



MNOSHA Instruction **CPL 2-1.52A**

May 23, 2018

Reissued in accessible format: January 13, 2022

## **SUBJECT: Enforcement Procedures for Workplace Violence Incidents**

### **Purpose:**

To provide guidelines for reviewing, responding to and inspecting workplace violence incidents and enforcing existing standards to workplace violence hazards. This directive is not intended to require MNOSHA to respond to every report of workplace violence or require that citations be issued to every incident investigated. Rather, it provides guidance in determining whether to initiate an inspection and/or cite an employer.

### **Scope:**

MNOSHA-wide.

### **References:**

1. Minn. Stat. §182.653, Subd. 2, Rights and Duties of Employers (General Duty Clause).
2. NIOSH Publication No. 2006-144, "Workplace Violence Prevention Strategies and Research Needs"
3. Federal OSHA Instruction CPL 02-01-058, Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence.
4. MNOSHA Instruction ADM 3.16, Complaints and Information Requests
5. MNOSHA Instruction ADM 3.17, Referrals
6. MNOSHA Instruction ADM 3.18, Serious Injuries
7. MNOSHA Instruction ADM 3.19, Fatalities
8. MNOSHA Instruction ADM 4.2, Imminent Dangers
9. MNOSHA Field Compliance Manual (FCM)
10. Federal OSHA 3148-06R 2016 Guidelines for Preventing Workplace Violence

## Cancellation:

This instruction supersedes CPL 2-1.52, dated February 5, 2013.

## Background:

In response to the growing recognition of workplace violence as a hazard in the workplace, MNOSHA established a workplace violence team in 1993 to develop policy recommendations for addressing workplace violence in the state of Minnesota. Federal OSHA initially added workplace violence to its agenda in early 1994. There has not been a workplace violence standard promulgated by federal OSHA, but their directive (CPL 02-01-052) was issued September 2011.

The very nature of violence makes dealing with workplace violence complex. Violence by definition can encompass a wide spectrum of behavior - from verbal abuse to homicide. In addition, violence exists in all segments of society and a great deal of overlap can occur. For example, violence committed by members of the general public and domestic violence can spill over into the workplace, making it difficult to establish employer control.

Research has provided frameworks for developing methods to prevent or minimize the likelihood of workplace violence. In September 2006, NIOSH published "Workplace Violence Prevention Strategies and Research Needs." In it, NIOSH noted that a multidisciplinary team approach to workplace violence prevention was needed, which includes "management, union, human resources, safety and health, security, medical/psychology, legal, communications, and worker assistance."

## Action:

### A. Key Terms and Definitions.

**Workplace Violence.** For purposes of MNOSHA enforcement, workplace violence is the threatened or actual use of force directed at an employee in the workplace or while the employee is on duty that results in or has a high likelihood of causing serious injury or death; it does not include verbal abuse.

**Formal Complaint.** See ADM 3.16.

**Referrals.** See ADM 3.17.

**Serious Injury.** See ADM 3.18.

**Fatality/Catastrophe.** See ADM 3.19.

**Catastrophic Event.** See CPL 2.94.

**Types of Workplace Violence.** Classifications of workplace violence that describe the relationship between the perpetrator and the target of workplace violence are:

- Type 1 Criminal Intent. Violent acts by people who enter the workplace to commit a robbery or other crime or current or former employees who enter the workplace with the intent to commit a crime.
- Type 2 Customer/Client/Patient. Violence directed at employees by customers, clients, patients, students, inmates or any others to whom the employer provides a service.
- Type 3 Co-worker. Violence against co-workers, supervisors, or managers by a current or former employee, supervisor, or manager.
- Type 4 Personal. Violence in the workplace by someone who does not work there, but who is known to, or has a personal relationship with an employee.

**Industries with a High Risk of Workplace Violence Hazards:**

Healthcare & Social Service Settings. This category covers a broad spectrum of workers who provide healthcare and social services in psychiatric facilities, hospital emergency departments, community mental health clinics, drug abuse treatment clinics, pharmacies, community-care facilities, residential facilities and long-term care facilities. Workers in these fields include physicians, registered nurses, pharmacists, nurse practitioners, physicians' assistants, nurses' aides, therapists, technicians, public health nurses, home healthcare workers, social and welfare workers, security personnel, maintenance personnel and emergency medical care personnel.

Late-Night Retail Settings. This includes entities such as convenience stores, liquor stores and gas stations. Factors that put late-night retail employees at risk include the exchange of money, 24-hour operation, solo work, isolated worksites, the sale of alcohol and poorly-lit stores and parking areas.

## **B. Processing Reports of Workplace Violence**

The report of workplace violence may be made to MNOSHA as a formal complaint, referral, serious injury, fatality/catastrophe or catastrophic event. This directive does not change the procedures for processing formal complaints, referrals, serious injuries, fatalities/catastrophes or catastrophic events. Rather, this directive provides guidance to MNOSHA staff to evaluate reports of workplace violence to determine if MNOSHA will initiate an inspection or advise the person reporting the incident to take other action.

