

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

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

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

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

14 Although workplace fatalities, including homicides, may attract more
15 attention, the vast majority of workplace violence consists of non-fatal
16 assaults. New York state workers' compensation board data on all New
17 York state injury or illness claims show that the claims caused by
18 assault in the health care industry have been consistently higher than
19 the state average across all industries. From 2008-2009, the percentage
20 of assaults and violent acts by persons of all claims was 6%, while in
21 hospitals it was 18.3%; and in nursing residential care facilities it
22 was 20%. In data compiled nationally by BLS on non-fatal injury and
23 illness across all private industries in 2009, the rate of assault and
24 violent acts by persons per 10,000 full-time workers is 3.9. Compar-
25 atively, 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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1 was 33.8 assaults and violent acts by a person per 10,000 full-time
2 workers.

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

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

41 Workplace violence prevention programs, which include management and
42 employee collaboration, worksite analysis, hazard prevention and
43 control, safety and health training, and recordkeeping and program eval-
44 uation, can reduce incidents of workplace violence.

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

48 Duty of public AND HEALTH CARE employers to develop and implement
49 programs to prevent workplace violence. 1. Purpose. The purpose of this
50 section is to ensure that the risk of workplace assaults and homicides
51 is evaluated by affected public AND HEALTH CARE employers and their
52 employees and that such employers design and implement workplace
53 violence protection programs to prevent and minimize the hazard of work-
54 place violence to public AND HEALTH CARE employees.

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

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

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

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

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

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