

DOSH DIRECTIVE

Department of Labor and Industries
Division of Occupational Safety and Health
Keeping Washington safe and working

5.05

Violence in the Workplace

(Updated) Date: November 5, 2010

I. Purpose

This directive provides guidance to DOSH staff on the appropriate application of WISHA standards in workplaces where there is an increased risk of violent incidents.

II. Scope and Application

This directive applies to all DOSH operations statewide. It replaces all previous instructions on this issue, whether formal or informal.

III. References

- Chapter 296-832 WAC, Late Night Retail Worker Crime Prevention
- DOSH Compliance Manual
- NIOSH Occupational Violence web resources <http://www.cdc.gov/niosh/topics/violence/>

IV. Background

- A.** Violence in the workplace is a major contributor to occupational fatalities and injuries. From 2000 to 2005, an average of 6 Washington workers died each year as a result of workplace homicide, and from 2000-2005 there was an annual average of 2,094 industrial insurance claims for assault and violence-related incidents. Recent years have shown some reduction in the number and rates of violence-related injuries, but homicide remains the fifth highest cause of workplace fatalities in Washington State. Washington's unique Late Night Retail Worker Crime Prevention standard appears to have prompted a reduction in violent crimes within its scope, but that scope is limited to a select group of retail businesses.
- B.** Although there is a degree of uncertainty, workplace violence is not entirely random and unpredictable. In fact, there are clear patterns. Research has repeatedly identified factors associated with incidents of workplace homicide or

assault. Based on its analysis of the various research, the National Institute for Occupational Safety and Health (NIOSH) has suggested that the following factors, when placed in combination with other conditions, *may* require attention (whether these factors in fact suggest a level of workplace exposure to violence that requires employer intervention depends upon a combination of circumstances specific to the individual employer or worksite:

[from NIOSH Current Intelligence Bulletin 57, July 1996]:

- Contact with public
- Exchange of money
- Delivery of passengers, goods, or services
- Having a mobile workplace such as a taxicab or police cruiser
- Working with unstable or volatile persons in health care, social services, or criminal justice settings
- Working alone (working in isolation) or in very small numbers
- Working late at night or early morning hours
- Working in high-crime areas
- Guarding valuable property or possessions
- Working in community-based settings

V. Enforcement Policies

A. Standards that Address Hazards.

Several existing provisions of the Washington Administrative Code (WAC) may apply to the hazards of violence in the workplace, including (but not necessarily limited to) the following:

- Chapter 296-832 WAC, Late Night Retail Workers Crime Prevention, provides direction to retail businesses that operate between 11:00 p.m. and 6:00 a.m. Restaurants, hotels, taverns and lodging facilities are beyond the scope of this rule.
- RCWs 49.19 and 72.23 require certain healthcare settings and state institutions to develop violence prevention programs.
- WAC 296-800-14005 requires employers to "Develop a formal accident prevention program (APP) that is outlined in writing. The program must be tailored to the needs of the workplace or operation and to the types of hazards involved." The program must include "a safety orientation program" that contains (among other things) information about reporting injuries and unsafe conditions, the use and care of personal protective equipment, and emergency procedures.
- WAC 296-800-14025 requires employers to "Establish, supervise, and enforce your accident prevention program in a manner that is effective in practice."

- WAC 296-800-11005 requires employers to "Provide your employees a workplace free from recognized hazards that are causing, or are likely to cause, serious injury or death." WAC 296-800-11010 requires employers to "Provide and use safety devices, safeguards, and use work practices, methods, processes, and means that are reasonably adequate to make your workplace safe" and to "do every other thing reasonably necessary to protect the life and safety of your employees."
- WAC 296-800-11035 requires employers to "Establish, supervise and enforce rules that lead to a safe and healthy work environment that are effective in practice."
- WAC 296-800-16005 requires employers to "Look for and identify hazards or potential hazards in your workplace and determine if PPE is necessary on the job."

B. Evaluating Complaints.

Each DOSH Enforcement Supervisor must evaluate any complaints alleging a workplace violence or security hazard according to the applicable guidance regarding evaluating complaints or referrals, in the DOSH Compliance Manual.

C. Workplace Fatality.

In the event of a workplace fatality resulting from violence, the supervisor must assign a Compliance Safety and Health Officer (CSHO) with experience appropriate to the situation. The CSHO must take special care not to interfere with any law enforcement activities. He or she must limit the investigation to the questions of whether the employer complied with applicable WISHA requirements, and whether any violation of such requirements contributed to the incident.