MNOSHA will not inspect incidents of workplace violence under classifications Type 3, Co-worker, and Type 4, Personal, including incidents that could be classified as intimidation, bullying or verbal abuse. MNOSHA staff should direct persons who report Type 3 and Type 4 incidents to their local police or sheriff agencies or other appropriate government entity, such as the Department of Human Rights, the National Labor Relations Board or MNOSHA's discrimination unit, depending on the circumstances. In some cases, there is no government entity that regulates the reported behavior (poor management skills, inappropriate workplace behavior that does not rise to the level of discrimination). In instances where it is determined that MNOSHA does not have jurisdiction, callers can be referred to Workplace Safety Consultation's workplace violence reference webpage for further information: <http://www.dli.mn.gov/WSC/wvp.asp>.

If the caller is in any immediate danger, the local police should be contacted, either by the caller or, if necessary, by the intake MNOSHA staff person taking the call.

### **1. Intake**

For reports of workplace violence under classifications Type 1 or Type 2, MNOSHA staff shall determine if reasonable grounds exist to consider conducting an inspection, subject to Supervisor/Director approval, by using the following criteria:

- a. Known risk factors to consider, listed by OSHA publication 3148-06R2016 Guidelines for Preventing Workplace Violence (While each of these factors shall be considered, they would not individually trigger an inspection.)
  - Working with unstable or volatile persons in certain healthcare, social service or criminal justice settings.
  - Working alone or in small numbers.
  - Working late at night or during early morning hours.
  - Workplace often understaffed
  - Working in high-crime areas.
  - Guarding valuable property or possessions.

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- Working in community-based settings, such as community mental health clinics, drug abuse treatment clinics, pharmacies, community-care facilities and long-term care facilities.
  - Exchanging money in certain financial institutions.
  - Delivering passengers, goods or services.
  - Having a mobile workplace such as a taxicab.
  - Employees perform jobs that might put them in conflict with others
  - Employees perform duties that could upset people (deny benefits, confiscate property, terminate child custody, etc)
- b. Evidence of employer and/or industry recognition of the potential for workplace violence in OSHA-identified high risk industries, such as healthcare and social service settings and late night retail settings, or evidence of workplace violence at the employer's establishment.
- c. Feasible abatement methods exist to address the hazard(s).

See Appendix A for examples applying these criteria to various types of situations.

## **2. Supervisor/Director Assignment of Report of Workplace Violence**

An inspection will generally be conducted where there is an inpatient hospitalization or death of one or more employees (fatality). If the Supervisor/Director determines, after assessing the facts and applying the criteria above, that it is not appropriate to initiate an inspection for a workplace violence fatality or hospitalization, they shall document the reasons on the Notes tab of the accident/event interface.

Note: OSHIs should not conduct their own inspections at the same time as other law enforcement personnel. If an OSHI arrives during a police investigation, they should stop their investigation, contact the law enforcement commander and request to be notified once the on-site police investigation is complete.

## **C. Inspection Procedures.**

This section outlines procedures for conducting inspections and issuing citations for workplace violence hazards. The procedures in FCM Chapter 3 (Inspection Procedures) shall be followed, except as modified below. OSHIs should consult any OSHA directives, and other references cited in this instruction for further guidance. OSHIs who identify incidents of workplace violence, through observations, employee interviews and/or injury and illness records, may address these hazards.

## **1. Opening Conference.**

- (a) OSHIs are to explain the reason for the inspection to the employer, including the incident that prompted the investigation.
- (b) OSHIs should review OSHA 300 log to determine if there are workplace violence injuries and review any trends of those injuries
- (c) OSHIs should request information on any hazard assessments performed and incident reviews at the facility concerning issues of workplace violence.
- (d) At the opening conference, OSHIs shall identify all employees who are in charge of security and/or responsible for the workplace violence prevention program, if any.
- (e) OSHIs shall initially determine whether the employer is in an industry where violence is a recognized hazard whereby the employer should have a workplace violence prevention program.
  - 1) Conduct interviews and request relevant documents to determine whether the employer has considered or implemented a hierarchy of controls for worker protection against potential acts of workplace violence (e.g., engineering or administrative controls, work practices and personal protective equipment).
  - 2) The evaluation of an employer's workplace violence prevention program should be based on any written safety programs and recordkeeping for injury and illness data. In addition, other information to be reviewed includes medical records related to incidents of workplace violence, police incident reports, actions taken to prevent future incidents and any other information deemed appropriate by the OSHI.
- (f) OSHIs should request all information regarding worker training programs and other methods used to inform workers of the potential for, and prevention of, workplace violence. Where appropriate, OSHIs should also request any discipline records related to violence or aggression shown at the workplace.

## **D. Walkaround and Records Review.**

OSHIs should use professional judgment in determining which areas of the facility will be inspected. OSHIs should identify jobs or locations with the greatest potential for workplace violence, as well as any processes and procedures that put workers at risk, including: building layout, interior and exterior lighting, communication systems, absence of security systems, and materials that could potentially be used as a weapon. OSHIs shall interview all employees on all work shifts who observed or experienced any acts of workplace violence. OSHIs should also interview first responders, police officers, managers and any others who observed any incident or its aftermath.

