Legislation and Regulations Addressing Workplace Violence in the United States and British Columbia

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Overview: For as long as workers have had contact with customers, coworkers, the public, and others, they have faced risk of assault. However, in the 1980s and 1990s, a number of highly publicized incidents occurred that involved multiple fatalities, and reliable statistics showed homicide to be a major cause of worker deaths. As a result, violence in the workplace became a subject of concern among the public and policymakers. This article reviews a number of legislative and regulatory efforts from the past decade that were designed to prevent violence against employees. Some states and localities have enacted legislation to address specific types of violence in the workplace, such as robbery-related violence, and violence against health care workers and taxi drivers. In addition, the U.S. Occupational Safety and Health Administration (OSHA), as well as a number of state OSHA programs, has attempted to reduce the risk of assault to workers through new and existing statutes and administrative regulations. To provide a contrast with developments in the United States, the author will also discuss requirements for prevention of assault in the workplace in the Canadian province of British Columbia.

Medical Subject Headings (MeSH): government agencies, jurisprudence; legislation; safety management; social control, formal; United States Occupational Safety and Health Administration; violence; workplace (Am J Prev Med 2001;20(2):149–154) © 2001 American Journal of Preventive Medicine

Introduction

Many occupations have long involved an inherent risk of violence. For example, law enforcement, corrections, and psychiatric personnel; workers who handle large amounts of cash or valuables; and people who work alone at night face a significantly greater risk of physical assault than the average worker. Although not an entirely new phenomenon, beginning in the 1980s, news reports of multiple homicide incidents in workplaces not usually associated with high risk of assault gave rise to a new concern among the public: violence in the workplace. By the early 1990s, policymakers concerned with occupational safety and health explicitly recognized assaults as an important cause of morbidity and mortality in the workplace.

Contributing to the recognition of assault as a significant source of workplace injuries, a number of reports detailed fatalities from injuries caused by other individuals, as opposed to those caused by inanimate workplace objects and conditions. In 1987, Kraus identified and epidemiologically described work-related homicides in California from 1979 to 1981. In 1990, the National Institute for Occupational Safety and Health reported data from its National Traumatic Occupational Fatalities surveillance system, indicating that from 1980 to 1985, homicide was the third leading cause of occupational fatalities in the United States, accounting for 13% of such cases. Coinciding with, or perhaps contributing to, recognition of the extent and magnitude of the problem, in 1992 the U.S. Bureau of Labor Statistics fully implemented its Census of Fatal Occupational Injuries (CFOI) surveillance system, receiving data from all 50 states and the District of Columbia. The CFOI data for 1992 indicated that the event category of “assaults and violent acts” accounted for 20% of occupational fatalities, compared with 40% from transportation accidents and 16% from “contact with objects and equipment,” respectively, the first and third most-frequent causes of workplace fatalities in that year. Since the inception of CFOI in 1992 and through 1998, the category of “assaults and violent acts” consistently ranked second as the cause of workplace fatalities in the United States.

Laws against acts such as assault and battery, murder, terrorism, and threatening behavior are long-standing, traditional deterrents to perpetrators of violence in the workplace and elsewhere. However, at least as early as 1990, legislation and administrative regulations began...
to be adopted with the specific intent of reducing the incidence of assaults on workers through requirements placed on employers. In addition, government agencies with responsibilities for occupational safety and health began to interpret existing general requirements for provision of a safe workplace as applying, within certain limits, to the hazard of assault. These laws, regulations, and interpretations have addressed the problem of assaults on workers either comprehensively or with a focus on the occurrence of violence in particular types of workplaces, or associated with particular occupations or activities.

In addition to statutes, administrative regulations, and interpretations, a substantial body of case law has developed related to workers’ compensation and tort liability with respect to employers’ responsibility for prevention of assaults on employees. A number of authors have amply surveyed this body of case law\(^4\)–\(^6\), therefore, it is not discussed in this paper.

