

Caring for Our Caregivers: House Subcommittee Holds Hearing on Healthcare Workplace Violence Bill

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By [Dee Anna D. Hays](#)

On February 27, 2019, the U.S. House Subcommittee on Workforce Protections held a hearing on House Resolution 1309, the Workplace Violence Prevention for Health Care and Social Service Workers Act, introduced by Representative Joe Courtney (D-CT).



On February 27, 2019, the U.S. House Subcommittee on Workforce Protections held a hearing on [House Resolution 1309](#), the Workplace Violence Prevention for Health Care and Social Service Workers Act, introduced by Representative Joe Courtney (D-CT). Courtney introduced a prior version of the bill in November 2018, [House Resolution 7141](#), but it did not move forward. Nevertheless, this hearing indicates that the current bill might not suffer the same fate.

Like its predecessor, the current bill would force the Occupational Safety and Health Administration (OSHA) to issue an occupational safety and health standard that requires covered employers within the healthcare and social service industries to develop and implement comprehensive workplace violence prevention plans. The core of the bill centers on giving teeth to OSHA's [Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers](#).

During the hearing, proponents of the bill argued that workplace violence in healthcare and social service settings has received scant attention. One such supporter, Dr. Jane Lipscomb, Ph.D., R.N., testified that “[h]ealth care workers face higher on-on-job injury and illness rates than workers in mining, manufacturing and construction—yet fail to garner the attention commensurate with this statistic.”

The bill acknowledges that OSHA already frequently cites employers for failing to take steps to prevent workplace violence under the General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act of 1970 (OSH Act), but emphasizes that employer organizations have challenged the agency's authority to do so. Under the clause, all employers are required to keep their workplaces “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” OSHA's stance that workplace violence is a serious, recognized hazard in several high-risk industries, including healthcare, is undisputed.

The bill is onerous for employers, requiring each workplace violence prevention plan to include:

- designation of an individual responsible for implementing the plan;
- risk assessments and identification of potential workplace violence hazards (informed by specific past violent incidents);
- “[h]azard prevention, engineering controls, or work practice controls to correct, in a timely manner, hazards that the employer creates or controls applying industrial hygiene principles of the hierarchy of controls”;
- “[r]eporting, incident response, and post-incident investigation procedures”;
- “[p]rocedures for emergency response, including procedures for threats of mass casualties and . . . incidents involving a firearm or a dangerous weapon”;
- employee training;
- “[p]rocedures for coordination of risk assessment efforts, [p]lan development, and implementation of the [p]lan with other employers who have employees” involving the same facility or services; and
- annual evaluations.

If passed, the bill would require OSHA to adopt an interim final standard on workplace violence prevention within 1 year of its enactment, promulgate a proposed final standard within 2 years of enactment, and then

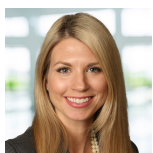
issue a final standard within 42 months of enactment. If OSHA fails to timely adopt an interim final standard as outlined in the bill, then the provisions set forth in the bill would go into effect and have the same weight as an OSHA standard until superseded by a proper interim final rule.

Opponents of the bill testified that, by proceeding directly to an enforceable interim final standard, the bill bucks the traditional rulemaking procedures set forth under the OSH Act and the Administrative Procedure Act; namely, that employers and other stakeholders would not be afforded due opportunity to provide input, as contemplated by both acts. Moreover, workplace violence and effective intervention modalities have not yet been sufficiently researched and are not fully understood, and the effectiveness of the OSHA guidelines embraced by the bill is unknown.

OSHA's maximum penalty amounts increased on January 23, 2019. "Serious and Other-Than-Serious" citations can now cost as much as \$13,260 per violation; "Willful or Repeated" citations can cost as much as \$132,598 per violation.

The implications of the bill are widespread as momentum for similar legislation continues to build. Employers may want to monitor the status of the bill and this rapidly developing area of law. Employers may also want to develop workplace violence prevention programs appropriate for their particular industries and to train managers and employees accordingly.

AUTHOR



Dee Anna D. Hays

Shareholder, Tampa

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