



# **Micro-Webinar Series:** Hot Topics in Employment Law for Massachusetts Health Care Organizations

## **Part 2 – Workplace Violence Prevention**

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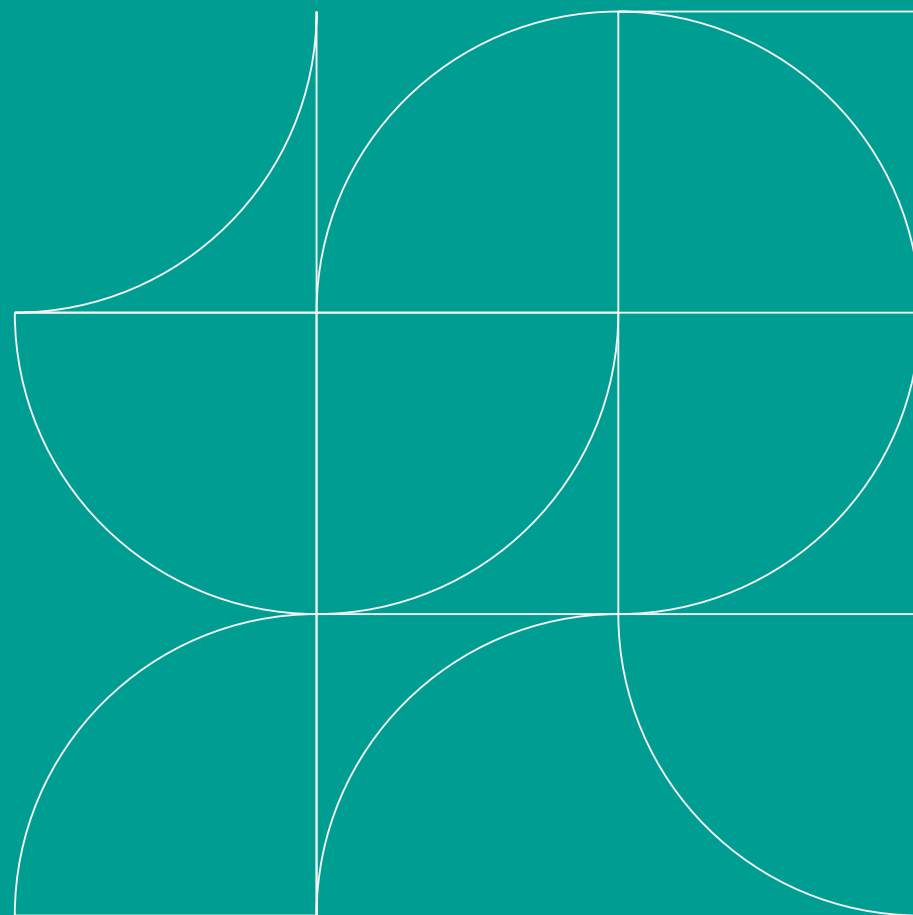
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# Agenda

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- 01** Costs and Defining WPV
- 02** OSHA WPV Enforcement in Health Care
- 03** Discrimination and Tort Liabilities
- 04** Workplace Violence Prevention Plans

# Workplace Violence in Health Care



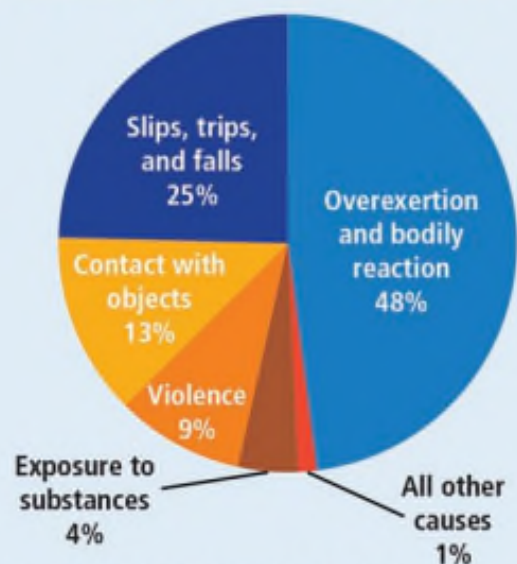
# Statistics on Workplace Violence

- Employers spend **\$4.2 Billion**/year due to workplace violence.
- Hospitals spend **\$2 Billion**/year on workers' compensation.
- Most common type of workplace victimization is **simple assault**
- Of the **5,147** fatal workplace injuries that occurred in the United States in 2017, **458** were cases of intentional injury by another person (about 9%).
- Estimated **6,000** reported rapes and sexual assaults in the workplace per year
- Domestic violence is the **3rd** leading source of conflict leading to death in the workplace.