Although the following is not an exhaustive list, to date requirements imposed on employers by statutes and administrative regulations with respect to preventing assaults on workers most frequently fall into one of the following categories:

1. Requirements to address the risk of assaults on workers associated with other crimes, such as retail robbery
2. Requirements to address the risk of violence in health care institutions
3. Requirements to address the risk of violence specifically posed to taxicab operators
4. Interpretations requiring employers to address prevention of assault in response to mandated general requirements for providing a workplace free of recognized hazards

**Robbery Prevention**

Requirements for late-night retail businesses were among the earliest government efforts intended to prevent assaults specifically on workers. These included administrative regulations adopted in 1990 by the Washington Industrial Safety and Health Services Agency (WISHA) and legislation passed in 1990 and 1992 by Florida.\(^7\),\(^8\) Also in 1990, partly in response to franchisee concerns about the risk of late-night robbery, the Virginia legislature passed legislation prohibiting gasoline retail franchisers from requiring franchisees to stay open more than 16 hours per day, or more than 6 days per week.\(^9\)

Washington Administrative Code 296-24-10203 applies to retail establishments operating between the hours of 11:00 pm and 6:00 am, with the exception of restaurants, hotels, taverns, or any lodging facilities. The regulation focuses on training employees and on aspects of the retail environment that may affect the risk of robbery. Establishments must train employees in policies and procedures for safety, security, and crime avoidance. Training must also address such issues as the importance of maintaining a clear view of the cash register from outside the store, maintaining cash levels in registers as low as possible, additional precautions after dark, and violence prevention in the event a robbery does occur. Environmental aspects of robbery and injury prevention addressed by the regulation include cash handling and minimization, visibility of cash registers from outside the store, and maintenance of outside lighting.

Florida has the most-extensive statutes with respect to prevention of crime in retail establishments. The law is limited to “convenience businesses,” defined as any place of business that is engaged primarily in the retail sale of groceries, or of both groceries and gasoline, and open for business at any time between 11 pm and 5 am. The law excludes businesses that are solely or primarily restaurants, have at least five employees on the premises between 11 pm and 5 am, or have at least 10,000 square feet of retail space. It also excludes businesses in which the owner or members of the owner’s immediate family work between 11 pm and 5 am. Florida’s attorney general enforces the law and may seek civil penalties of up to $5000 per violation, plus attorneys’ fees and costs.

As do the Washington Administrative Code requirements, the Florida statutes address employee training and environmental aspects of robbery and injury prevention. However, Florida additionally provides for approval of employee training curricula and contains more detailed environmental requirements. These requirements include security cameras, drop safes for cash management, height markers at the entrance to stores, and silent alarm systems. Additionally, if a murder, robbery, or other specified violent crime occurs at a covered business, one of the following measures must be implemented between 11 pm and 5 am:

- at least two employees on the premises at all times,
- a secured safety enclosure of transparent polycarbonate,
- a security guard or off-duty police officer on the premises, or
- locking the premises and conducting business through an indirect pass-through, trap door, or window.

The additional security measure chosen must be in place for at least 24 months after the date of the most-recent covered violent crime, after which time the business may request an exemption from the Office of the Attorney General of the State of Florida.

**Prevention of Violence in Health Care Institutions**

In 1993, the California legislature passed, and the governor signed into law, legislation mandating hospi-
tals licensed by the state’s Department of Health Services to conduct a security and safety assessment, and based on that assessment, to develop a plan to protect personnel, patients, and visitors from aggressive and violent behavior. This legislation also included specific requirements for training emergency room personnel.\textsuperscript{10} The ability of hospitals to provide a secure environment for providing health care services was added as an element that the state would consider when negotiating contracts for participation in the Medi-Cal program, the California equivalent to the federal Medicaid program, which funds medical care for qualifying low-income individuals.\textsuperscript{11}

In 1999, Washington passed legislation mandating that health care settings develop and implement detailed plans to prevent and protect employees from violence.\textsuperscript{12} Legislation passed in January 2000 assured that the requirements of the 1999 bill would also apply to the state’s two psychiatric hospitals.\textsuperscript{13} Health facilities covered by the Washington legislation must conduct security and safety assessments to identify existing or potential hazards for violence and to determine appropriate preventive measures. Based on the hazards identified in the security and safety assessment, the violence-prevention plans must address security considerations related to the following:

1. The physical attributes of the health care setting
2. Staffing, including security staffing
3. Personnel policies
4. First-aid and emergency procedures
5. Reporting of violent acts
6. Employee education and training

The legislation also includes detailed requirements for employee training and for recording violent acts against employees, patients, and visitors.

