

12 NYCRR PART 800.16

PUBLIC EMPLOYER WORKPLACE VIOLENCE PREVENTION PROGRAMS

800.16-1

1.1 Title and Citation: Within and for the purposes of the Department of Labor, this part may be known as Code Rule 800.16 Public Employer Workplace Violence Prevention Program, relating to requirements of public employers to develop and implement programs to prevent and minimize workplace violence; allows any employee or representative of employees who believes that a serious violation of this safety or health standard exists, or an imminent danger exists, to request an inspection by the Department of Labor; and provides for the enforcement of such requirement by the Commissioner of Labor. It may be cited as Code Rule 800.16 “Public Employer Workplace Violence Prevention Programs” as an alternative and without prejudice to its designation and citation established by the Secretary of State.

1.2 Purpose and Intent: It is the purpose of this Part to ensure that the risk of workplace violence is evaluated by affected public employers and their

employees and that such public employers design and implement protection programs to minimize the hazard of workplace violence to employees.

1.3 Application: This Part shall apply throughout the State of New York to the State, any political subdivision of the State, public authorities, public benefit corporations or any other governmental agency or instrumentality thereof.

This part shall not apply to any employer as defined in Section twenty-eight hundred one-a of the Education Law.

800.16-2

DEFINITIONS

Terms: As used in or in connection with this Part, the following terms mean:

a) Authorized Employee Representative. An employee selected by the employees or the designated representative of an employee organization recognized or certified to represent the employees pursuant to Article 14 of the Civil Service Law.

b) Commissioner. The Commissioner of Labor of the State of New York or his or her duly authorized representative for the purposes of implementing this Part.

c) Employee. A public employee working for an employer.

d) Employer. The State, any political subdivision of the State, public authorities, public benefit corporations and any other governmental agency or instrumentality thereof. But, shall not apply to any employer as defined in Section twenty-eight hundred one-a (2801a) of the Education Law.

e) Imminent Danger: Any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided for by this Part.

f) Participation of the Authorized Employee Representative. The Authorized Employee Representative is given an opportunity to contribute

information, assist with analyzing statistics and conducting the workplace risk evaluation and determination and participate in incident reviews. The responsibility for preparing, determining the content of, and implementing the requirements of this part remain with the employer.

g) Retaliatory Action. The discharge, suspension, demotion, penalization or discrimination against any employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

h) Risk Evaluation and Determination. An employer's inspection or examination of their workplace to determine if existing or potential hazards exist that might place employees at risk of workplace violence. A risk evaluation shall include, but is not limited to, a review of previous workplace incidents, review of the Log of Work-Related Injuries and Illnesses, a survey of employees asking what conditions could be contributing to potential incidents, site security and inspection surveys.

i) Serious physical harm. Impairment of the body so as to render the body part affected functionally useless or substantially reduced in efficiency.

- j) **Serious Violation:** A serious violation shall be deemed to exist in a place of employment if there is substantial probability that death or serious physical harm could result from a condition which exists , or from one or more practices, means , methods, operations, or process which have been adopted or are in use, in such place of employment.
- k) **Supervisor.** Any person within the employer's organization who has the authority to direct and control the work performance of an employee, or who has the authority to take corrective action regarding the violation of a law, rule or regulation to which an employee submits written notice.
- l) **Workplace.** Any location away from an employee's domicile, permanent or temporary, where an employee performs any work-related duty in the course of his or her employment by an employer.
- m) **Workplace Violence.** Any physical assault, threatening behavior, verbal abuse occurring where a public employee performs any work related duty in the course of his or her employment.

n) Workplace Violence Incident. A workplace violence incident is defined as one or more of the following:

- (1) An attempt or threat whether verbal or physical to inflict injury upon another employee;
- (2) Any intentional display of force which would give an employee reason to fear or expect bodily harm;
- (3) Intentional and wrongful physical contact with a person without his or her consent that entails some injury or offensive touching;
- (4) Harassment of a nature that would give an employee reason to fear escalation or make it difficult to pursue a normal life when the harassment arises out of or in the course of employment;
- (5) Stalking an employee with the intent of causing fear when such stalking has arisen through or in the course of employment.

o) Workplace Violence Prevention Program. An employer program designed to prevent, minimize and respond to any physical assault, threatening behavior or verbal abuse occurring in the workplace. Article 2 Section 27b of the New York State Labor Law requires that employers must develop and implement a Workplace Violence Prevention Program.

