

WORKPLACE VIOLENCE PREVENTION: NUTS AND BOLTS FOR TOWNS

By Deb Volberg Pagnotta, CEO
Interfacet, Inc.

Effective October 5, 2006, the New York State Legislature enacted Labor Law § 27-b, the Workplace Violence Prevention Act, requiring public employers to develop and implement programs to “prevent, minimize and respond to” workplace violence. On April 29, 2009, the New York State Department of Labor finally published 12 NYCRR Part 800.6, “Public Employer Workplace Violence Prevention Programs,” the follow-up regulations (“the rule”) detailing how the rubber meets the road.¹ **Public employers – yes, this includes towns -- should be in full compliance with the rule before August 28, 2009.** So, what’s a town to do?

For all you ostriches out there, it is now really, really time to comply. In a nutshell, every town must prepare and post a written policy statement on workplace violence; conduct a risk evaluation of its single or multiple workplaces; advise and train all employees about workplace violence; develop an incident reporting system; and keep records for annual internal review. All together, this constitutes a program. Additionally, every town with twenty or more full-time employees must develop and implement a *written* WVP program.

Preliminary advice. First, be inclusive, not exclusive. Invite all the stake-holders to the table to participate – this might include the executive or high-level designee, the director of personnel or human resources, security personnel, union leader or representatives,² legal counsel, director of EAP program, safety/health personnel, and risk manager. This may feel unwieldy at first, but necessary and useful to obtain all the perspectives and buy-in. Second, the rule specifically permits public employers to share resources in developing these WVP programs: consider working with neighboring towns to minimize costs and resources used to develop the policies, programs and trainings. Third, use common sense – the overarching goal is to create safer workplaces, recognizing that every employer is unique in many ways, including budget, composition, services provided, and challenges faced. Fourth, determine in what order you will meet your obligations.

Assessment of risks. Clearly, upfront, a town must assess what its actual risks may be. Make sure to review all records and reports from the last five years (if possible, although the rule only requires one) which relate to violence and/or injury at the town’s

¹ For ease of reference, “workplace violence prevention” is abbreviated as WVP.

² The rule defines Authorized Employee Representative as that individual authorized by the employees or “recognized or certified to represent the employees pursuant to Article 14 of the Civil Service Law.” The rule itself requires that the AER be included only in the evaluation of the physical plant, in the development of the written program, and in the annual review of the incident reports.

workplaces: this helps to identify patterns at particular locations, with individuals, or specific operations. Assess relevant policies, work practices and procedures which may impact the risks. Employees (e.g., town court personnel, tax assessors, emergency responders) who frequently work with irate residents may be at higher risk. Don't underestimate risks caused by night hours, or long hours worked by public safety or transportation employees in the wintertime – exhaustion can raise risk, as can use of alcohol or caffeine. Look at risks posed by the location, structure and management of town buildings. Can anybody walk in at any time? Is there good lighting in the environment around the buildings? Do employees work alone? Be location and employee-specific.

Written Policy Statement. The next step is to develop and conspicuously post a written policy statement. This is akin to New York State's Right to Know Law (hazardous substances at the workplace), which reasonably requires employers to notify employees that the law or program exists. Consider posting it on your website or intranet as well. – this sends a powerful message. Give it to all new employees upon hire, and send it out with the final paycheck of every year. The written policy statement itself should be in "plain English"; include basic definitions; detail basic reporting and responding steps; carve out necessary exemptions (e.g., police may carry appropriate weapons, firefighters use axes, or transportation workers might need certain cutting instruments); and prohibit retaliation for reporting violence.

Creating the Written Prevention Program. This is distinct from the written *policy* statement required for *all* towns, and applies only to towns with twenty or more full-time employees. This written WVP program must include a list of risk factors, reduction methods, a "hierarchy of controls,"³ how the town actually plans to reduce the identified risks,⁴ a reporting system, a written outline for the employee training, and a plan for annual review. Remember that the written policy referenced above may actually contain some of these items, for example the reporting system: you might simply attach a copy of the policy to the program as an appendix.