**Taxi Barrier Ordinances**

In the United States, taxicab operators have by far the highest risk of fatal assault of any occupation, according to the National Institute for Occupational Safety and Health (NIOSH).\textsuperscript{14} To address this risk, a number of cities have passed ordinances that require bullet-resistant barriers between operators and their customers in some or all taxicabs. These cities include Los Angeles, Chicago, New York, Baltimore, Boston, Albany (New York), and Oakland (California) (C. Rathbone, personal communication, 1999).

Stone and Stevens\textsuperscript{15} have evaluated the impact of the Baltimore ordinance and report that in the 12-month periods before and after the ordinance took effect in 1996, assaults on taxi drivers decreased 56%. These authors also report that in 1991, a cab operator working without a barrier was 5 times more likely to be assaulted than was a driver protected by a barrier.

In May 2000, OSHA released a fact sheet entitled “Risk Factors and Protective Measures for Taxi and Livery Drivers.” The fact sheet notes that taxi drivers have the third highest rate of nonfatal assaults, behind police officers and private security guards. Safety measures to prevent assaults on taxi drivers noted in the fact sheet include:

- automatic vehicle location or global positioning systems (GPS) to locate drivers in distress;
- caller ID to help trace location of fares;
- first-aid kits in every car for use in emergencies;
- in-car surveillance cameras;
- partitions or shields;
- protocols with police—owners and police need to track high-crime locations;
- radios for communication in emergencies (e.g., with an “open mike switch”);
- safety training for drivers, dispatchers, and company owners;
- silent alarms; and
- use of credit/debit cards (“cashless” fare systems) to discourage robberies.

**Efforts to Prevent All Types of Workplace Violence**

**Federal OSHA**

The state and local legislative and regulatory efforts detailed above attempted to address assaults in particular types of workplaces. In contrast, regulatory enforcement efforts by federal OSHA and by some state OSHA plans approved by federal OSHA (most notably Washington and California) have attempted to address the entire spectrum of risk from assault on workers.

Under Section 5(a)(1) of the federal Occupational Safety and Health Act,\textsuperscript{16} the so-called general duty clause, OSHA is empowered to enforce a general duty on employers to take steps to reduce or eliminate “recognized” workplace hazards likely to cause death or serious physical harm to employees. In a 1992 memorandum, OSHA interpreted this duty of employers to include, or at least not exclude, reducing or eliminating criminal acts of violence that are recognized in a particular employment arena as part of the nature of doing business.\textsuperscript{17} In contrast, the memorandum notes that the general duty clause would not cover criminal acts of violence not “recognized” as characteristic of employment but that represent random antisocial acts that may occur anywhere. In this memorandum, as a matter of information, OSHA also noted the potential for tort liability of employers for assaults on their employees. Areas of potential liability mentioned included negligence, negligence in hiring and retention, failure to warn potential victims, and failure to repudiate incidents of workplace violence.

From 1993 through 1995, OSHA issued Section 5(a)(1) general duty clause citations to eight private businesses and three federal government establish-
Health care or retail businesses were the establishments most frequently inspected. However, OSHA’s use of the general duty clause to address the hazard of assault was curtailed after the agency lost an appeal of a citation issued to a property management company (Secretary v Megawest Financial, Inc.).

In that case, an employee who worked in a property management office at an apartment complex managed by the employer filed a complaint with OSHA. Police had been called to the office numerous times to remove actual and potential tenants for verbally or physically threatening the office staff. The administrative law judge in the case found that the employer expected the office staff to confront irate residents, but did not train staff to diffuse anger or to lessen the impact of potential incidents until the police arrived. The judge also found that residents who threatened staff seldom, if ever, suffered any consequences. The judge deemed these findings to have satisfied the first element required for a 5(a)(1) citation, namely, “existence of the hazard.” However, the judge ruled that OSHA had not proved the second element required for a general duty clause citation—that the employer or the employer’s industry recognized the risk of assault. The judge ruled that because violence is widespread in society and that society empowers the police to control such conduct, a high standard of proof should be applied to the test for employer recognition of the hazard of assault. The judge did not find that employee fear of assault, even if communicated to the employer, was sufficient to demonstrate employer recognition, nor was the occurrence of a previous injury from a violent incident. These findings constituted OSHA’s primary proof of employer recognition. Additionally, the judge ruled that industry recognition of the hazard was not proved. The judge noted, among other factors, that apartment management was not one of the industries identified by NIOSH in a 1993 publication as having a high risk of employee assault.