**1. Access to employee medical records.**

In situations where the OSHI determines that medical records should be reviewed, the OSHI should obtain specific written consent from an employee and should ensure that the agency or agency employee receiving the information is listed on the consent form as the designated representative.

**2. Other Records.**

Whenever possible, OSHIs should review the following types of records to determine if other incidents of workplace violence occurred and were undocumented in the OSHA log. As with the injury and illness records, OSHIs should identify the frequency and severity of the incidents.

- (a) Workers' Compensation Records.
- (b) Insurance Records.
- (c) Police Reports.
- (d) Security Reports.
- (e) Accident or near-miss logs.
- (f) First-Aid Logs.

**E. Citation and Notice Procedures.**

Violations cited using the General Duty Clause, Minn. Stat. §182.653, subd. 2, should be documented using all the required elements for general duty as outlined in the FCM Chapter 4. Furthermore, OSHIs should focus on the availability to employers of feasible means of preventing or minimizing workplace violence hazards.

**F. Coding.**

When an OSHI conducts an inspection as a result of a report of workplace violence or when a general duty citation is issued for workplace violence hazards, the OSHI must enter the following code in Field 42, Optional Information on the Inspection tab:

Type = N  
ID = 16  
Value = Violence

for the OSHA Management Team

Distribution: OSHA Compliance and WSC Director

Attachments: Appendix A - Examples

NOTICE: Minnesota OSHA Directives are used exclusively by MNOSHA personnel to assist in the administration of the OSHA program and in the proper interpretation and application of occupational safety and health statutes, regulations, and standards. They are not legally binding declarations and they are subject to revision or deletion at any time without notice.



## Appendix A: Examples

Federal OSHA has developed guidance and recommendations on workplace violence prevention for late-night retail and healthcare settings. These resources can be used by Supervisors/Directors and MNOSHA personnel to inform employers about developing a workplace violence prevention program.

Below are four examples applying these criteria to various types of situations. The first example presents facts where MNOSHA would investigate, the second is a case where MNOSHA would not investigate and the final two are examples requiring Supervisor/Director discretion.

### **Example 1 — Inspection to be conducted**

A patient in the psychiatric ward attacks a nurse at a local hospital.

- Known risk factor — YES
  - Working with unstable or volatile persons in healthcare.
- Industry and/or Employer Recognition — YES
  - Large body of studies on the existence of potential workplace violence in these types of healthcare settings. Previous incidents reported to employer.
- Existence of feasible means of abatement — YES
  - Large body of work on feasible means of abatement available to address workplace violence in these types of healthcare settings (e.g., having two or more employees present when unstable clients are at the facility).

### **Example 2 — No inspection conducted**

A disgruntled acquaintance stabs an employee of a bookstore at work.

- Known risk factor — NO
  - The incident covers only some of the risk factors, and the hazard could not have been reasonably anticipated.
- The incident occurred at 10 a.m. in a store with five employees present.
  - The only employer knowledge was that the employee and acquaintance appeared to argue prior to the stabbing.
  - Industry and/or Employer Recognition — NO
  - No industry history of violence at bookstores and no reason for the employer to anticipate such an incident.
- Existence of feasible means of abatement — NO
  - No known prevention measures for random acts of violence in this type of workplace setting.

**Example 3 — Supervisor/Director discretion required**

A shooting was reported at a local grocery store.

- Known risk factor — Unknown  
Evidence to be considered:
  - Is the store in a high-crime area?
  - Have there been past threats or acts of violence and is there a pattern of violence against employees at the store?
  - What time of day or night did the incident occur?
  - How many times have police responded to disturbances at this location?
  - How many employees were working at the time?
  - Was the incident a robbery?
- Industry and/or Employee Recognition — Unknown
  - Answers to the above questions will help determine if the local grocery store may be considered a late-night retail establishment for which there may be industry knowledge of the potential for workplace violence.
  - Information should be gathered on any safety precautions taken by the employer and a review should be conducted of injury and illness logs to determine whether the employer recognized the potential for violence or knew of past incidents.
- Existence of feasible means of abatement — Unknown
  - Determine if there are feasible means of abatement available to the local grocery store to eliminate or reduce the possibility of future incidents.

**Example 4 — Supervisor/Director discretion required**

Employees at a financial institution were shot.

- Known risk factor — YES
  - Exchange of money. However, information needs to be gathered regarding the type of workplace where the incident occurred (i.e., a stand-alone bank, a credit union in an office building, a quick loans or check cashing storefront).
  - Was the establishment in a high crime area?
  - Was the financial institution held up?
  - What were the circumstances surrounding the violent incident?
  - Was the perpetrator an acquaintance of any of the employees?
  - What interactions occurred between the perpetrator and employees?
- Industry and/or Employer Recognition — YES
  - Studies exist on the potential for armed robberies at financial institutions.
  - Were there any engineering controls in place to address incidents of workplace violence, such as bulletproof glass and buzz-in entries?

- Existence of effective abatement methods — Unknown
  - Are there feasible abatement methods available to reduce or eliminate the possibility of future incidents?
  - Feasible abatement methods would depend on the type of incident that occurred and the institution.