



# Municipalities Labor Law Alert

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## NEW REGULATIONS REQUIRE PUBLIC EMPLOYER WORKPLACE VIOLENCE PREVENTION COMPLIANCE

On April 29, 2009, the New York State Department of Labor (“DOL”) published final regulations implementing the Public Employer Workplace Violence Prevention Act (Labor Law §27-b) (the “Act”), which requires public employers in New York to develop and implement a program to prevent workplace violence. The Act applies to all public employers in New York, other than school districts,<sup>1</sup> and requires that covered public employers take specific steps to reduce the likelihood of workplace violence. Although the Act became effective in March 2007, it took over two years for the regulations to be published in final form due to significant disagreements among the stakeholders concerning several of the regulations’ important provisions. The final regulations contain six key components.

<sup>1</sup> School districts are already required to implement their own school safety plans under existing law. (Education Law Section 2801-a).

### 1. Workplace Violence Policy Statement

On or before May 29, 2009, all covered public employers in New York must develop and implement a written policy statement concerning the employer’s workplace violence prevention program’s goals and objectives. The policy statement must be posted where employee notices are normally posted. Furthermore, the policy statement must provide a brief overview of the employer’s workplace violence prevention policy, and incident alert and notification system for employees to follow, in the event of a workplace violence incident.

### 2. Risk Evaluation and Determination

By June 29, 2009, covered public employers must perform risk evaluations of their workplaces. The term “workplace” is defined in the Act as “any location away from an

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employee's domicile, permanent or temporary, where an employee performs any work-related duty in the course of his or her employment by an employer." According to commentary by DOL concerning the final regulations, the agency believes that the term was defined broadly by the Legislature so that employers would develop policies and procedures to account for employees who work "in the field." Public employers, of course, may have multiple "workplaces" and the law requires that all workplaces be assessed as part of the risk evaluation.

The risk evaluation must include an examination of the written records of prior workplace violence incidents. The risk evaluation also must include an analysis of the employer's relevant policies, work practices, and work procedures which may have an impact on workplace violence. Finally, a public employer, along with authorized union representatives of the employees, must conduct an evaluation of the physical environment of the workplaces to assess any factors which may place employees at risk of workplace violence. The factors identified by DOL that may place employees at risk of workplace violence include, but are not limited to, the following:

- (1) Working in public settings;
- (2) Working late at night or early in the morning;
- (3) Exchanging money with the public;
- (4) Working alone or in small numbers;
- (5) Working in a location with uncontrolled public access to the workplace;
- (6) Other areas of the workplace with previous security problems.

### 3. Workplace Violence Prevention Program

By July 14, 2009, public employers **who employ twenty or more full time permanent employees** must develop, with the participation of the authorized union representative, a written workplace violence prevention program. According to the final regulations, the union representative's participation must include involvement in the risk evaluation and in developing the written program. Previously developed and implemented safety and health programs that were completed in order to comply with other federal, state or local regulations will suffice to satisfy the requirement to develop a written program, as long as such programs are modified to include the additional requirements of the new Act.

At a minimum, the written workplace violence prevention program must include the following:

- (1) A list of the risk factors identified during the risk evaluation and determination phase;
- (2) The methods the employer will use to prevent incidents of workplace violence;
- (3) A hierarchy of controls to which the program will adhere (such as engineering controls, work practice controls and personal protective equipment);
- (4) The method and means by which the employer will address each specific hazard identified in the workplace evaluation;
- (5) The development and implementation of a reporting system so that employees are able to report any workplace violence incidents that occur in the workplace;
- (6) A written outline or lesson plan for training employees regarding the program; and
- (7) A plan for program review and update on at least an annual basis.

A limited exception exists with respect to the disclosure in the written program of information that should be kept confidential for security reasons, as described in the final regulations.

#### 4. Employee Training

The final regulations also require that all public employers covered by the Act (*i.e.*, not just those public employers with 20 or more full time permanent employees) provide employees with information and training on the risks of workplace violence. This training must be provided at the time of the employee's initial assignment and at least annually thereafter.

The training must include the following:

- (1) Employees must be informed of the risk factors identified during the risk evaluation and determination phase and be provided with an overview of the requirements contained in the final regulations;
- (2) Employers must inform employees of the measures they can take to protect themselves from the identified risks, including any specific procedures that the employer has developed to protect employees, such as incident alert notification procedures, appropriate work practices, emergency procedures and use of security alarms or other devices;
- (3) Employers with 20 or more full time permanent employees (and who therefore have developed a written program) must inform employees as to the location of the written workplace violence prevention program and how to obtain a copy. The written program also must be available to the authorized union representative and the DOL Commissioner.

#### 5. Recordkeeping and Recording of Workplace Violence Incidents

The final regulations require covered public employers to establish and implement a reporting system for incidents of workplace violence. Reporting systems that have been implemented to comply with other federal, state or local laws are considered acceptable in satisfying this requirement, as long as they are modified to cover any additional information required by the new Act. At a minimum, a covered public employer must develop and maintain a Workplace Violence Incident Report that includes the following with respect to each incident that was reported:

- (1) The workplace location where the incident occurred;
- (2) The time of day or the shift when the incident occurred;
- (3) A detailed description of the incident, including the events leading up to the incident and how the incident ended;
- (4) The names and job titles of the employees who were involved;
- (5) The name or other identifier of other individuals who may have been involved;
- (6) The nature and extent of injuries arising from the incident; and
- (7) The names of any witnesses.

In certain circumstances that are deemed “privacy concern cases,” an employer must redact the victim’s name but otherwise complete a Workplace Violence Incident Report as described above.

## **6. Employee Reporting and Workplace Inspections**

The final regulations require that an employee or authorized union representative bring to the attention of a supervisor, in the form of a written notice, any concern that a “serious violation” of the workplace violence prevention program of the employer exists. A “serious violation” is defined as either a failure to develop and implement the program or a failure to address situations that could result in serious physical harm. After bringing the matter to the attention of a supervisor, the employee or the authorized union representative must afford the employer a reasonable opportunity to correct the issue. However, if after a reasonable opportunity to correct the concern has passed and the matter remains unresolved, then the employee or authorized union representative may request an inspection of the workplace by the DOL.

Employers must be in compliance with all aspects of the Public Employer Workplace Violence Prevention Act by August 28, 2009.

For further information about the Public Employer Workplace Violence Prevention Act and for assistance in meeting the requirements of the new regulations, including development of a workplace violence prevention program, the workplace evaluation process and employee training, please contact:

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