The rule requires the town to solicit input from an authorized employee representative, in assessing risks and developing a written program. It is conceivable that some

³ Identified by risk management professionals, this hierarchy in descending order of effectiveness and preference generally includes:

- Elimination (e.g., eliminating the risk altogether, such as prohibiting weapons on town property, or permitting only town employees into certain workplace areas)
- Safer alternatives/substitution (e.g., if cleaners work alone at night, mandating they work in pairs)
- Engineering controls (e.g., physical barriers where cash is handled)
- Work practice controls (e.g., replacing scissors with blunter instrument)
- Personal protective equipment (e.g., bullet proof vests)

⁴ Many of these risks can be easily reduced. Put buzz-in doors, rather than leaving buildings wide open. Put auto-dial to the local police department on each phone. Install a panic button under the desk of the town clerk. Require identification to enter buildings. Put higher-watt bulbs into street lights. Remember that assessing means identifying the risk and also reviewing and implementing the steps to reduce the risks, where feasible.

representatives will decline to participate, possibly for reasons presumably related to troubled labor-management relations. Solution? Keep inviting, keep the doors open, keep the reps in the loop, and provide them with all relevant written materials. The process should be transparent. Section 800(g)(2) (i – vii) details very specifically what the program should include: you should track these closely.

Note that the regulations specifically exempt from disclosure information kept confidential for security purposes. This exemption, which was not contained in the first draft of the regulations, was included in part to address the strongly expressed concerns of law enforcement organizations relating to ongoing investigations and confidentiality.

Employee education. This is common sense. When you have completed the evaluation and developed the WVP program (written or not), you must train the employees, managers and supervisors to the program, policy and procedures. Train annually thereafter. You can use a variety of methods to reduce training costs: share training with other towns; catch two birds with one stone by training on harassment prevention and workplace violence prevention at the same time; and consider using web-based on-line/on-demand “eTraining” tailored to municipal entities or to your particular town. The purpose is to let employees know both their rights and obligations

Recordkeeping and recording of incidents. Every town must comply with this part of the rule. While it may seem initially daunting to create a “system”, in fact the rule is quite detailed in terms of what is actually required and how to structure it: a “Workplace Violence Incident Report” with listed items (Section 800[i][3]); a carve-out process for “privacy concern cases”; keeping the files for use in annual review; and the annual, actual review of any reports/incidents (with the authorized employee representative). Do make the Workplace Violence Incident Report form easily available to your employees – for example, include this form in your written policy, and consider posting this on your website for easy access.

Be reassured, though, that the rule recognizes that reporting systems developed to meet other legal obligations will be considered acceptable if they “cover or are modified” to cover incidents of workplace violence. For example, you may already have in place a system for the reporting of sexual or other types of harassment: typically employers who have created written harassment prevention programs include a written complaint form; the names and contact information for the individuals designated to receive the complains; a written complaint form; and the creation of a central file (separate from personnel files) for maintaining information relating to such allegations. Or, a town may want to use its established system for reporting occupational injuries and illnesses (see, 12 NYCRR Part 801, with corresponding instructions SH 901).

Employee obligation to report. Except in cases of imminent danger, an employee, or the authorized employee rep, who believes a serious violation of the WVP policy or program has occurred or an imminent danger exists, “shall” notify the town by providing a “written notice” to a supervisor in writing. This obligation – designed to allow the town to take corrective action before an employee may notify the New York State

Commissioner of Labor -- is distinct from the town's obligation to develop and provide the "Workplace Violence Incident Report" for easy reporting.

Useful sites.

<http://www.labor.state.ny.us/workerprotection/safetyhealth/workplaceviolence.shtm>

<http://www.usda.gov/news/pubs/violence/wpv.htm>

<http://www.asisonline.org/guidelines/guidelineswpvfinal.pdf>

<http://www.labor.state.ny.us/workerprotection/safetyhealth/PDFs/PESH/901Instruction.pdf#page=2>

For more information about designing and implementing your town's program, contact Deb Volberg Pagnotta at dvpagnotta@interfacet.com or 914-997-8888.