Since the Megawest decision, OSHA has focused its efforts in preventing workplace violence on developing guidance documents for industries with employees who perform tasks with a recognized risk for assault. In 1996, OSHA released Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers (OSHA Pub. No. 3148) and a fact sheet entitled “Protecting Community Workers Against Violence.” Recommendations for Workplace Violence Prevention Programs in Late-Night Retail Establishments (OSHA Pub. No. 3153) was released in 1998. As noted above in the discussion on taxi ordinances, a fact sheet for taxi and livery drivers was released in May 2000. Development of these publications did not occur without controversy. Some employers and employer organizations have voiced concern that such documents could be used as the basis for future citations under OSHA’s general duty clause.

Efforts by the States

As do a number of other states with OSHA-approved state plans for job safety and health, Washington and California enforce regulations requiring comprehensive safety programs in all workplaces. California and Washington have interpreted these regulations to require employers to take steps to prevent assault on employees when such events are reasonably foreseeable.

In Washington, workplace inspections by the Washington Industrial Safety and Health Act Services Agency related to violence, but not specifically related to late-night retail crime, primarily address employer compliance with Washington Administrative Code 296-24-040, which requires an accident prevention program including a formal written program.

In California, the OSHA-approved job safety and health program is housed in the state’s Department of Industrial Relations. Within the department, the Division of Occupational Safety and Health conducts workplace inspections and enforces the state’s occupational safety and health regulations. The division, often referred to as Cal/OSHA, became particularly concerned with the risk of violence faced by employees in 1993. In that year, on the afternoon of July 1, a man made his way to the 34th-floor offices of a law firm that had, at one time years before, handled a case with which he had been involved. The man shot and killed eight workers and bystanders before taking his own life. In 1994, the Bureau of Labor Statistics’ CFOI indicated that workplace homicides in California had increased from 197 in 1992 to 243 in 1993, a 25% increase. In response to the resulting increased interest in preventing workplace assaults, Cal/OSHA convened two well-attended conferences on the subject in 1994. Those conferences helped to inform development of the Cal/OSHA Guidelines for Workplace Security (last revised March 30, 1995). These guidelines continue to guide the Cal/OSHA effort.

As in Washington State, and as detailed in the guidelines, Cal/OSHA’s main enforcement tool in workplace violence inspections is to require a general safety program, termed an Injury and Illness Prevention Program. The Injury and Illness Prevention Program consists of eight elements, including requirements for a written program, identification of responsibilities for the program, systems for hazard recognition and correction, accident investigation, two-way communication with employees, and employee training.

Developing a classification system for assaults occurring in the workplace was the Cal/OSHA effort’s key contribution to clarifying thinking and discussion on the subject. Using the traditional public health approach of focusing on the hazardous agent—in this case the perpetrator of the assault—the Cal/OSHA system described three “types” of workplace violence.
events based on the relationship of the perpetrator to the workplace:

- In Type I events, the perpetrator has no legitimate business relationship with the workplace and usually enters the affected workplace to commit a criminal act. Retail robbery is the most-typical example of this type of event.
- In Type II events, the perpetrator is a recipient, or in the case of inmates and criminal suspects, an “object,” of service provided by the affected workplace or victim. Typical examples of this type of event are assault by a frustrated customer on a service provider, assault by a patient on a health care provider, and assault by a criminal suspect on a law enforcement officer.
- In Type III events, the perpetrator (or his or her family member or acquaintance) has some employment relationship to the workplace. Typical examples of this type of event are assault by a current or former employee on other employees or supervisors, and assault on an employee (and often others) by a current or estranged family member or individual or other acquaintance.