# Statistics on Workplace Violence in Hospitals

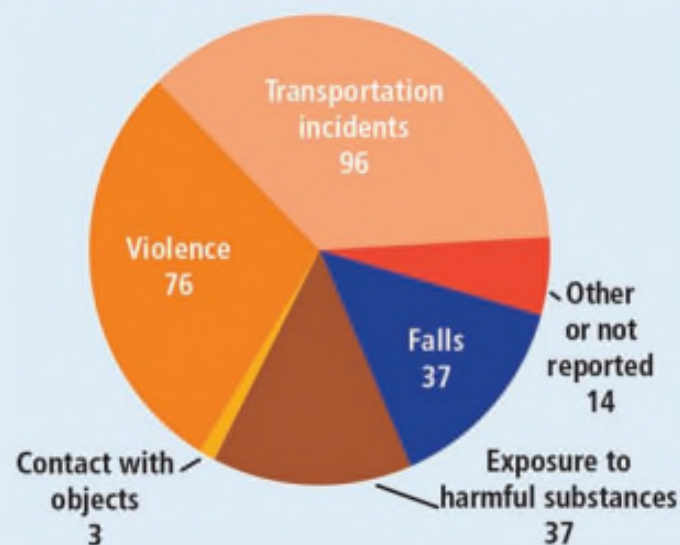
**Figure 6. Hospital Worker Injuries Resulting in Days Away from Work, by Event or Exposure, 2011<sup>7</sup>**



*Data source: Bureau of Labor Statistics, 2011 data*

This figure shows the distribution of events or exposures that led to injuries and illnesses resulting in days away from work, in hospitals, in 2011. These categories are coded as "event or exposure" in BLS data sets.

**Figure 8. Causes of Fatal Workplace Injuries in Hospitals, 2003–2011<sup>9</sup>**



*Data source: Bureau of Labor Statistics*

This graph shows the distribution of workplace fatalities in hospitals, by cause. Data have been aggregated for the 2003–2011 period to provide a sufficient sample size for analysis.

# Defining Workplace Violence

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“Violence” means the attempted, threatened, or actual conduct that causes and/or is likely to cause injury, including any threatening statement or behavior which gives an employee reasonable cause to believe that he/she or other worker is at risk of injury.

## Type 1

Individual with no connection to the workplace commits a crime

## Type 2

Violent act by an individual directed to an employee at the workplace by a customer or client

## Type 3

Violent act by a current or former employee directed at another employee

## Type 4

Violent act at the workplace by another person who has a relationship with an employee