The Workplace Violence Prevention Program shall be in writing if the public employer has 20 or more full time permanent employees.

800.16-3

MANAGEMENT COMMITMENT AND EMPLOYEE INVOLVMENT

3-1 Workplace Violence Policy Statement:

“The employer shall develop and implement a written policy statement on the employers’ “Workplace Violence Prevention Program” goals and objectives and provide for full employee and employee representative participation.”

The Workplace Violence Policy Statement shall be posted where notices to employees are normally posted. The policy statement shall briefly indicate the employer’s workplace violence prevention policy and alert and notification policies for employees to follow in the event of a workplace violence incident.

3-2 The responsibility for preparing and implementing the requirements of this Part remains with the employer. Local governments and all other public employers may elect to share resources in the development and implementation of their workplace violence prevention programs.

800.16-4

WORKPLACE EXAMINATION

4-1 Record Examination:

The employer shall examine any injury, illness, accident, incident or statistical record in their possession to identify trends and the type and cause of injuries. The examination shall look to identify patterns of injuries in particular areas of the work place or incidents which involve specific operations or specific individuals.

4-2 Workplace Evaluation and Determination

The employer, with the participation of the Authorized Employee Representative shall evaluate the workplace to determine the presence of factors or situations which may place employees at risk of workplace violence. The Department of Labor has tools to aid employers in performing this evaluation which will be posted on the Departments internet site

Factors which might place an employee at risk include but are not limited to:

- 1) Working in public settings (e.g. Social Service Workers, Police Officers, Firefighters, Teachers, Public Transportation Drivers, Health Care Workers, other Governmental Workers or Service Workers.
Working late night or early morning hours;
- 2) Exchanging money with the public;
- 3) Working alone or in small numbers;
- 4) Uncontrolled access to the workplace; or
- 5) Areas of previous security problems.

800.16-5

THE WORKPLACE VIOLENCE PREVENTION PROGRAM

5-1 Employers with 20 or more full time permanent employees, with the participation of the Authorized Employee Representative, shall develop a written workplace violence prevention program.

5-2 The workplace violence prevention program shall include the following:

- a) A list of the risk factors identified in the workplace examination;
- b) The methods the employer will use to prevent the incidence of workplace violence incidents at such workplace or workplaces, including but not limited to:
 - 1) Making high risk areas more visible to more people;
 - 2) Installing good external lighting;
 - 3) use drop safes or other methods to limit cash on hand;
 - 4) Post signs stating that limited cash is on hand;
 - 5) Providing training on conflict resolution and non violent self defense responses; and
 - 6) Establishing and implementing reporting systems for incidents of aggressive behavior.
- c) The Program shall adhere to a hierarchy of controls as follows:
engineering controls, work practice controls, and finally personal protective equipment;

- d) The employer shall address the methods and means to address each specific hazard identified in the workplace evaluation and determination;
- e) The employer shall address when crisis counseling will be provided, following generally accepted practices, after a work place violence incident for employees.
- f) The employer shall design and implement a workplace violence reporting system for any workplace violence incidents that occur in the workplace. The reports must be in writing and maintained for the annual program review; and
- g) An outline or lesson plan of employee training shall be made part of the written program.
- h) The program shall be reviewed and updated as necessary at least annually.

800.16-6

EMPLOYEE INFORMATION AND TRAINING

6-1 Upon completion of the Workplace Violence Prevention Program every employer shall provide each employee with information and training on the risks of workplace violence in their workplace or workplaces at the time of the employees' initial assignment and at least annually thereafter. Retraining shall be provided whenever significant changes are made to the workplace violence program. At a minimum training shall address the following:

- a) Employers shall inform employees of the requirements of this Part and the risk factors in their workplace that were identified in the risk evaluation and determination;
- b) The measures that employees can take to protect themselves from the identified risks including specific procedures that the employer has implemented to protect employees such as incident alert and notification procedures, appropriate work practices, emergency procedures, use of security alarms and other devices;
- c) Employers with 20 or more full time permanent employees shall inform employees of the location of the written workplace violence program and how to obtain a copy.
- d) A review of procedures for providing crisis counseling to affected employees after an incident and the protocol developed to determine when such counseling should be made available.

