

OSHA Citation of Employer For Failing to Do More to Prevent Workplace Violence Upheld

Related Professionals

David E. Dubberly
803.253.8281
ddubberly@nexsenpruet.com

Practices

Employment & Labor Law

Industries

Health Care

05.15.2019

In December 2012, a “service coordinator” (similar to a community service worker and home health worker) employed by Integra Health Management Inc. was fatally stabbed during a home visit to one of the company’s clients.

The client had a history of mental illness and violent criminal behavior, including, in the 1990’s, convictions for aggravated battery with a deadly weapon and aggravated assault with a weapon. Integra was unaware of this because, at the time, it did not conduct background checks on clients. The murdered worker had submitted multiple reports to her supervisors in which she described disturbing behavior by the client and stated that she was uncomfortable being alone with him in his house.

OSHA Cites Employer Based on General Duty Clause

Following the tragedy, the U.S. Occupational Safety and Health Administration (OSHA) cited Integra for a “serious” violation of the “general duty clause” of the Occupational Safety and Health Act (OSH Act). According to OSHA, Integra violated the clause because its “employees were exposed to the hazard of being physically assaulted by [clients] with a history of violent behavior.”

What is the General Duty Clause?

Under the OSH Act, OSHA issues detailed regulations for workplace safety and investigates and cites employers for failure to comply with those rules. If OSHA identifies a workplace hazard that is not covered by a specific regulation, it may issue a citation under the general duty clause, which requires employers to keep workplaces “free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees.”

Employer’s Appeal

Even though there is no specific OSHA regulation on workplace violence prevention, Integra was unsuccessful in contesting the agency’s citation,

which was affirmed by an Administrative Law Judge of the Occupational Safety and Health Review Commission. Integra then appealed to the Commission, arguing that:

- The “hazards encompassed by the general duty clause [do not] include the risk of criminal assaults upon employees by third parties”;
- Neither Integra nor the social service or healthcare industries “recognized” the risk of a community service or health worker being assaulted by a client during an in-home visit as a hazard; and
- There were no feasible (*i.e.*, effective and reasonable) abatement measures that would have materially reduced the hazard.

OSHRC’s Decision

The Commission rejected Integra’s arguments, finding that:

- Workplace violence is a hazard covered by the general duty clause when “there is a direct nexus between the work being performed” and the “risk of workplace violence” like there was in this case;
- Integra recognized the hazard of physical assault against its workers by clients because it provided some safety training in recognizing and dealing with potentially violent clients, and because the murdered worker raised safety concerns in reports to her supervisors; and
- OSHA proposed abatement measures that were feasible.

OSHA’s Proposed Measures to Reduce Risk

The abatement measures proposed by OSHA, which the employer argued were not feasible but which the Commission found to be feasible, included:

- Creating a written workplace violence prevention program;
- Determining the behavioral history of clients, for example, using criminal background checks;
- Putting procedures in place to communicate any incidence of workplace violence to all employees who could potentially be exposed;
- Providing additional training on how employees can respond to a workplace violence incident;
- Providing employees with a reliable way to summon assistance when needed; and
- Establishing liaisons with local law enforcement agencies.

After the Commission’s findings in the Integra case, employers are on notice of the responsibility to take steps to prevent workplace violence under the general duty clause. Employers may consider taking steps similar to those

described above, among others, to address the risk of workplace violence.

Our Insights are published as a service to clients and friends. They are intended to be informational and do not constitute legal advice regarding any specific situation.