance in the development or presentation of training or policies addressing workplace violence, please contact:

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- Kristen Chang at 414-721-0923 or kchang@hallrender.com; or
- Your regular Hall Render attorney.

More information about Hall Render's Labor & Employment services can be found [here](#).

[references]

[1] <https://www.osha.gov/Publications/OSHA3826.pdf>

[2] <https://www.congress.gov/bill/116th-congress/house-bill/1309/text>

[3] <https://www.nursingworld.org/practice-policy/advocacy/state/workplace-violence2/>

[4] <https://docs.legis.wisconsin.gov/2019/related/enrolled/sb163>

[5] See, for example, §850 of the Maine statutes: Employment leave for victims of violence.

[/references]