S T A T E O F N E W Y O R K

4856

2011-2012 Regular Sessions

I N A S S E M B L Y

February 8, 2011

Introduced by M. of A. LANCMAN, GOTTFRIED -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to the prevention of violence in health care workplaces

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "health care workplace violence prevention act".

S 2. Legislative findings. The legislature finds and declares that for many years health care workers have faced a significant risk of job-related violence.

The federal Bureau of Labor Statistics ("BLS") reports that incidents of homicide nationally for health care practitioners and technical occupations as well as for health care support occupations more than doubled from 2007 to 2009. National injury rates also reveal that health care workers are at high risk of violent assault at work. BLS data shows that nationally, out of the 111 workplace fatalities that occurred in the health care industry in 2009, 41 (36.9%) were caused by assaults and violent acts. This is an increase of 74.5% since 2005.

Although workplace fatalities, including homicides, may attract more attention, the vast majority of workplace violence consists of non-fatal assaults. New York state workers' compensation board data on all New York state injury or illness claims show that the claims caused by assault in the health care industry have been consistently higher than the state average across all industries. From 2008-2009, the percentage of assaults and violent acts by persons of all claims was 6%, while in hospitals it was 18.3%; and in nursing residential care facilities it was 20%. In data compiled nationally by BLS on non-fatal injury and illness across all private industries in 2009, the rate of assault and violent acts by persons per 10,000 full-time workers is 3.9. Comparatively, the rate of assault for nursing aides, orderlies and attendees

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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was 33.8 assaults and violent acts by a person per 10,000 full-time workers.

Recent local examples of workplace violence in the health care industry include Danbury Hospital in Bridgeport, Connecticut and St. Barnabas Hospital in Bronx, New York. In July 2010, the federal Occupational Safety and Health Administration (OSHA) cited Danbury Hospital for "failing to provide its employees with adequate safeguards against workplace violence". At Danbury Hospital, OSHA found twenty-five instances of patient violence against hospital employees that resulted in lost workdays or restricted duty for employees in the five years prior to the inspection. OSHA also found at Danbury Hospital that the hospital's workplace violence program was incomplete and ineffective at preventing these instances of violence. In a 2010 OSHA inspection, OSHA found that St. Barnabas Hospital "did not have an effective workplace violence prevention program". At St. Barnabas, forty employee injuries caused by patient assault on employees were recorded in 2009 that either resulted in lost workdays or medical treatment beyond first aid.

OSHA identifies several factors accounting for the increased risk of work-related assaults on health care workers. These include the prevalence of handguns and other weapons among patients, their families or friends in hospital emergency rooms; the increasing use of hospitals by police and the criminal justice system for holding and caring for acutely disturbed, violent individuals; the increasing number of acute and chronic mentally ill patients being released from hospitals without follow-up care (these patients have the right to refuse medicine and can no longer be hospitalized involuntarily unless they pose an immediate threat to themselves or others); the availability of drugs or money at hospitals, clinics and pharmacies, making them likely robbery targets; factors such as the unrestricted movement of the public in clinics and hospitals and long waits in emergency or clinic areas that lead to patient frustration over an inability to obtain needed services promptly; the increasing presence of gang members, drug or alcohol abusers, trauma patients or distraught family members; low staffing levels during times of increased activity such as mealtimes, visiting times and when staff are transporting patients; isolated work with clients during examinations or treatment; solo work, often in remote locations with no backup or way to get assistance, such as communication devices or alarm systems (this is particularly true in high-crime settings); lack of staff training in recognizing and managing escalating hostile and assaultive behavior; and poorly lit parking areas.

Workplace violence prevention programs, which include management and employee collaboration, worksite analysis, hazard prevention and control, safety and health training, and recordkeeping and program evaluation, can reduce incidents of workplace violence.

S 3. The section heading, subdivision 1 and paragraphs a and b of subdivision 2 of section 27-b of the labor law, as added by chapter 82 of the laws of 2006, are amended to read as follows:

Duty of public AND HEALTH CARE employers to develop and implement programs to prevent workplace violence. 1. Purpose. The purpose of this section is to ensure that the risk of workplace assaults and homicides is evaluated by affected public AND HEALTH CARE employers and their employees and that such employers design and implement workplace violence protection programs to prevent and minimize the hazard of workplace violence to public AND HEALTH CARE employees.

a. "Employer" means: (1) the state; (2) a political subdivision of the state, provided, however that this subdivision shall not mean any

employer as defined in section twenty-eight hundred one-a of the education law; [and] (3) a public authority, a public benefit corporation, or any other governmental agency or instrumentality thereof; AND (4) A HEALTH CARE PROVIDER LICENSED UNDER ARTICLE TWENTY-EIGHT OR THIRTY-SIX OF THE PUBLIC HEALTH LAW OR ARTICLE SIXTEEN OF THE MENTAL HYGIENE LAW.

b. "Employee" means [a public] AN employee working for an employer.

S 4. The provisions of this act shall not diminish the rights of employees pursuant to any law, rule, regulation or collective bargaining agreement.

S 5. Nothing in this act shall change or alter an entity's obligation to comply with any otherwise applicable workplace safety standards established by law or otherwise. Any provision of this act which jeopardizes an entity's receipt of Medicaid or Medicare reimbursement shall be null and void with regard to such entity.

S 6. This act shall take effect on the two hundred seventieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.