



## OSHA Sends Message to Treatment Facility: Keep Workers Safe from Violent Patients

Joseph P. Moriarty

Workplace violence has become a serious issue for employers throughout the United States. In addition to the potential civil liability and workers' compensation liability, employers must consider the potential for OSHA citations and penalties arising from workplace violence.

OSHA recently cited a treatment facility for "shocking" violence by patients against workers. At the facility, workers were repeatedly assaulted, bitten, punched, kicked, and pinned down by patients, causing multiple broken bones, concussions, and other injuries. As part of the penalties, OSHA outlined the following abatement methods: (1) providing trained security officers; (2) ensuring doctors were available to authorize emergency treatment orders during the night shift; (3) creating a comprehensive workplace violence program with training and education; (4) providing employees with personal panic alarms/body alarms or other means of communication to immediately summon help, (5) making physical changes to the facility to reduce patient attacks, and (6) evaluating the effectiveness of existing controls, such as, but not limited to plexiglass barriers or windows.

As discussed in this article, OSHA offers employers only general guidance on ways to provide employment free of workplace violence. To avoid a citation after a violent incident (or repeated violent incidents), employers should proactively implement workplace safety policies and programs – and regularly train and educate employees – taking into consideration the specific workplace setting, industry-recognized hazards, and foreseeable violent incidents against workers.

### OSHA Cites Treatment Facility for Patients' Violence on Workers

In May 2023, a behavior health and substance abuse disorder facility in Jacksonville, Florida was [cited](#) for a serious violation after repeatedly exposing workers to nearly 200 violent incidents in 2022.

OSHA's investigation found that "[o]n or about November 12, 2022, and continuing thereafter, employees, including Mental Health Associates, nurses, counselors, and physicians were exposed to the hazard of physical threats and assaults, such as being bitten, kicked, punched, scratched, and sexually assaulted by patients when providing care, attempting to de-escalate patients, and engaging in daily activities."

In the citation, OSHA stated that among other methods, feasible and acceptable means of abatement would be to:

1. Use properly trained security officers to respond to aggressive or violent patient behavior. Ensure security guards or officers follow written procedures. Alternatively, train existing staff to the level of security staff, ensuring every shift has these trained staff members available. Designated staff or security guards should be available to all units on all shifts, especially during times when there is reduced staffing, to rapidly respond and de-escalate a situation when patients are exhibiting disruptive, aggressive, and/or violent behavior, and be able to monitor live video surveillance of all the units.

2. Ensure doctors are readily available to authorize emergency treatment orders during the night shift when violent and aggressive patients are not responding to existing medical treatment.
3. Create a comprehensive workplace violence program, consolidating current policies to ensure clear policies and procedures on hazard/threat assessments, controls, prevention strategies, employee training and education, and incident reporting and investigation. Include employees from all shifts to participate in the development, implementation and maintenance of the program. Train all staff on the program policies and procedures.
4. Provide employees who will have direct interaction with patients, including but not limited to: Therapists, Nurses, and MHAs, with personal panic alarms, body alarms, or a reliable means of communication to immediately summon the response team to assist in patient care areas. Provide training on this equipment and ensure it is inspected, tested, and maintained in working order at all times.
5. Make physical changes to the facility to reduce patient attacks. Review the physical environment of each wing to determine the presence of factors which may place an employee at an increased risk of being exposed to workplace violence. To include, but not limited to, seclusion room doors that patients were able to break open and elope, moveable furniture that can be used as weapons, and nurses' stations without plexiglass barriers that patients are able to access.
6. Evaluate the effectiveness of existing controls, such as, but not limited to plexiglass barriers or windows, at least annually, and improve, expand, or update them as needed. Follow up to confirm the controls implemented are being used and maintained properly.

### OSHA's "General Duty Clause" and Workplace Violence

OSHA may issue citations and penalties to employers for workplace violence under the "[General Duty Clause](#)" of the OSH Act. The General Duty Clause requires employers 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." Employers who do not take reasonable steps to prevent or abate a recognized violence hazard in the workplace can be cited and fined.

OSHA does not provide specific rules covering workplace violence; however, courts have interpreted the General Duty Clause to mean that an employer has a legal obligation to provide a workplace free of conditions or activities that either the employer or industry recognizes as hazardous and that cause, or are likely to cause, death or serious physical harm to employees when there is a feasible method to abate the hazard. OSHA describes workplace violence as follows:

Workplace violence is any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. It ranges from threats and verbal abuse to physical assaults and even homicide. It can affect and involve employees, clients, customers and visitors.

OSHA has issued [guidance](#) to identify certain risks for workplace violence, such as exchanging money with the public and working with volatile, unstable people. Working alone or in isolated areas may also contribute to the potential for violence. Providing services and care, and working where alcohol is served may also impact the likelihood of violence. Additionally, time of day and location of work, such as working late at night or in areas with high crime rates, are also risk factors that should be considered when addressing issues of workplace violence. Among those with higher risk are workers

who exchange money with the public, delivery drivers, healthcare professionals, public service workers, customer service agents, law enforcement personnel, and those who work alone or in small groups.

In addition, OSHA provides [guidance](#) on various prevention programs and provides [training resources](#) to prevent workplace violence. OSHA recommends that employer's take appropriate precautions, implement a well-written workplace violence program, and establish a zero-tolerance policy towards workplace violence. Specifically, an employer that has experienced acts of workplace violence, or becomes aware of threats, intimidation, or other indicators showing that the potential for violence in the workplace exists, could be on notice of the risk of workplace violence and should implement a workplace violence prevention program combined with engineering controls, administrative controls, and training.

### **Recommended Practices for Workplace Safety Policies and Programs**

Employers should regularly review their workplace safety policies and programs – or draft and implement such policies and programs. Employers should also regularly train and educate employees thoroughly on workplace safety. By undertaking proactive practices, employers reduce the risk of an OSHA citation, as well as increase the opportunity for a good defense should one materialize after a workplace violent incident.

For more information, please download a complimentary copy of Willcox Savage's "[Virginia Employer's Guide to OSHA/VOSH](#)" or contact attorney Joseph P. Moriarty.

#### **Joseph P. Moriarty**

Willcox Savage

440 Monticello Avenue, Suite 2200

Norfolk, Virginia 23510

[jmoriarty@wilsav.com](mailto:jmoriarty@wilsav.com)

(757) 628-5502