D. Inspecting Late Night Retail Employers

CSHO's must evaluate compliance with Chapter 296-832 WAC, when inspecting late-night retail employers subject to those requirements, and issue citations as appropriate under the standard. If the requirements of the late-night retail standard are met by employers subject to the standard, CSHOs must not use the APP standard to impose more stringent requirements to address the same hazards.

E. Conducting Inspections.

In evaluating an employer's compliance with existing obligations under the Accident Prevention Program standard (WAC 296-800-14005) as they relate to workplace violence, CSHOs must follow these inspection procedures:

1. The CSHO must be alert to the presence of factors that **may** be associated with an increased risk of workplace violence, especially when inspecting an employer within an industry with a high rate of workplace violence injuries or

fatalities. The presence of one or more such factors, including those acknowledged by NIOSH (see background section, above) may not be significant in itself. The CSHO must consider the overall environment to determine whether the potential hazards pose a credible threat of physical injury.

2. When reviewing injury records and conducting interviews of employers, employees and their representatives, the CSHO must be alert to patterns of workplace violence incidents.
3. The CSHO also must review the employer's written Accident Prevention Program (APP) to determine whether it addresses any hazards identified by the CSHO.
 - a. If the APP does not address such hazards, then the CSHO must evaluate whether the employer was, or clearly should have been, aware of the hazard. If so, the CSHO must issue the appropriate violation under WAC 296-800-14005, or the equivalent vertical standard. If not, the CSHO must provide an appropriate advisory "message" on the citation and notice giving the employer the necessary guidance, rather than issuing a "violation" under WISHA.
 - b. If the APP addresses such hazards but is clearly insufficient, the CSHO must issue the appropriate violation under WAC 296-800-14005, or the equivalent vertical standard. Use of such a test does not allow the CSHO merely to substitute his or her judgment for the employer's with regard to either the extent of the hazard or the method of abatement; rather, considerable deference must be paid to the employer's analysis of the hazard and its appropriate abatement.
 - c. If the employer effectively addresses such hazards in employee handbooks or other written materials (and if the guidance found in the handbooks or other materials has actually been put into effect by the employer) other than the APP, any APP violation must be treated as de minimus and therefore not cited.
 - d. If the APP sufficiently addresses existing workplace violence hazards but is not enforced, the CSHO may issue a violation of WAC 296-800-14025 as appropriate.

F. Applying the “Safe Place” Standard.

Safe place citations under WAC 296-800-11005 (or the equivalent requirement in a vertical standard) must be issued only if no specific standard applies and are subject to the guidance regarding safe place provisions, in the DOSH Compliance Manual. This detailed guidance describes the appropriate approach in determining the presence of the following four elements of any safe place citation:

1. The employer must have failed to keep the workplace free of a hazard to which employees of that employer were exposed
2. The hazard must be recognized by the employer, by the industry, or by “common sense”
3. The hazard must be causing or likely to cause death or serious physical harm
4. There was a feasible and useful method to correct the hazard.

G. Management Responsibility.

When staff encounters situations related to employee-on-employee violence, or other situations involving a specific situation where the employer may have failed to provide sufficient protection, staff must take care not to base their conclusions solely on the fact that an incident occurred. A citation of WAC 296-800-11035 in such circumstances may be issued only if the department concludes that the employer clearly failed to respond in a reasonable manner based on what the employer knew or clearly should have known at the time of the incident.

H. Personal Protective Equipment (PPE).

If personal protective equipment (PPE) would be an appropriate response to any identified hazards, the CSHO must determine whether the employer performed an analysis of hazards that might necessitate the use of PPE, as required by the PPE standard (WAC 296-800-16005). If the hazard is recognized and no such analysis has been performed, the CSHO must issue the appropriate citation under WAC 296-800-16005.

If the employer has performed the required analysis, the CSHO must determine whether the decisions resulting from the analysis were reasonable. Use of such a test does not allow the CSHO merely to substitute his or her judgment for the employer's with regard to the hazard and its appropriate abatement).

I. Voluntary L&I Guidelines.

Voluntary workplace violence guidelines issued by L&I may not be used as a basis for a citation, nor may such guidelines be used to demonstrate an employer's knowledge of a hazard for enforcement purposes.

J. Coding in the WIN System.

All inspections where workplace violence issues are reviewed, whether cited or not, must be coded "Workplace Violence" in the Special Tracking Information box, located on the WIN Inspection screen. All consultations where workplace violence issues were reviewed must be coded "Workplace Violence" in the Emphasis Information box on the WIN Consultation Visit screen.

Approved:



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