# OSHA Enforcement on Workplace Violence

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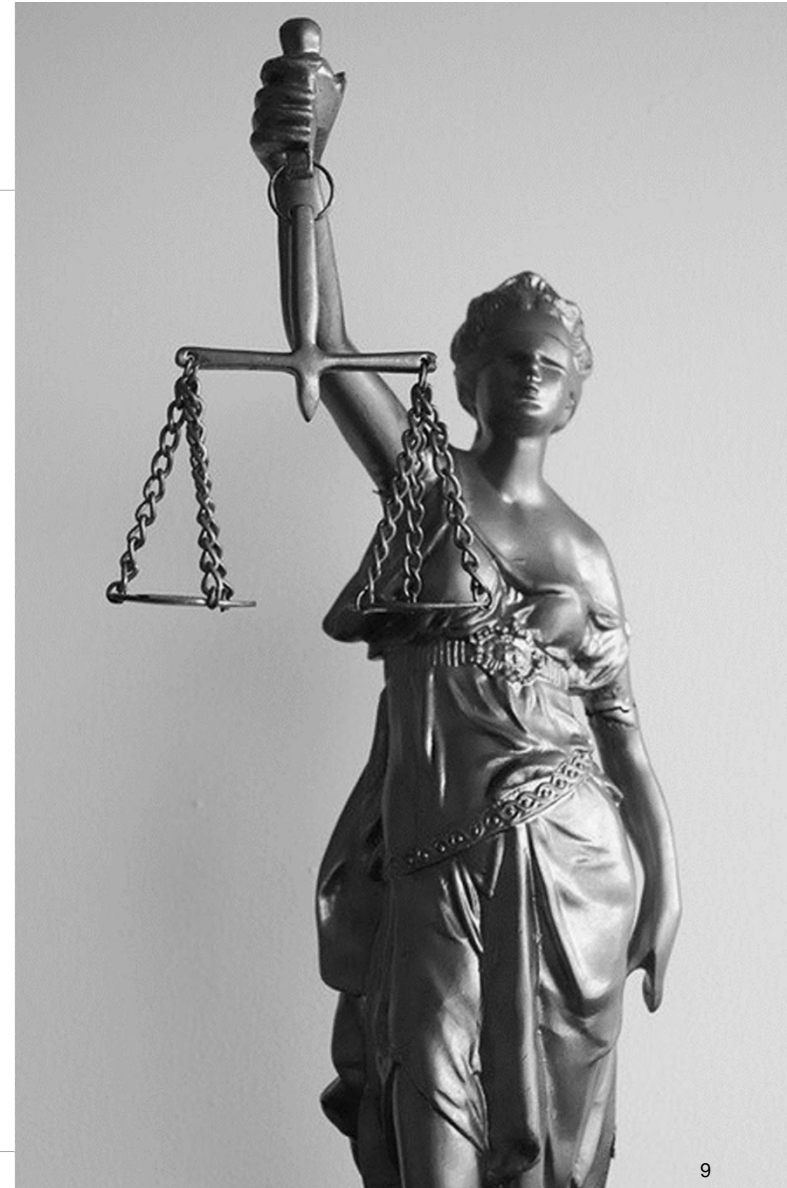
- General Duty Clause
- Record-keeping Regulations
- Workplace Violence in Health Care Standard (CA)
- Workplace Violence in Health Care Standard (Federal, Pending)
- Pending MA legislation





# Legal Issues Caused by Workplace Violence

- Workers' Compensation
  - Exclusive Remedy
- Common Law
  - Negligent Hiring, Negligent Retention, Negligent Supervision, Negligent Training, etc.
- Title VII Civil Rights Act
  - Prevention of Workplace Harassment which may lead to violence
- ACA Section 1557



## Legal Limitations



### **Americans With Disabilities Act**

- Who is covered?
- Disability vs. Behavior
- Reasonable Accommodation
- Direct Threat Analysis

# OSHA Workplace Violence Guidance and Procedures

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- OSHA Worker Safety in Hospitals: Caring for our Caregivers  
<https://www.osha.gov/hospitals/workplace-violence/>
- Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers  
<https://www.osha.gov/sites/default/files/publications/osha3148.pdf>
- Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence  
<https://www.osha.gov/enforcement/directives/cpl-02-01-058>



# OSHA Enforcement of Workplace Violence Against Behavioral Health Centers

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- Employee complaints to OSHA
- OSHA WPV Inspections
- OSHA enforcement positions
- Trial experience
  - Expert testimony



# Adoption of Formal Workplace Violence Prevention Plan

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- Organization's commitment to protecting employees
- Workplace hazard analysis (updates)
- Means and methods to notify the employer of perceived or actual threats
  - Means to investigate promptly
- Examples of prohibited conduct
- No weapons on premises
- All organization facilities subject to search
- Cooperation of supervisors, managers and all employees
- Employee involvement (?)



# Nuances to Workplace Violence Policies

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- Crafting a policy for patient populations with mental health conditions
  - Owning Zero-Tolerance
- Workplace Violence Prevention Plan
  - Engineering controls
  - Administrative controls



# Additional Requirements

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- Mandatory safety concern reporting
  - Hotline
- Mandatory injury reporting
  - As soon as reasonably aware
- Incident logging
- OSHA recordkeeping
  - OSHA inspection will review Form 300 logs
- OSHA Serious Injury Reporting
- Post-incident drug testing (?)
- Employee Assistance Programs (EAP)



# Potential Action Items from Plan

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- Engineering controls
  - Parking
  - Lighting
  - Security cameras
  - Plexiglass / Dividers
- Administrative controls
  - Employee training
  - Security training
  - Emergency response
  - De-escalation
- Response to employee concerns
- Appropriate treatment of patients





# Workplace Violence: Potential Problem Sources

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- Mishandled termination or discipline
- Disgruntled former spouses or significant others
- Guns, alcohol, drugs on or influencing work site
- Retaliation by “accused”
- Inadequately trained or overzealous security personnel



# Thank You

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