



Municipalities Information Memo

November 2006

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NEW STATE LAW AIMS TO COMBAT PUBLIC EMPLOYER WORKPLACE VIOLENCE

The New York legislature recently enacted a new statute requiring New York public employers to develop and implement a program to prevent workplace violence. As more fully set forth below, the new law, which is effective March 4, 2007, requires a public employer to: (1) evaluate its workplace to assess the risk of workplace violence; (2) develop a written workplace violence prevention program; and (3) implement an annual employee training program concerning issues related to workplace violence. The law also requires public employers to implement a system for employees to report serious violations of the employer's workplace violence protection program or to report other imminent dangers in the workplace. Where the public employer fails unreasonably to correct the problem, the reporting employee may request that the New York Department of Labor conduct an inspection of the premises.

The law, codified as section 27-b of the New York Labor Law, applies to all public employers, including state and local governments, public authorities, public benefit corporations and any other governmental agency or instrumentality thereof. The requirement to develop a written workplace violence prevention program and to implement an employee training program, as more fully described below, applies only to public employers who employ at least twenty (20) full time, permanent employees. The new law does not apply to school districts, which are required to maintain their own school safety plans pursuant to Section 2801-a of the Education Law.

Risk Evaluation

The law requires that all public employers (even those that do not employ twenty (20) or more full time permanent employees) evaluate the presence of risk factors or workplace situations that may put employees at risk of occupational assaults and homicides. The law contains a non-exclusive list of factors which an employer must consider:

- Do the employees work in the public setting? (e.g., social services workers, police officers, firefighters, teachers, public transportation drivers, health care workers and service workers);
- Do the employees work at night or early morning?
- Do the employees exchange money with the public?
- Do the employees work alone or in small numbers?
- Is there uncontrolled access to the workplace?
- Are there areas of previous security problems at the workplace?

Written Workplace Violence Prevention Program

Public employers who employ twenty (20) or more full time permanent employees also must develop and implement a written workplace violence prevention program. The written program must include: (1) a list of the risk factors identified by the employer in its risk evaluation process described above; and (2) a description of the methods the employer will use to prevent occupational assaults and homicides. The law contains a non-exclusive list of the methods an employer may implement to prevent workplace violence:



- Making high-risk areas more visible to more people;
- Installing good external lighting;
- Using drop safes or other methods to minimize cash on hand;
- Posting signs stating that limited cash is on hand;
- Providing training in conflict resolution and nonviolent self-defense responses; and
- Establishing and implementing a reporting system for incidents of aggressive behavior.

Employee Information and Training Program

Public employers who employ twenty (20) or more full time permanent employees must make the written workplace violence prevention program available, upon request, to employees and their designated representatives (i.e., union officials), and also must implement an employee information and training program on the risks of occupational assaults and homicides in the workplace. This training program must occur at the time of initial assignment and annually thereafter.

The training program must include, at a minimum, the following: (1) a description of the measures employees can take to protect themselves, including the specific procedures implemented by the employer to protect employees (e.g., appropriate work practices, emergency procedures, use of security alarms and other devices); and (2) a description of the details of the workplace violence prevention program developed and implemented by the employer.

Reporting System for Serious Violations The law also requires the implementation of a reporting system for employees to use if they believe a serious violation of the employer's workplace violence prevention program exists or an imminent danger otherwise exists. According to the new law, an employee must report the matter to his or her supervisor in the form of a written notice. The employer must be given a reasonable opportunity to correct the matter. The requirement to provide written notice to a supervisor does not apply where an imminent danger or threat exists with respect to a specific employee (or general health of a patient in the health care setting) and the employee reasonably believes in good faith that reporting to the supervisor would not result in corrective action.

Where an employee has reported an issue and the public employer has not corrected the matter after a reasonable period of time, the employee (or employee representative) may request that the Department of Labor conduct an inspection of the workplace. A request to the Department of Labor for an inspection must: (1) be in writing; (2) state with reasonable particularity the grounds for the requested inspection; and (3) be signed by the employee or employee's representative.

The law only requires that the Department of Labor provide a copy of the request for an inspection to the public employer no later than the time of the inspection. Therefore, the Department of Labor may arrive to conduct an inspection with no prior notice to the employer. In addition, upon request by the employee, the Department of Labor may withhold the name of the employee or employee representative who requested the inspection on the copy provided to the employer at or before the time of inspection. A representative of the employer and an employee representative must be given an opportunity to accompany Department of Labor officials during the inspection. Furthermore, the Department of Labor is not limited to conducting an inspection only with respect to the particular alleged violation, but "may inspect any other area of the premises in which he or she has reason to believe that a serious violation" exists. The law also authorizes the Department of Labor to conduct an inspection of an employer's premises on its own initiative, without a prior request from an employee or an employee representative. Finally, the law requires the Department of Labor to adopt rules and regulations implementing the statutory provision by July 3, 2007. The Department of Labor has not yet provided any draft or initial regulations with respect to this new law.

No Retaliation

The law also prohibits an employer from retaliating against an employee who has: (1) reported an alleged serious violation to a supervisor; (2) requested an inspection by Department of Labor officials; or (3) accompanied Department of Labor officials during the inspection.

Development of Workplace Violence Protection Program and Employee Training Program

Bond, Schoeneck & King attorneys have extensive experience in working with employers to develop various workplace policies and to implement and conduct training programs for employees. We frequently provide training for employers on risk management topics, including workplace violence training. We can assist you in developing a written workplace violence prevention program as well as the required annual employee training. Given the effective date of March 4, 2007, public employers will have a very short window to ensure compliance with this new legislation.

Should you have further questions with respect to this issue, please contact:

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