Following development of the Cal/OSHA classification system, some authors have chosen to separate events perpetrated by current or former employees of an establishment from those perpetrated by an estranged spouse or acquaintance into Types III and IV, respectively.26

The Cal/OSHA system proved crucial to facilitating meaningful discussion about workplace assault. Before development and general acceptance of the Cal/OSHA classification system, discussions of workplace violence often quickly degenerated into confusion over whether participants were addressing retail robbery, assaults on service workers, or assaults by coworkers and estranged spouses. The first Conference on Workplace Security held by Cal/OSHA on April 13, 1994, highlighted this problem. Development of the incident classification system in the interim greatly facilitated discussion at the second Cal/OSHA conference held on November 3, 1994. The two conferences on the subject that Cal/OSHA organized in 1994 informed the development and implementation of a special pilot enforcement and incident-response effort. The pilot program, detailed in the Cal/OSHA “Guidelines for Workplace Security,” was intended both as a regulatory enforcement response to the problem of workplace assault and as a means of gathering information on the occurrence and prevention of workplace violence, particularly homicide.

During the Cal/OSHA Workplace Security pilot inspection program, which started in 1993, approximately 250 workplace inspections were initiated. Researchers have analyzed data associated with 237 of those inspections.26 Industries in which workplace inspections were conducted included health care, which accounted for 17% of inspections, retail establishments (17%), security/police (11%), service industries (9%), restaurant (9%), manufacturing (8%), transportation (7%), education (6%), government (6%), professional (6%), and property management (2%). Among the 237 inspections conducted, 40% were for Type I incidents or risk, 30% were for Type II incidents or risk, 29% for Type III, with about 1% unspecified.

Of the 237 Cal/OSHA inspections studied, 56 businesses received citations related to workplace violence. The vast majority of these citations were issued with respect to the required Injury and Illness Prevention Program. However, a handful of citations were also given for violations of specific Cal/OSHA requirements potentially applicable to prevention of workplace assault, including maintenance of exits and illumination, requirements for employee alarm systems, and development and implementation of an emergency action plan. A number of citations were also given for failure to properly record or report worker injuries resulting from assault.

After the pilot inspection program concluded, Cal/OSHA continued to respond to employee complaints related to workplace violence. In recent years, with a decline in these types of complaints, the number of inspections related to workplace violence conducted by Cal/OSHA decreased from 43 in 1997, to 33 in 1998, to 22 in 1999 (personal communication, Cal/OSHA Program Office, Division of Occupational Safety and Health, California Department of Industrial Relations, San Francisco, CA, June 2000).

The British Columbia Approach

In 1993, the Canadian province of British Columbia implemented regulations that address prevention of workplace violence.27 These regulations require employers to perform a risk assessment in any workplace in which a risk of injury to workers from violence arising out of their employment may be present. The risk assessment must consider previous experience in that workplace, occupational experience in similar workplaces, and the location and circumstances in which work will take place.

If the required assessment identifies a risk of worker injury from violence, the employer must establish policies and procedures to minimize or, if possible, to eliminate the risk. The regulations include a requirement for worker training, including informing workers of persons whom they are likely to encounter in their work who have a history of violent behavior. Finally, the employer must report incidents of violence, including threatening statements and other events with a potential for injury, to the Workers’ Compensation Board of British Columbia. The employer must also investigate as required for other workplace hazards. Prompt cor-
rective action is required to prevent recurrence of similar incidents.

Of note, the British Columbia regulations discussed above specifically exclude coverage of violence and threats by other workers in the workplace. A more general prohibition against “improper activity or behavior” covers such incidents.28

**Conclusion**

Only in the past decade have governments begun to attempt to specifically address the risk of assault posed to employees in their workplaces through legislative and regulatory requirements placed on their employers. Not all employees in all states are covered by protective requirements. In addition, the effectiveness of the measures adopted to date have not been fully evaluated. Nonetheless, and at the very least, the process of developing laws and regulations to address the problem has undoubtedly contributed to informing workers, the public, and policymakers about the hazard of workplace violence and about possible means for its prevention. This greater awareness of the hazard of workplace assault can only help to further the effort to reduce its occurrence.

**References**

18. OSHA Integrated Management Information System.
24. Injury and Illness Prevention Program. Title 8, California Code of Regulations, Section 3205.