800.16-7

RECORDKEEPING AND RECORDING OF WORKPLACE

VIOLENCE INCIDENTS

7-1 Employers shall develop and implement protocols for the reporting of workplace violence incidents which includes procedures for reporting incidents that may be of a criminal nature to the appropriate police agency. An employee's right to pursue a criminal complaint shall not be infringed upon.

7-2 Employers at sites where there is a developing pattern of workplace violence incidents which may involve criminal conduct or a serious injury shall attempt to develop a protocol with the District Attorney or Police to insure that violent crimes committed against employees in the workplace are promptly investigated and appropriately prosecuted. The employer shall provide information on such protocols and contact information to employees who wish to file a criminal complaint after a workplace violence incident.

7-3 Workplace violence reports and recordkeeping:

The employer shall develop and maintain a workplace violence incident report that can be in any format but at a minimum contains the following information:

- a) Workplace location;
- b) Time of day/ shift;
- c) Incident description including what happened immediately prior to the incident and how the incident ended;
- d) Names and job titles of involved employees;
- e) Name or other identifier of individuals involved;
- f) Extent of injuries;
- g) Names of witnesses; and
- h) An explanation of the actions the employer has or is in the process of taking to mitigate future incidents with a time table for correction where appropriate. Interim protective measures shall also be listed.

The employer shall address global (all similar worksites) enhancements which become apparent are necessary to protect all employees.

7-4 The Workplace Violence Incident reports must be maintained for use in annual program review and updates.

7-5 This Requirement does not relieve an employer of the recordkeeping requirements of 12NYCRR Part 801.

7-6 The employer with the participation of the authorized employee representative shall conduct a review of the work place violence incident reports at least annually to identify trends in the types of incidents in the workplace and review of the effectiveness of the mitigating actions taken.

800.16-8

EMPLOYEE ACCESS TO INFORMATION

8-1 Every employer with at least 20 permanent full time employees shall make the written workplace violence prevention program available to Employees, Authorized Employee Representatives and the Commissioner, for reference in the work area during the regularly scheduled shift.

800.16-9

EMPLOYEE REPORTING OF WORKPLACE VIOLENCE PREVENTION CONCERNS OR INCIDENTS

9-1 Any employee or their representative who believes that a violation of the employer's workplace violence protection program exists, or that an workplace violence imminent danger exists, shall bring such matter to the attention of a supervisor in the form of a written notice and shall afford the employer a reasonable opportunity to correct such activity, policy or practice.

9-2 Written notice to an employer shall not be required where workplace violence imminent danger exists to the safety of a specific employee or to the general health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

9-3 If following a referral of such matter to the employee's supervisor's attention and after a reasonable opportunity to correct such activity, policy

or practice the matter has not been resolved and the employee or the employee representative still believe that a violation of a workplace violence prevention program remains, or that an imminent danger exists, such employee may request an inspection by giving notice to the Commissioner of Labor of an alleged violation of this Part. Such notice and request shall be in writing, shall set forth with reasonable particularity the grounds for the notice and shall be signed by such employee or their representative. A copy of the written notice shall be provided by the Commissioner to the employer or the person in charge no later than the time of inspection, except that at the request of the person giving such notice, such person's name and the names of individual employees or representatives of employees shall be withheld. Such inspection shall be made forthwith by the Commissioner.

9-4 No employer shall take retaliatory action against any employee because the employee exercises any right accorded him or her by this Part.

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EFFECTIVE DATES

10-1 The Employers Policy Statement required by section 3-1 shall be complete 30 days after the effective date of this Part.

10-2 The workplace examination required by section 4 of this Part shall be completed within 60 days of the effective date of this Part.

10-3 The workplace violence prevention program required by section 5 shall be complete within 75 days of the effective date of this Part.

10-4 Employers shall be in compliance with the entire Part within 120 days of the effective date of this Part.